The Royal Commission on Legal Services

Chairman: Sir Henry Benson GBE

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PART IV

The legal profession

CHAPTER 29

The Structure and Organisation of the Profession: Solicitors

Background

The present position

29.1 The name of every person admitted as a solicitor is entered on the Roll of solicitors. It contains the names of those who are in active practice and those who are not, those who have remained in the legal profession and those who have gone on to some other form of work. It gives no indication who are the current, active members of the profession.

29.2 In order to practise as a principal or, if in employment, to undertake certain types of work, a solicitor must hold a practising certificate. These are issued annually by the Law Society to every solicitor requiring one. An applicant for a practising certificate must satisfy certain conditions. He must pay a fee of £60, including £20 for the national information campaign (see paragraph 27.5), for the issue of a practising certificate, and (subject to certain relief during the first six years in practice) a further £30 as a contribution to the compensation fund. The number of practising certificates in force on 30th April 1979 was 34,090.

29.3 Any solicitor on the Roll, whether he has a practising certificate or not, may become a member of the Law Society. The London subscription is £20; solicitors elsewhere pay £14, or, if they fall within certain categories, reduced subscriptions. The position at 30th April 1979 is summarised in Table 29.1.

29.4 Members of the Law Society have the right to vote in elections for the President, Vice-President and auditors and for council members representing their various constituencies; members are also sent certain notices and publications. They may use the amenities of the building in Chancery Lane comprising dining rooms, reading rooms and a library. A solicitor who is not a member of the Law Society has none of these rights.

The Law Society

29.5 The Law Society is both the governing body of the profession and its professional association. Its functions are exercised and its policies are determined through its Council. The Law Society is responsible for issuing practising certificates, proposing practice rules for approval by the Master of the Rolls, investigating complaints and prosecuting disciplinary proceedings and administering the civil, and part of the criminal, legal aid schemes as agent for the

TABLE 29.1
Membership of the Law Society, 30th April, 1979

	Number of solicitors with practising certificates	Percentage
Members of the Law Society	27,257	80
Not members of the Law Society	6,833	20
Total of practising certificates in force	34,090	100

	Members of the Law Society	Percentage
With practising certificates as above	27,257	86
Without practising certificates	4,480	14
Total membership of the Law Society	31,737	100

Source: Law Society.

government. The structure and voting arrangements of the Society are set out in annex 29.1.

29.6 In its capacity as a professional association the Law Society performs various functions for the benefit of the public and the profession. For the public benefit it maintains standards by imposing educational requirements and disciplinary sanctions, and provides for a compensation fund and arrangements for professional indemnity insurance. It gives assistance to schools and others who wish to provide education in the law and it cooperates with careers advisory services. It maintains a law reform committee and is regularly consulted by the government and others on matters of legal policy. For the benefit of its members, it makes recommendations to the government on matters affecting their interests, circulates the Gazette, conducts institutional advertising, maintains the Law Society's Hall and offers support and advice in a number of ways to individual practitioners.

Local law societies

29.7 There are 121 local law societies, all of which operate independently of the Law Society. They make their own financial arrangements and their own rules as to membership. Their size varies greatly: the numbers of members range from 1,200 to ten. The total membership of local societies in September 1978 was 24,405. Because their rules for membership vary it is not possible to say what is the total potential membership, but it is clear that most members of the practising profession belong not only to the Law Society but also to a local law society. In addition to the local law societies, there are eight Associated Law Societies which are regional groupings of local law societies. According to the Law Society, the Associated Law Societies vary in effectiveness and in their levels of activity. The

Law Society in its evidence suggested that the activities of local law societies can be divided into the following categories, although they are not exhaustive.

(a) *Professional:* dealing with complaints from the public, helping solicitors who are in difficulties, maintaining a register of vacancies for articled clerks and organising social activities.

(b) *Educational:* arranging lectures and courses and maintaining a library.

(c) *Public relations:* advisory services of various kinds and relations with the local press.

(d) *Relations with the Law Society:* each local society is independent and, according to the Law Society, its independence is carefully guarded. At least once every year there is a meeting of presidents and secretaries of local law societies, and a separate meeting of local law society secretaries. Presidents, secretaries and other members of local societies meet at the annual National Conference of the Law Society which is usually held in October. The Law Society maintains a network of communication, partly by correspondence with local law societies' secretaries and partly by contacts maintained by Council members.

Organisations connected with the Law Society or the law

29.8 In its evidence, the Law Society listed many organisations connected with the legal profession, in addition to local law societies, to which members of the profession are known to belong. We deal elsewhere with organisations representing students and articled clerks and members of the profession in employment other than in solicitors' offices. We also mention elsewhere the work of such organisations as the Legal Action Group and Justice, formed to advocate improvements in the substance and the administration of the law. In the following paragraphs we consider the position of the British Legal Association (BLA), which claims that it should exercise some of the functions at present performed by the Law Society.

The British Legal Association

29.9 The BLA informed us in January 1977 that its membership, which fluctuates from time to time, was in the region of 2,100, distributed amongst 1,382 firms of solicitors out of a total of between 6,500 and 7,000 firms throughout the country. It has an Executive Committee, elected by show of hands at a general meeting. It expects between 60 and 150 members to attend such meetings, though up to 300 were estimated to have attended one meeting. Its written evidence was approved by a meeting attended by between 70 and 80 members.

29.10 The BLA described the reasons for its foundation in the following way.

> The British Legal Association was founded in 1964 by a group of solicitors in private

practice who considered the Law Society was not sufficiently active in pursuing the interests of solicitors. Another reason for BLA's foundation was a feeling of frustration at the way in which the centralised Law Society in London was increasingly out of touch with the grass roots practitioner. The Law Society was too subservient to Government and seen to comply too readily with the wishes, often expressed in private, of the Lord Chancellor. Attacks upon the profession in the media and by politicians were not being answered, although the attacks were often ill-informed, unfair and tendentious.
The Law Society, it was felt, had important statutory functions to perform in the public interest and this was incompatible with the unfettered representation of the sectional interests of solicitors.
Further, there was a dislike of the 'closed shop' of the Law Society whereby it was exceedingly difficult to get on the Council of the Law Society or on to the Council of a local law society unless you were acceptable to those in power. It was also considered that many members of the profession had an unhealthy fear, which the Law Society did nothing to dispel, of the powers of the Law Society.

29.11 The BLA contended that the functions of the Law Society should be confined to those concerned with the administration and government of the profession and that the function of representing the interests of the profession should be carried out by the BLA. We return to this suggestion in paragraph 29.36.

The Organisation of Solicitors

Principles

29.12 Before discussing the evidence received concerning the present arrangements, we set out the principles we regard as appropriate for the organisation of solicitors operating as an independent profession, offering a service to the public at large.

29.13 In order that a service of adequate quality may be provided to the public by practitioners with the necessary standards of competence and probity, a number of functions must be performed.

(a) A standard of education must be set as a qualification for admission, students must be given professional education and training, a candidate's suitability to practise must be established by examination or otherwise and a programme of post-qualification education should be set up.

(b) Codes of conduct and appropriate standards of professional work must be maintained.

(c) Requirements as to conduct and quality of service must be enforced, where necessary by professional disciplinary procedures.

(d) The public must be made aware of the services which the profession provides and these services must be coordinated in a way that best serves the public interest.

(e) A sufficient income must be raised to enable the functions mentioned above to be effectively performed and property and assets held must be administered to the advantage of the profession.

29.14 The profession should have good internal communications between its members so as to be able to make representations or to give advice to the government and others on matters with which the profession is concerned. Where in the public interest the conduct of certain matters is reserved by law to the legal profession, it should be for the responsible department or public prosecuting authority rather than for the profession to enforce the law.

29.15 We have considered the evidence that these functions cannot adequately be performed by a single body, and have reached the conclusion that (except for the prosecution of unqualified persons) the Law Society should continue to perform the functions described above.

The character of the governing body

29.16 The governing body of a profession should be compact and readily identifiable; it should be a means of providing guidance and leadership both in its corporate capacity and through its president and members. The different sizes and types of practice and the various specialisms in which members of the profession are employed should be represented on it. Control should not be vested in a single group or sector and there should not be an established governing clique. Its functions should not be so highly centralised as to make it appear remote from its members in any part of the country. It must be responsive to lay opinion.

Findings

Criticisms of the present arrangements

29.17 It was argued in evidence submitted to us that the present arrangements fell short of these principles in a number of ways. The main criticisms, and our comments on them, are set out below.

29.18 We received evidence asserting that the profession was not sufficiently responsive to lay opinion and the needs of the public. We do not believe it to be true that solicitors in general are inattentive to public opinion. Most solicitors succeed in establishing a good working relationship with their clients and are found attentive and cooperative. Many assist in meeting the needs of the general public by engaging in voluntary work. Even so, the impression remains in the minds of some members of the public that the profession is unresponsive because it has been slow to adapt to changing demands.

29.19 We believe that this impression has been formed because in recent years solicitors, with some exceptions, have not attempted to provide services in new areas of work, in particular in social welfare law. There are a number of reasons

for this, one of which is that much of the work in this field is not sufficiently remunerative. It must be accepted that in a period of financial restraint it is difficult to secure alterations in the structure of fees; efforts have been made to improve the present position, but even so the profession does not appear to have succeeded in making it clear to the public why, for the reasons given, its services are limited in extent.

29.20 The same period has also been marked by the growth of law centres. These at first encountered hostility from solicitors practising in their areas and from local law societies. Initially the Law Society did not find it easy to establish a satisfactory relationship with the law centres and the profession appeared to the public at that time to be concerned only with protecting itself from competition.

Communications within the profession

29.21 Within the profession, there is some lack of communication between the Law Society and solicitors who are not directly connected with its activities. The Society has no organisation of its own by which to carry out its policies throughout the country. There has been criticism, expressed by individual solicitors and by organisations such as the British Legal Association, of the way in which the Law Society forms its policies and puts them into effect. The Society is said to be too highly centralised.

29.22 In spite of the connections maintained with local law societies, the Law Society can never be certain of their support for its declared policies. In its evidence the Law Society said that this situation was healthy. We do not agree. There should be free and vigorous debate within any organisation before, rather than after, a policy is adopted. Once a policy has been adopted, in accordance with the organisation's constitutional and democratic arrangements, it should be put into effect. Within the solicitors' branch of the profession, this does not always occur. A policy may be adopted by a vote of the Council of the Law Society. It may thereafter encounter resistance amongst solicitors and local law societies and suffer a check. In the evidence submitted to us examples were given where a proportion only of local societies had responded to a policy laid down by the Law Society. In consequence, a referendum may be required, as in the case of the indemnity insurance scheme, and sometimes, as in the important issue of educational policy, the intended progress of events may be impeded.

29.23 These considerations lead us to two conclusions. First, the system by which at present the Law Society may sound out opinion within the profession as a whole is not adequate. Secondly, the Law Society and its decisions are not held in proper regard by all solicitors and by all local law societies. We discuss possible remedies in paragraphs 29.28 onwards.

Lack of support

29.24 While there is no doubt of the dedication and competence of those who serve as members of the Council and who occupy senior offices, many solicitors

who might usefully take part in the government of the profession choose not to do so.

29.25 Sole practitioners and members of small firms are not in a position to devote much time to work outside their practices. For example, it is difficult for a sole practitioner to combine the onerous duties of service on the Council or fulfilling the role of President with earning an adequate living from professional work. Moreover, a practitioner has a duty not merely to himself but to his clients. Unless he has the support of a number of partners, a solicitor cannot be sure that the interests of his clients will not suffer if he devotes his time and energies to other purposes. Sole practitioners and members of small partnerships, through no fault of theirs, are therefore under-represented in the work of the Society. There are at present no sole practitioners on the Council; only three of the 70 members are from two-partner firms.

29.26 There is another category of absentee from the Council and committees of the Law Society which is regrettable. There are many very able solicitors who are not sole practitioners or from two-partner firms who nevertheless choose to take no part in the organisation and management of the profession. We consider that they owe it to their profession to do so.

29.27 In the remainder of this chapter, we consider whether improvements would be achieved by changes in membership of the Law Society, by means of increased lay participation in the work of the profession, and by a district organisation. Apart from general criticisms, we received complaints relating to specific areas of activity. We deal with these in other chapters under appropriate subject headings; they arose particularly in relation to the handling of complaints, with which we dealt in Chapter 25.

Proposals

Voting rights

29.28 Under present arrangements only those solicitors who have become members of the Law Society and have paid the appropriate subscription are entitled to take part in elections for its governing body, the Council. As shown in Table 29.1 above, only 80 per cent of solicitors who take out practising certificates are members of the Law Society.

29.29 Until 1974 the Society had a statutory power to compel all practising solicitors to become members of the Law Society. The power was never exercised and was not included in the Solicitors Act 1974. We asked the representatives of the Law Society who gave oral evidence before us whether membership should be compulsory for all practising solicitors. They replied that it should not.

> As lawyers, we are concerned with the freedom of the individual, and it ill becomes us to force membership of the Society on all solicitors with—or in some cases—without a

practising certificate. This was the reason why the Society refrained from making use of its statutory power to compel membership, when it was available. If the power were restored, the Society would not use it.

29.30 We are convinced that, in an independent and self-governing profession, it is a responsibility rather than a privilege of all practitioners to take part in its management. Furthermore, it is essential that they should receive all the professional communications issued by the governing body for the information and guidance of members.

29.31 Only solicitors who are principals in firms or who undertake litigation are required to hold practising certificates issued annually. We consider that the requirement to hold a practising certificate should apply to any solicitor on the Roll who is working in the capacity of a solicitor. This is consistent with our recommendation in Chapter 32 that every barrister who is in private practice or who requires his professional qualification for the purpose of his work should pay an annual subscription to the Senate. A person on the Roll who is not required to hold a practising certificate but who wishes to participate in the affairs of the profession should be enabled to do so on application to the governing body and on payment of an appropriate subscription.

29.32 We consider that all solicitors who pay their dues and hold practising certificates should be entitled to hold office in the governing body of the profession and vote in elections. They should also receive all technical and other material which is prepared for the use and information of members. This will be of increasing importance in the future, particularly when definitive Professional Standards and preliminary exposure drafts are issued. All solicitors working as such would then be in a position to play a full part in the business of the profession and should be encouraged to do so.

29.33 We do not wish to imply that membership of the Law Society should be compulsory, and recognise the objection to such a proposal. But account must be taken of the fact that, in order to have the right to practise, a solicitor must have a practising certificate and for it must make a payment to the governing body of his profession to provide funds enabling it to carry out its functions. We think it fair that anyone required to make such a payment should, if he chooses, be entitled to take part in deciding the application of funds so raised and to hold office in the governing body which determines the rules which are applicable to practising certificates.

29.34 If the foregoing arrangement are adopted, it will be desirable to re-assess the payments made annually by solicitors for practising certificates and by the others mentioned in paragraph 29.31 in order to raise an income which is adequate for the needs of the profession. We pointed out in paragraph 29.4 that the Law Society provides certain amenities at the Law Society's Hall in Chancery Lane in the form of a library, dining rooms and reading rooms. When re-assessing the annual payments, the Law Society might decide that an appropriate annual

payment should be made by those who wished to take advantage of these amenities; those who did not wish to do so would not be required to make any payment in respect of them.

Functions of the Master of the Rolls

29.35 As officers of the Supreme Court, solicitors are subject to its supervision which is, in part, exercised by the Master of the Rolls. He is empowered, with the concurrence of the Lord Chancellor and the Lord Chief Justice, to make regulations about the admission of solicitors, the keeping of the Roll of solicitors, the maintenance of a register of applications for practising certificates and the issue of certificates. He formally admits articled clerks as solicitors when the Law Society certifies that they have satisfied the requirements for admission. Rules on a number of matters, including those as to professional indemnity and disciplinary procedures, can be issued by the Society only with his concurrence. He appoints members of the Solicitors' Disciplinary Tribunal. We see no reason to alter these arrangements save for some changes as regards the approval of practice rules, set out in paragraph 25.10.

Suggested changes in structure

29.36 A number of suggestions were made to us for changes in structure which would bring about different forms of supervision or guidance over the affairs of the profession. The most fundamental proposal was that of the British Legal Association. It wished the present functions of the Law Society to be divided between the Law Society and the Association. It had it in mind that it should represent the interests of the profession, while the Law Society should exercise governing functions.

29.37 There is at present little cooperation between the Law Society and the BLA. We do not wish to see the profession's responsibility to provide a service to the public dissipated in any way. The profession's duty is to maintain a service of the requisite standard. The appointment of another body would remove from solicitors collectively the sense of direct responsibility to perform this duty. We do not think that it would be practicable to separate functions in the way proposed and to divide up responsibilities, for example of the bodies listed in annex 29.1 paragraphs 9–11, so as to deal separately with matters affecting the public interest and matters affecting only the profession. The evidence suggests that the great majority of the profession do not wish the present responsibilities of the Law Society to be divided, and we consider this to be right.

29.38 Alternatively, it was suggested that an advisory committee should be set up to report on the conduct of business by the Law Society, in the way that the Lord Chancellor's Legal Aid Advisory Committee reports on the operation of the legal aid system. In this connection, we draw attention to the recommendation in Chapter 6 that a Council for Legal Services should be established which will be responsible for advising the Lord Chancellor on all aspects of the provision of legal services. We consider that no additional advisory body will be necessary.

29.39 At present, laymen attend meetings of the Law Society's Legal Aid Committee but not those of the fourteen area committees for legal aid or their dependent local committees. They are also appointed to the Solicitors' Disciplinary Tribunal. A Lay Observer is appointed to investigate the Law Society's treatment of complaints. If our recommendations as regards regional legal services committees are adopted (see Chapter 6) laymen will be appointed to serve on those bodies.

Laymen on the Council of the Law Society

29.40 It was argued in the evidence submitted to us that laymen should be appointed to the Council of the Law Society by the responsible minister or some other external agency. We do not favour this proposal, because it is contrary to the principle that the governing body should be elected by the members of the profession. It would be possible as an alternative to require that the Council co-opt laymen, in the way it now co-opts solicitors with specialist knowledge, from a panel maintained by an external agency. But this would amount to external appointment of additional members, with a limited power of choice given to the Council.

Laymen on committees

29.41 With regard to the committees of the Law Society, we take a different view. We believe that laymen would be of assistance in certain committees. For example, the committees dealing with remuneration, education and public relations would often benefit from the co-option of experts in these fields. We consider it would be in the public interest, as we said in Chapter 25, if laymen served on the committees concerned with disciplinary matters. Laymen, together with representatives of the judiciary and the Bar, could play an important part in the work of the committee on Professional Standards, whose appointment we recommended in Chapter 22. The Law Society told us in the course of oral evidence that it would be willing to appoint laymen to committees in appropriate cases.

29.42 We believe that an arrangement of the kind proposed above would put laymen where they are likely to be of the most help and are able most effectively to exercise influence, namely at the stage when the policies to be recommended to the Council are in the process of formation. Much will depend on the standing and expertise of those appointed. We believe the responsibility for making suitable appointments should rest on the Law Society.

District organisation

29.43 If the policies of the Society are to be put into effect in a fashion acceptable both to the public and to practising members of the profession, we think it essential that it should have an organisation throughout the country upon which it can rely to carry these policies into effect. Examples of such policies are those relating to recruitment and training of articled clerks; post-qualification education; duty solicitor and rota schemes; liaison with the CABx organisation;

the checking and updating of legal aid solicitors lists; and service on the proposed regional legal services committees. We refer to this in later paragraphs as a district organisation but it could be an area, provincial or regional organisation. The 121 local societies cannot at present constitute an organisation of this character. Many of them are too small, have no permanent staff and confine themselves to social activities and all take pride in their independence from the Law Society.

29.44 The Law Society is opposed to this suggestion because it does not wish to create a further bureaucracy. We sympathise with its view, but consider such a result need not follow. The necessary district organisation could be provided in a number of ways and it is a matter for the Law Society to devise whatever is the most efficient and economical system. It could be achieved by enlarging some of the existing law societies which would absorb others. Alternatively, local law societies could be affiliated, as many already are, into district or regional groupings. Each enlarged society or each district group (as may be decided) would need some secretarial staff and, for this purpose, it would draw on the resources of personnel which at present provide secretarial staff for the local law societies so that little or no increased expenditure would be necessary.

29.45 The district organisations would have to work closely with the regional legal services committees recommended in Chapter 6.

29.46 The essential feature of the arrangement we propose is that the district organisation, whether or not formed by grouping or absorbing local societies, should regard itself as associated with, and not independent of, the Law Society. The Law Society agreed that a district organisation might perform a useful service in promoting continuing education and organising office consultancy services. A former president of one of the largest local law societies pointed out the deficiencies of the local societies in dealing with such matters as public relations and communications with practitioners. He said that many practitioners in remote areas, although in close touch with members of their small local society, felt cut off from the mainstream of professional life. A district organisation associated with the Law Society is precisely suitable for remedying deficiencies of this kind and for undertaking the responsibilities described in paragraph 29.43. A particular function which such a district organisation could perform is the formation of a clients' advisory service on the lines which has been established nationwide by the Royal Institute of British Architects; this service helps potential clients who seek its advice to identify their problems and find professional assistance which is appropriate to their needs. We believe that a district organisation of this nature would do much to meet one of the criticisms from the British Legal Association.

29.47 A district organisation of this kind cannot be created except by the governing body of the profession and with the willing cooperation of local societies and all practitioners. At present the Law Society is not disposed to adopt any form of district organisation. Be we emphasize that there is clear evidence, summarised above, of a need to improve the implementation of the policies of the

profession, as adopted and expressed by the Law Society, throughout the country. Local law societies are not suitable for this purpose. Many are too small; some lack interest; all reject any arrangement which would make them responsible in any way to the Law Society or which would interfere with their present desire to be independent of the profession's governing body. The developments that are taking place in our system of government and in the attitudes of our society, movements within it, and in technology and business practice will all in the future require the profession to act as a whole, and without undue delay, in order that clear and coordinated policies may be developed and their implementation pursued with a sense of a common purpose. It would be difficult to achieve this with the profession's present structure, and we believe that a change on the lines we propose is indispensable. It will require leadership of a high order both in the Law Society and in the local law societies to bring these changes into effect.

Conclusions and Recommendations

			Paragraphs
Principles	R29.1	The principles on which the legal profession should be organised are set out in the text.	29.13-29.15
Lack of support	R29.2	The Law Society is entitled to a greater measure of support than is at present provided by the local law societies and many solicitors.	29.23
Voting	R29.3	Every solicitor working in the capacity of a solicitor should hold a practising certificate; this should entitle him to have voting rights and to participate in the work of the professional governing body; subscription rates should be adjusted appropriately.	29.31-29.32
Overall responsibility	R29.4	Responsibility for safeguarding the general interests of the profession should not be transferred to the British Legal Association.	29.37
Laymen	R29.5	The Law Society should in appropriate cases co-opt laymen to serve on its committees but not on the Council.	29.40-29.41

Paragraphs

District organisation	R29.6	A district organisation should be formed, by re-grouping or re-organising local societies, which would be responsible for implementing the policies of the Law Society throughout the country.	29.43-29.47

ANNEX 29.1

The Structure and Voting Arrangements of the Law Society

(paragraph 29.5)

The Council of the Law Society

1. The Council of the Law Society comprises 70 members, 56 of whom are elected by the members of the Law Society. The remaining 14 are elected by the Council itself to ensure that it has members with specialist knowledge in particular aspects of legal practice and branches of the law.

2. For the purpose of the election of members of the Council the country is divided into 31 constituencies. Each constituency returns a number of members (varying from one for most provincial constituencies up to five for an area with a high concentration of Law Society members like the City of London) to the Council for a five-year term. No constituency returns more than one member in any particular year unless a vacancy arises in mid-term through death or resignation, in which case the newly-elected member will serve only for the balance of the five years. Provided he is sane, below the age of 70 and not bankrupt, a member can stand for election in the constituency in which he has his registered address or is a member of a local law society. He must be nominated by at least two but no more than ten eligible members, or be selected by a committee comprising representatives of the local law societies in the constituency. Under the Law Society's bye-laws these selection committees are established in each constituency for the purposes of securing sufficient candidates and of assisting members to make a choice between candidates. If a selection committee is satisfied that there are sufficient candidates of merit to fill the available vacancies it is not obliged to make a selection.

3. A member is eligible to nominate a candidate and to vote in the election in the constituency within which is his registered address.

4. Where the number of candidates does not exceed the number of vacancies available the persons nominated are deemed to be elected. Where there are more candidates than vacancies a poll is taken of the members in the appropriate constituency and the election is decided by a simple majority. In the case of a tie the election is determined by lot drawn by the chairman of the scrutineers appointed by the President of the Law Society.

5. Recent experience in elections for vacancies to the Council has been as follows.

TABLE 29.2
Election of the Council of the Law Society, 1975-77

	1975	1976	1977
Number of vacancies to be filled	12	14	12
Vacancies filled without a poll	11	12	11
Candidates for contested vacancies:–			
nominated by members	2	2	1
selected by committees	0	3	1
Number of eligible voters voting	377	(a)267[1] (b)740	337
% of eligible members voting	68	(a) 25 (b) 98	61

[1]The figures are given separately for each of the two constituencies in which the election was contested.

Source: Law Society.

President and Vice-President

6. The President and Vice-President are elected at an annual general meeting of the Society, having been nominated from among the members of the Council by at least two members of the Law Society. All members of the Council are eligible for nomination. If either post is contested the election is settled by postal ballot of all the members of the Law Society. Both officers remain in office until successors are elected at an annual general meeting.

7. There has not been a contested election for the office of President in living memory. The most recent election for the office of Vice-President was in 1953.

Committees of the Council

8. The Council of the Law Society is served by a number of standing and special committees. The President and Vice-President are *ex officio* members of all of these except the Legal Aid Committee and, if they are members of the Solicitors' Disciplinary Tribunal, the Professional Purposes Committee. Standing committees may co-opt non-Council members of the Society provided the number of such members does not exceed the number of Council members on the committee.

9. The standing committees of the Council are the following:–
Council Coordinating Committee
Contentious Business Committee
Education and Training Committee
Law Reform Committee
Legal Aid Committee
Non-Contentious Business Committee
Professional Purposes Committee
Professional and Public Relations Committee
Treasurer's Committee.

10. In addition there are various permanent special committees including committees on:–
The Future of the Profession
Computer Services
Constitution of the Law Society
Indemnity Insurance and International Relations
The Gazette, and
Specialist Selection.

These are supplemented by special committees set up from time to time to handle transient matters such as Limitation of Actions or the Royal Commission on Legal Services. There are also joint standing committees with the Bar and with the Institute of Legal Executives, both of which are chaired by the Law Society.

Committees of the Law Society

11. In addition to the committees of the Council there are a number of committees which are concerned with matters as to which solicitors as a profession have an interest and a view. These are known as the standing committees of the Law Society. Each has a majority of non-Council members. They are concerned with the following subjects:–
Criminal Law
Company Law
Land Law and Conveyancing
Revenue Law
Town and Country Planning
Solicitors' Remuneration in Non-Contentious Business
Solicitors' Remuneration in Contentious Business.

CHAPTER 30

Practising Arrangements: Solicitors

Introduction

30.1 Solicitors may work not only as sole practitioners but also in partnership with other solicitors; they may not, however, practise in partnership with members of other professions nor are they permitted to incorporate their firms as limited or unlimited companies under the Companies Acts 1948 to 1976. In this chapter we consider whether the prohibitions on inter-disciplinary partnerships and incorporation should be changed. The contents and conclusions of this chapter apply only to solicitors. We consider the practising arrangements of barristers in Chapter 33, in which we recommend that all barristers should continue to practise as sole practitioners.

Inter-Disciplinary Partnerships

The present rule

30.2 Rule 3 of the Solicitors' Practice Rules 1936-1972 prevents a solicitor from sharing or agreeing to share his professional fees with any person except another solicitor or one who is entitled to practise as a lawyer in any country other than England or Wales and has his principal office in such a country. The present rule effectively prevents partnerships with members of other professions but does not prevent a solicitor from employing a member of another profession if it is desirable to do so.

The argument for change

30.3 There are occasions when a client requires advice not merely from a lawyer but also from someone skilled in another discipline such as accountancy, medicine, architecture or engineering or from someone experienced in housing matters or in social and community work. It is argued that it would be more convenient for the client if advice and assistance of every description were available in one place and within one organisation. The suggestion has therefore been made that lawyers should be permitted to practise in partnership with members of other professions. We examine the advantages and disadvantages of partnerships with different disciplines and then consider some matters of general application.

Partnerships with doctors and others

30.4 It has been suggested that solicitors might enter into partnerships with members of other professions including medicine, accountancy, engineering and

architecture or with patent agents or actuaries. The services of members of these professions are likely to be called in aid mainly in the conduct of litigation. In personal injury matters, for example, it is necessary to have medical and technical advice and, when calculating damages, it is often desirable to have actuarial assistance. Consulting engineers advise, in conjunction with architects, in relation to building contracts and similar classes of work.

30.5 In litigation, professional experts prepare reports of their findings on which, if the case proceeds to trial, they give evidence. An expert is engaged not only to advise the client but also in litigation to give evidence to the court. In this respect his function is different from that of the solicitor or of the barrister. We consider it would not be in the public interest if the expert adviser practised in partnership with the lawyers whose function it was to prepare the case for trial. In this field, therefore, we consider that inter-disciplinary partnerships should not be permitted.

Partnerships with estate agents

30.6 In transactions affecting land, it is said that the client may prefer to instruct only one firm to deal with all matters arising from the sale and purchase of domestic property, and that the success of solicitors' property centres in Scotland shows the attraction of a scheme of this character. So far as advantages to the client are concerned, we consider that a vendor, putting property on the market, may not necessarily wish to instruct one agent only. In the same way, a purchaser who is looking for a suitable property will usually wish to make enquiries of a number of agents, in order to widen the area of selection.

30.7 The Law Society said in evidence that partnership with estate agents would have some disadvantages for solicitors; in particular, it would be easier for large firms of estate agents to take in one or more solicitor partners than for firms of solicitors to recruit estate agents on level terms. This would have the effect of absorbing sole practitioners and small firms into practice with estate agents. If, in accordance with its purpose, a combined partnership concentrated on conveyancing work and property transactions, the long-term effect would be to reduce the number of solicitors in general practice in small towns and rural areas. There is no indication of any demand within either profession for the right to form such partnerships and we attach importance to the existing convention that reputable estate agents leave it to the solicitor to prepare a contract on behalf of the vendor. This division of function will be emphasised if, in accordance with our recommendation in Chapter 21, unqualified persons are precluded from preparing, for reward, contracts for the sale of interests in land. Having regard to all these considerations, we do not consider that partnerships between solicitors and estate agents would be in the public interest.

Partnerships with accountants

30.8 A number of the larger firms of accountants and solicitors employ members of the other profession, no doubt to extend their range of work. A salaried post might not however attract the most able or senior members of the

other profession, and therefore the ability to offer partnerships might be an advantage to these firms.

30.9 Where there is an overlap of work, which in the case of lawyers and accountants is mainly in the fields of taxation and trusts, both disciplines prefer the freedom to seek advice on behalf of their clients from those who have specialised knowledge. In taxation matters, the accountant will wish to consult a barrister or solicitor who has special knowledge of the problem under consideration. In trust matters the solicitor will prefer to consult an accountant who is known to have experience in that area. Both disciplines rely on the independent and impartial advice which they obtain from the other and it is in the client's interest that they should do so.

30.10 In any event there appears to be no general demand by either profession to establish inter-disciplinary partnerships. There is support for this view from abroad in the fact that, although for some years it has been possible for lawyers and accountants to form partnerships in certain parts of Germany, little use has yet been made of this facility.

30.11 The Law Society pointed out that inter-disciplinary partnerships with accountants would enable solicitors to extend the range of their business and to retain the conduct of cases which a client might otherwise prefer to be handled by a member of the other profession. It is suggested that such partnerships would enable solicitors and accountants better to compete with merchant banks for certain classes of commercial work. As regards the first of these points, we think, as we mention below, that it is in the client's interest for him to be able to choose his adviser without restriction. We think there is little substance in the second point.

Cost

30.12 It is arguable that the cost of advice from an inter-disciplinary partnership would be lower than that of advice given by two professional firms separately; there would, for example, be savings in time as a result of there being ready access to another discipline within the same office. However, the same amount of professional work would be required from those practising in the various disciplines under either arrangement. In a simple case, a saving might be made although in most cases this would, we think, be small.

Confusion of responsibility

30.13 The client of a solicitor has certain rights: he has the right to have costs taxed by the court or certified by the Law Society, his communications are protected by legal professional privilege and he can look to the disciplinary procedures of the Law Society for a remedy in cases of misconduct and to the compensation fund to protect him from the consequences of dishonesty. In the case of other professions, the nature of the protection available to clients and the disciplinary rules and procedures are all different. It is said that partners from two professions should be under the highest ethical requirements of both; but this is to say that for the purpose of providing a code of professional discipline for this class

of partnership, the two professions would have to produce a common code of conduct. We suspect that this would lead to considerable practical difficulties.

Advice on the choice of experts

30.14 We have mentioned the importance, where a client needs assistance from a practitioner in another discipline, of directing him to someone with the right knowledge and experience. If there were inter-disciplinary partnerships there would be an inevitable tendency to refer the client to the partner in the firm who was engaged in that discipline. But he might not be the person best suited to resolve the client's problems. The independence of the solicitor's advice would therefore be likely to be impaired.

Summary

30.15 Our concern is to raise the level and quality of service to the public by the legal profession. This purpose would not be served by any measures which confused the divisions of professional responsibility in the mind of the client. Divisions of function between different professions and callings are the result of historical development and are not fixed for all time, but we do not think that it would be in the interests of clients or in the general public interest if at present partnerships were permitted between solicitors and members of other professions.

Incorporation

The present position

30.16 The traditional method by which professional people carry on business is as sole practitioners or in partnership firms. This is so in the overwhelming majority of professional practices in this country and abroad. Practice in this form signifies the total commitment of the practitioner to his client because all the partners in a firm are jointly and severally responsible to the firm's clients to the full amount of their partnership and their private assets. Practice in corporate form is permissible for lawyers in certain states in America but such arrangements are rarely to be found in any profession in this country or in other member states of the EEC. The only significant exception of which we are aware in this country is the Royal Institution of Chartered Surveyors which recently approved practice in corporate form with limited liability subject to certain restrictions.

30.17 The incorporation of a firm of solicitors as a company under the Companies Acts 1948 to 1976 is prohibited by the combined effect of the provisions of the Solicitors Act 1974 and rule 3 of the Solicitors' Practice Rules 1936-1972. If these restrictions were changed there would be two possibilities, namely the formation either of limited liability companies or of companies with unlimited liability.

Limited liability companies

30.18 A company formed under the Companies Acts 1948 to 1976 and limited

by shares has a capital of a stated amount divided into shares. The liability of the shareholders as such is limited to the unpaid nominal amount of the shares which they own. If the company fails, the owners of the shares may lose part or all of their value but, if the shares are fully paid, are not liable to make any further contribution towards paying off the creditors of the company. In most circumstances, the creditors have recourse only to such assets of the company itself as are available to meet their claims.

Unlimited liability companies

30.19 It is possible to form a company under the Companies Acts with unlimited liability. In that event the shareholders have no protection of limited liability and are jointly and severally responsible to the full extent of their private assets for the liabilities of the company. Their position therefore in a business carried on as an unlimited company is similar to that of the partners of a firm and a client has equivalent remedies against them.

Advantages of incorporation

30.20 In commerce, incorporation has a number of advantages which result from the ability of the company to raise capital, to maintain its identity in spite of changes in its members and to carry on business as a legal person separate and distinct from its members. Companies are almost invariably formed with limited liability with the consequence that the liability of the shareholders is restricted in the way described in paragraph 30.18.

30.21 For solicitors the main advantage of practice in corporate form is financial. In most cases the greatest benefit of incorporation lies in securing improved pension and retirement benefits. As the law stands at present, better pension arrangements can be secured for the directors of a company (whether limited or unlimited) than are possible for the partners of an unincorporated firm. This anomaly has existed for a great many years in this country and, if it were to be removed, the main advantage of incorporation would vanish for many solicitors. Incorporation may have certain consequential effects for tax purposes and this is also true in connection with the formation of service companies referred to in paragraphs 30.27—30.29.

30.22 The advantages to a solicitor in carrying on business as a limited company (as opposed to an unlimited company) in order to limit his liability against substantial monetary claims for negligence are more apparent than real. This was explained by the Law Society in its evidence in the following way.

> It would, no doubt, limit the liabilities of the company in matters such as trading debts, but in respect of the firm's professional liabilities to clients (and perhaps others) it is likely that solicitor-members of the firm would continue to be personally liable in full for their own negligence unless express contractual exclusions or limitations were effectively imposed.

In these circumstances, the client would be in a position to pursue his claim against the solicitor or solicitors who were personally responsible for any negligence. As regards the company, if claims were made upon it which it was

unable to meet, it would be forced into liquidation. The solicitor's business would thus be destroyed and his professional standing irreparably damaged, quite apart from any disciplinary proceedings which the Law Society would find necessary to initiate. The client for his part would be in a worse position to the extent that if the company was unable to satisfy his claim out of its assets, he could not pursue a claim for the balance against those shareholders in the company who were not personally responsible for the negligent act or omission. We consider, therefore that incorporation of a solicitor's firm as a limited liability company should not be permitted.

30.23 This view is shared by the Law Society which, for reasons stated in paragraphs 23.28-23.30 does not seek authority for solicitors to carry on business as limited liability companies. The Society does not think that the profession at large would be in favour of practice with limited liability, and this is borne out by the evidence of a number of provincial law societies and by the Young Solicitors' Group of the Law Society. The Society seeks only for authority for solicitors to carry on business as unlimited liability companies, which is akin to practice in partnership on the lines indicated in paragraph 30.16. The Council of the Law Society resolved in 1976 in favour of practice in the form of unlimited liability companies and it is now the policy of the Society to seek a change in the law enabling solicitors to practise in this way, subject to certain conditions.

Safeguards for incorporated practices

30.24 On the considerations in paragraphs 30.19 and 30.21, we regard as reasonable the wish of the Law Society that solicitors be enabled to practise in corporate form with unlimited liability but we think that certain safeguards should be imposed. The safeguards we have in mind are as follows.

(a) All the directors and shareholders should be in possession of current practising certificates.

(b) The arrangements for indemnity insurance and the responsibilities and benefits of the compensation fund should apply in the same way as if the unlimited liability company were a partnership firm.

(c) Those engaged in the company should be subject to the same disciplinary and other procedures as those in a partnership firm.

(d) The directors and the shareholders of the unlimited liability company should be the same persons.

(e) The articles of association of the unlimited liability company should provide that on the retirement or death of a director his shares should either be transferred to one or more shareholders (who, by reason of (d) above, will also be directors), or, as is possible in the case of an unlimited liability company, returned to the company and repaid.

30.25 The safeguards in paragraph 30.24(a), (b) and (c) are self-explanatory. The reason for 30.24(d) is to ensure that those who, as directors, are responsible for conducting the business are responsible to clients and others for the debts and obligations of the firm. This would place the directors of the unlimited liability company in the same position as partners in a firm.

30.26 Unless the safeguard in paragraph 30.24(e) is introduced, the shares owned by a director who dies or retires might pass, and could be expected to pass, to retired partners or to executors or beneficiaries who were not solicitors with practising certificates. Full or partial control of the company might therefore pass to persons who were not subject to the professional discipline and control of the Law Society; this would be against the public interest.

Service Companies

Main advantage

30.27 It is possible under present arrangements for firms of solicitors to set up and own service companies for the purposes of employing staff, providing premises, furniture, equipment and general maintenance of the office. Under the present rules of the Law Society, membership of the company must be restricted to members or partners of the firm, being admitted solicitors holding practising certificates, retired partners of the firm and dependants of retired or deceased partners. The main advantage of a service company is that better pension benefits can be obtained for the directors which it employs, provided the directors are not partners of the parent firm. It is also sometimes possible to build up in the service company a limited amount of reserves for the purpose of working capital.

Safeguards

30.28 Although it is not directly responsible for the provision of professional services to clients of a firm, a service company is an important component of the firm. Since it does not deal with, and is not responsible to, clients there is no objection to its incorporation either as a limited or unlimited company, but we think that safeguards should be imposed as follows:–

(a) all the shares in a service company should be owned by the partnership firm which it serves; and

(b) the letter heading of the partnership firm should be in a form which specifies clearly the status of those whose names are shown.

30.29 The reason for the safeguard in paragraph 30.28(a) is the same as that explained in paragraph 30.26, that full or partial control should not be allowed to pass into the hands of persons who are not solicitors and are not under professional discipline.

Conclusions and Recommendations

			Paragraphs
Inter-disciplinary partnerships	R30.1	Partnerships between solicitors and members of other professions should not be permitted.	30.15
Incorporation	R30.2	Incorporation of a solicitor's business with limited liability should not be permitted.	30.22
	R30.3	Incorporation of solicitors' firms with unlimited liability should be permitted subject to the safeguards stated in the text.	30.24
Service companies	R30.4	Subject to the safeguards stated in the text, there is no objection to service companies.	30.28

CHAPTER 31

Legal Executives

Introductory

Definition

31.1 Both branches of the legal profession employ staff. A barrister's staff is, as a rule, limited to a clerk, usually with a junior or juniors, with some secretarial and typing assistance. Solicitors, with heavier office responsibilities, employ larger administrative and secretarial staffs. Unlike barristers, they also employ staff for the purpose of dealing with their professional work. Some are solicitors (usually called "assistant solicitors") and some are not admitted as solicitors, and are generally known as "legal executives". The legal executive who deals with professional work for which his employer, the solicitor, is responsible, is the subject of this chapter.

Background

31.2 In the nineteenth century attorneys and solicitors employed a large number of clerks. The majority of these were writing clerks, whose functions have now been superseded by the typewriter, the copying machine and other modern office equipment. There was also a category of more senior clerks who carried out legal rather than clerical work. In the course of the nineteenth century, they came to be known as "managing clerks" and in 1892 the Solicitors' Managing Clerks' Association was founded to represent their interests.

31.3 From the foundation of the Association, the managing clerk occupied a recognised position in the structure of the profession. Most firms now employ one or more persons who are not solicitors, to whom a proportion of their professional work is delegated. No rules are laid down concerning the training or qualifications of such fee-earning staff, their responsibilities and supervision or their pay and conditions of service.

31.4 Between the first and second world wars, the pay of managing clerks was relatively low, and it was found after the second world war that the number of recruits to private practice, in the face of competition from expanding national and local government services and the demands of industry and commerce, was insufficient to keep pace with wastage and retirements. An attempt was therefore made in 1949 to raise the calibre, status and level of earnings of managing clerks by introducing a voluntary qualifying examination, leading to a managing clerk's certificate. This failed to achieve its purpose. Those holding the certificate enjoyed no appreciable increase in status or in pay, and few troubled to qualify for it.

31.5 After discussions between the Law Society and the Solicitors' Managing Clerks' Association it was agreed that a new, independent, examining and

qualifying body for unadmitted staff should be set up. As a result, the Institute of Legal Executives (ILEX) came into existence in 1963. Unadmitted staff were encouraged to join the Institute and obtain its qualifications, but membership and qualification were not made a condition of employment, in a fee-earning capacity, in solicitors' firms and other legal offices. Whilst being independent of the Law Society, the Institute maintains close relations with it, and a joint consultative committee of the two bodies meets several times a year to discuss matters of common interest.

The Institute of Legal Executives

Purpose

31.6 The purpose of setting up the Institute as an examining and qualifying organisation was to improve the number and quality of recruits and to protect the status and interests of unadmitted legal staff. There are three levels of membership, comprising students, associates and fellows.

Titles

31.7 One objection to the style "managing clerk" was that it was too widely used, sometimes by employees who had neither the standing nor the responsibility of senior fee-earning staff. The name "legal executive" was intended to be given only to those who had qualified as fellows of the Institute; but the name passed into general currency and is now used to describe any member of a solicitor's staff who, while not qualified as a solicitor, does professional work. In the remainder of this chapter, we will use the expression in this general sense.

Numbers

31.8 The numbers of members of the Institute, in their various categories, are shown in the following table.

TABLE 31.1
Membership of ILEX, 1965-78

Year	Students	Associates	Fellows	Total
1965	3,020	2,469	7,459	12,948
1966	3,114	2,690	7,344	13,148
1967	3,024	3,018	7,218	13,260
1968	2,974	3,315	7,126	13,415
1969	2,935	3,430	6,934	13,299
1970	2,900	3,514	6,733	13,147
1971	2,963	3,451	6,590	13,004
1972	3,317	3,448	6,570	13,335
1973	3,968	3,444	6,523	13,935
1974	4,218	3,714	6,477	14,409
1975	4,500	3,631	6,627	14,758
1976	4,809	4,070	6,126	15,005
1977	3,930	3,968	5,801	13,699
1978	3,438	3,949	5,724	13,111

Source: Institute of Legal Executives.

TABLE 31.2
Number of new students, associates and fellows of ILEX, 1965-78

Year	New Students	New Associates	New Fellows
1966	890	340	53
1967	803	488	82
1968	837	497	100
1969	853	416	140
1970	819	372	134
1971	836	344	182
1972	1,164	346	197
1973	1,333	301	195
1974	1,334	588	192
1975	1,182	357	173
1976	1,759	726	242
1977	702[1]	537	195
1978	777	569	296

[1]The fall in the number of students followed the raising of the GCE entry requirements from 1st January, 1977.
Source: Institute of Legal Executives.

31.9 A survey conducted in 1966 by the National Board for Prices and Incomes showed 17,200 legal executives to be employed in 6,725 firms. A survey by the Law Society in 1976 indicated that 16,208* legal executives were employed in 6,421 firms. This figure may not, however, include all those working as legal executives who are not members of ILEX. The Institute considers that the true number of legal executives working in solicitors' firms, whether members of ILEX or not, may exceed 20,000. If this estimate is correct, it would mean that the number of such legal executives increased, over the period, by something over 16 per cent.

31.10 The surveys mentioned in the previous paragraph indicated that, in the same period, the number of qualified solicitors working in private practice, either as principals or as employed ("assistant") solicitors, rose from 18,600 to 27,200, an increase of 46 per cent. The number of assistant solicitors rose from 3,500 to 6,034, that is, by 72 per cent. It is clear from these figures that the proportions of fee-earners in the profession are changing, the number of solicitors increasing more rapidly than that of legal executives.

Qualifications

31.11 A person entering the Institute as a student is required to have four 'O' level passes at grade C or three 'A' level passes. In either case one of the passes must be in English.

*This figure included 1,776 part-time staff who were counted as 888 employees

31.12 An associate must be aged 20 or more and have served in a solicitor's office or its equivalent for at least three consecutive years and must pass the associates' examination, which comprises four papers, two in substantive law and two in procedure. The papers are of a standard approximately equivalent to GCE 'A' level. The examination is in two parts which may be taken separately.

31.13 A fellow of the Institute must be aged 25 or more, have served eight years in appropriate employment and must pass an examination comprising three papers chosen from a range of some 13 topics.

31.14 The requirements for qualifications in the Institute have been devised to correspond with the work which is required of those in practice. Fellows of the Institute of five years' standing are permitted by the Law Society to be placed in management of an office of a practice, subject to daily attendance by a solicitor. As a rule, a legal executive undertakes a class of work narrower than a solicitor and is expected to deal with only one department of legal practice, often conveyancing or litigation. Within his speciality, he may acquire experience and knowledge as deep as that of many practising solicitors. A solicitor, on the other hand, is required to have a wider knowledge of the law than a legal executive. This is reflected in the fact that in the solicitors' final examinations candidates are required to take papers in seven topics, while candidates for fellowship of the Institute take papers in three topics, which may be closely related. The Institute has formulated a new scheme of qualification "designed to match the practical needs of the present day profession". Given the support of the Law Society, the Institute believes that both the profession and the public will benefit from this scheme.

31.15 When the Institute was founded in 1963, managing clerks aged 35 or more of sufficient experience were enabled to join as fellows without sitting the qualifying examination. This method of entry ceased to be available in 1965; in that year, of the total of 7,459 fellows, 47 had qualified by examination, the remainder by experience. As Table 31.1 shows, there were 7,459 fellows in 1965, and this number fell to 5,724 in 1978. It will be observed that the number of fellows qualifying by examination is not keeping pace with losses from retirement and change of occupation. The total membership of the Institute increased in the same period from 12,948 to 13,111 due to the number of new students entering in the intervening years. Comparing its new membership with that of the Law Society, the Institute said in evidence:–

> In 1976, the Law Society registered 2,730 deeds of articles of clerkship. In that year, the Institute enrolled 1,729 Students. The articled clerks will, within four years or so, produce over 2,000 new solicitors. Within eight years, the new Students could produce perhaps one quarter as many Fellows. In 1976, new solicitors were nine times as many as new Fellows.

Training

31.16 Courses designed specifically for students and associates of the Institute are provided in colleges of further education and polytechnics in areas where the

demand is sufficient. Correspondence courses are also available. The records of the Institute show that almost half the enrolled students and over one-third of enrolled associates were attending courses in 1978/79.

31.17 The Institute's survey of students showed that most of those on courses, 76 per cent of those in the public service and 74 per cent of those in private practice, attended on day release. The course fees of 87 per cent of those in public authority employment and of 70 per cent of those employed by private practitioners were paid in whole or in part by their employers.

31.18 By contrast to student members, only a quarter of associates received day release, the majority studying in their own time, either by evening study at local colleges or by correspondence. Day release for both students and associates was usually limited to half a day a week.

31.19 The Institute's main criticism of training for students and associates is that methods are haphazard. There are no settled arrangements for day release and, in general, arrangements for members of the Institute compare unfavourably with those for articled clerks.

Proposals of the Institute

31.20 In these circumstances the Institute made the following proposals to us.

(a) The status of fellows of the Institute should be recognised:–
   (i) by salaries consistent with their work and responsibilities or by being allowed to share profits with the employing solicitor; and
   (ii) by conferring greater rights of audience on fellows and enabling them to administer oaths and affirmations and take statutory declarations.

(b) Even if those who work in a fee-earning capacity for solicitors are not required to have the qualification of the Institute, solicitors should be required to give more assistance, in the way of payment of course fees and arrangements for day release, to assist members of the Institute to attain qualifications leading to fellowship.

(c) The Institute should be more closely associated with decisions taken regarding professional matters within the Law Society.

(d) The Institute should be more generally represented on bodies which have functions affecting the legal profession.

The Future

Principles

31.21 Before dealing with the proposals mentioned above, we indicate the principles which we think should be followed.

31.22 Until the reforms of the nineteenth century, the legal profession was composed of many branches, each specialising in a particular class of work. The number of specialist branches has been reduced so that now, apart from the London notaries who are mainly concerned with international legal transactions, there are effectively only two branches of the profession, solicitors and barristers. We consider this development to have been in the public interest. The greater the number of branches in the profession, the more likely it would be that a client would be forced to go from one practitioner to another in order to complete even a straightforward transaction. It was necessary for us to consider whether the advantages of a two-branch profession outweighed the disadvantages. For the reasons stated in Chapter 17 we have found in favour of the present system, but we consider that the creation of additional branches of the profession would be contrary to the public interest.

31.23 It is important that the line of responsibility for a piece of work should be clear and direct. Where liability to a client may arise, it must be covered by adequate insurance and appropriate compensation arrangements for loss of a client's money. It is the responsibility of the governing bodies of the profession to ensure that these obligations are met. We think it is in the public interest that undivided responsibility should rest on the solicitor for all work done by him and under his authority and that measures to ensure that his liability is covered by insurance and compensation arrangements should be the sole responsibility of the Law Society.

31.24 We have noted the increase in the numbers of qualified solicitors and in the proportion of salaried solicitors working in firms. We regard this as being in the public interest. Professional legal services should thereby become more widely available.

31.25 This is not to say that the legal executive should have no part to play in the conduct of the business of the profession. On the contrary, we believe that there will always be individuals who, though not qualified as solicitors, have developed such expertise in a particular class of work as to be able to handle it with competence on behalf of both their employers and their employers' clients. Moreover, the proper use of the skill and expertise of legal executives will enable costs to be kept down without diminishing quality of service, and this is clearly in the public interest.

Independent practice

31.26 It will be clear from what we have said above that we consider that legal executives should not set up independent practice. The Institute is of the same opinion. In the course of its evidence it pointed out that if there were to be any relaxation of the present restrictions on conveyancing work, the legal executive had the strongest claim for inclusion in the class of persons permitted to do this work independently for gain, and the Institute had the strongest claim to be the examining and licensing authority; but it said:–

> ... however, the Institute must take its stand on the broad issue of maintaining the unity of legal practice which is thought to be in the long term interest of the general public.

We agree.

Compulsory membership

31.27 If the Institute of Legal Executives were constituted as the governing body of an independent profession, it would be reasonable to require that anyone wishing to practise as a legal executive should either be a member of, or be granted a practising certificate by, the Institute. The Institute is not in this position, and does not seek compulsory membership. It is therefore understandable that the Institute should press for measures which, without compelling membership, would enhance the status of its members.

Profit-sharing

31.28 In its evidence to us the Institute argued in favour of permitting solicitors to make profit-sharing arrangements with fellows of the Institute. It pointed out that at one time such arrangements were common, but are now prevented by rule 3 of the Solicitors' Practice Rules, 1936-1972, which prohibits the sharing of profits with any person who is not a solicitor. The Institute argued that this restrictive practice should only be retained if it can be justified. It said that if the original justification of the rule was to prevent touting by clerks who would be paid commission on new business, such a view is unwarranted in modern times in relation to the members of a recognised professional body whose members are subject to the disciplinary control of their institute.

31.29 It is not possible to accept the Institute's arguments because the sharing of profits within a firm of solicitors becomes, in effect, a form of partnership. A legal executive is not qualified as a solicitor, is not under the same direct professional obligations nor subject to the same disciplinary procedures. The effect of allowing legal executives to be paid a share of profits would be to enable one who was not directly subject to the requirements of practice of the Law Society to become, for all practical purposes, a partner in a firm. It would be possible, if such arrangements were permitted, for a firm of solicitors to be composed largely of legal executives, sharing profits with only one or two solicitors. We do not consider any arrangement which could lead to results of this kind to be in the public interest. On the other hand, we can see no objection to the use of discretionary bonus schemes to enable salaried staff to benefit from the results of their efforts.

Enhanced pay for qualifications

31.30 If fellows of the Institute were regularly paid more than other legal executives, no doubt many more would attempt the examinations. However, it would be impossible to require solicitors to pay an enhanced salary to fellows without specifying what rates of pay should be enjoyed by all fee-earners within firms. We consider this would be wrong in principle and, in any case, impracticable.

31.31 Qualification as a fellow will often result in enhanced pay due to the wider technical knowledge which the fellow has acquired. There are many cases in which a legal executive, whether or not he is a fellow of the Institute, commands a higher salary than an assistant solicitor in the same firm by reason of his special knowledge and experience; this is as it should be. A solicitor is, however, entitled to pay his staff according to the value of their work and success ultimately depends on the quantity and quality of work handled, and not on the formal qualification.

Facilities for further education

31.32 The Institute argued that solicitors should be required to give their legal executives, in particular students and associates of the Institute, assistance by way of day release and payment for courses to enable them to qualify as fellows of the Institute. We consider that solicitors should be encouraged to enable their staff to obtain qualifications, in particular by granting day release to associates studying for the fellowship examination and special leave for the purpose of taking the examination. It is generally regarded as a mark of a good employer that he enables his staff to study for and obtain additional qualifications and, as we pointed out in paragraph 31.17, a large proportion of students are already provided with these facilities. We do not however think it suitable to propose binding rules on this point. If the provision of training were made a formal binding obligation, the resulting expense would, we think, discourage solicitors from employing unadmitted staff, to the detriment of legal executives as a class.

31.33 The number of fellows qualifying by examination in each year is a very small proportion of the total of legal executives employed. This is an indication that, at present, qualification as a fellow of the Institute is not regarded as essential for the satisfactory performance of the duties of a legal executive in a senior capacity. Where a legal executive is able to earn reasonable remuneration and his employer considers his knowledge and competence to be satisfactory, there is no occasion to create compulsory arrangements for further education and training. In these circumstances, therefore, while we consider every encouragement should be given to legal executives to obtain the qualifications of the Institute, and to their employers to facilitate their doing so, we do not consider compulsory arrangements to be appropriate.

Rights of audience

31.34 The Institute of Legal Executives has for some years been concerned to extend the rights of audience of fellows of the Institute in the lower courts. In the early stages of its work a joint consultative committee was formed with the Law Society. This recommended in 1968 that fellows of the Institute should be granted rights of audience as follows:–

in the county court:–

(a) before a registrar in open court—in matters within the registrar's

jurisdiction (that is orders or matters covered by Order 23 Rule 1 of the County Court Rules, 1936);

(b) before a judge in open court:–
 (i) on approval of settlements;
 (ii) on applications for adjournments;
 (iii) on applications for judgment by consent;

in the magistrates' court:–
(c) on laying informations, making complaints and applying for summonses;

(d) on application for witness summonses;

(e) on unopposed applications for adoption of children;

in the coroner's court:–
(f) no proposals, the report of the Brodrick Committee on coroners not having been published at that time;

before tribunals:–
(g) solicitors were to support the position of members of the Institute in the event of any tribunal refusing to admit as a representative a member appearing on the instructions of a solicitor principal.

31.35 In December 1968, the Council of the Law Society approved these proposals, with the exception of audience before the registrar in open court. After discussion with responsible government departments, legislation was enacted which empowered the Lord Chancellor to give directions conferring on persons in legal employment certain rights of audience in the county courts. The Lord Chancellor has given directions which enable fellows of the Institute to appear before a judge in open court on uncontested applications for adjournments and judgments by consent.

31.36 In its evidence, the Institute argued for a general extension of the rights of audience of fellows in the lower courts. It was made clear that it was not seeking these rights with a view to establishing an independent profession of legal executives. It was argued that fellows of the Institute, rather than senior legal executives as a class, should be granted rights of audience in order to add to the attractions of qualification as a fellow. This would enable the court to verify the right of audience of any individual by reference to the list of fellows which is published in the Solicitors' Directory.

31.37 We accept that there are legal executives who, whether fellows of the Institute or not, are capable of handling advocacy in the categories mentioned in the Institute's evidence with a competence equivalent to that of many solicitors. But the question is not whether individual legal executives should have a right of

audience, but whether fellows of the Institute as a class should. The Institute argued that the right should be exercised by fellows alone, because they have a qualification which can readily be verified. The defect in this argument is that the status of fellows can be attained by qualifying in three subjects only, none of which may be appropriate to litigation. It would not be reasonable to expect a court, before conferring a right of audience, to check not merely that the advocate was a fellow of the Institute, but also that he had qualified in appropriate subjects.

31.38 There is a more general objection to the Institute's proposals. We believe it to be in the public interest that the level of representation should in all cases be as high as possible consistent with reasonable economy. In some tribunals, lay assistance is sufficient to secure a just result. But where legal representation is required, we believe the emphasis should be on providing if possible the services of a qualified solicitor or barrister. On this general ground we feel unable to support the arguments of the Institute.

The position of the Institute

31.39 The Institute was set up as an examining and qualifying body, of a kind appropriate to an independent profession. But all its members are subject to supervision by solicitors, who are answerable to their own governing body in respect of the conduct of all work done in their firms including work performed by legal executives. The Institute cannot, therefore, operate in the same way as an independent professional body and exercise the same degree of exclusive control over its members.

31.40 As we have already pointed out, the Institute's senior members, the fellows, are declining in number. In this connection the Institute said:–

> The Institute considers that so long as the status of members of the Institute in the profession remains as it is today their system of qualification will do no more than maintain its precarious hold on the situation.

The Institute wishes to reverse this trend. It does not propose that the status of its members should be altered by constituting them as a separate and independent branch of the legal profession. We think this attitude is correct, but it follows that the work and opportunities of a legal executive will be of a more limited character than those of a solicitor. For the reasons we have given, we do not consider that, in the longer term, it would be in the public interest for the purpose of enhancing the status of members of the Institute to make the qualifications of the Institute compulsory, as a condition either of employment or of enjoying higher pay or status within a firm. Nor do we consider that any substantial change should be made in the present arrangements affecting rights of audience of legal executives. Measures can, however, be taken to improve the position of the Institute and its members.

The role of the Institute

31.41 The Institute provides a useful service to the profession and to the public. Its members are required to undertake study and take examinations to add to their

knowledge and improve the quality of their work. All solicitors should acknowledge the valuable contribution which may be made by legal executives to the work of the profession and, in recognition of the advantage to themselves in doing so, should encourage their staff to join the Institute and attempt its qualifications. For the reasons we have given, however, we do not regard this as a matter for compulsion.

31.42 The matters we have mentioned above will be affected by the future development of consultative arrangements between the Institute and the Law Society. The onus of developing these arrangements rests mainly on the Law Society, in whose committees decisions and recommendations of importance both to solicitors and legal executives are made. We recognise that there are some matters which are not suitable for a joint committee, but we consider that, wherever possible and appropriate the Law Society should bring the Institute into preliminary discussions of policy issues affecting its members' interests.

Conclusions and Recommendations

			Paragraphs
Role of legal executives	R31.1	The services of legal executives will continue to be of value in the foreseeable future in the provision of legal services.	31.25
	R31.2	Legal executives should continue to perform their functions as the employees of solicitors, but not as independent practitioners.	31.26
Profit sharing	R31.3	Profit sharing between solicitors and legal executives should not be permitted but discretionary bonus schemes to reward valuable service should be allowed.	31.29
Enhanced pay for qualifications	R31.4	It is impracticable to require that those who obtain qualifications in the Institute should receive enhanced pay.	31.30-31.31
Education	R31.5	Solicitors should provide facilities for further education for their unadmitted staff, but such arrangements should not be compulsory.	31.33
Rights of audience	R31.6	There should be no general extension of the right of audience of legal executives.	31.38

			Paragraphs
The Institute of Legal Executives	R31.7	Membership of the Institute for all legal executives should be encouraged, but should not be made compulsory.	31.41
The Institute and the Law Society	R31.8	Development of the formal arrangements for consultation between the Institute of Legal Executives and the Law Society should continue.	31.42

CHAPTER 32

The Structure and Organisation of the Profession: Barristers

Introduction

32.1 We gave a brief account of the history of the legal profession at the opening of Chapter 3. In this chapter we deal in more detail with the present organisation and structure of the Bar, and the means by which its affairs are managed. In the last ten years the Bar and the Inns have improved the management structure of their branch of the profession. It is our function to look ahead and consider what further improvements are required in the present structure to enable it to meet future demands.

The Inns

Membership and control of the Inns

32.2 There are four Inns of Court, the Inner Temple, the Middle Temple, Lincoln's Inn and Gray's Inn. Every barrister called to the Bar of England and Wales must belong to one of these Inns. There are three categories of member, benchers, barristers (or "hall" members) and students. Control of the Inns and of their assets is vested in the benchers.

32.3 The right to appoint new benchers is confined to existing benchers. They normally hold office for life. The senior officer of an Inn is known as the Treasurer. The Treasurer is appointed by the benchers from amongst their number, on the basis of seniority, and holds office for a year. The senior permanent official is known as the under treasurer, or, at the Inner Temple, the sub-treasurer. We understand that between 350 and 400 benchers are actively concerned in the running of their Inns, of whom about 30 per cent are practising barristers, the remainder being judges or in retirement.

Functions of the Inns

32.4 The functions of the Inns today fall into five categories.

(a) The Inns own and administer property. Each Inn contains a large number of units of accommodation which are in part let as professional chambers to barristers and in part to other tenants, for professional, commercial or residential purposes.

(b) The Inns provide law libraries and common rooms for barristers and students.

(c) The Inns provide meals for benchers, barristers and students.

(d) Each Inn awards scholarships and bursaries, of varying amounts, for students and young barristers.

(e) While the Inns have no day-to-day responsibility for formal education (though they are by rule represented on the responsible body, the Council of Legal Education) they contribute a collegiate element in the training of students and young barristers by dining, moots, talks and practical exercises both after dinner and at week-end meetings.

Finances of the Inns

32.5 The Inns have two main sources of finance, their estate income, which is by far the most important, and their income from students on admission and from those called to the Bar and the Bench. There is also a relatively small income from investments and other sources. Our consultants, with the cooperation of the four Inns, prepared a factual memorandum on their finances, a copy of which appears in Volume II section 12. In the following paragraphs we deal with the main points that emerge from this report, and offer some suggestions for the future.

Assets and liabilities of the Inns

32.6 No estimate is available of the market values of the properties owned by the Inns which are heirlooms from the past and, we are informed, cannot be sold. In practice, market values are of little relevance. The buildings of the Inns are used as centres of professional activity but their development is restrained by planning controls. The value given for insurance purposes in 1977 was a little over £100 million, made up (in round figures) as follows.

Lincoln's Inn	£30 million
Inner Temple	£32 million
Middle Temple	£27 million
Gray's Inn	£14 million
Total	£103 million

Most of the buildings are within the Inns themselves, but a small amount of property is owned outside London which provides chambers for members of the Bar practising in the provinces.

32.7 The income and expenditure of the Inns, for the year ending 31st December 1976, was as follows.

TABLE 32.1
Income and expenditure of the Inns, year ended 31st December, 1976

	Lincoln's Inn	Inner Temple	Middle Temple	Gray's Inn	Combined Total	1975 Combined Total
	£'000	£'000	£'000	£'000	£'000	£'000
Income						
Estate (gross)	594	581	402	674	2,251	1,898
Members . .	26	29	43	43	141	213
Investment . .	24	12	39	1	76	90
Miscellaneous	8	4	9	2	23	61
Total . .	652	626	493	720	2,491	2,262
Expenditure						
Estate expenses	327	175	93	214	809	642
Administration	185	118	207	175	685	563
Education . .	59	66	26	70	221	221
Catering net loss	32	66	34	67	199	182
Library . .	44	57	55	46	202	180
Subscription to Senate	20	20	20	25	85	67
Church . .	2	11	17	3	33	39
Donations . .	3	3	3	5	14	12
Miscellaneous . .	1	1	5	—	7	4
Total . .	673	517	460	605	2,255	1,910
Surplus (deficit) before tax and exceptional items	(21)	109	33	115	236	352
Tax	—	—	—	(19)	(19)	(10)
	(21)	109	33	96	217	342
Exceptional and prior year items	23	(33)	21	(8)	3	(78)
Surplus . .	2	76	54[1]	88	220	264

[1]The Middle Temple surplus of £54,000 is reduced to £4,000 in its accounts by transfer of £50,000 to the New Building Fund.

Source: Consultants' memorandum on the accounts and finances of the four Inns of Court, Volume II section 12.

It will be seen from this table that the Inns derive most of their income from leasing their property; the net estate income in 1976 is shown in the following table.

TABLE 32.2
Income of the Inns from estates, 1976

	Gross Income £'000	Expenditure £'000	Net Income £'000
Lincoln's Inn	594	327	267
Inner Temple	581	175	406
Middle Temple	402	93	309
Gray's Inn	674	214	460
Total	2,251	809	1,442

Source: Consultants' memorandum on the accounts and finances of the four Inns of Court, Volume II section 12.

32.8 Ninety per cent of the gross income of the four Inns was derived from this source; the actual proportions varied from 82 per cent in the case of the Middle Temple to 94 per cent in the case of Gray's Inn. The proportion of income derived from rents of barristers' chambers varies more widely between the four Inns. In 1976 the Inner Temple and Middle Temple obtained over 70 per cent of their rental income from chambers, Lincoln's Inn 33 per cent and Gray's Inn only 13 per cent. It is the policy of all the Inns to convert more of their property to use as professional chambers by barristers, but there are a number of obstacles, with which we deal in Chapter 33.

32.9 Each Inn administers its properties in its own way. Efforts have been made in recent years to adopt a common rental policy throughout the Inns, but this has not yet been achieved. We set out in the annex to this chapter a schedule, taken from our consultants' memorandum, showing the rental policies at present followed. It will be observed that they are not uniform. Although the proportion of full rack rent charged to professional chambers is now approximately the same in all cases, the length of leases varies widely, as does the period between rent reviews. These differences result in unequal treatment of practising barristers in respect of the cost of professional accommodation, and in our view give rise to unfairness.

32.10 With one exception, referred to below, the accounts of the Inns make no provision for depreciation of their property and no fund is maintained to provide for major rebuilding and renewal. The payments to be made fall unevenly across the years, and, if paid out of revenue when they arise, cause serious distortions from year to year. Any organisation owning property should, we think, make an annual provision of this sort and the amount set aside calls for regular review to take account of rises in the cost of labour and materials. Accordingly we think

that all the Inns would be well advised to make provision out of current revenues for a fund to meet the accumulating costs of expenditure of this character. The exception referred to above is Lincoln's Inn which, since 1974, has been setting aside, by annual charges to revenue, a fund to provide for reconstruction and non-routine maintenance of all its buildings and intends to continue doing so. According to an estimate received in 1974, this required the expenditure of approximately £1 million (at then current prices) over the following fifteen years.

32.11 It is the practice of each Inn, with some exceptions, to charge improvements and the purchase of fixed assets against revenue each year as they arise. For the reason given in paragraph 32.10, we consider this undesirable and suggest that capital expenditure of all kinds should, in accordance with normal practice, be charged to an appropriate capital account with provision for renewal on the lines indicated in the preceding paragraph.

Students

32.12 The total received by the four Inns in respect of admission and other fees from members and students amounted to £213,000 in 1975 and £141,000 in 1976. The revenue derived from students out of these amounts was as follows.

	1975 £'000	1976 £'000
Admission fees	127	71
Payments on call to the Bar	68	56
	195	127

The expenditure by the Inns in relation to students, other than the apportionment of general administrative expenses referred to in the next paragraph, was as follows.

	1975 £'000	1976 £'000
Total of scholarships and prizes	116	96
Less amounts provided out of specific trust funds bequeathed to the Inns for the above purposes	57	53
Net	59	43
Other expenses	64	59
Direct expenses	123	102
Proportion of catering losses attributed to students	98	119
Total expenditure relating to students	221	221

The number of students admitted in 1975 and 1976 were 1,817 and 1,059 respectively; this accounts for the fall in admission fees in 1976.

32.13 In addition to the direct expenses mentioned above, a proportion of the cost of maintaining libraries and part of the general administrative expenditure of the Inns can be attributed to students. None of the Inns has made a precise calculation of the amount that can be so attributed but an estimate made by one Inn suggests that two-thirds of the library expenditure and one-tenth of the administrative expenditure (both calculated on a basis agreed with the Inland Revenue) might be regarded as attributable to students. On this basis, the proportion of general expenses attributable to students was as follows.

	1975 £'000	1976 £'000
Two-thirds of library expenditure	120	134
10% of administrative expenditure	55	69
	175	203

32.14 The net annual expenditure for students in each of the years 1975 and 1976 can be expressed as follows.

	1975 £'000	1976 £'000
Expenditure by the Inns — paragraph 32.12	221	221
Payments out of specific trust funds — paragraph 32.12	57	53
Proportion of other administrative expenditure — paragraph 32.13	175	203
	453	477
Less Revenue provided by students — paragraph 32.12	195	127
	258	350
Total number of students	1,787*	1,025
Net expenditure per student	£ 150	£ 350

*In 1975, shortly before the requirement of all-graduate entry took effect, there was an unusually large number of admissions.

Catering

32.15 The total income and expenditure related to catering was as follows.

	1975 £'000	1976 £'000
Income	179	214
Expenditure	459	532
Loss from catering	280	318
Loss attributable to students	98	119
Loss attributable to barristers and benchers	182	199

The expenditure included £31,000 and £36,000 in 1975 and 1976 respectively on staff meals, but did not include any charge in respect of administration or the use of premises. It will be observed that the loss on catering represents a high proportion of the total annual expenditure of the Inns. The price of meals is, in effect, subsidised for the benefit of students and barristers. The benefit is enjoyed by those barristers who work in London rather than in the provinces. We revert to this matter later in the chapter.

Uniform accounts

32.16 In 1975, the Inns decided that their accounts should be presented in a uniform way. Good progress has been made but some differences of presentation remained in the accounts prepared in 1976. For example, Gray's Inn included buildings in its balance sheet at a 1950 valuation and subsequent additions at cost. The other three Inns did not, in their balance sheets, place any value on the majority of their considerable holdings of property. We think that in future it would be desirable for the accounts of all the Inns to be prepared and presented in a uniform way.

Tax

32.17 The Inland Revenue agreed to treat the Inns as charities from 1st January 1974, except to the extent that their income was applied to non-charitable purposes, such as subscriptions to the Senate and the deficit on the catering for members other than students.

Publication

32.18 The accounts of the Inns are approved and adopted by the benchers but are not sent out in full to the members as we think desirable. We understand they are made available for inspection by members, and that Lincoln's Inn, Gray's Inn and the Inner Temple provide a short form of accounts for the use of members at their annual meetings.

The Bar and the Senate

Background

32.19 Before explaining the present arrangements and the composition and functions of the Senate of the Inns of Court and the Bar, we set out the background in more detail than in Chapter 3.

32.20 At the end of the nineteenth century, at the time of the closure of Serjeants Inn and the return of the common law judges to their Inns, the management and discipline of the profession was vested in the Inns (save for the educational functions carried out by the Council of Legal Education) and the Inns managed all the business of the profession. The benchers of the Inns held meetings and took decisions in private, without consulting the practising Bar, and did not publish minutes or financial accounts. As the result of a petition presented to the Attorney General in 1883 by 285 members of the Bar, the Bar Committee was established to:-

> ... collect and express the opinion of the members of the Bar upon matters affecting the profession and to take such action as may be deemed expedient.

Although elected by the whole profession, the Bar Committee was a consultative body without real power. It was financed by voluntary contributions from individual barristers.

32.21 In 1895 a committee appointed by the annual general meeting of the Bar recommended that the Bar Committee should assume responsibility for the enforcement of professional discipline and custom, and that the benchers of each Inn should be represented on a new committee which was to be called the General Council of the Bar. The Inns declined to give up their disciplinary functions and to be represented on the Council. They did, however, agree to give the Council an annual subsidy of £600 each, subject to the condition that the Council should not "interfere with the property, jurisdiction, powers or privileges of the Inns of Court". The majority of the Council's funds came from voluntary subscriptions from individual barristers.

32.22 After discussion of a new constitution for the Bar Council by the annual general meeting of the Bar in 1945, a new constitution was approved and came into effect in 1946. The objects of the Bar Council were defined as follows.

(a) Maintenance of the honour and independence of the Bar, and the defence of the Bar in its relations with the judiciary and the executive.
(b) Improvement of the administration of justice, procedure, the arrangement of business, law reporting, the Circuit system and the preservation of trial by jury.
(c) Promotion and support of law reform.
(d) Cooperation between the two branches of the profession.
(e) Protection of the public right of access to the courts and of representation by counsel before courts and tribunals.

At this stage of development, discipline remained a function of the benchers of

each Inn, acting as a domestic tribunal with jurisdiction over the members of the Inn.

The Senate of the Four Inns of Court

32.23 The Senate of the Four Inns of Court was created in 1966 by resolutions of the Inns and the Bar Council. It was intended to provide a single body to act on behalf of all of them collectively in matters of common interest. The Inns surrendered some of their functions relating to the government of the profession and investigation of allegations of misconduct became the responsibility of the Senate's Disciplinary Committee, which consisted of practising barristers.

32.24 The Senate comprised seven members of each Inn (six benchers and the Treasurer) and six representatives of the Bar Council. It had the power to consider any matters submitted to it by one of the Inns, but a decision of the Senate was binding on the Inns only if it involved no expense to them. In any matter within its jurisdiction where the spending of money was involved, the Senate had to persuade each of the Inns to make funds available. This proved a time-consuming process, and prevented adequate long-term planning.

32.25 During the late 1960s, the numbers in the profession increased rapidly. There was, as a result, an urgent need for an accommodation policy. The Inns retained full control over admissions and calls to the Bar, and over their property in which all the chambers in London were housed. The Senate could not intervene, being enjoined by its constitution not to interfere in "the control or management of the property or assets of any of the Inns". The Bar Council had no power to provide additional accommodation or to obtain a common policy from the Inns. In 1970 an accommodation committee appointed by the Senate proposed the formation of an Inns of Court property company to operate as a commercial concern to acquire property for the expansion of the provincial Bar. The scheme foundered because three of the Inns rejected it.

32.26 In this period the view was widely held within the profession that a stronger central organisation was necessary. Late in 1970, the Lord Chancellor, Lord Hailsham of St. Marylebone, held several meetings with the Bar Council, the Senate and the Inns. As a result, with the agreement of the Bar Council, the Senate set up in May 1971 a committee of practitioners and judges under Lord Pearce to consider the structure, organisation, finance and practices of the profession.

The Pearce Committee

32.27 In its first interim report in May 1972 the Pearce Committee summarised the faults of the prevailing system as lack of central control, diffusion of effort, lack of cooperation and duplication of functions.

32.28 The Committee drew attention to the following points.

(a) Apart from the Council of Legal Education, there were six autonomous

bodies (the four Inns, the Bar Council and the Senate) involved in the administration of the profession, then comprising fewer than 3,000 practising barristers. This was unduly cumbersome and made it difficult to take swift and effective action when needed.

(b) There was a multiplicity of committees (61 in 1970 excluding *ad hoc* committees) often working in isolation and duplicating the work of others.

(c) The whole system was wasteful of manpower, accommodation, money and time, all of which were in short supply.

(d) The finances of the Senate were inadequate to permit it to perform its functions effectively.

(e) Decisions, frequently of importance, were taken by the Inns with the participation of "no element from the under 50's, however talented or gifted, whether silk or junior".

32.29 The Committee considered that the following difficulties were connected with the defects described above:-

(a) the critical shortage of chambers in London and the failure to achieve an overall long-term plan to move certain practitioners or commercial tenants into premises in Lincoln's Inn or Gray's Inn, to relieve the pressure on the Temple;

(b) the failure to coordinate to the best advantage the provision of legal education by the Council of Legal Education, the Bench, the Bar and the Inns;

(c) the lack of a common rent policy;

(d) the lack of effective control over pupils and over the organisation of chambers;

(e) the lack of any common library policy;

(f) the long delay in formulating the profession's response to the Ormrod Report on legal education.

32.30 The general conclusion of the Committee was that there should be "one effective central governing body" and that that body should have sufficient financial resources to carry out its policies. It set down seven basic principles regarding this new body.

(a) Each Inn should be represented by both benchers and hall members (those members of the Inn who were not benchers).

(b) A substantial number of the members of the new body should be elected.

(c) The new body must be financially independent.

(d) It must have full executive powers over the functions allotted to it.

(e) It should have three main committees (executive, Bar and finance).

(f) Its principal officers should be its president and its chairman.

(g) There should be no separate body formally representing the practising Bar or discharging "trade union" functions.

32.31 It proposed a new Senate of upwards of eighty members comprising a president (who might be a judge), a chairman (who must be a practising barrister), 36 members nominated by the Inns, 33 members elected by the practising Bar, 6 employed barristers and any necessary co-options. The Bar committee was to be composed exclusively of practising barristers and would continue the "trade union" functions, and possibly the name, of the Bar Council. The chairmen of the finance committees of each Inn should be members of a new finance committee. The chairman of the new Senate should be an *ex officio* member of all three committees.

32.32 It was recommended that finance should come in part from subscriptions from all members of each Inn and that the lump sum payments on admission and on call to the Bar should be phased out. The subscriptions should be collected by the Inns who should also make up the difference between the total amount collected and the new Senate's budget. This difference would be apportioned between the Inns on the basis of "available income" assessed by the finance committee. The Inns would have to supply detailed income and expenditure information to the finance committee and should be consulted before the new Senate took any major financial decisions. The implication was that the Inns would be bound by decisions of the Senate. The Pearce Committee considered that, given the composition of the new Senate and the small size of the practising Bar, there would be no need to continue the annual general meetings of the Bar.

The reaction to the Pearce interim report

32.33 With some reservations, the Bar accepted these proposals, but the benchers of Gray's Inn and the Inner Temple did not.

32.34 In December 1972 the Senate passed a resolution recommending the establishment of an adequately financed central governing body, and calling for suggestions to amend the Pearce proposals. Each of the Inns, the Bar Council and a number of other organisations (such as the Council of Legal Education) submitted memoranda, and in May 1973 the Pearce Committee put forward a "redrafted scheme incorporating all the changes".

The 1973 scheme

32.35 Under the amended scheme the financial powers of the new Senate were somewhat reduced. The Senate, not the Inns, was to collect subscriptions, the lump sum payments on admission and call were to remain, and the basis of assessing the Inns' contribution was to become a matter of dividing the difference between subscription income and estimated expenditure equally between the Inns, unless they chose otherwise.

32.36 The Bar Council was to remain an autonomous body so that it could be seen that the judiciary was not involved in such of its functions as affected only the interests of barristers. It would however comprise all the members of the new Senate elected by the Bar and would share the new Senate's accommodation and secretariat. It was to be dependent on the new Senate for its finance. General meetings of the Bar were to continue. The Council of Legal Education was to become a committee of the new Senate retaining its former title.

32.37 The Bar accepted these proposals. The Inns reserved their position by committing themselves only on the basis of seven undertakings, called the Understandings, which are set out below.

> The purposes for which the Inns hold and must conserve their property are the education and training of new entrants to the profession, the provision of accommodation and facilities for those who wish to practise, and the well-being of the Bar as a whole, and accordingly:
>
> (1) The undertakings by the Inns give rise to a moral obligation but not to any legally enforceable liabilities.
>
> (2) In setting the contributions of the Inns to the Senate, regard will be had to the general principle:
> that no Inn will be required, except with its consent, to make annual contributions of amounts which, taking one year with another,
> - (a) would result in its being compelled to reduce its capital assets or the provision of proper reserves for their maintenance; or
> - (b) would disable it from continuing to provide
>   - (i) scholarships or other financial assistance for students or barristers in pupillage as it thinks proper, due regard being had to the level at which similar provision is made by the other Inns, to the financial needs of the Council of Legal Education and to the importance of providing adequate accommodation for the practising Bar; and
>   - (ii) the facilities which it has hitherto afforded to its members generally.
>
> (3) Unless otherwise agreed between the Inns, the annual contributions of each will be equal in amount except to the extent that in the case of any particular Inn this would involve exceeding the limit mentioned in the preceding paragraph.
>
> (4) In settling the contributions of the Inns to any special project of a capital nature, regard will be had to the general principle that no Inn will be required except with its consent to make a contribution in an amount which would involve its realising or raising money on the security of any of its capital assets.
>
> (5) The consent by an Inn to contribute an amount in excess of the limits mentioned in paragraphs (2) or (4) will not be withheld unreasonably and will be given through its representative on the Finance Committee to whom the Inn will delegate authority wide enough to enable him to act promptly without reference back to that Inn.
>
> (6) In deciding the annual rates of subscription of members regard will be had to the general principle that taking one year with another the annual running costs of the Senate together with the costs of any special project of an income nature, and any

deficit in the annual budget of the Council of Legal Education should be borne as between subscription of members and contributions from the Inns:

(a) up to an amount equal to the present annual running costs of the Bar Council together with those of the former Senate, in the same proportions as at present; and

(b) as to any excess, in equal proportions or such other appropriate proportions as may be determined by the Senate, having regard to the services rendered to the Bar as a whole through the new Bar Council, to the responsibility of the Inns for the education and training of new entrants to the profession and to the extent to which the resources of the Inns are derived from rents of professional chambers of barristers in London.

(7) In carrying out 'agreed policy' as respects the provision within the Inns of Court of professional accommodation for barristers or their pupils or the rent to be charged therefore each Inn concerned will be entitled to keep such number of residential flats as is required to preserve the character of the Inn, due regard being had to the needs of the profession as a whole.

The Pearce Committee's amended proposals were implemented and the new Senate—the Senate of the Inns of Court and the Bar—came into being in 1974.

The Senate of the Inns of Court and the Bar

32.38 The Senate has a maximum of 101 members made up as follows:-

(a)	the Attorney General, the Solicitor General, the Chairman of the Council of Legal Education and the leader for the time being of each of the six circuits *ex officio*;	9
(b)	the Chairman for the time being of the Senate's Disciplinary Tribunal;	1
(c)	six representatives appointed by the benchers of each Inn;	24
(d)	three hall representatives elected by the subscribers (other than benchers) of each Inn;	12
(e)	Bar representatives elected by members of the Bar (of which 18 are practising juniors, including at least 6 under seven years call);	39
(f)	additional members appointed by the Senate comprising not more than six benchers, six subscribers other than benchers, three subscribers (whether or not benchers) who are also circuit judges and one subscriber (not being a member of the judiciary) who carries out full-time judicial functions:	
	maximum	16
	maximum	101

32.39 The officers elected by the Senate are:-

(a) President —2 year term, not renewable (may be a judge)

(b)	Chairman	—1 year term, may be re-elected for a second term (must be a practising barrister)
(c)	Vice-Chairman	—1 year term, may be re-elected for a second term (must not be a judge)
(d)	Treasurer	—2 year term, may be re-elected for a third year (may be a judge)

32.40 The Senate, which has an annual general meeting of subscribers, is the central governing body of the profession. According to its regulations, its leading functions are as follows.

> (a) To keep under review and if thought fit amend the Consolidated Regulations of the Inns . . . and . . . to discharge all other functions which formerly fell to be discharged by the former Senate.
> (b) To consider and lay down general policy with regard to all matters affecting the profession (other than matters within the exclusive jurisdiction of the Bar Council or the Inns) either of its own motion or on reference from any of its Standing Committees.
> (c) To raise funds for its general purposes or any of them in contributions from the Inns and in subscriptions from present and retired holders of judicial office and from Practising and Non-practising barristers.
> Source: Regulation 13 of the Senate.

32.41 The Senate has four standing committees; an Executive Committee (whose chairman under the regulations is the Chairman of the Senate) and three committees dealing respectively with finance (under the regulations, the President and Chairman of the Senate are joint chairmen), accommodation and libraries (whose chairmen under the regulations are benchers).

32.42 One of the functions of the Executive Committee of the Senate is:-

> To make recommendations to the Senate and to implement the general policy as laid down from time to time by the Senate on the following matters:
> (a) qualifications for admission to the profession,
> (b) the rates of subscription and the classes of Subscribers to the Senate,
> (c) the location and use of chambers, including the responsibilities of Heads of Chambers,
> (d) the provision of accommodation for barristers in London and the provinces,
> (e) library policy.
> Source: Regulation 15 (B) (ii) of the Senate.

The Inns have undertaken to abide by the general policy laid down from time to time by the Senate concerning these matters.

The Disciplinary Tribunal of the Senate

32.43 Charges of professional misconduct against a barrister are heard by a disciplinary tribunal, composed of the permanent chairman of the tribunal, at present a Lord Justice of Appeal, and between five and seven members nominated in each case by the President of the Senate. One member must be a layman, selected from a panel nominated by the Lord Chancellor, and the majority must be both members of the Senate and practising barristers. We described the disciplinary process in Chapter 26.

Finance of the Senate

32.44 The Senate's finances come in the main from voluntary subscriptions from practising barristers, employed and retired barristers and judges and from subventions from the Inns, as the following table of income for 1976/77 shows.

TABLE 32.3
Sources of the Senate's finances, 1976/77

	£'000	%
Voluntary subscriptions received	157	62
Subscriptions from the Inns	80	32
Other income	15	6
	253	100

Source: Consultants' memorandum on the accounts and finances of the four Inns of Court, Volume II section 12.

The Bar Council

32.45 The Bar Council has a maximum membership of 60 made up as described below:-

(a)	the Treasurer of the Senate (if he is a barrister), the Attorney General, the Solicitor General, and the leader of each of the six circuits (or his deputy) for the time being, all *ex officio*;	9
(b)	the Bar representatives who are members of the Senate;	39
(c)	the Bar Council has power to co-opt not more than 12 members of the Senate who are barristers. maximum	12
	maximum	60

The Chairman and Vice-Chairman of the Senate are also Chairman and Vice-Chairman of the Bar Council.

Functions of the Bar Council

32.46 The principal functions of the Bar Council are to maintain the standards, honour and independence of the Bar, to promote and improve its services and to represent and act for the Bar in its relations with others and in all matters affecting the administration of justice. The Council's work is carried out through a number of committees.

(a) The Bar Committee is responsible for professional etiquette, conditions of work, remuneration and relations with other professions (including a joint committee with the Law Society).

(b) The Professional Conduct Committee investigates complaints against barristers, unless the Treasurer of the barrister's Inn considers the complaint to be of a domestic character which may be dealt with by the Inn. The committee prefers and prosecutes disciplinary charges before the Disciplinary Tribunal of the Senate. It may also make recommendations on matters of professional conduct to the Senate, the Bar Council or the Bar Committee as appropriate. The committee comprises 15 barrister members and has power to co-opt one or more lay representatives. It has co-opted two lay members, as we described in Chapter 26. It may make rulings on such matters as it thinks fit.

(c) There are also committees concerned with international relations, young barristers, fees and legal aid, and taxation and retirement benefits.

Finances of the Bar Council

32.47 Although it is autonomous, the Bar Council is dependent on the Senate for its finance. It shares the Senate's accommodation and secretariat.

The Council of Legal Education (CLE)

32.48 The CLE is required, subject to such directions as the Senate may give on matters of general policy, to conduct the work of the educational charity which bears its name. It is responsible for running the Inns of Court School of Law. It makes recommendations to the Executive Committee of the Senate on any matters relating to legal education, pupillage, the provision of facilities for continuing education, including refresher courses for practising barristers and courses in new legislation, specialist matters, inter-disciplinary topics and judicial duties. It also has a duty to review and make recommendations to the Inns on all matters relating to the attendance by students at training functions such as moots, debates or weekend courses within the Inns and the keeping of terms, and to make recommendations to the Executive Committee on general policy as to qualification for admission.

32.49 The CLE is, for formal purposes, a committee of the Senate, comprising between 26 and 30 members, namely:-

(a) the Chairman, who is elected by the Senate but need not be a member of that body before his election;

(b) the Dean of the CLE *ex officio*;

(c) 12 members of the Senate, of whom eight are nominated by the Inns and four are elected by the Senate;

(d) not less than 12 but not more than 16 co-opted members, who need not be members of the Senate but are appointed by that body after consultation with the Chairman of the CLE and the Treasurers of the Inns.

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Finances of the CLE

32.50 Financial responsibility for the CLE rests with the Senate and the Inns. Its income comes in part from invested capital and in part from the tuition and examination fees charged to students by the Inns of Court School of Law, which are intended to meet the running costs of the school.

The circuits

32.51 The six circuits are autonomous organisations. Each has its own rules and customs, officers and controlling committee. The officers are the circuit leader, the deputy leader, the treasurer and the circuit junior. Finance is provided by subscriptions from their members. A barrister may be a member of only one circuit, but a barrister who is a member of a circuit may appear in a court on another circuit.

32.52 Each circuit is concerned with the administration of circuit business within its own area. The officers of the circuit are in regular contact with the circuit administrator, who is a senior official of the Lord Chancellor's Department. The matters discussed in this way include the listing of cases and the taxation of costs. The circuit maintains contact between its members, and between its members and the Bench, at social functions such as circuit dinners. The circuits are concerned with the establishment of chambers in their areas; although they have no direct control in this matter, it is unlikely that a new set which was not approved by the circuit leader and committee would be granted a supporting loan by the Senate. The circuits in recent years have not exercised disciplinary powers of any formal kind, though, in cases which do not call for formal disciplinary procedures, the leader and other officers of the circuit may exercise considerable influence by informal admonition or advice.

32.53 The circuit leaders or their deputies are *ex officio* members of the Bar Council, and in recent years have been co-opted members of the Senate. In addition there is an understanding that, so far as possible, all the circuits are adequately represented, by co-option if necessary, on the Senate and the Bar Council. This apart, the relationship between the circuits and the central governing body of the profession is traditional rather than formal.

32.54 In recent years the profession has doubled in size, and more barristers practise in the provinces. We consider it doubtful whether the present loose organisation of the profession in the regions will be satisfactory in the future. The Senate told us in evidence that the standard practices and traditions of the circuits are not always regarded as binding in the way they were in the past; there is, therefore, a need to put the powers and responsibilities of the circuits on a formal basis in order to maintain standards. As we said in Chapter 29, we consider a strong district or regional organisation to be a valuable element in the management of a profession. We recommend therefore that the governing body of the Bar should review the powers and function of the circuits, having regard to the following considerations amongst others:-

(a) whether, and what, authority should vest in the circuit leader alone, or in an elected committee with the leader as chairman;

(b) whether the circuit leader or committee will need increased administrative and secretarial assistance to exercise additional functions;

(c) whether circuits will need additional funds and how such funds should be raised, either by additional subscriptions from circuit members, subvention from Senate funds or by some other means;

(d) whether certain powers and functions of the Senate should be delegated to the circuits to implement the policies of the Senate as they affect the circuits;

(e) whether, and to what extent, disciplinary powers should be exercised by circuits. In our view, the circuit organisation would be of value for enquiry, conciliation and other action requiring personal contact. But we consider that formal disciplinary business of any substance should be the responsibility of the Senate and the Bar Council. We deal with this point in Chapter 26.

Specialist bar associations

32.55 There are a number of specialist bar associations. Some of them are large: the London Common Law Bar Association, for example, has 450 members. Barristers engaged in specialist work, including crime, family law, revenue, conveyancing, international law and many others have their own associations which are independent of the Senate. As with the circuits, an attempt is made, by co-option, to secure the representation on the Senate of specialist bars which happen not to be represented by elected members.

The Future Structure and Organisation of the Bar

Continuing problems

32.56 It was the hope of the Pearce Committee that the problems it identified in its first interim report (paragraph 32.28 above) would be overcome by the measures it proposed. In the event, the recommendations of the Pearce Committee were not fully implemented, and a number of the problems it identified remain. We comment on these in the following paragraphs.

32.57 It will be observed that seven groups of persons take part in directing the affairs of the profession: the Senate, the Bar Council, the Council of Legal Education and the four Inns. These groups are not homogeneous and they are appointed to office by a variety of different methods; some of them have powers which are independent of the others. This gives the impression that those who constitute the Senate are delegates representing different interests rather than the profession as a whole. Although the Senate lays down general policy on all matters affecting the profession, this does not extend to matters within the

executive jurisdiction of the Inns or the Bar Council. It appears from the evidence that, for the purpose of its separate powers and functions, the Bar Council is not subject to any directions from the Senate although the Senate is in theory the central governing body of the profession.

32.58 The Inns retain financial autonomy. The large resources available in property and in income from property are not under the direct control of the governing body of the profession. The Inns are not bound to accept any guidelines in the exercise of their functions and there is no uniformity between them in the methods of administration and of financial management.

32.59 The Understandings (see paragraph 32.37) do not, in our view, provide a sound basis for the long term administration of the profession. They provide the Senate with no certain means of financial support. The Pearce Committee proposed that practising members of the Bar should be compelled to pay subscriptions by sanctions imposed, through the Inns, on their enjoyment of subsidised professional accommodation. This proposal was linked with two others, that the Inns should collect subscriptions on behalf of the Senate, and that the charges imposed on joining an Inn should be phased out. There are a number of objections to the proposal to enforce subscriptions by imposing sanctions on the use of professional accommodation; in particular, the sanction could be applied only to barristers with chambers within the Inns and would not therefore affect the provincial Bar. Moreover, the proposal has the effect of treating all those in a set of chambers, for financial purposes, as a single unit. At present therefore the Senate's income from practising members is derived from voluntary subscriptions. Eighty five per cent of eligible barristers pay their subscriptions and there is a loss to the Senate from default on subscriptions in the region of £15,000 per year. In our opinion it is desirable that, as in other professions, payment of a subscription should be mandatory.

32.60 Members of the Bar under the age of 50 play little part in the formulation of policy in the Inns. The present arrangements provide for the election to the Senate of members of the Inns who are not benchers, but within the Inns the position remains that the existing benchers appoint new benchers from among the most senior members of the Inn. The Pearce Committee described the failure of the Inns to enable their junior members to play a greater part in framing policy as "a serious disability".

32.61 No final conclusions have been reached on a variety of other problems which have existed since the time the Pearce Committee reported. These include:-

(a) a common rent policy;

(b) the shortage of accommodation;

(c) difficulties in finding pupillages;

(d) difficulties over access to tenancies in chambers; and

(e) finance for pupillage and students.

The Inns have a close interest in the solution of these problems which are of importance to the practising profession and particularly to new entrants and junior barristers.

The collegiate functions of the Inns

32.62 Before setting out our recommendations for changes in the present arrangements, it is necessary to deal with the collegiate functions of the Inns. Members of the Bench and Bar attach importance to the collegiate element provided by the Inns and the facilities they make available. Before the establishment of the CLE in 1852 each Inn was solely responsible for the education of its students. The CLE is now responsible for formal education but the Inns continue to provide the collegiate element by maintaining common rooms and libraries, providing meals in hall, awarding scholarships and bursaries and organising moots, talks and other activities in hall and at weekend meetings. The collegiate element also plays a part in maintaining professional standards and quality. Personal association within the profession, at least that part of it based in London, is close and is fostered by the proximity of professional chambers one to another, the opportunity of meeting in hall and the contacts between members of the practising profession and students during and after dinner and at moots. Although the collegiate element was said by some witnesses to have disadvantages, we think that it is of continuing value.

32.63 The administration of the resources of the Inns, represented in their ownership of land and buildings, is a separate issue. We believe, as we explain in paragraph 32.76, that these large and valuable assets should be administered by the Inns under the general direction in matters of policy of the governing body of the Bar. We are satisfied that this should not, and in practice will not, diminish the collegiate element in the life of the Bench and Bar which is provided by the Inns.

The principles

32.64 In the formation of the governing body, the general principles expressed in Chapter 29 apply and, in the case of the Bar, we draw attention to the importance of establishing a single governing body not dominated by any particular group, which controls, and is seen to control, the affairs of the profession; of arranging that the governing body should, in general, be composed of members of all levels of seniority elected by the profession as a whole, rather than delegates from the Inns; and of ensuring that the governing body should have effective control of the financial policies of the profession.

32.65 The President of the Senate in oral evidence stated that these were fair propositions, but made the qualification, in the case of the Bar, that the judges had a part to play in the management of the profession. On the subject of finance he

said that it was reasonable to ask the Inns to adjust financial policy to the requirements of the profession as formulated by the Senate. He subsequently expressed the view, with the support of the Senate's Executive Committee, that it should not be implied that matters such as the administration of assets and the level of reserves were for the Senate rather than the Inns.

32.66 The Senate, in its evidence on the future of the profession, said that there was pressure from the practising profession for the assets of the Inns to be used in the context of the whole profession. In connection with the admitted need to formulate and update an overall financial assessment of the needs and resources of the profession, the Senate said:-

> With a secure income from both Inns and Bar, the Senate could sensibly consider the financial needs and resources of the profession over and above the sectional interests of barristers and Inns. Given such powers the Senate could provide better services to the profession as a whole and indirectly therefore to the public.

32.67 Clear and single-minded direction will be needed if our main recommendations are to be effectively implemented. It is our opinion, having regard to the problems referred to in paragraphs 32.56-32.61, that the existing organisations are neither sufficiently coordinated nor adequately representative of the profession as a whole to provide the necessary direction. Accordingly, we consider it would be in the interests of the public and the profession if the structure of the Senate were reshaped in respect both of its powers and its composition.

32.68 In the light of the legal constitution of the Inns of Court a question may arise whether the changes we propose can be effected without legislation. These proposals in their essential features are close to the recommendations of the Pearce Committee, set up by the profession itself, which did not contemplate the necessity for legislation. Such improvements are in our view essential if the profession, through its governing body, is to handle properly its powers and responsibilities. It is important therefore that early progress should be made without the delay inevitably involved in the preparation and passage of legislation for which we doubt the need. We very much hope, therefore, that the Bar and the Inns of Court will make early progress towards the desired goal.

Powers of the Senate

32.69 The Senate, composed as proposed below, should assume responsibility for all matters affecting the barristers' branch of the profession. The policies of the Senate should be declared to be binding on the Inns and the Bar. The property of each Inn should remain vested in it and should continue to be managed and administered by it but in accordance with the policies of the Senate.

Composition of the Senate

32.70 We consider that the main part of the Senate, amounting to approximately 60 persons (though the precise number is not critical), should be elected by members of the barristers' branch of the profession by secret postal

ballot. Appropriate arrangements will be needed to ensure that different bands of seniority, specialists, employed barristers and barristers practising in different parts of the country are adequately represented. In all other professions, including the solicitors' branch of the profession, an elected governing body, given the power of co-option, is adequate for its intended purpose. However, in the case of the barristers' branch of the profession it would not be wholly adequate, for it would include no representatives of the judges.

The appointment of judges to the Senate

32.71 The judges have strong historical and constitutional claims to play a part in the administration of the barristers' branch of the profession. Even if these were put aside, it must be recognised that the most able practitioners tend to be promoted to the Bench in their late forties or their fifties. In other professions, members of this seniority and standing are at the point where they exercise the most influence in the affairs of their profession. To deprive the public and the profession of the service on its governing body of practitioners whose standing and ability have merited appointment to the Bench is contrary to common sense. Accordingly, we are satisfied that arrangements should be made to ensure that judges form part of the Senate.

32.72 We consider the best method by which this can be achieved is to allocate an additional number of places, between ten and twenty, on the Senate to which judges may be appointed. This could be done by appointment, by election by members of the Bar, by co-option by the Senate or by election by the judges themselves.

32.73 The presence of the judges on the Senate introduces a complication which does not arise in other professions. There may be certain topics of concern to the practising profession with which the judges consider it inappropriate themselves to deal. We understand that it is for this reason, amongst others, that a separate Bar Council at present continues in existence. We consider that this difficulty can be met if the members of the Senate who are elected by, or co-opted from, the profession comprise a Bar Committee, on the pattern of the present Bar Council. This committee would be charged with responsibility for dealing with all business with which the judges on the Senate think it inappropriate to be involved; we have in mind for example the question of fees and levels of remuneration.

Representation of the Inns

32.74 All those elected, co-opted and appointed to the Senate will be members of Inns, and a proportion, including all the judges of the High Court and above, will be benchers. It is necessary that all those on the Senate should regard themselves as representing the profession as a whole and should not regard themselves as delegates of their Inns. But it is essential that the Inns be formally represented, and for this purpose we consider that the Treasurer and the chairman of the finance committee of each Inn should be *ex-officio* members of the Senate.

32.75 The responsibility of the Inns for directing the affairs of the profession has

steadily diminished since the end of the nineteenth century. Directly or indirectly this responsibility has largely passed to the Senate, the Bar Council and the CLE. Evolution has been relatively rapid in recent years by virtue of the efforts made by the practising profession and the Inns. Our recommendations propose that this process of evolution should continue to the point where the primary responsibility for the affairs of the profession rests within a single, coherent organisation, namely the Senate.

The administration of the Inns' properties

32.76 We pointed out earlier that an important part of the work of the Inns at present is concerned with the administration of the property which each of them owns. The benchers and others devote a great deal of time and attention to this work. We see no reason why the Senate should not delegate this function to the Inns, provided it is carried out in accordance with policies laid down by the Senate so that there is uniformity in the methods of administration and financial management. In this connection it should be noted that the Understandings recognise that the assets administered by the Inns are held for the well-being of the profession as a whole; our recommendations put this into formal effect.

Committees of the Senate—lay participation

32.77 The Senate in its new form should appoint committees for the purpose of carrying on its work; these should deal with, amongst other matters, professional purposes, finance, education and pupillage and the administration of property. For the reason given in Chapter 29, we are of the view that while laymen, appointed or co-opted for the purpose, would not be able to play a useful part on the Senate itself, they would, as in the case of the Law Society, play a valuable part in the committees responsible for framing proposals as to future policy. The Senate made it clear in its written and oral submissions that it would be assisted by the presence of laymen on its committees. We are strongly of the view that all committees should be enabled to recruit laymen if appropriate; in relation to finance and the administration of property it is desirable, whether or not consultants are engaged to advise on these matters, that laymen of knowledge and experience should be appointed to serve on these committees.

Future policies

32.78 In formulating its future policies and preparing guidelines for the management of the properties by the Inns, we think that the Senate should have regard to the following matters.

(a) Certain funds were bequeathed to the Inns in trust for specific purposes. Such funds will continue to be administered in accordance with the requirements of the trusts. It may be possible, as has been done with other trusts of a similar nature, to pool the assets in order to save some expenses of administration, but the disposition of the income would continue to conform to the provisions of the trust deeds.

(b) A budget for the whole of the remaining income and expenditure of the Inns and of the Senate should be prepared, with estimates for at least the next two years. In planning the expenditure, the Senate should have regard to the many competing demands for funds falling on the profession and the need to make a fair allocation of resources. We have in mind for example the costs of administration; the need to make additional accommodation available for chambers; the educational needs of the Bar and students; financial support for students and pupils; and the requirements of the Inns for collegiate purposes.

(c) We agree with the view expressed by the Senate to us in evidence that it is now necessary to review the present policy of assisting barristers by charging less than the market rent for chambers in the Inns and by allowing a subsidy of meals. We think that this should be carried out as part of the review referred to in (b) above.

(d) Rental and leasing policies in relation to the properties managed by the Inns should be made consistent throughout as soon as possible (see paragraph 32.9). These policies should, as recommended in paragraphs 62 and 63 of the interim report of the Pearce Committee and as proposed in other chapters of this report, contain provision for securing that chambers have a sound internal organisation, pupillage is properly conducted, young barristers are fairly treated and that suitable arrangements are made by the head of chambers for using the accommodation effectively and allotting the rent and expenses on a fair and reasonable basis.

(e) Provision should be made out of each year's revenue to build up funds adequate to meet the cost of major rebuilding and renewal in future years. Capital expenditure should no longer be charged to revenue (see paragraphs 32.10 — 32.11).

(f) The charitable status of the Inns or of the Senate should be preserved to whatever extent it is possible and appropriate to do so.

(g) Uniform salary scales and pension arrangements should be adopted for all the staff employed by the Senate and the Inns.

(h) A compulsory annual subscription should be paid by barristers in private practice or who require the professional qualification for the purposes of their work (see paragraph 32.59). It will be for the Senate to devise the means but regard should be paid to the following:-
   (i) the possibility of differing subscriptions for those in private practice according to seniority and for employed barristers, judges and members overseas;
   (ii) the possibility, now under consideration by the Senate, of including the obligation to pay the subscription as part of an amended call declaration;

(iii) the extent to which the facilities of the Inns should be granted to members of the Inns who pay no subscriptions.

Payment of annual subscriptions in this way should enable the Senate to adopt the policy recommended in Chapter 39 of reducing the level of admission and call fees.

(j) Expert advisers on matters relating to finance, the management of property and other business should continue to assist the Senate and the Inns in the management of their assets.

(k) There should be an annual meeting of subscribing members to receive a report on the past year and an explanation of the policies of the Senate. A report, incorporating the audited accounts of the Senate and the relevant parts of the accounts of the Inns, should be sent out before the meeting.

(l) We cannot accept that the administration of the Inns in the best interests of the profession and the public can be achieved if annual appointments to high office within the Inns, including the highest office of Treasurer, are made without regard to the age, experience, background or merit of the office holder but solely on grounds of seniority. We recommend that this practice should be discontinued. So far as age limits are concerned we understand that two of the Inns already impose an age limit of 70 and this limit is accepted in other professions and occupations. It gives younger members, directly in touch with the practising profession, increased opportunities. We think that the same age limit should apply to members serving on the Senate or its committees.

(m) It should be regarded as normal practice to appoint or co-opt non-benchers to the committees of the Inns.

(n) The creation of a new Senate with the functions and powers we recommend removes some cause for concern at the present method of appointing benchers but we consider that a self-appointing body of this character is anomalous and hard to justify.

Cooperation between the two branches of the profession

32.79 It is essential that cooperation between the two branches of the profession should be achieved by regular meetings between members of their governing bodies. This was recognised by the Council of the Law Society and the Bar Council, who set up a Joint Committee which held meetings for a number of years. A Special Joint Standing Committee was set up in November 1975. Joint committees or working parties have been formed from time to time to consider topics including taxation, international relations, young barristers and solicitors, the proposed Common Professional Examination and ease of transfer between the branches.

32.80 Neither the Joint Committee nor the Special Joint Standing Committee has met in the recent past for regular discussion of business, but we understand that it is the intention to resume regular meetings as soon as possible. We attach importance to the resumption of these meetings, particularly in the light of the recommendations affecting the profession contained in this report. In addition, as we commented in Chapter 29, liaison and consultation between the circuits and the district organisation of the Law Society which we propose should be established as a routine in future.

Conclusions and Recommendations

			Paragraphs
Circuits	R32.1	The organisation and functions of the circuits should be reviewed.	32.54
Main problems	R32.2	The problems identified by the Pearce Committee have not yet been solved.	32.56-32.61
Inns	R32.3	The collegiate functions of the Inns are of continuing value and should be preserved.	32.62
Composition of the Senate	R32.4	In the interests of the public and of the profession the structure of the Senate should be changed.	32.67
	R32.5	The majority of the Senate should be elected, but the judges and the Inns should be represented on it as proposed in the text.	32.70-32.74
	R32.6	Committees of the Senate should include co-opted laymen.	32.77
Property of the Inns	R32.7	The properties of the Inns should continue to be vested in them, but they should be administered in accordance with policies laid down by the Senate.	32.76
	R32.8	Budgets of the whole of the revenue and expenditure should be prepared; a fair allocation of resources between competing demands can then be made.	32.78 (b)
	R32.9	Consistent rental and leasing policies should be adopted by all the Inns.	32.78 (d)

			Paragraphs
	R32.10	Provision for major rebuilding and renewal should be charged against revenue each year. Capital expenditure should not be charged to revenue.	32.78 (e) and 32.10-32.11
Charitable status	R32.11	The Inns' present charitable status should be preserved.	32.78 (f)
Salaries and pensions	R32.12	Uniform salary scales and pension arrangements should be adopted for all administrative staff of the Inns.	32.78 (g)
Subscription	R32.13	A compulsory subscription to the Senate by barristers should be introduced.	32.78 (h) and 32.59
Accountability	R32.14	There should be an annual meeting of subscribing members. A report incorporating audited accounts should be despatched to members before the meeting.	32.78 (k)
Retirement	R32.15	Members of the Senate and benchers should retire from active administrative work on reaching 70 years of age.	32.78 (l)
Cooperation with the Law Society	R32.16	Close cooperation and working arrangements between the two branches of the profession should be maintained in the future.	32.80

ANNEX 32.1

TABLE 32.4
Rental policies of the Inns
(paragraph 32.9)

	Gray's Inn	Inner Temple	Middle Temple	Lincoln's Inn
Chambers				
Rent	$\frac{2}{3}$ FRR [1]	63% FRR	$\frac{2}{3}$ FRR	$\frac{2}{3}$ FRR (as from March 1978)
Length of lease	6 years (review after 3 years)	Quarterly	Quarterly	Annual
Type of lease	Tenants repairing	Tenants repairing	Tenants repairing	Tenants repairing
Must head tenant be a member of the Inn?	No	Yes	No	No
Number of sets of chambers [2]	17[3]	131		44
Offices				
Rent	FRR	FRR	FRR	FRR
Length of lease	6 years (review after 3 years)	Quarterly	Quarterly	20 years (with reviews after 5, 10 & 15 years) or 21 years (with breaks after 7 or 14 years)
Type of lease	Tenants repairing	Tenants repairing	Tenants repairing	Tenants repairing
Number of offices	70[4]	27	16	37
Residential				
Rent	'Fair rent' ($\frac{2}{3}$ fair rent to members	63% FRR	Approx 70% of estimated registered rent[5]	Registered rent (less 10% for members)
Length of lease	3 years	Quarterly	For one year certain	3 years
Type of lease	Tenants repairing	Tenants repairing	Tenants repairing	Tenants repairing
Numbers of units of accommodation	62	63	81	70

[1]FRR = Full Rack Rent (or Precinct Rent). All proportions quoted are approximate and vary from time to time.
[2]Taken from 1976 Law List—the number of separate lettings will be greater.
[3]In addition, the Council of Legal Education and the Senate occupy accommodation in Gray's Inn.
[4]In addition, the Clergy Benevolent Association and the Barristers' Benevolent Association have offices in Gray's Inn. Neither association has paid rent in the past though we have been informed that the Clergy Benevolent Association will be charged rent in the future.
[5]We are informed that it is the current policy of the Middle Temple to move towards charging tenants of residential accommodation the registered rent.
Source: Consultants' memorandum on the accounts and finances of the four Inns of Court, Volume II section 12.

CHAPTER 33

Practising Arrangements: Barristers

Chambers

Definition

33.1 The expression "chambers" is used in two senses. Since the seventeenth century the word has been used to describe a set of rooms let out as living or working accommodation. It is used in this sense in particular of accommodation in the Inns of Court.

33.2 In its developed sense, "chambers", or "a set of chambers", is used to describe a group of barristers who work together for the purposes of professional practice, sharing accommodation and the services of a clerk.

Practising rules

33.3 A barrister is not permitted to practise unless he is a member of professional chambers, or is a pupil of such a member, having completed six months' pupillage. In order to be accounted a member of chambers, a barrister (unless he is a pupil) must have his name exhibited at the chambers, usually at the foot of the staircase and on the door, must be entitled to use chambers as necessary for the purposes of practice and must have the services of the clerk who is the clerk of chambers. It is not, however, necessary for a barrister to have a room, or any space in chambers, set aside for his exclusive use. A barrister may work at home, but his private residence cannot be treated as chambers for the purposes set out above; the relevant passage in Boulton's *Conduct and Etiquette at the Bar* runs as follows.

> A private residence or part of a private residence shall not be eligible to be regarded as professional chambers for the purposes of these rules, but a barrister who is a member of professional chambers may use his private residence for professional work.

An exception is made in respect of residential property in the Inns, part of which may be used as professional accommodation at the discretion of the governing body and provided proper clerking arrangements are made.

Numbers and size of chambers

33.4 Statistics concerning the number of chambers relate to the number of sets, not to the number of rooms in occupation. In this sense there were, on 1st January 1979, 199 sets of chambers in central London and 104 in the provinces. In some cases, barristers practise from both a London and a provincial set or from two provincial sets. The number of barristers working in chambers varied widely, from one up to 30 and more. Details are shown in the following table.

TABLE 33.1
Sizes of chambers, 1st January 1979

Number of barristers[1] in set	Number of sets	
	Central London	Provinces
1	3	5
2	0	3
3	2	4
4	1	4
5	0	4
6-10	36	20
11-15	56	31
16-20	56	20
21-25	37	11
26-30	8	1
Over 30	0[2]	1[3]
Total	199	104
Average number of barristers per set	15	12

[1]Barristers practising from more than one set of chambers have been counted at their principal chambers only.
[2]There is a London set with 43 tenants, but this includes a substantial number who practise mainly in the provinces. Excluding tenants who practise mainly in the provinces, the largest number of barristers in a London set is 29.
[3]The largest set of provincial chambers has 31 barristers, all of whom practise mainly in that set.
Source: Compiled from information held by the Senate.

Distribution of chambers

33.5 In provincial cities, chambers are not distributed in one area or according to any plan. There are now sets of chambers in 28 centres in the provinces, providing accommodation for nearly 1,300 barristers. Details are given in the following table.

TABLE 33.2
Location of chambers, 1st January 1979

	Number of sets of chambers[2]		Number of Barristers[1]	
Central London	199		3,080	
Provinces:–	104		1,283	
Midland and Oxford Circuit:–				
Birmingham		12		165
Derby		1		1
Leicester		4		37
Nottingham		3		55
Stoke on Trent		1		4
North Eastern Circuit:–				
Bradford		1		14
Hull		1		13
Leeds		8		129
Middlesbrough		1		11
Newcastle-upon-Tyne		5		64
Sheffield		3		28
Northern Circuit:–				
Liverpool		14		179
Manchester		19		249
South Eastern Circuit:–				
Brighton		2		15
Cambridge		1		11
Colchester		1		13
Guildford		1		7
Hythe		1		2
Norwich		1		10
Wales and Chester Circuit:–				
Cardiff		4		75
Chester		3		36
Newport		1		2
Swansea		2		30
Western Circuit:–				
Bournemouth		2		5
Bristol		5		65
Exeter		4		29
Plymouth		1		8
Southampton		2		26
Total	303		4,363	

[1]Barristers practising from more than one set of chambers have been counted at their principal chambers only.
[2]There are also six sets of chambers where all the tenants practise primarily elsewhere. One is in the Temple, and the others in Birmingham, Ipswich, Norwich, and Preston (2).
Source: Compiled from information held by the Senate.

33.6 In London nearly all professional chambers are situated in the Inns of Court. The distribution is as follows.

TABLE 33.3
Distribution of chambers, London, 1st January 1979

Location	Number of sets	Number of barristers[1]	Average number of barristers per set
Inner Temple / Middle Temple[1]	138[2]	2,339	17
Lincoln's Inn	43	518	12
Gray's Inn	17	213	13
Wellington Street (Covent Garden)	1	10	—
Total	199	3,080	15

[1]Barristers practising wholly or principally from London chambers.
[2]Including the set of 23 barristers practising from Devereux Chambers which lies immediately outside the precincts of the Inn.
Source: Compiled from information held by the Senate.

33.7 It will be seen that the majority of London barristers practise from chambers in the Temple and Lincoln's Inn. The Senate told us that the historical reason for this is that these were the Inns most conveniently situated for access to the courts. When the court of King's Bench and other common law courts sat in Westminster Hall, the quickest way to reach them was by water from Temple Stairs. When the Lord Chancellor and Vice-Chancellor were accustomed to sit in the old hall of Lincoln's Inn, chambers in that Inn and in Gray's Inn were the most convenient for chancery practitioners. Both chancery and common law courts now sit in the Royal Courts of Justice, situated in the Strand with the Inner and Middle Temples immediately to the south, and, to the north, Lincoln's Inn and, at a greater distance, Gray's Inn. The position remains today that most common law and criminal sets of chambers are in the Temple, and most chancery practitioners have chambers in Lincoln's Inn. Up to a few years ago, there were only one or two sets of professional chambers in Gray's Inn, the remainder being given over to residential accommodation and offices occupied by solicitors and others.

33.8 It is not the case, as is sometimes supposed, that barristers may have London chambers only within the precincts of the Inns or in property owned by them. Even so, only one set is operating in London at any distance from the Inns, at Wellington Street in Covent Garden. The great majority of barristers, as the figures in Table 33.3 show, prefer to practise in one of the three Inns nearest the Royal Courts of Justice. There are a number of reasons.

33.9 First, it is the policy of the Inns to charge barristers a rent lower than the full market rent. The amount of the subsidy varies from Inn to Inn and from one set of chambers to another, but the amount charged is as a rule about two-thirds the full market rent. It cannot be expected that many barristers would be willing to

forgo this advantage by working outside the precincts of the Inns, given the high level of rents which are charged in the area. The degree to which rents are subsidised is shown in the following table.

TABLE 33.4
Subsidy of chambers' rents

	Inner Temple	Middle Temple	Lincoln's Inn	Gray's Inn	Total
Rental income: barristers chambers[1]	£451,000	£290,000	£180,000	£82,000	£1,003,000
Rental basis: barristers' chambers[2]	63% Full rack rent	⅔ Full rack rent	½ Full[5] rack rent	⅔ Full rack rent	—
Approximate annual cost of the subsidy of barristers' chambers[1]	£264,900	£145,000	£180,000	£41,000	£630,900
Approximate cost of the subsidy as % of rental income (all lettings)[1 3]	65%	47%	67%	9%	—
Approximate subsidy per barrister[4]	£166	£174	£359	£250	—

[1]Figures for the year ending 31st December 1976.
[2]All the proportions quoted are approximate and vary slightly from tenancy to tenancy.
[3]Rental income is the estate income net of expenses.
[4]Based on the number of barristers practising from each Inn in March 1977.
[5]This was raised to two-thirds of the full rack rent at the March 1978 rent review.
Source: Consultants' memorandum on the accounts and finances of the four Inns of Court, Volume II section 12.

33.10 Secondly, it is important for the clerk to a set of chambers to have early and accurate information about future court hearings. Under present arrangements, this often involves examining lists put up in a central location. Until more modern methods of communication become established, such as a telex network or closed-circuit television, barristers practising at any distance from the Inns would be at a disadvantage in this respect.

33.11 The third reason is that of long tradition. We have no doubt that, even if it were relatively easy to practise elsewhere, barristers would still prefer to practise from the Inns.

33.12 Some of the Inns have purchased properties in order to provide professional chambers. The Middle Temple has leased Devereux Chambers, just outside its precincts, which provides accommodation for 23 barristers. Three Inns have combined to acquire a building in Southampton which provides professional chambers for 26 barristers, and the Middle Temple has taken a building in Leicester which provides chambers for 16 barristers.

Financial assistance for chambers

33.13 Under modern conditions it is expensive to open a new set of chambers. It is necessary to obtain accommodation; if this is outside the precincts of the Inns, a premium as well as rent may be payable. The rooms must be suitably furnished and the services of a clerk retained. Books are indispensable, and in themselves call for an expenditure of between £5,000 and £10,000. If the chambers contain a large proportion of barristers who have no established practices, it will take time to build up the work of the set. A lengthy period will elapse before fees start to come in.

33.14 In order to assist practitioners, the Senate has established a chambers loan fund, which is managed by a sub-committee of the Senate's Accommodation Committee. The Loans Sub-Committee is empowered to recommend loans or the grant of rent reliefs up to an aggregate of £60,000 at any one time. The amount lent or granted in each year from 1971 to 1978 is shown in the following table.

TABLE 33.5
Financial assistance to chambers: loans made and reliefs granted, 1971-78

Year	Number of loans and grants	Total value of loans and grants £
1971	4	5,000
1972	4	5,000
1973	7	15,400
1974	8	22,170
1975	9	14,300
1976	11	10,700
1977	7	7,750
1978	6	13,750

Source: Senate.

Composition of chambers

33.15 The Senate attaches importance to the maintenance of what are described as "balanced" sets of chambers. The ideal is to have in a set barristers of all

grades of seniority, appropriate for every level of case which might come its way. Sets are described as "top heavy" or "bottom heavy" if they have too many senior or too many junior barristers. It is an advantage to the members of chambers and to their clerk if there is a spread of capacity through the chambers. If there is a shortage of senior barristers, the chambers may lack prestige and the ability to attract the cases of substance which bring other business in their train. If there is a shortage of juniors, the set may get the reputation of being unsuited for bread and butter work. If, in a "top heavy" set, senior members are promoted to the Bench or retire, the clerk may suffer a loss of income as may the other members, because of the loss of prestige.

Internal structure and management of chambers

33.16 The organisation of a set of chambers is an internal matter. There is no recognised or authorised pattern. In every set there is a head of chambers, who holds the tenancy of the accommodation and is responsible for payment of the rent. The other members of the set are sub-tenants or licensees. The amount they pay in respect of accommodation and the terms on which they occupy it are matters of private arrangement between themselves and the head of chambers.

33.17 We received some criticism of this system. It was said that the head of chambers may strike an unfair bargain with his colleagues. There have been complaints that heads of chambers have behaved in an arbitrary and unreasonable way or that they have allowed the clerk of chambers too strong a control over the careers of the set's junior members. Some chambers have been criticised because their standards of administration, particularly in respect of finance, are inadequate for the purposes of practice in modern conditions.

33.18 In response to our questionnaires, the Senate undertook to consider proposals for maintaining and improving standards. As a result, the Senate in August 1977 sent a memorandum to all heads of chambers concerning the structure and administration of chambers. This memorandum is known as *Chambers Guidelines* and is reproduced in annex 33.1. The Senate's initiative in issuing guidelines was important and timely. We have, however, received evidence that the guidelines are not yet observed in all chambers. The Senate is aware of this, though it believes there is a general willingness to abide by them. When giving oral evidence to us, the Senate said that it was minded to insert in leases of professional chambers a term requiring observance of the guidelines. It indicated it would be glad to have the support of a recommendation from us to this effect. We make such a recommendation in paragraph 33.35.

Growth of the Bar

33.19 The growth in size of the Bar and in the number of sets of chambers is shown in the following table.

TABLE 33.6
Growth in numbers of barristers and chambers, 1965-78

	1965	1978
Number of barristers in practice[1]	2,164	4,263
Number of new entrants[2]	138	285
Number of sets of chambers[1]		
London	181	197
Provinces	75	105
Total	256	302
Average number of barristers per set of chambers	8	14

[1]Number at 1st October of year shown.
[2]Number entering during calendar year ended 30th September of year shown.
Source: Senate.

The present position

33.20 The effect of the influx of new members and the doubling in size of the Bar is that young barristers of less than ten years' seniority now comprise the majority of the profession. There is a large bulge in numbers at the junior end of the practising Bar. As the figures in the preceding paragraph show, the number of chambers has not risen in proportion to the number of practitioners; instead, existing sets have steadily grown larger to accommodate newcomers. There is a limit to capacity, dictated to some extent by the physical space available, but in particular by the desire of those in chambers to maintain a balanced structure (see paragraph 33.15) and to match numbers at all levels to the supply of work available.

33.21 The effect of the situation we have described is that a large number of new entrants to the profession find it impossible to obtain a permanent place or "seat" in chambers. We understand that the present number in this position is about 100. In many cases, young barristers in this situation are allowed to stay on in the chambers in which they have served their pupillages. They are called "squatters" or "floaters". The chambers which are their temporary hosts will no doubt do their best for them. The clerk will put in their way work which established members of chambers cannot take and will look out for possible openings for them. But their position is insecure and in most cases their prospects of earning a living as practising barristers are poor.

Future growth

33.22 It is rare for a profession to double in size as quickly as the Bar has done in the last 10 to 15 years. Such a rapid expansion is bound to give rise to strains and difficulties, all the greater in the case of the Bar, with the chambers system as the basis of its professional working arrangements. That the present position is not considerably worse is due to the efforts made by the Inns to find additional accommodation and by the Senate and practising barristers in chambers to provide places for new entrants. Our main concern is with the suitability of the

present structure and practising arrangements of the profession to meet the demands likely to be imposed on it in the next 20 or 30 years.

33.23 Forecasts of future demands for services of most kinds are at best hazardous and at worst totally misleading. A mistaken forecast of future requirements made in 1969 led to an unnecessary recruiting campaign and was in part responsible for the present surplus of new entrants to the Bar. However, if the recommendations elsewhere in this report for improvements and extensions in the provision of legal services are implemented, we think it likely that the demand for barristers' services will show a gradual increase in future. This will be sustained not merely by the changes we recommend as regards legal aid but also by the increasing volume of new legislation, any increase in the crime rate and the growing complexity of modern society. Hence demand for barristers' accommodation and for the services of barristers is unlikely to fall below the present level and can be expected to increase.

Matters for consideration

33.24 The facts described above lead in our view to four questions. It is necessary to consider, first, whether it is right to require barristers to work only from professional chambers with the services of a clerk; secondly, if barristers continue to work in association in chambers, whether the present arrangements for supervising their internal arrangements are satisfactory; thirdly, whether any additional measures can be taken to assist those who cannot at present find a seat in chambers; and fourthly, what further steps can be taken to reduce physical overcrowding.

Formal Requirements

General principles

33.25 As a general principle, we consider that restrictions on the freedom to practise should be relaxed unless they are in the public interest. It is, however, in the public interest that the governing body of a self-regulating profession should maintain control over the conduct of its members (see Chapter 26). Moreover, we consider that the legal profession should go further than has been customary in the past in concerning itself not only with professional misconduct, but with incompetence and inefficiency and in general with maintaining a high standard of professional work. The Senate accepts this responsibility.

33.26 As the profession grows in size, the task of maintaining standards is likely to become more, rather than less, difficult. It would be inconsistent to impose on the Senate the duty of controlling backsliders while removing from it the necessary means of control. The question, therefore, is whether the present rules as to professional chambers, as set out in paragraph 33.3 above, are required for the purpose of maintaining standards in the way we recommend.

The present rules

33.27 The Senate attaches importance to practice from chambers because it provides for mutual support in respect of expenses and the allocation of work, professional association, informal advice and guidance, devilling and assistance to newcomers. It argues also that a barrister practising alone, particularly in the criminal courts, would be exposed to pressure to ignore the rules of conduct relating to touting and improper association with clients and witnesses; the younger and more inexperienced the barrister, the greater the risk.

33.28 The rules regarding chambers are closely linked to the requirements as to the employment of a clerk. In its oral evidence, the Senate made it clear that it regarded the clerking rule as the more important of the two. In Chapter 34 we recommend that the present rule requiring the engagement of a clerk should be modified to a rule that a barrister should make whatever arrangements are necessary to ensure that his practice is efficiently conducted. We also recommend abrogation of the rule against a spouse acting as clerk.

Modifications to the rules

33.29 Although the clerking rule may be modified in the way proposed, it is important, in the public interest, to retain the principle that a barrister should practise in circumstances which enable him to operate efficiently and in compliance with the rules made by the governing body as to professional behaviour. We believe that, whatever formal rules prevail, most barristers will continue to practise in association. We consider that a system in which there are balanced sets of chambers containing barristers of different ages, skills and experience is of value to clients. In these circumstances, attention must be paid to the internal organisation of chambers and we make recommendations for this purpose later in this chapter which are intended to assist the Senate in its responsibility for maintaining standards.

33.30 In general, we agree with the necessity for the rules now in force. We consider, however, that they should not be regarded as absolute. They are designed to ensure that a barrister, in his practising arrangements, observes the principles of efficient administration and conforms with professional standards of conduct. To this end the Senate should be informed of the place where a barrister or a group of barristers proposes to practise and their intended means of administering the practice. It should however be willing to grant a waiver of specific rules when it is satisfied that the proposed arrangements are in the interests of the clients and that proper standards will be maintained. In this connection, particular attention should be paid to the need of young barristers for the support and guidance which may be obtained by working in association with others. It is, however, equally important that barristers should be enabled to make a start in practice and, if a newcomer is unable to find a place in an established set, it may be necessary to allow him to practise in circumstances which are not regarded as ideal.

Practice from home

33.31 Under the present rules as to practice from home, part of a residence within the Inns may, as mentioned in paragraph 33.3, be used for the purposes of practice in exceptional circumstances. A residence outside may not be so used in any circumstances. We do not believe that for the purpose of maintaining standards there is any special significance in practising from a residence within the curtilage of one of the Inns. The only advantage is proximity to the Royal Courts of Justice. We received little evidence in favour of abrogating the rule against practice from home. This is understandable. Barristers in established practice are not affected by the rule, while those who are anxious to set up in practice for the first time would find little advantage in doing so at an address remote from the central area and unknown to potential clients. But a barrister may wish to practise from home and may be able to do so in circumstances which do not infringe the principles we have stated; if so, we consider that the Senate should waive the rule which prevents him from doing so.

33.32 The rule as to practice from home is connected with the rule against a spouse acting as clerk. If the formal rules as to chambers and clerking are modified as we propose, it would be possible in principle for a barrister to practise from home, the spouse acting as clerk. The Senate said in evidence that it was mainly concerned to restrict sole practice, which might be encouraged if barristers could practise from home. We consider that, in each case, the Senate before giving consent should have regard to the risk that the proposed arrangement would lead to a breach of the basic principles in paragraphs 33.29-33.30. If so, it should not be permitted.

Loans to chambers

33.33 The Senate has complete discretion as to the operation of the chambers loan scheme described in paragraph 33.14. It takes the view that proposals to support unstructured sets (that is, sets in which there is no spread of age and experience) should be examined with particular care. Experience has shown that, without financial support, it is rarely possible to establish a new set that is adequately equipped. In these circumstances we consider that the Senate's discretion should be exercised within the spirit of the recommendations made in paragraphs 33.28-33.30.

Internal arrangements

Future of chambers

33.34 We said in paragraph 33.29 that we expected most barristers to continue to work in association as at present. The chambers system has been worked out over the years according to the needs of practice. Although there will be some innovations if the rules are modified as we propose, we think it likely that the chambers system, largely in its present form, will continue in the future. It is therefore necessary to consider the internal regulation of chambers. The Senate, in its written submission on the future of the Bar, said:–

> The Senate are now satisfied that in order to keep high the standards of professional service to the public a more active concern with internal chambers arrangements has become necessary.

Chambers Guidelines

33.35 We explained in paragraph 33.18 how the memorandum to heads of chambers, known as the *Chambers Guidelines* came to be issued. The guidelines are of particular value in recommending special arrangements to help newcomers and to give them financial support. They are capable of further development, and we make recommendations in Chapter 34 as to matters which may be included in future issues. The main problem at present is to secure compliance with the guidelines. On this point, the Senate said:–

> So far as sets of chambers within the Inns are concerned, however, the Senate is considering whether or not to recommend that in all grants of new tenancies of chambers there should be a condition entitling the Inns concerned not merely to arbitrate in disputes within chambers but where necessary to advise and supervise the tenant (who is normally the head of chambers) in the conduct of chambers to the extent even of reserving a power to terminate the tenancy if there is not compliance with minimum standards such as set out in the Chambers Guidelines.

We support this proposal.

33.36 Control over chambers not owned by the Inns cannot be exercised in this way. The alternative is to include an undertaking in appropriate terms in the declaration which all barristers make during the ceremony of call to the Bar. The Senate in evidence said:–

> . . . the powers of the Senate and of the Professional Conduct Committee would be formally and practically strengthened if the Call declaration were amended to include a positive obligation on any barrister practising or intending to practise in England and Wales to abide by the rules of conduct and practice for the Bar as published by the Senate.

Such an obligation should, in our view, be imposed and it should include compliance with the guidelines issued from time to time. When the Senate receives (in its own words) "evidence of individual instances of serious mismanagement which must give rise to concern", disciplinary sanctions should be employed if no other means of securing compliance with the guidelines is available. Either the Senate or the circuit leader should in all cases be available to arbitrate in the event of disputes which cannot be resolved by discussion within chambers.

Assistance for the unplaced

The nature of the problem

33.37 What is needed by the barrister who has completed pupillage is not so much a room or place to sit as an opportunity to obtain a supply of work so as to become established in practice. The best chance of getting work is by obtaining a "seat" in well-established chambers. Remedies for the present pressure for places which are directed only to providing additional physical accommodation therefore

miss the point. What is needed are seats in the practising units where work is available. If, as at present, there is a surplus of young barristers, there will not be enough work for them all. It follows that sets of chambers will in general not have sufficient incoming work at an appropriate level to provide for all the newcomers who seek places; they cannot therefore take them and a requirement that they should do so could not be effective.

33.38 In all occupations and walks of life there is an ebb and flow. For many years, since long before the recent influx, about half of those who have been called to the Bar have not, for various reasons, become established in practice. Some obtain the qualification without any intention of setting up in private practice and many openings are available for those who leave. It appears that the problem may be diminishing because, although the number of recruits to the Bar has been unusually high in recent years, the most recent figures suggest that the trend has turned downwards. This can be seen in the following table.

TABLE 33.7
Intake of new entrants into chambers, 1972-78

Year ended 30th September	Number of new entrants	Seats vacated	Net increase
1972	275	70	205
1973	321	103	218
1974	299	68	231
1975	364	86	278
1976	382	147	235
1977	326	131	195
1978	285	98	187

Source: Senate.

A limit on recruitment

33.39 One means of reducing the pressure for seats in chambers would be to impose a quota on the number of entrants to the profession. As we say in Chapter 39, we are opposed to such a solution. We consider that anyone who is able to qualify is entitled to attempt to establish a practice. Equally, we are opposed to compelling existing sets to provide quotas of seats for newcomers. Even if the Senate were entitled in law to use its powers in this way, we consider it should not do so. Associations between practitioners should be a matter for free choice. Such measures would in any case not be effective for the reasons given in paragraph 33.37.

A base for beginners

33.40 It was suggested to us by a former Treasurer of one of the Inns that the present difficulties would be relieved by providing a base for newcomers to the profession, which they could use while they were finding professional chambers. The base would not provide working accommodation, but rather the services of a clerk and perhaps space for storing papers and robes. It would therefore enable a barrister to receive work in the orthodox way.

33.41 There are a number of objections to this proposal. It is said that such a base would be easy to enter but difficult to leave. At present most sets of chambers make commendable efforts to find places for newcomers. If a base were established, the impulse to do this might be diminished. While long membership of the base might become a stigma, the imposition of a time limit on membership would give rise to hardship. The conclusion of this line of argument is that setting up a base involves a risk of creating a second grade of barristers, those practising from the base rather than from chambers. The proponent of the scheme said, in answer to this argument, that it is better to have some means by which to attempt to set up in practice, rather than none at all.

33.42 Arrangements have been made for young barristers who have been unable to find seats in existing sets to be accommodated in the Middle Temple library. This scheme differs from the base discussed above in that the barrister using this accommodation must make use of the clerking facilities of existing chambers. Although the scheme has been widely publicised, only ten barristers have sought to make use of it.

33.43 The experience of the Middle Temple scheme is not a good augury for any arrangements by which barristers may practise without a seat in chambers. While we acknowledge the force of the objections to a base for beginners, we believe that initiatives of this kind should be supported, in the interests of all those who are at present unable to find a seat in established chambers. At the same time we reiterate the point that seats in chambers are ultimately dependent on a sufficient supply of work to keep barristers employed.

Better information

33.44 When a large surplus of newcomers arrives there are no real remedies for their problems, which arise from shortage of work of a suitable kind rather than of accommodation. We think that prevention is better than cure and although predictions are hazardous, more should be done to inform potential recruits to the profession of their prospects.

33.45 We put this to the Senate, and it suggested that a body should be formed, possibly a study group of the Senate, to collate and assess the following information:–

(a) statistics relevant to the present and, particularly, the anticipated volume of work, for instance the numbers of civil and criminal cases *per annum*;

(b) the numbers of active chambers in London and the provinces grouped according to specialisation;

(c) the anticipated number of seats available annually according to groups, having regard to:–
   (i) current availability;

(ii) anticipated expansion;
(iii) anticipated wastage by retirement or promotion;

(d) the anticipated number *per annum* of new entrants intending to practise in England and Wales, distinguishing if possible between those who have and those who have not already been able to make arrangements for:–
(i) pupillage; and
(ii) seats in chambers.

This information should be sent to all persons and organisations responsible for advising young people on careers.

33.46 We support this proposal because it will clearly be of value to potential recruits and to the profession as a whole to have as much information on these lines as it is possible to compile. The estimates for the future should be shown in relation to the figures for (say) the past ten years so that those concerned can observe the forecast trends against past results. The study group would no doubt also need to obtain the assistance of the Law Society and of other organisations able to provide information about the demand for barristers' services throughout the country.

33.47 The information obtained in this way should be supplemented with information about notified vacancies in chambers, which should be available to all barristers in pupillage. The Senate should maintain a detailed and constantly updated register of vacancies, giving details of chambers including the number and seniority of existing members and the nature of the work they attract.

33.48 We accept that whatever measures of a general nature are taken, and in spite of sound information to potential recruits and pupils, the demand for places in chambers both for pupillage and for permanent seats will never precisely match the supply; there will always be a surplus or deficiency. What is required in the future is that a person of ability is not excluded from the opportunity of setting up in practice for want of wealth or connections. On its present showing, the Bar should be able to cope with this. Even in the recent conditions of a surplus of newcomers we have had evidence that virtually all newly-qualified barristers wishing for pupillages have been able to obtain them; seats have been found for the majority of those who, having completed pupillage, wished to set up in practice; temporary arrangements have been made for some others. A similar sustained effort in the future, combined with financial assistance for newcomers as proposed in Chapter 39, will be necessary to achieve what is required.

Physical Accommodation

The present position

33.49 There can be no doubt of the physical overcrowding in the Inns. Rooms are shared even by the most senior barristers. It is common to find two or more

barristers working in one small room. This may not matter to barristers as much as it would to members of other professions. The most intense work of many barristers is done in court and the preparation is often done in the evening at home. Because accommodation, particularly in central London, is costly, there is an incentive to put up with working conditions that others would find unacceptable. But there must come a point at which overcrowding affects the work of those concerned in complex technical and human problems. The evidence we have received suggests that this point has been reached and that it is necessary to increase the physical accommodation available to the Bar.

Accommodation within the Inns

33.50 Twenty years ago and more there was no pressure on the Inns for professional accommodation. Accordingly, a proportion of their accommodation was devoted to residential use, often by tenants who had no connection with the profession. Commercial tenancies of office premises were granted to solicitors and others. These tenancies are protected by statute. It is not, therefore, open to the Inns to give notice to quit to their tenants simply for the purpose of obtaining additional accommodation for practising barristers. In many cases, the Inns would be reluctant in any event to evict tenants of long standing. Some firms of solicitors, for example, have had offices in the Inns for over a century.

33.51 It is the policy of the Inns to convert residential to professional accommodation wherever appropriate. They have, however, found it difficult to obtain planning permission for this purpose. It is the policy of the planning authority to maintain the quantity of residential accommodation in the Inns. It is said that their collegiate atmosphere depends in part on their having residential tenants. Changes in planning policy are outside our remit but we wish to record the difficulties faced by the Senate and the Inns in providing adequate accommodation within their precincts and that most barristers work in crowded and unpleasant conditions. We therefore have sympathy with the view expressed by the Senate, that for planning purposes the Inns should be treated in the same way as university colleges, and be allowed themselves to establish the appropriate proportion of residential and working accommodation within their precincts.

Problems in opening new chambers

33.52 We mentioned in paragraph 33.13 some of the problems involved in opening new chambers. The first is to secure the services of a competent clerk and supporting staff. The second is the expense involved. This is greatest for new chambers outside the Inns, which must pay an unsubsidised rent, and possibly also a premium, as well as purchasing the books and equipment needed. The third is to bring the existence of new chambers and the background and experience of the members to the notice of potential clients.

33.53 The only remedy for the first two problems is money. Enough must be found to guarantee the income of chambers staff for a reasonable period and to procure accommodation and other requirements. As pointed out in

paragraph 33.14, the Senate has set up the chambers loan fund to give financial assistance for these purposes. In Chapter 32 we recommended that the Senate should have power to develop financial and other policies which will enable all the resources of the profession to be used, in a coordinated way, to meet its problems. We consider that the Senate should adopt a vigorous policy to secure the provision of more accommodation so that, to the extent which is necessary to meet the need, new well-structured sets of chambers can be established which are housed in reasonable conditions with modern office facilities and equipment.

33.54 At present a new set is entitled to insert notices in the professional journals giving only the names of the members and clerk and the address, and also to send a circular letter to existing clients. We received evidence that it is difficult for a new set to build up its business; even established sets which change their address, particularly those moving out of the Temple, suffer loss of business. In Chapter 27 we recommended that information might also be given about the general character of work undertaken by the members. We think that the Senate should permit such advertisements to appear in the professional press on more than one occasion and over a period of time.

The size of sets

33.55 We have noted the trend for sets to grow in size. If additional physical space for existing sets is made available, it is to be expected that this process will continue. It was proposed to us in evidence that the size of sets should be controlled by placing a limit on the number of QCs in a set. The application of this rule would, on the limit being reached, force a split to take place. The Senate does not wish the size of the largest sets to be much increased, for it is concerned that a very large set would be able to monopolise certain classes of work. In our view, this would be more likely to happen if the chambers practised in a restricted speciality rather than general common law work. However, the Senate, in spite of its concern, rejected the proposal to impose an arbitrary upper limit on the size of chambers, and we think it was right to do so. While there may be a desirable upper limit on size, above which the structure of sets would become unwieldy, the evidence we received suggested that large sets of between 20 and 30 members operate efficiently, and, in particular, give a reliable service in an emergency. They are also able to maintain an adequate staff and have a greater capacity for taking in newcomers and for making arrangements to help them establish themselves in practice. We recommend that the Senate has regard to these considerations when settling longer term policies regarding chambers on the lines suggested in paragraph 33.53.

Partnerships at the Bar

Definition

33.56 In the Partnership Act 1890 section 1, "partnership" is defined as follows.

> Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

Those working in partnership do so as a single entity; letters are usually signed in the name of the firm rather than of the individual partner, and legal proceedings are conducted in the name of the firm. A client is the client of the firm, not of an individual partner. At the same time, each partner is liable in full for all the debts and obligations of the partnership. Solicitors are permitted to practise in partnership, and the majority do so. A barrister is not permitted to enter into partnership with another barrister except in respect of work overseas.

33.57 Although all barristers practise from chambers which, in the great majority of cases, are shared with others, and although all the barristers in a set of chambers share the services of the clerk, the relationship between the occupants of a set of chambers differs from that between partners in a number of ways. Barristers share the expenses of the chambers in which they work, but not the profits. There is an individual relationship between the clerk and each barrister in chambers. A barrister builds his livelihood and reputation on his own skills and is dependent on his own capacity to attract work. A client may be loosely referred to as "a client of chambers", but, both in theory and in practice, only the barrister retained by the client has any duty or liability to him. The other barristers in chambers have no such relationship with the client, and may, if instructed, act in proceedings for an opposing party. In particular in specialist work, where the number of barristers with appropriate skill and knowledge is limited, it is common to find members of the same chambers appearing against one another. This arrangement was not criticised in the evidence submitted to us.

33.58 There is a variant of partnership, which has been discussed at the Bar, which is known as the "common purse". In a partnership, the work coming in to the firm and the profits made from it are common to all the partners. A common purse involves pooling the income, but not the work from which it arises. The difference between partnership and a common purse is not easy to discern.

Nature of restriction

33.59 No rule of law, statute or regulation prevents barristers from forming partnerships. They are prevented from doing so by a rule of conduct dating from 1902, when the Bar Council laid down that no practice in the least degree resembling partnership was permissible between counsel. The basis of the rule is that the barrister offers his knowledge and skill to the public at large as an individual and that it is not in the public interest that barristers should be permitted to form partnerships, whatever the advantage to themselves in doing so.

History

33.60 The question of partnership has been considered on a number of occasions in the recent past. In 1952 a committee under the chairmanship of Sir Godfrey Russell Vick considered the matter and recommended that it be further considered when another committee had reported on retirement pensions for the self-employed. The subject was further discussed at a special meeting of young barristers in 1957, and by the Bar Council in 1959. At the 1959 meeting

proposals for common purse arrangements were disapproved. In 1961, by a majority, a committee under Geoffrey Lawrence QC recommended that partnerships should not be permitted. In 1969 a committee under Sydney Templeman QC reported to the Bar Council on this topic and recommended that partnerships should not be permitted. The Templeman Report contains a full account of the history summarised above, and of the arguments for and against the rule. It is appended by permission in Volume II Section 13.

Recent events

33.61 As a result of our enquiries, the subject was again examined by the Senate and all the arguments and relevant considerations were fully and fairly set out in the Senate's Submission No. 7 pages 1.10 to 1.13 and an annexed note. The conclusion was as follows.

> Taking all these factors into account it is thought that, in the long term, it would be contrary to the public interest to permit partnerships at the Bar and that the damage to the public interest would outweigh such advantages to it as might accrue from any improvement in the efficiency with which the partnership as a whole would "process" work which would otherwise be done individually. Opinion within the Bar, as it has always been on this issue, is divided; but it cannot be denied that the individualism of the Bar, and to some extent its detachment, would be diminished if partnerships were to be permitted.

33.62 It will be observed, therefore, that, although this subject has been examined several times in the past 40 years and again as a result of the appointment of this Commission, the conclusion has always been the same. The conclusion of the Senate was supported by the Young Barristers' Committee of the Bar Council and the Young Solicitors' Group of the Law Society. The Justices' Clerks Society said that:–

> Partnership, combined with the rule that partners may not represent contrary interests, would lead to chaotic results particularly in provincial towns.

The Barristers' Clerks' Association gave evidence to the same effect. Because the damage to the public interest would outweigh its advantages to barristers the balance of the arguments is against partnerships.

The relevant factors

33.63 In the light of the detailed examinations which have so often been undertaken into this subject, we do not think it is necessary to set out again in this report the many factors which have been taken into account and lead to the above conclusion. We make the following comments, however, which we think are relevant.

33.64 The justification for the existence of the Bar as a separate branch of the legal profession rests firmly on the proposition that the client, or his solicitor acting on his behalf, may select a particular individual by reason of his known capabilities. This freedom of choice goes to the root of the practice and structure of the Bar. It encompasses the right to select a barrister who has a known skill or specialist knowledge; a barrister who will match the skill of counsel acting for the

other party in the case; above all the selection of an individual in whom the client may have confidence.

33.65 These advantages, which are at present available to the public, would be eroded if partnerships were permitted. Both by law and in practice, a partnership involves the sharing of work and responsibility and a common interest in earning profits so that if one member of a partnership cannot, or does not wish to, deal with a particular matter another partner, who may not either be known, or acceptable, to the client does so. The Senate stated in its evidence that there would be a restricted choice of barristers; there would probably also be a dilution of commitment, so that over a period of years the highest standards of competence and independence would be jeopardised; incompetence would probably be protected and cost increased for the client. While we are not in entire agreement with all these points advanced by the Senate, the restriction of choice does concern us. The difficulties for the public and the profession would be particularly acute in some of the small specialised Bars and in the provincial centres, some of which have only one set of chambers (see Table 33.2).

33.66 Partnership would often we think be convenient or advantageous to barristers but the point of overriding importance is the public interest. We therefore consider that partnerships between barristers should not be permitted.

Silks and Juniors

Introductory

33.67 The barristers' branch of the legal profession is divided into two tiers. A minority of barristers, about one tenth of the total, practise as Queen's Counsel. All other practising barristers are known as "junior" barristers. A junior barrister may concentrate on a specific class of work, but within his field he does all the day-to-day work of the Bar, including in particular all the drafting and advisory work involved in the preparation of an acion for trial. Appointment as Queen's Counsel is made by Letters Patent. When appointed a QC, a barrister wears a silk gown. The process of becoming a QC is usually known as "taking silk" and a barrister so appointed is often called a "silk". When the sovereign is a man, the rank is called "King's Counsel". Both Queen's Counsel and junior counsel have a right of audience in all courts. It is customary to retain a QC to present a case in the House of Lords, but junior counsel have the right to address the House.

History

33.68 The first King's Counsel were appointed in the seventeenth century but the title did not originally indicate pre-eminence in the profession. The leading practitioners then were the serjeants-at-law, who enjoyed a status comparable with the judges of the superior courts. The expression "King's Counsel" indicated not rank but function, the duty of assisting the law officers of the Crown in cases in which the Crown had an interest.

33.69 In the course of the eighteenth and nineteenth centuries appointment to the rank of King's Counsel came to be regarded as a mark of pre-eminence in the profession rather than as a retainer for Crown work. The effect of the original purpose persisted until 1920 in the requirement that a KC had to obtain a dispensation before accepting a brief to appear against the Crown. By the end of the nineteenth century, appointments to the rank of serjeant-at-law had ceased to be made and serjeants were replaced, as the leaders of the Bar, by Queen's Counsel.

System of appointment

33.70 Queen's Counsel are appointed by the Queen on the advice of the Lord Chancellor. Practitioners who wish to be considered for appointment are invited, towards the end of each year, to submit their names to the Lord Chancellor. No practising barrister is considered who does not apply. Each applicant is asked to complete a form, giving a brief *curriculum vitae* and the names of referees, usually judges. Lord Elwyn-Jones, when Lord Chancellor, told us that he consulted the Law Officers, the Lord Chief Justice, the Master of the Rolls, the President of the Family Division, the Vice-Chancellor of the Chancery Division, the presiding judges of the six circuits, the circuit leaders and the leaders of the specialist bars. The Lord Chancellor takes into account, in addition to the factors affecting each applicant personally, more general questions such as the total number of silks practising at the common law and Chancery Bars and on each circuit, and the numbers currently practising at specialised Bars. In the light of all these considerations, he settles the list of names to be recommended to the Queen.

33.71 Rejection of an application is not, however, once and for all; it is both permissible and common for second and further applications to be made, and many barristers have received appointment to the rank of QC on their third or subsequent attempt. The proportion of QCs to junior barristers has remained steady at about ten per cent (see annex 33.2 table 33.8). The percentage of successful applicants for each of the last five years has been in the region of 20-30 per cent (see annex 33.2 table 33.9).

Reasons for applying

33.72 Most applicants for silk are in their forties and fifties and apply for two main reasons. The first, which is common to all professions, is the desire for advancement. In general, QCs enjoy higher incomes and have a higher status than junior barristers. With a few exceptions, appointments to the High Court Bench are made from the ranks of Queen's Counsel. The second reason, peculiar to the Bar, is to secure a change in the nature of the work undertaken. As we explain in paragraph 37.3 a barrister's work is divided between advocacy and paper work. Paper work traditionally forms a major part of the work of the junior barrister, is generally less well paid than court work, is laborious and demands long hours of close attention. Successful juniors apply for silk not merely to secure advancement but also to be rid of their heavy burden of paper work. Some support their applications for silk with medical certificates emphasizing the need for a reduction in their work load.

The two-counsel rule

33.73 In July 1974 the Director General of Fair Trading instructed the Monopolies and Mergers Commission to examine the two-counsel rule. A brief explanation of the background may be helpful.

33.74 As a rule, cases requiring a barrister's attention go, in the first instance, to a junior barrister who, in the majority of cases, handles both the paper work and the advocacy himself. In some cases, where the volume of work so requires, two juniors may be retained. If the case calls for skilled and experienced advocacy or specialised advice, a QC as well as a junior barrister may be retained. The advice of a QC may be taken at an early stage in a difficult case, but he is not normally brought into the case until the trial or the stage of preparation for trial, for the cost of retaining him from the outset would not be justified.

33.75 At the time of the investigation by the Monopolies and Mergers Commission, the arrangements we have described above were supported by a rule of practice, commonly known as the two-counsel rule. By this rule, it was contrary to etiquette for a QC to appear in court unless a junior was instructed to appear with him; a QC did not handle paper work on his own, but would settle papers in cases of difficulty only in consultation with a junior retained with him for the purpose. A much criticised rule, that a junior barrister instructed with a QC was entitled to be paid two-thirds of his fee, was abrogated by the Bar in 1971.

The report of the Monopolies Commission

33.76 In its report published in 1976, the Monopolies and Mergers Commission (which was not required to consider the merits of the two-tier system) said that the formal restriction described in paragraph 33.75 was contrary to the public interest, although paper work, in the ordinary course of events, should be recognised as appropriate to junior barristers.

33.77 This recommendation was accepted by the government of the day and by the Bar Council, which, after discussion with the Director General of Fair Trading, issued revised rules in July 1977 on the acceptance of instructions by Queen's Counsel (see annex 33.3). A QC may now appear in court without a junior, but he is entitled to expect that a junior will be briefed with him unless the contrary is stated, and is entitled to decline instructions to appear in a case without a junior if this would prejudice his ability to conduct that case or any other, or to fulfil his other professional obligations. It is still the rule that a QC should not deal with paper work, save in a case in which he has agreed to appear without a junior. In non-contentious work, a QC may draft documents but should decline to do so if the interests of the client require that a junior also be instructed. We consider the impact of the new rules in paragraph 33.86.

Matters for decision

33.78 In these circumstances, there is, first, the general question whether the

public interest requires that the two-tier system and the rank of QC should be abandoned; if not, whether any alteration in the present practising arrangements is desirable and finally, whether any changes should be made in the present method of appointment.

Continuation of the two-tier system

33.79 The evidence submitted to us, in general, favoured the present system. The Society of Labour Lawyers expressed a view shared with a number of others.

> Provided the Two Counsel Rule goes, we would, on balance, favour the continuation of the division of the Bar into QCs and juniors. The rank of silk is not merely an honour for those who acquire it. It is beneficial to solicitors and their clients to be able to identify the top men in their profession. They are marked out also for judicial preferment—though nowadays many who are not silks do also become judges. It is true that having a separate rank of senior lawyers may have the effect of somewhat raising the general level of fees. There are also some problems attendant on the actual process of selection of silks. But broadly we do not think that these difficulties cancel the advantages of having a rank of lawyers who in the main confine themselves to the more serious and the more difficult cases.

33.80 Under our present system, the expeditious conduct of court business depends on the ability of judges to sum up to a jury or to deliver judgment immediately following the conclusion of the evidence and argument. This is partly a matter of ability, partly of training. The work of a QC is said to provide invaluable training for this purpose. A judge who was one of the few to have been appointed to the High Court bench from the junior bar, without having first become a QC, told us in evidence:–

> I am quite sure I am a less efficient judge than I would have been had I spent some years as a silk working almost exclusively in court: I never learnt how to memorise the facts of a long case, or the evidence which had been given or to put the facts and the law into their place; and so I did not learn the art of delivering an extempore judgment in anything but a simple case.

33.81 It was pointed out to us that a number of Commonwealth and former Commonwealth countries have adopted the two-tier system. In those which have a republican form of government, the rank of "senior counsel" has been substituted for that of QC.

33.82 The criticism of the present arrangements, following the abolition of the two-counsel rule, is that they may be inflationary because a barrister who takes silk will immediately be entitled to charge higher fees for new work. It should, however, be borne in mind that barristers, like members of other professions, would be expected to charge progressively higher fees as they gained in experience and reputation because they have more to offer and undertake more responsible work. When a barrister is made a silk it is a recognition that he will in future devote his time to work involving special qualities of skill and experience, for which he is entitled to charge higher fees. There are a large number of junior barristers available to do work which does not require the services of a silk. Provided that a solicitor only briefs a silk when he is satisfied that the work which

the QC can perform justifies the higher charge, the public is not put at a disadvantage.

33.83 It is sometimes claimed that the two-tier system is inflationary because when one side retains a silk, the other, whether or not it is necessary, feels impelled to do the same. This does not always happen and in court silks are sometimes opposed by juniors. But each side naturally seeks to be represented by an advocate whose standing is equivalent to the other's and this would not change if the two-tier system was abolished. The remedy for over-representation lies in close control by solicitors, taxing masters and legal aid authorities.

33.84 In the light of the evidence put before us and the foregoing arguments, we have reached the view that the two-tier system at the Bar serves a useful purpose, and that it should be continued subject to certain modifications which we recommend below.

Acceptance of work

33.85 In any profession it is in the public interest that a practitioner should not undertake work which is below his level, which should be done at lower charge by a junior. In most occupations those involved can, if they see fit to, refuse work they do not wish to undertake. A barrister is not in the same position. By the "cab rank" rule (see paragraph 3.20) a barrister is required to accept a brief, for a proper fee, in any forum in which he professes to practise. If this rule is to continue in effect, as we consider the public interest requires, it should not prevent a barrister of standing from declining work suitable for a less senior person.

33.86 For the reasons given in the preceding paragraph, we consider that it would be contrary to the public interest if practising arrangements operated so as to require QCs to accept cases of an inappropriate kind. Equally, clients should not be obliged to retain a junior barrister as well as a QC in a case which a QC, properly instructed, could reasonably undertake without assistance. The present arrangements came into force in October 1977. We are not satisfied that a proper balance between the considerations mentioned above has yet been established. We understand from the taxing masters that they are now dealing with a number of cases in which QCs have acted alone. However, the secretaries of area legal aid committees, when consulted by the Law Society early in 1979, with only two exceptions, felt that the change from the original two-counsel rule to the new arrangements had made no or very little practical difference. They thought that even in those cases where the area committee was minded to allow leading counsel alone, there was nearly always strong opposition from either the leading or junior counsel, or both. The Chairman of the Bar told us that it was the Senate's firm policy that the new arrangements should be applied, and that the Professional Conduct Committee would investigate allegations of failure to observe them. Both the Senate and the Barristers' Clerks' Association should ensure that their members comply with the new arrangements. The Law Society should impress on its members that they should resist the employment of two counsel unless they are satisfied that it is necessary. Similarly, legal aid committees should not grant legal

aid certificates for two counsel where, under the arrangements now in force, it is not appropriate to do so.

Appointment

33.87 The present arrangements for appointing QCs have been criticised in a number of ways. It should be recognised that these appointments can be no more than an exercise of judgment, and, as such, are likely to be questioned from time to time.

33.88 A number of witnesses criticised the secrecy which attends the present system of appointments, because it creates uneasiness in the profession. It sometimes happens that juniors, regarded by their colleagues as competent and reliable, are refused silk after repeated applications when others, regarded as less suitable, are granted it. Until recently, little has been known about the consultations undertaken by the Lord Chancellor before he recommends the appointment of silks. The impression we have gained is that the process of consultation by successive Lord Chancellors has not been on a consistent basis. Lord Elwyn-Jones, giving evidence when he was the Lord Chancellor, told us that it was only in 1978 that he extended the process of consultation to all those listed in paragraph 33.70.

33.89 We consider that the process of consultation described to us by Lord Elwyn-Jones is thorough and comprehensive and should enable future Lord Chancellors to form an accurate view of the merits of the applicants for silk. We think it desirable, however, that the Bar should be seen to be more closely involved in the process of consultation. For this purpose we suggest that a committee of three or four Queen's Counsel, nominated by the Senate, should be consulted in confidence by the Lord Chancellor; they should be shown the list of applicants and invited to comment on it if they wish. Full information about the process of consultation, when developed in this way, should be made public so that applicants will be assured that a fair and proper assessment of suitability will be made.

33.90 We received evidence that the reputation of a barrister suffers if it is known that he has applied many times for silk without success. We believe that this problem could be mitigated to some extent by keeping the names of all unsuccessful applicants on the file for reconsideration each year. Any applicant should be enabled at any time either to withdraw his name from consideration or to submit further information or references to support his application.

33.91 Table 33.8 in annex 33.2 shows that the percentage of QCs has remained in recent years at roughly ten per cent of the practising Bar. Lord Elwyn-Jones told us that this was purely fortuitous. We recommend that the only criterion for determining whether a barrister should be appointed a QC should be his own merits. The number of appointments should not be related to a fixed number or percentage. We do not consider that there should be any convention by which the applications of certain classes of practitioner are favoured, such as that whereby members of Parliament were once granted silk on application.

Appointments honoris causa

33.92 In every year one or two people are appointed QC *honoris causa*. They are not practitioners, but have served the law with distinction, either in the public service or academic field, and are honoured accordingly by appointment to the rank of QC. Because such appointments serve no practical purpose, practitioners sometimes call the QC *honoris causa* an "artificial silk". But this does not indicate any serious objection to their appointment and we can see none.

33.93 Organisations representing barristers in commerce, finance and industry suggested to us that more such appointments should be made from amongst their number. It is best that a professional appointment of this kind should be confined, as a general rule, to the purposes of practice, but we can see no reason why appointments *honoris causa* should be confined to one class or another. We observe only that, if such appointments are to be made, it should be for distinguished service to the law and not to any other field of endeavour. It may well be that barristers employed in commerce, finance and industry perform distinguished service for those purposes rather than for the purposes of the law. If this be so, their merit should be recognised in some other way. But if in the course of his work a salaried barrister performs distinguished service to the law, we see no reason why it should not be recognised by appointment to the rank of QC.

Court Dress

Scope of section

33.94 This section is concerned not only with the formal robes of barristers, but with requirements as to court dress generally. If the arguments in favour of court dress and against it are of any weight, they apply with equal force to all such requirements, affecting not only advocates but also judges and court staff.

Requirements as to dress

33.95 Requirements as to formal dress vary from court to court. In general, where the judge of the court has a legal qualification, he is robed and so are all lawyers who appear as advocates in his court. Robes are worn in the magistrates' courts neither by members of the Bench nor advocates. They are worn in court by the Bench, court staff and advocates in county courts, the Crown Court, the High Court and the Court of Appeal. Robes are worn by advocates in proceedings in Parliament, both before the Appellate Committee of the House of Lords and Parliamentary Committees dealing with legislative business. Robes are not worn at tribunals, formal enquiries or arbitrations, whether or not the proceedings are conducted by a judge or a qualified lawyer.

33.96 Before all courts and quasi-judicial bodies, whether formal robes are required or not, lawyers are expected to dress soberly. When so required, a solicitor appearing as advocate wears bands and a gown. A barrister wears bands and gown of a different design, and a wig. The gown of a Queen's Counsel is made of silk.

Evidence for and against formal dress

33.97 We received little evidence on this topic. The main arguments against formal dress are that it is out-moded and perpetuates an undesirable air of exclusiveness, may intimidate laymen in court and is an unnecessary expense. The arguments in favour of traditional dress are that it is commonly used in this country on a wide variety of occasions; and that formal dress is appropriate in court to emphasize the seriousness of the proceedings and to enable those involved readily to identify the judge, advocates and others. For the advocate, the use of a wig and gown helps to reduce distinctions of age and sex and, as a uniform, emphasizes the functions and responsibilities of the administration of justice.

General considerations

33.98 Formal dress is worn for many different purposes. The best known examples are the wigs and gowns worn by the Speakers and officers of both Houses of Parliament; the same costume is worn on formal occasions by officers in local government. Uniform or ceremonial dress are regularly to be encountered in many walks of life.

33.99 It is said on the one hand that litigants are intimidated or put off by wigs and gowns, and on the other that people are so accustomed to seeing legal dress in the theatre, cinema and on television that its effect is not disconcerting. The evidence we received did not support the first of these assertions. We received from lay people who had been involved in legal proceedings a number of detailed criticisms of the functioning of the courts and the profession. Only two witnesses mentioned direct experience of a layman feeling at a disadvantage because of lawyers' court dress. The impression we have derived from our enquiries and the personal experience of members, is that in most cases formal dress appears to be taken for granted and a client tends to resent someone appearing on his behalf dressed in an untidy or casual way.

33.100 We do not regard this as a matter of central importance. If decisions on this point are required, they should be made by the profession in consultation with the judiciary and those responsible for the administration of courts. For our part, we see no reason to make any recommendation.

Conclusions and Recommendations

			Paragraphs
Organisation of practice	R33.1	A barrister's practice should be so organised, subject to the approval of the Senate, as to ensure that it is efficiently and properly conducted.	33.30

			Paragraphs
	R33.2	The approval of the Senate should be sought for intended arrangements for practice if they are other than in established chambers.	33.30
	R33.3	In proper cases the Senate should waive the rule against practice from a barrister's residence.	33.32
	R33.4	The Senate should have regard to the matters mentioned in recommendation 33.1 above, when considering applications to the chambers loan fund.	33.33
Organisation of chambers	R33.5	Compliance with the chambers guidelines should be a term of all professional tenancies of Inn properties.	33.35
	R33.6	An undertaking should be given on call to comply with the rules of conduct and practice of the Bar; failure to comply should attract disciplinary sanctions.	33.36
	R33.7	The Senate or circuit leader should if necessary arbitrate in internal disputes in chambers.	33.36
Recruitment	R33.8	No formal limit should be placed on the numbers recruited to the Bar.	33.39
	R33.9	Full information should be available to potential recruits.	33.45-33.46
Shortage of seats in chambers	R33.10	The Senate should maintain an up-to-date register of vacancies in chambers, containing all relevant details.	33.47
	R33.11	For planning purposes, the Inns should be treated in the same way as university colleges in respect of the balance between professional and residential accommodation.	33.51
	R33.12	The Senate should develop vigorous financial and other policies to increase the amount of properly equipped accommodation available to barristers.	33.53

			Paragraphs
Size of chambers	R33.13	No arbitrary upper limit should be imposed on the number of barristers working in a set of chambers.	33.55
Partnerships	R33.14	Barristers should not be permitted to practise in partnership.	33.66
Silks and juniors	R33.15	The two-tier system of silks and juniors should be retained.	33.84
	R33.16	Steps should be taken by all concerned to ensure that, where appropriate, the abolition of the two-counsel rule is being observed.	33.86
	R33.17	The process of consultation adopted by the Lord Chancellor when making appointments should be extended and made known to the Bar.	33.89
	R33.18	Unsuccessful applications for silk should be reconsidered each year without further application.	33.90
	R33.19	QCs should be appointed on the basis of merit and not by reference to a fixed proportion of the practising Bar.	33.91
Court dress	R33.20	If changes in court dress are thought to be required, their nature should be settled between the legal profession, the judiciary and the courts administration.	33.100

ANNEX 33.1

(paragraph 33.18)

The Senate of the Inns of Court and the Bar

11 South Square
Gray's Inn
London WC1R 5EL

MEMORANDUM TO HEADS OF CHAMBERS August 1977

Chambers Guidelines

In its answers to the Questionnaire of the Royal Commission on Legal Services, Section II, 1.9, the Senate undertook to consider proposals for maintaining or improving standards in chambers. The following Chambers Guidelines have now been approved.

Introduction

In principle the Senate does not intervene in the internal management or organisation of chambers, or in relations between the members of chambers and between them and their senior clerks and staff; and it recognises that, no two sets of chambers being the same, any comprehensive code for them would be unworkable even if it was desirable. But the profession and indeed the public in general have an interest in encouraging high standards of management and organisation within chambers, and it is for this purpose that the Senate makes these recommendations.

It is recognised that a very large proportion of chambers are well run, and already apply to a substantial extent the recommended arrangements. However the Senate has recently received evidence of individual instances of serious mismanagement which must give rise to concern.

It is hoped therefore that not only heads of chambers but also all members of the Bar will carefully study these recommendations. In cases of serious departure Leaders of Circuits or heads of specialist Bar Associations will be prepared to help, and will in appropriate cases inform the Senate.

The recommendations will also be supplied to new sets of chambers, though the Senate recognises that some of the financial recommendations cannot be applied in the early days of new sets.

These are guidelines and not rules of conduct. However when chambers are in receipt of, or have applied for, financial assistance from either the Senate or the Inns fulfilment of these recommendations is likely to be taken into account.

Heads of Chambers

The main responsibilities of a head of chambers are:

(a) Supervising the running of chambers as a whole, and ensuring its efficient management, in close liaison with the Senior Clerk.

(b) Making himself available to all members of chambers to discuss their problems. In particular all members, whatever their seniority, should be encouraged to discuss freely with the head of chambers any problem they may have about the availability of work, payment of fees, etc.

(c) Keeping an eye on the performance of members of chambers, and in particular new entrants, and giving encouragement or warning where necessary.

(d) Appointing other members of the chambers' staff after consultation with other members of chambers and with the senior clerk.

(e) Supervising the chambers' finances and the chambers' bank account.

Chambers' Committees

Most sets of chambers containing more than about ten members will be well advised to consider the establishment of a Chambers' Committee if, contrary to the growing practice, they do not already have one. It is not always satisfactory for the head of chambers and senior clerk to be exclusively responsible for their management, and where such a Committee is appointed, it is useful for them to take off the shoulders of the head of chambers the work involved in some of the matters listed in the preceding section, though the head of chambers must always maintain ultimate responsibility.

An annual audit, either by the Chambers' Committee, or by qualified accountants should be considered.

Other suitable matters for a Chambers' Committee are:

(i) The admission of pupils and their monitoring following admission.
(ii) Chambers' libraries.
(iii) Purchase or hire of major equipment.
(iv) Insurance.
(v) Re-decoration, common furniture and allied matters.
(vi) Staff appointments (other than that of the senior clerk) and conditions of employment.

Security of membership

In a small community like chambers, where personal relationships are so important, it would be inappropriate to propose any hard and fast guidelines.

It is however important that, in any case where a dispute arises within chambers, either affecting an individual or a group of members, the minority should be treated fairly. The consequences of a notice from the head of chambers to a member or members of chambers to leave may nowadays be very grave.

It is suggested that, in general, save in cases of misconduct, not less than three months notice should be given.

The Senate is always ready to provide the services of a member or members of the Bar Council as conciliators, and in case of such a dispute the chambers concerned should avail itself of these services.

Financial obligations of members of chambers

Normally, contributions from individual members of chambers towards chambers' expenses should be adjusted ratably, according to the level of gross earnings or to a combination of gross earnings and seniority, also taking into account whether the member concerned shares a room or occupies one on his own. As a result, new entrants and low earners should be assisted by the more successful members of the set.

In the case of new entrants, during the first years of practice after pupillage, the terms of the 1975

Senate Resolution annexed hereto should be adhered to. The figures contained in this recommendation will be kept under review.

While the Senate recognises that it may be thought undesirable for members other than the head of chambers, or possibly the Chambers' Committee, to know the earnings of individual members, every member of chambers should have access on request to the chambers' accounts insofar as they relate to chambers' expenses.

Admissions

The main criteria for admission should be ability, merit, and the standard of performance during pupillage.

Senior Clerks

The senior clerk performs two distinct functions; he is directly in charge of the administration of chambers as a whole, and he is the senior clerk of each individual member of chambers. This duality of function is rarely, if ever, expressed in contractual terms, and can give rise to problems on both sides, for instance when a clerk wants to leave chambers or when some members of chambers want a change of clerk. We therefore suggest that newly appointed senior clerks should be engaged by the head of chambers on the terms of a contract specifying, in relation to the senior clerk's position as clerk to the chambers as a whole, a reasonable term of notice on both sides. The senior clerk's engagement as clerk to each individual member of chambers should be terminable on either side, on the termination of the main contract.

When new appointments are made, serious consideration should be given to:

(i) Providing a scale of senior clerk's remuneration so that it is not necessarily tied to the gross income before expenses of the set as a whole. As an alternative, making express provision for a review of the senior clerk's remuneration whenever a significant change of circumstances in chambers occurs. Clerk's fees should, subject to exceptional individual cases, be based upon the agreement reached between the Bar Council and the BCA set out in the Annual Statement 1969/70 pp. 33-36.

(ii) Arrangements whereby if practicable and with the senior clerk's agreement no senior clerk's fees are payable by anyone earning less than £5,000 on the first £1,500 of his gross earnings, provided that, in those cases in which it is practicable, the first £1,500 is not taken into account in assessing his total chambers contribution (and that if he earns less than £1,500 he makes no contribution).

(iii) Establishing a sinking fund so as to provide compensation to senior clerks when they suffer a severe drop of income due to the appointment or retirement of senior members of chambers.

In a case of a dispute between chambers and their senior clerk, conciliation by a member or members of the Bar Council and a member or members of the BCA is normally appropriate.

Junior clerks and other staff

The aim should be to ensure that a differential between the total remuneration of senior clerks and junior clerks, and between junior clerks and other staff, is reasonably adjusted.

Pensions

Arrangements should be made providing a reasonable pension for senior clerks and first juniors at the age of 65.

Fees

One of the clerk's many functions is to negotiate fees, though his principal is responsible for what he charges. Where therefore there is no ordinary market or standard rate for particular work, the

principal should ensure that he approves the fee.

Reliability

In cases (fortunately rare) of persistent late returns of briefs, failure to attend court punctually, or over-booking, by or on behalf of individual members of chambers or the chambers as a whole, the ultimate responsibility rests with the head of chambers to take appropriate action. He should therefore follow up complaints personally, establish whether the blame rests with the barrister or senior clerk or both, and take suitable action to prevent recurrence.

Annexure. Extract from Annual Statement 1975-76

Financial obligations of new members of chambers

The Planning Committee prepared a report on the financial obligations required to be assumed by new members of chambers. On consideration of the report the Senate resolved as follows.

(1) It is neither necessary nor desirable that the methods of financing chambers should be standardised but it is the responsibility of heads of chambers to ensure that the financial burden falling on new entrants is consonant with their means.
(2) Their obligations include clerk's fees.
(3) Ordinarily in the first year the burden should not exceed £300 or 20 per cent of gross receipts if this produces a greater figure.
(4) In the next two years the burden should continue to be limited.
(5) It is not contrary to good practice to calculate the burden as a direct proportion of gross income, but the total percentage of the gross income including clerk's fees should not during any of the first three years exceed 20 per cent unless gross receipts reach £3,000 per annum.
(6) It is in accordance with the best traditions of the Bar that those who are established earners should help to subsidise new entrants.
(7) Where chambers' libraries exist and are run as separate financial units a new entrant should not be required to contribute but where this is unavoidable his contribution should be limited to fall within the above limits.

The above recommendations do not apply to new sets of chambers.

ANNEX 33.2

TABLE 33.8

Practising barristers:
total number and number of QCs, 1973-78
(paragraph 33.71)

1st October	Total	QCs
1973	3,137	329
1974	3,368	345
1975	3,646	370
1976	3,881	372
1977	4,076	384
1978	4,263	404

Source: Senate.

TABLE 33.9

Applications for silk, 1973-78
(paragraph 33.71)

Year	Number of applicants	Successful	Honoris causa
1974	110	33	1
1975	110	34	1
1976	140	32	2
1977	134	29	1
1978	151	39	2

Source: Lord Chancellor's Department.

ANNEX 33.3

Rules of the Bar Council on the Acceptance of Instructions by Queen's Counsel

(paragraph 33.78)

1 General

For the purpose of implementing the recommendation of the Monopolies and Mergers Commission (1975-76: House of Commons Paper 512: paragraph 208) that the "two-counsel" rule should be abrogated, the following rules will come into effect on 1 October 1977.

2 Abrogation of rules

All existing rules of professional conduct and etiquette restricting the right of Queen's Counsel to accept instructions to appear as an advocate or to do any other work without a junior are abrogated and are replaced by the following rules.

3 Appearances as an advocate

(1) Queen's Counsel may accept instructions to appear as an advocate without a junior.

(2) Unless the contrary is stated when instructions in any matter are first delivered to Queen's Counsel, he is entitled to assume that a junior is also to be instructed at the hearing.

(3) Queen's Counsel should decline to appear as an advocate without a junior if he would be unable properly to conduct that case, or other cases, or to fulfil his professional or semi-professional commitments unless a junior were also instructed in the case in question.

(4) Paragraph (3) of this rule shall have effect notwithstanding any obligation which requires counsel to accept a brief in a forum in which he professes to practise.

4 Contentious written work

Queen's Counsel should not without a junior settle pleadings or draft such other documents necessary for the conduct of contentious proceedings as are normally drafted by junior counsel provided that Queen's Counsel may without a junior settle pleadings or draft documents for use in proceedings in which the Queen's Counsel has agreed to appear as an advocate without a junior.

5 Non-contentious work

(1) Queen's Counsel may accept instructions to advise or to draft a non-contentious document without a junior.

(2) Queen's Counsel may decline any such instructions if the interests of the client require that a junior should also be instructed.

6 Settlement of disputes

If any dispute arises under Rule 3, under the proviso to Rule 4, or under Rule 5 as to whether or not Queen's Counsel may decline instructions unless a junior is also instructed, the dispute shall be referred for determination to the Professional Conduct Committee of the Bar Council, whose determination shall be binding upon the barrister or barristers concerned.

7 Supplemental

(1) In the application of these rules to proceedings before the Judicial Committee of the Privy Council "junior" includes any person who has the right of audience in the case in question before the Judicial Committee.

(2) Queen's Counsel may accept instructions to appear without a junior at the taking of evidence abroad.

CHAPTER 34

Barristers' Clerks

Background

The name "clerk"

34.1 The description "clerk" covers a wide range of occupations. When it is used in relation to office workers, nowadays with increasing rarity, it is usually taken to mean one who is junior in status and whose work is concerned mainly with the handling of paper and minor book-keeping, but who has no executive authority. In the case of both solicitors' and barristers' senior clerks, such a description is wrong. We have seen that, to correct it, the solicitor's clerk came to be called, first a "managing clerk" and more recently a "legal executive". The title of the barrister's clerk has not changed in the same way, although, as the Senate said in its evidence to us, when used of senior clerks the expression is a misnomer.

Functions

34.2 When discussing the grades of clerk, senior and junior, it is important to distinguish between their duties. The junior clerk's duties, depending on standing and length of service, range from fetching and carrying to acting as the senior clerk's deputy; many of his duties could be described as clerical. The same is not true of the senior clerk. It is not easy to find a corresponding example in other walks of life of the work he undertakes. He combines the functions of office administrator and accountant, business manager, agent, adviser and friend.

34.3 The Barristers' Clerks' Association (BCA) provided us with detailed information about the work required of both senior and junior clerks. We summarise below the functions of a senior clerk.

(a) *Office administrator and accountant*
In this capacity the clerk acts on behalf of chambers as a whole, his duties including the following:–
  (i) supervising the chambers' accounts;
  (ii) preparing an annual statement of chambers' income and expenditure;
  (iii) supervising and instructing the junior clerks in their duties;
  (iv) ensuring that each member of chambers receives an adequate secretarial and typing service, and advising the head of chambers on staff requirements.

(b) *Business manager*
In this capacity the clerk works for each member of chambers as a separate principal in the following ways:–
(i) maintaining a diary of all professional engagements;
(ii) checking court lists for cases in which the principal is retained;
(iii) negotiating fees and, in consultation with the principal, arranging appeals if necessary where fees have been fixed on taxation at a figure considered too low;
(iv) sending out fee notes to solicitors and reminders if fees are unpaid;
(v) keeping the principal's accounts and VAT returns and providing information for tax returns.

(c) *Agent*
In this capacity the senior clerk acts both for each principal and for the whole set. The responsibilities involved cannot be so readily categorised as in the two preceding cases and vary from one clerk to another. We believe they would be generally taken to include:–
(i) advising principals on their practices, case loads and careers (including such matters as applying for silk);
(ii) ensuring that beginners receive a supply of work appropriate to their levels of experience;
(iii) advising solicitors which barristers in chambers are suitable to be briefed in a given case;
(iv) by providing impartial advice on the allocation of work to counsel (whether in his chambers or not), maintaining the confidence of clients and their willingness to consult the clerk when there is work to be given out.

When considering the position and functions of senior clerks it is relevant to bear in mind that the total number of senior clerks in England and Wales is approximately 300.

34.4 The BCA pointed out that, in performing their duties, in particular those listed under the headings of business management and agency, clerks carried out a number of functions that are in the public interest, and not merely in the interests of their principals collectively or individually. If a clerk is unable to accept a brief on behalf of any barrister in his own chambers, or returns a brief, he will, if he can, suggest an alternative and will make enquiries to find one on behalf of the client if so desired. He may be personally consulted by a solicitor about the choice of counsel for a particular case and will suggest names of suitable barristers or

sets of chambers. No fee is payable for work of this character but, if it is well done, it enhances the reputation of the clerk and his chambers and this sustains the flow of paying work.

Professional rules as to clerks

34.5 It is a rule of the profession that a barrister may not practise unless he is a member of a set of chambers. This means that the barrister must have his name exhibited at the chambers, must have the right to make such use of the chambers as his practice requires and must have the services of the clerk to the chambers. There is invariably one senior clerk for every set of chambers. We were told in evidence by the Senate that, in the few cases where there are joint senior clerks, one of the two will, in practice, be performing the tasks of a first junior.

34.6 It is clearly desirable that a barrister should have competent secretarial assistance. When a barrister is in court, there must be someone available at his professional address with sufficient knowledge and authority to arrange future professional engagements. This goes beyond merely keeping an office diary. It may include, for example, discussions with opponents and court officials concerning the listing of cases in such a way as to avoid a clash of engagements. Even were it not a rule that a barrister should have a clerk to see to such things, virtually all barristers with established practices would find it necessary to delegate responsibilities of this kind in order to concentrate on their professional work.

34.7 Although, in practice, a barrister will, for the reasons we have given, almost invariably need a clerk, we think that the professional rule that he must employ a clerk is unnecessarily restrictive. A barrister should ensure that his work is handled efficiently and in a way which protects the interests of his clients. This requirement should be imposed as a professional rule of conduct, but we do not think it necessary to specify the means by which this result is to be achieved. This should be left to the barrister subject to the requirement, mentioned in paragraph 33.30, that the Senate approve arrangements for barristers setting up in practice.

34.8 We consider also that the rule against appointing a spouse as clerk is outdated. As a general rule, it may be undesirable that a clerk, by virtue of marriage to one of the barristers in chambers, should have a particular personal interest in the progress and success of that member. But this is a problem for the members of chambers to resolve. If they are willing as a group to accept as clerk the spouse of one of their number, we do not think they should be prevented from doing so by a binding rule.

34.9 This rule also operates, in many cases, to prevent a barrister from practising at home. We dealt in Chapter 33 with the general question whether it is desirable in principle that a barrister should be constrained to work from a professional address other than his home address. In the present context we need say merely that a barrister who practised from home would be under the same

obligation to conduct his or her practice efficiently and that, if his or her spouse acted as clerk or secretary, the duties of such a person would have to be competently performed.

34.10 We agree with the rule that a barrister may not act as a clerk for other barristers without the permission of the Senate. We see no objection to a barrister acting as clerk provided that it is his sole function and that he is not held out at the same time to be in private practice as a barrister; if satisfied on this point the Senate should, in our view, give permission.

Ratio of staff to principals

34.11 Under the present arrangements, the ratio of staff to barristers in chambers is low, about one to four. As a result, the overhead expenses incurred in staffing a barrister's practice are appreciably lower than those of a solicitor or of most comparable occupations. It is in the public interest that the level of a barrister's overhead costs be kept as low as is consistent with efficiency, in order to save expense to clients.

Contracts of Employment and Remuneration

Terms of engagement

34.12 Until recently it was not the tradition for clerks to make formal contracts with heads of chambers and their other principals, and at present the majority of clerks, 75 per cent of those responding to the BCA survey, have no such contract. The full range of the duties of barristers' clerks is nowhere laid down in writing, although their responsibilities for office management are contained in a publication prepared by the BCA, called *A Methods Manual for Counsels' Clerks*. It was published in 1970, and is currently in the course of revision. The Senate indicated in evidence to us its intention to promote means of improving standards in chambers, and accordingly in August 1977 issued guidelines in the form of a memorandum to heads of chambers (see annex 33.1). With regard to senior clerks the Senate said:–

> The senior clerk performs two distinct functions; he is directly in charge of the administration of chambers as a whole, and he is the senior clerk of each individual member of chambers. This duality of function is rarely, if ever, expressed in contractual terms, and can give rise to problems on both sides, for instance when a clerk wants to leave chambers or when some members of chambers want a change of clerk. We therefore suggest that newly appointed senior clerks should be engaged by the head of chambers on the terms of a contract specifying, in relation to the senior clerk's position as clerk to the chambers as a whole, a reasonable term of notice on both sides. The senior clerk's engagement as clerk to each individual member of chambers should be terminable on either side, on the termination of the main contract.

We agree with this approach. In our view, the arrangements proposed by the Senate in its guidelines should be adopted by all chambers as soon as a convenient opportunity arises.

34.13 Because of its complexity, there will be many aspects of a senior clerk's work which cannot be spelt out in a written contract. For this reason we think it right that the BCA should issue and keep up-to-date a methods manual. By doing this, the Association makes an important contribution to the efficient conduct of the work of the profession.

Remuneration

34.14 With the cooperation of the BCA, our consultants carried out a survey of the remuneration of barristers' clerks of all grades. The results are set out in Volume II section 14. The response rate was not high, but tests of the survey results have shown that they provide a reasonable illustration of the levels of earnings in 1975/76. The main findings in relation to senior clerks were as follows.

(a) A minority of clerks (eight per cent of those responding), were paid a salary, sometimes supplemented by a percentage of fees. This group received on average a net income (before tax and pension provision) in 1975/76 of £7,604. No trend was apparent of any increase in the number of barristers paying clerks on a salaried basis.

(b) Where clerks were paid on the basis of a percentage of gross fees, the amount received varied with the percentage and the arrangements for contributions by the clerk to chambers' expenses. There appeared to be two main groups, those who received five to seven per cent of gross fees and made no contribution, and those who received between eight and ten per cent of gross fees and did make a contribution to chambers' expenses. In the first category, the average income, in 1975/76 before tax and pension provision, was £8,968. In the second, after deducting the contribution to chambers expenses, the average income was £11,378.

(c) In general, the greater the number of principals in chambers, the higher the income of the clerk.

(d) Where clerks were of six years' standing or more, the pattern of earnings did not appear to rise in step with additional years of service.

(e) The average gross income in 1975/76 of the 119 clerks who provided information amounted to £11,623; the expenses amounted to £1,341, of which £951 represented payments to junior clerks and other staff. The average net income for those who provided information for the survey (half of whom were aged 40 or less) was therefore £10,282. This figure was before tax and pension provision.

34.15 In the following comparison of the earnings of barristers (Queen's Counsel and juniors) and barristers' clerks, the figures relate to 1975/76 and should not be taken as representing current earnings.

TABLE 34.1
Earnings of barristers and clerks, 1975/76, before tax and provision for pensions

Level of income	QCs[1]	Juniors[1]	Senior clerks	Junior clerks
	£	£	£	£
Upper quartile	26,500	9,500	12,850	3,500
Median	19,400	6,100	9,770	2,100
Lower quartile	14,200	3,500	6,100	1,456
Average	21,500	7,300	10,282	2,527
Numbers included in survey	202	1,757	119	172
Approximate percentage of total category	60%	62%	53%	53%

[1]Estimated figures.
Source: Consultants' report on the survey of the remuneration of barristers' clerks, Volume II section 14.

Junior clerks
34.16 Table 34.1 above shows that the average earnings of junior clerks are relatively low. Most of them are paid a fixed salary, though about one-third receive a small percentage of the fees of the barristers in the chambers. Full information from the survey concerning the earnings of junior clerks can be found in Volume II section 14. For our present purposes it is sufficient to note that, although their earnings are relatively low, the survey by the BCA showed that almost all junior clerks believed their long-term prospects to be good or very good.

Earnings generally
34.17 Table 34.1 shows that the average earnings of senior clerks are at all levels appreciably higher than those of junior barristers. In the larger sets of chambers it is likely that the senior clerk will earn more than most of the junior barristers for whom he works. Members of the Commission visited barristers' chambers, and saw the demanding nature of the clerks' work. But we regard the work of junior barristers as equally demanding and in some cases more so, and we therefore take the view that the difference in the nature and intensity of the work does not justify the present overall difference in remuneration between clerks and junior barristers, though there may certainly be instances in which it is justified.

34.18 Until recently, it was the practice for a barrister's clerk to charge the client a fee separate from that of the barrister for his services. As an example, if a barrister received a dock brief at a fee of two guineas, the client had also to pay a clerk's fee of 2/6d. Tables of fees set out in rules relating to costs always included a separate column showing the fee payable by the client to the clerk. In addition to the fee paid by the client to the clerk it was a common practice for a barrister, who

charged his fee in guineas, to pay to the clerk the "shillings in the guineas"—that is, five per cent of the fee retained by the barrister.

34.19 For many years it was the policy of the BCA to retain the system by which a barrister's clerk was entitled to claim a separate fee from the client. It is said in evidence:–

> The Barristers' Clerks' Association through its representatives was able in 1953 to convince working party No. 1 (of the Evershed Committee) that clerks' fees should remain; to convince the Lord Chancellor that clerks' fees should remain; and then in 1965/6 to convince the Joint Committee of the Bar Council and the Law Society that clerks' fees should not be abolished.

The position changed when decimal currency was introduced. The Bar decided to charge fees in pounds rather than in guineas. It was decided also, with the agreement of the BCA, that the barrister's stated fee should include the clerk's fee which would no longer be charged separately. Since decimalisation, separate clerks' fees are no longer shown on any schedule or scale of costs.

34.20 The Senate informed us that a barrister and his clerk may strike any bargain they see fit in relation to the sharing of fees, with the proviso that not less than five per cent of every fee received by the barrister shall be paid over to the clerk. We set out in paragraph 34.14 the various methods of remunerating barristers' clerks. In the following table we show the distribution of the various methods of remuneration among the 156 senior clerks who responded to the BCA survey.

TABLE 34.2
Barristers' clerks: methods of remuneration

Method of remuneration	Number of senior clerks	%
5% of barristers' gross fees	24	15
6% or 7% of gross fees	26	17
8% or 9% of gross fees	25	16
10% of gross fees	66	42
salary or combination of salary and percentage of receipts	15	10
All methods	156	100

Source: Consultants' report on the survey of remuneration of barristers' clerks, Volume II section 14.

34.21 It is sometimes the practice to guarantee the senior clerk a minimum income. The table shows that 141 clerks out of 156 were remunerated by a percentage of gross fees. Of these, 24 said they were guaranteed a minimum income.

34.22 The BCA strongly defended the present system of remuneration. It

pointed out that a clerk cannot improve his financial position through promotion and he therefore needs some incentive and reward for developing and maintaining the business of chambers. It added that the clerk's income is at risk in a number of ways. A barrister may turn out badly; he may turn out well and be promoted to the Bench; he may move from one set of chambers to another. In all these circumstances a clerk may suffer a drop in income. This is felt particularly on promotion of barristers (the most able and the highest earners) to the Bench. The BCA pointed out that remuneration by commission acts as an incentive to build up the careers of newcomers, although a clerk must always be sensitive to what the market can stand.

34.23 Arguments against this view were put to us. Payment by commission acts as an incentive to fix fees as high as possible and to keep work in chambers even though this may not be in the client's interest. Moreover, it can cause the clerk to be exposed to a serious conflict of interest. The influence and advice of the clerk are important to the head of chambers and to all the members in the set when they consider whether it is desirable for chambers to divide; but if a clerk is paid solely by a percentage of gross receipts, he would suffer an appreciable drop in earnings if division took place.

34.24 It was argued that these factors weigh against the public interest, though their impact is reduced by the integrity with which clerks approach their work. However, given the fluctuations in fortune to which a set of chambers is subject, for the reasons described, payment to the clerk of a percentage of the gross fees of all the barristers in chambers can, unwittingly, lead to clerks' remuneration that is either unreasonably high or unreasonably low. We believe this to be undesirable.

34.25 In this context, it is of interest to note that in its guidelines to chambers (see annex 33.1), the Senate said:–

> When new appointments [of senior clerks] are made, serious consideration should be given to:
>
> (i) Providing a scale of senior clerk's remuneration so that it is not necessarily tied to the gross income before expenses of the set as a whole. As an alternative, making express provision for a review of the senior clerk's remuneration whenever a significant change of circumstances in chambers occurs. Clerk's fees should, subject to exceptional individual cases, be based upon the agreement reached between the Bar Council and BCA set out in the annual statement 1969/70 pages 33-36. [Note: This agreement provided, inter alia, that not less than five per cent of the gross fees should be payable to the clerk.]
>
> (ii) Arrangements whereby, if practicable and with the senior clerk's agreement, no senior clerk's fees are payable by anyone earning less than £5,000 on the first £1,500 of his gross earnings, provided that, in those cases in which it is practicable, the first £1,500 is not taken into account in assessing his total chambers contribution (and that if he earns less than £1,500 he makes no contribution).
>
> (iii) Establishing a sinking fund so as to provide compensation to senior clerks when they suffer a severe drop of income due to the appointment or retirement of senior members of chambers.

34.26 We consider it desirable for the future to avoid basing the remuneration of

clerks solely on a percentage of the gross earnings of barristers in chambers. Without regard to percentages the clerk should be paid fair remuneration for the services rendered and the administrative responsibility undertaken. It may be desirable to arrange for incremental increases and to reward a high pressure of work by bonus payments, but in the view of a majority of us such bonus payments should not exceed one per cent of gross fees. We believe this to be the best way of complying with the first proposal in paragraph (i) in the guidelines. As will be clear from what we have said above, we consider that the five per cent rule should no longer be followed.

Pensions

34.27 We note in Chapter 36 that barristers as a class do not make adequate provision for their own pensions. It is not therefore surprising that pension arrangements for their staff are poor. The BCA told us in evidence that in 1975 it tried to launch a pension scheme which required the participation of barristers; it said that the response, particularly in relation to junior clerks, was lamentable. We think it likely that the majority of clerks will be contracted into the new state pension scheme which started in 1978. We do not propose there should be compulsory arrangements by which the state pension may be supplemented. However, it is our view that in modern conditions everybody should be properly provided with pensions and, so far as this has not been done, it is the responsibility of barristers who retain the services of clerks to see that it is done. In its guidelines the Senate said "arrangements should be made providing a reasonable pension for senior clerks and first juniors at the age of 65". We agree and consider that the Senate should lend its support and influence to any future arrangements proposed by the BCA or others to provide adequate pensions for barristers' staff.

The Work of Clerks

General

34.28 A number of criticisms were expressed to us of the way in which the functions of senior clerks were sometimes exercised. In its evidence the Senate confirmed that it was aware of such criticisms. We deal with them below.

Efficiency

34.29 We dealt with the question of efficiency in the running of chambers in Chapter 33. The proposals we made there in connection with the responsibility of the head of chambers and the appointment of chambers' committees should, if implemented, produce improvements. We think that further measures are needed in respect of the training and qualification of clerks. In its evidence to us, Justice, an association which includes a number of practising barristers, said:–

> We would accept that many senior clerks are very capable and organise their chambers effectively. Nevertheless it is our view that a more professional approach is now necessary to the efficient conduct of the business of chambers . . . Every senior clerk should be encouraged to receive and should have made available to him by the chambers to which he is attached, a proper training in office management and accounts; and it should be his responsibility to ensure that his chambers are adequately staffed on the secretarial and book-keeping side.

We agree with this view. Evidence of a similar character was submitted by the Bar Association for Commerce, Finance and Industry.

34.30 The BCA sets standards, requiring certain educational qualifications of its members, together with a short course and an examination. However, in many cases more should be done. We consider that, as part of their general responsibility for the operation of chambers and the work of their clerks, members of the Bar should arrange for their staff to attend courses in book-keeping, accountancy and office administration. This training should include instruction in modern techniques, for example the use of computerised systems, either directly or through a bureau, for accounting and other administrative purposes, and for providing up-to-date information.

34.31 The responsibility for ensuring that chambers are administered efficiently and in accordance with up-to-date techniques rests on the head of chambers and on any member, or committee of members, appointed to supervise the running of chambers. As we pointed out in Chapter 33, we consider it should be a duty of all heads of chambers to review their present administrative arrangements in order to satisfy themselves that everything which is necessary is being done.

Excessive authority

34.32 In answer to the question posed, "does the clerk exercise too much authority?" the Senate said in evidence:–

> In a few cases: yes. There are still a few members of the Bar who would not take a day off without their clerk's approval (which might well not be granted), whose efforts to get him to collect their fees are ineffective and who can almost be regarded more as their clerk's man than their own. Where this occurs, we deplore it. We think that it has its origins:
>
> (i) in the fact that in the past that barrister has "handed himself over" to his clerk to too great an extent, particularly with regard to fee negotiation and booking;
>
> (ii) in the fact that, being the clerk to each member of chambers separately, it is in practice impossible to remove him without at least the unanimous decision of the top half of chambers;
>
> (iii) in the fact that in some sets in the past neither the head of chambers nor any member of chambers has taken any interest in the management of chambers, leaving the clerk with total authority over the administration of chambers and over everything except the actual performance of work by the members.

We agree with the Senate that any situation of this kind is to be deplored.

34.33 The evidence submitted to us suggests that it has been a tradition of the Bar for many years that barristers concentrate solely on their professional work and leave all the administrative details of their working lives to their clerks. Total concentration on matters which affect a client's interests, to the exclusion of all matters concerning the barrister's interests, is praiseworthy. If taken too far, however, it can amount to a failure to exercise responsibility for the conduct of professional work. It is in the interest of their clients, not merely in their own interest, and therefore necessary, that barristers should pay careful attention to the organisation of their chambers and the way in which work coming into

chambers is handled. We deal in Chapter 37 with the discussion of fees between barrister and client.

Overbooking and unallocated briefs

34.34 In its evidence the Senate agreed that clerks sometimes overbook, but it said that this is rarely, if ever deliberately done. We accept that overbooking occurs because of the many uncertainties and varying factors which apply in all litigation.

34.35 We regard as more serious the allegation that in certain classes of case, in particular minor criminal cases, clerks receive briefs which are not marked with a barrister's name and do not allocate them until the evening before the trial. It is said that the main reason for this is that, owing to the uncertainties of the system of listing cases for hearing, it is impossible to know until a very late stage which cases will be listed to be heard on a given day. Therefore briefs are kept in the clerk's room, unallocated, and issued when the cases are put into lists and the clerk knows which barristers are free to deal with them. The objections to this practice are obvious and in paragraphs 22.39-22.42 and 22.63 we make recommendations to prevent it.

The relationship between barrister and clerk

34.36 A newly-qualified barrister, without reputation or an established practice, depends on his senior clerk to recommend him to potential clients and to help him build up his practice. Most clerks go to great pains to help newly-called barristers. It is in the interests of the barrister, the clerk and the chambers to do so. But just as a senior clerk can make a barrister's career, so can he break it. If the guidelines of the Senate and our own recommendations are followed, the few cases referred to by the Senate in the evidence quoted in paragraph 34.32, in which a senior clerk exercises excessive authority, should no longer occur. This will not, however, affect the clerk's influence over the distribution of work, which he is bound to retain as long as he acts as the recipient of briefs, instructions and enquiries from solicitor clients. It is important that this influence should be exercised fairly. Our evidence and information suggests that sometimes it is not. Although such occasions may be infrequent, it is important to eliminate them.

34.37 There are three main reasons why a clerk may seek to restrict the flow of work to a particular barrister. The first is that the barrister is insufficiently experienced. If this is the reason, both barrister and clerk should clearly understand it to be so. If the barrister feels he is unreasonably held back, he should raise the matter with the head of chambers, for it is in the interest of the whole set to build up the practices of the members. The second reason is that a barrister handles his work badly or has given a client cause for complaint. In such a case, we consider that the clerk should refer the problem to the head of chambers for him to decide, after discussion with the barrister and, if appropriate, the chambers committee, what action should be taken. The third reason is that the clerk does not like the barrister, because of personal antipathy or some prejudice

relating to class, race or sex. Should this occur, it is to be thoroughly deprecated. In no circumstances should a clerk's personal feelings toward a barrister unfairly impede his chances of progress. All involved, the head and members of chambers and the clerk himself, must be on their guard against such a situation and the head of chambers should always intervene to prevent it.

Recruitment and training

34.38 There is no shortage of recruits to the ranks of barristers' clerks. However, the BCA told us that there was a shortage of applicants for senior clerks' positions in small chambers, the members of which are earning little and cannot afford to pay adequate remuneration. This is evidence, not so much of a shortage of senior clerks, as of the difficulties faced by barristers, particularly in the early years of their careers, in setting up chambers. The BCA made it clear that there was no shortage of junior clerks fit to be groomed for promotion to senior clerk.

34.39 Barristers are not under any compulsion to appoint as senior clerks only those who reach the standard set by the BCA. Although we think there should be more detailed training, in particular in modern systems of office management and accounting, we do not regard it as necessary to require barristers to employ as senior clerks only those who have passed the BCA's examinations. Barristers are responsible for any failing on the part of a clerk and should, in their own interests, ensure that training and experience, particularly of senior clerks, are adequate.

Improving standards

34.40 We conclude this chapter by commending the BCA for its efforts to improve standards. It has set up training schemes. It has given thought to the provision of pensions, and it is not its fault that its proposals have not had widespread results. The majority of barristers' clerks, as is desirable, belong to the BCA. There is good cooperation between the Senate and the Association which enables sensible joint measures to be taken. In the course of our work we found the attitude of the BCA to be progressive and helpful; this leads us to expect that the Association will cooperate with the Senate in whatever ways are necessary to implement the improvements we have suggested.

Conclusions and Recommendations

			Paragraphs
Employment of a clerk	R34.1	A barrister should not be compelled to have a clerk but he should be under a professional obligation to see that his practice is administered efficiently.	34.7
	R34.2	A barrister should not be prevented from having a spouse as clerk.	34.8

			Paragraphs
Terms of engagement	R34.3	Subject to the revisions relating to the remuneration of clerks stated in the text, the guidelines issued by the Senate in August 1977 for the engagement of clerks should be generally adopted as soon as possible.	34.12 and 34.25-34.26
Standards	R34.4	The methods manual issued by the Barristers' Clerks' Association should be regularly revised and re-issued.	34.13
Pensions	R34.5	The Senate and BCA should use every means to encourage the provision of adequate pensions for the staff in chambers.	34.27
Efficiency	R34.6	Barristers should ensure that staff of chambers receive adequate training in modern techniques of accounting and administration.	34.30-34.31

CHAPTER 35

Discrimination

Background

Introduction

35.1 This chapter is concerned with discrimination on the grounds of sex or race. The issue of sex discrimination has been in the public mind throughout this century. The more recent issue of race discrimination in this country is not as well understood as that of sex discrimination, nor is it as near a solution.

35.2 Great importance is attached to the elimination of discrimination of any kind within the legal profession. The law occupies a central place in our social affairs. It must be impartial and its benefits and protection known to be available to all without regard to their sex or ethnic origins. A failure to remove even the appearance of discrimination from the legal profession reduces the confidence of every sector of the public in the fair administration of justice.

Definitions

35.3 Race discrimination has been defined by the Commission for Racial Equality (CRE) in the following way.

> *Direct discrimination*
> This consists of treating a person, on racial grounds, less favourably than others are or would be treated in the same circumstances. Segregating a person from others on racial grounds constitutes less favourable treatment. (Racial grounds are defined in terms of race, colour, nationality—including citizenship—or ethnic or national origins.)
> *Indirect discrimination*
> This consists of applying a requirement or condition which, whether intentional or not, adversely affects a considerably larger proportion of one racial group than another and cannot be justified on non-racial grounds. (A racial group is a group defined by reference to colour, race, nationality—including citizenship—or ethnic or national origins.)

35.4 The Equal Opportunities Commission (EOC) uses similar definitions in relation to sex discrimination.

35.5 In the legal profession, formal discrimination against women ceased to exist at the end of the first world war, when women were enabled to enter practice as barristers and solicitors. No such discrimination on grounds of race or national origin appears to have operated at the Bar in modern times. Indeed, in the reception and training of students, the tradition was to welcome those from abroad, particularly from Commonwealth countries. In the solicitors' branch of the profession, while there has been no direct formal discrimination, a form of indirect institutional discrimination existed until recently, in a long-standing legislative provision prohibiting non-British subjects from becoming or practising

as solicitors in England and Wales and Northern Ireland. This derived from a provision of the Act of Settlement 1700, prohibiting aliens from enjoying "any office or place of trust either civil or military". This prohibition was removed by legislation in 1974.

35.6 A number of measures can be taken to prevent the spread of prejudice and to reduce its effects. The provisions made in this country for these purposes vary in some respects as between race and sex discrimination, but the broad effect of the present arrangements is to forbid, by law, speech or behaviour calculated to encourage prejudice and any conduct or arrangement designed to discriminate on grounds of race or sex. These are combined with a programme of education and conciliation designed to promote equality of opportunity and to reduce and eventually to eradicate prejudice of which discrimination is the expression.

35.7 Although reverse discrimination is not permissible, various forms of affirmative action are lawful and may play an important part in eliminating the effects of past discrimination. We explore in this chapter the possibilities of certain specific forms of action and wish to make it clear at the outset that we regard as indispensable to the future health of the profession the development of policies of affirmative action to assist in particular the members of ethnic minorities.

Sex Discrimination

Numbers of women in the profession

35.8 Detailed information gathered from surveys of women in the legal profession is contained in Volume II section 15. The main features are summarised in the following paragraphs.

35.9 The records of both branches show that there has a been small increase, year by year, in the proportion of women practising in the profession. The findings of enquiries undertaken by the EOC showed that the number of women practising at the Bar rose steadily from 64 (3.2 per cent) in 1955 to 336 (8.2 per cent) in 1977. The number of women holding practising certificates as solicitors rose from 619 (2.7 per cent) in 1967/68 to 2130 (6.5 per cent) in 1976/77.

35.10 Although the proportion of women in practice has risen, it remains well below the number of those studying for law degrees and entering the profession. The proportion of women law graduates rose from 18 per cent in 1972 to 31 per cent in 1977. Women made up 25 per cent of the solicitors admitted to the Law Society between 1st December 1978 and 28th February 1979 and 32 per cent of the articled clerks registered in 1978. The number of women called to the Bar in 1977/78 was 227 (24 per cent) out of a total of 954.

35.11 A substantial proportion of those who qualify to practise, both men and women, do not do so. The figures for solicitors are unknown, but enquiries have shown that of the students domiciled in the UK who were called to the Bar in

1975, 50 per cent of the men had commenced practice within three years compared with 33 per cent of the women.

35.12 Of those who commenced practice, a higher proportion of women left within the first ten years. Precise figures are not available for solicitors. Data provided by the Senate show that the total number of UK students called to the Bar in 1965 included 46 women and 255 men. The numbers commencing practice were 17 women and 142 men. Between 1966 and 1975 eight of the women (57 per cent) and 19 of the men (13 per cent) ceased practice.

35.13 The great majority of women barristers are at the junior end of the Bar. The survey of income at the Bar 1976/77 (see Volume II Section 18) showed that 56 per cent of the women barristers responding were aged under 30, compared with 37 per cent of men; 49 per cent of women were of less than three years' seniority compared with 29 per cent of men. By contrast, at the senior end of the Bar, out of 404 Queen's Counsel in October 1978 five were women. There is a similar disproportion in the full-time judiciary. The number of women judges, recorders, masters, registrars and stipendiary magistrates is small. By contrast, of the lay magistrates, drawn from the general population, over one-third are women. In this connection, it should be borne in mind that for certain purposes, such as hearing juvenile cases, the presence of a woman magistrate on the bench is required by legislation.

Membership of the governing bodies

35.14 During 1977/78 one woman was elected to the Council of the Law Society, to become the sole woman member out of 70 Council members. No women served on the committees of the Council in 1977/78. It may be remarked by way of contrast that the immediate past President of the Incorporated Law Society of Northern Ireland is a woman. The Senate of the Inns of Court and the Bar had, in 1977/78, no women officers or women Inn representatives, one woman Bar representative and one woman additional member. The Senate has set up a special committee, the Bar Council Equal Opportunities Sub-Committee, whose members include two men and seven women. In 1977/78 Lincoln's Inn had two women benchers out of 109, the Inner Temple one woman bencher out of 140, the Middle Temple two women benchers out of 142 and Gray's Inn one woman bencher out of 89.

Distribution in offices and chambers

35.15 The Equal Opportunities Commission obtained from the Law Society figures concerning the distribution of women in certain firms. As we mentioned in paragraph 35.9, these figures relate only to those who held practising certificates and do not give an accurate impression of the total numbers of women solicitors in each firm. The figures show that there are wide variations between firms but there is nothing to suggest that women solicitors are concentrated in certain sizes of firms or types of practice. The EOC found that out of 290 sets of chambers in London and the provinces in 1977, 97 had no women members, and 106 had only one woman member.

Remuneration

35.16 No information is available concerning the remuneration of women solicitors as compared with that of men. As far as barristers are concerned, there is no great difference between the earnings of women and men who have been in practice for three years or less. Thereafter the earnings of women fall behind, and the average earnings of women who have been in practice for between nine and fifteen years are half the average of men of the same seniority. The reason for this difference has not been established, but it has been suggested that among the relevant factors are that earnings fall behind rapidly in the event of an appreciable break in practice, as may occur when a woman barrister has children, and that there are comparatively few women of senior status working in the better-paid types of specialist practice where the fees are generally privately funded.

The extent of discrimination

35.17 The United Kingdom Federation of Business and Professional Women which has 17,500 members in 439 clubs throughout the United Kingdom said with regard to discrimination:–

> Being particularly interested in equal opportunities for women, the Federation sought to obtain evidence of discrimination against women in training for and entry to the legal profession. The majority of clubs said that there was no apparent discrimination . . . Those clubs which considered that discrimination existed felt that preference might be given to a man as being a better long term proposition. There was also the interesting comment that there is sometimes prejudice against women by clients.

The Equal Opportunities Commission was in no doubt that discrimination existed. It drew attention to the small proportion of women in practice, the number of chambers with no women members, the small number of women practising in solicitors' firms and serving on the governing bodies of the profession.

35.18 The question of discrimination has been considered by the Bar Council Equal Opportunities Sub-Committee, set up in 1977 after a meeting with the Equal Opportunities Commission to keep under review the problems of equality of opportunity facing new entrants to, and existing members of, the profession. Most of its women members are of relatively recent call and are believed to have a fair working knowledge of current problems. In the light of their own knowledge and investigations, and in the light of a survey by questionnaire sent to all women in practice at the Bar, the Committee reached the conclusion, expressed in the evidence to us, that there was in the past, and to some extent still is, a degree of discrimination against women in the vital areas of obtaining tenancies in chambers and thereafter work. It said that there was a substantial body of opinion that the antipathy felt by established members of the profession and their clerks has considerably diminished in the last few years. It continued:–

> . . . yet we are in no doubt that there remains in certain quarters of the Bar an element of hostility towards the whole idea of women practising as barristers. This attitude of mind, itself a relic of Victorian times, seems to be found largely among the older and more idiosyncratic people, some of whom, unfortunately, may be in positions of influence and who

thus give an overall appearance of prejudice to a profession which in general, we are sure, would repudiate such views. Such an attitude of mind, apart from being proscribed by the Sex Discrimination Act, brings the Bar as a whole into public disrepute and positive steps should be taken to discourage it.

35.19 Our own conclusion on the evidence received and all that we have seen in the course of our visits is that sex discrimination based on prejudice has diminished in the legal profession in recent years. Its after effects are however still strongly felt and although steady improvement is being made it would be many years at present rates of progress before women occupied a significant place in the work and management of the profession. We believe also that in chambers and, we suspect, in many solicitors' firms, an effect similar to that of discrimination arises from hesitancy in accepting women as members or partners in any numbers in case they are lost to the demands of the family or for fear (not always unjustified) that they may be less acceptable to clients than men. It appears to be commonly, though erroneously, held that work involving family matters or children is more suited to women than work relating to commerce, tax, planning or other specialist branches of the law.

Remedies

35.20 The EOC put forward a number of suggestions to improve the present position. We consider these in turn.

35.21 The first proposal was that the governing bodies of the profession should draft a guide, for circulation to heads of chambers and to firms, outlining their obligations as regards discrimination. Such a letter has been sent by the Senate to heads of chambers. The Law Society has not done this, on the basis that solicitors may be expected to know the law. In our view, the Senate was right to circulate a letter. It enabled it to point out to heads of chambers that the Bar should observe the spirit as well as the letter of the legislation and gave helpful and direct guidance on the enquiries that could properly be made of candidates for seats in chambers. We consider that this material should in future be incorporated in the *Chambers Guidelines* (see Chapter 33). We recommend that the Law Society should issue guidance to all firms in the same terms.

35.22 The EOC recommended that the governing bodies should set up machinery to monitor the implementation of the Sex Discrimination Act. The Senate has set up a committee, as we have mentioned, to keep under review problems of equality of opportunity. It is intended that this committee should remain in being and its terms of reference enable it to take up any problems facing women at the Bar, not merely those affected by the Sex Discrimination Act. A number of measures have been put in hand by the committee. The Law Society has not set up machinery to monitor the implementation of the Act. We recommend that it should do so.

35.23 The EOC recommended that the Senate should circulate a guide to barristers' clerks. The Senate considered this to be a matter for the Barristers'

Clerks' Association rather than itself, but in its letter of guidance to chambers it specifically asked that the attention of clerks be drawn to the contents. We recommend that the Barristers' Clerks' Association should issue appropriate guidance to its members.

35.24 The EOC recommended that both branches of the profession should give consideration to more flexible working arrangements, particularly to allow more opportunities for part-time work. This was said by the Senate committee to be unrealistic. We do not agree. We recommend that in both branches of the profession further consideration should be given to arrangements by which lawyers who wish to work part-time or at home may be enabled to do so.

35.25 The EOC recommended that consideration should be given in both branches of the profession to maternity leave and, in the case of the Bar, to the provision of a crèche for pre-school children. In the case of self-employed lawyers, the expression "maternity leave" may be a misnomer. We have no doubt however that in both branches of the profession some arrangements could be made for this purpose. It is known, for example, that some chambers make special arrangements to enable a woman tenant to retain her place while absent to have a child. We recommend that a careful study be made of the feasibility of any arrangements of this kind which would assist mothers to return to work after childbirth.

35.26 It is said that a crèche in or near the Inns of Court would benefit only a barrister working in London whose practice required or enabled her to travel to chambers each morning before going to court and that a crèche nearer home would be more useful to barristers as to all working mothers. Even so, we consider that the proposal should not be dismissed out of hand and we recommend it for further consideration.

35.27 The EOC proposed that both branches of the profession should register as training agencies under the Sex Discrimination Act enabling them to provide special refresher or re-entry courses for women. A number of refresher courses are at present provided by the Law Society for solicitors, but they are devised for those in practice rather than for solicitors returning to practice after a period of absence. A number of other organisations provide courses but none, so far as we are aware, are intended for those who have been away from practice and in some cases the cost is high. We recommend therefore that the demand for such courses for both solicitors and barristers should be assessed and suitable courses provided if there is any demand for them. The Senate and Law Society should if necessary register as training agencies for this purpose.

35.28 The EOC proposed that the Senate should stress to potential entrants that the Bar is no longer an exclusive male preserve. It has been agreed by the Bar sub-committee that the statistics showing the steady increase in the number of women in practice at the Bar should be included in material available to potential recruits. We recommend that the Law Society should do the same.

35.29 The EOC recommended that both branches of the profession should use the powers conferred by the Sex Discrimination Act to reserve for women seats or extra seats on the elected governing body. The Bar Council sub-committee expressed distaste at this proposal, saying that the concept of "the statutory woman" is demeaning and not calculated to advance the cause of equal rights for women. It suggested that the better solution was for women to be encouraged to stand for election to the Senate in open competition with men, which now they rarely do. We agree that it would be preferable for women to be elected to the governing body, giving each one standing equal to that of other elected members. This apart, use of the power to co-opt women to committees may be of more practical importance than elections to the Senate in promoting measures to improve the position of women. The continued existence of the Equal Opportunity Sub-Committee has a valuable effect. We recommend that both branches of the profession should maintain arrangements of this kind to monitor the implementation of equal opportunities for women. In case these measures prove ineffective, the governing bodies should have and should exercise powers to reserve places for women.

35.30 Finally, the EOC suggested that the benchers of the Inns of Court should elect more women to the bench. We endorse this suggestion.

Race Discrimination

Information available

35.31 Statistics are not kept, either by the Senate or by the Law Society, which give any indication of the number of practising lawyers drawn from ethnic minorities, but there are thought to be about 200 working as barristers in London and a small number in the provinces. It is likely that the proportion of practising barristers belonging to ethnic minorities is higher than that of solicitors because, as we mentioned above, the Bar has a long tradition of training students from Commonwealth countries, while the solicitors' branch of the profession was until 1974 prevented by law from offering qualification as a solicitor to anyone who was not a British citizen. In the following section, therefore, we deal in the main with the position and problems at the Bar; it should not however be assumed that no problem exists or is likely to arise in the solicitors' branch of the profession. For the purpose of planning future policies, what we say applies equally to both branches.

Evidence concerning discrimination

35.32 We received comparatively little evidence on this topic. The Chief Executive of the Commission for Racial Equality wrote to our Secretary setting out the views of the CRE and his letter has been included in the evidence made public. We received evidence from the governing bodies of the profession, the judiciary, students' associations and from a number of barristers belonging to ethnic minorities.

35.33 The policies of the governing bodies of the profession are firmly against discrimination of any kind. We have no doubt that the great majority of practising lawyers are equally strongly against it. Even so, the evidence shows clearly that barristers from ethnic minorities are less successful than others in finding seats in chambers. Apart from evidence of personal experience or opinion we received on this point, we were made aware of the fact that there are a number of sets of chambers—the so called "ghetto" chambers—whose members are drawn exclusively from ethnic minorities.

35.34 In recent years the number of recruits to both branches of the profession has increased, considerably in the case of the Bar. Competition for places in chambers has been correspondingly intense. There are a number of young barristers, of all races, who can find no places in established chambers. Some have established new sets of chambers with a preponderance of young barristers. It is not surprising if, in those circumstances, a young barrister from an ethnic minority gravitates to chambers whose members are drawn exclusively from ethnic minorities.

35.35 A decline in the number of recruits to the profession combined with a vigorous accommodation policy should help relieve the difficulties described above. A member of an ethnic minority should then have no more difficulty in finding a place than any other newly-qualified barrister. In the past, some first-generation immigrant lawyers whose qualifications enabled them to practise in England and Wales had difficulties because their knowledge of English law and procedure was rusty and a number were not good at expressing themselves in clear and effective English. This problem should not arise in future. Under the new system of education and training, all entrants to the profession should be well qualified and competent to practise. We understand that when a barrister from an ethnic minority practices in an integrated set, he has no more difficulty than others of the same seniority in finding work from clients of all kinds.

Present trends

35.36 Present trends give cause for concern. Barristers practising in chambers containing exclusively members of ethnic minorities tend to recieve work from their own minority communities. Their practices are not balanced, in the sense, for example, that they are more likely to appear for the defence than the prosecution in criminal cases. The impression is given that they are, and feel themselves to be, outside the normal run of professional practice.

35.37 In future years an increasing number of solicitors from ethnic minorities will become qualified. If the present pattern of events were repeated, the result would be that firms of solicitors, composed exclusively of members of ethnic minorities, would set up practices in areas with a substantial minority population. The range of their cases and clientele would be one-sided. They would tend to send work only to barristers from the ethnic minorities. The effect would be that there would then exist in the legal profession an enclave whose members would have no more than formal contacts with those outside. Under such conditions,

internal discipline would be certain to suffer. Externally, there would be a clear division on racial lines in the practice of the law and, to some observers, in the administration of justice itself.

35.38 We do not say that affairs will reach this state and we do not wish to over-dramatise the risks. It must be accepted, however, that something like this could happen if present trends continued unchecked. The possibility alone is a cause for anxiety because a failure of integration in the legal profession, more than any other, would have damaging and divisive effects over a wide area of public and and private life.

Remedies

35.39 We are satisfied that there is an urgent need for both branches of the profession to develop policies to prevent even the appearance of discrimination in legal practice. We understand the objections to reverse discrimination. However, there are certain forms of affirmative action which are lawful and whose use should not be ruled out. Failure to achieve full racial integration in the legal profession would have so serious an effect that a heavy responsibility rests on the governing bodies of both branches to adopt whatever policies are necessary to avoid it.

35.40 The first measure which we consider should be taken by both the Senate and Law Society is to set up standing committees for the purpose of promoting equal opportunities for lawyers drawn from ethnic minorities. We do not recommend that the same body should deal with both sex and race discrimination because the problems to be dealt with are not identical and the composition of the two groups should differ.

35.41 The first task for these committees would be to compile detailed and accurate information about the present position, and keep it regularly updated. The Commission for Racial Equality has issued a helpful paper, *Monitoring an Equal Opportunity Policy,* which explains methods and procedures by which employees can be classified according to ethnic origins. We consider that the suggestions made in this paper could readily be adapted to their own needs by both branches of the profession. This would provide a sound basis on which to decide future policies.

35.42 In formulating policies it should be recognised that members of ethnic minority groups suffer from a series of disadvantages which are complicated and difficult to remove. The main requirement appears to us to be that places should be found for members of ethnic minorities in both firms and chambers so that the profession may be fully integrated. We appreciate the objections to compulsory measures. The only alternative is a clear voluntary commitment by the profession as a whole to ensure that all racial groups enter and practise on equal terms, accompanied by strong guidance from the governing bodies. We recommend that guidance in written form should be issued by the governing bodies of the profession to all firms and chambers. In the case of the Bar, general material on

this point should be included in chambers' guidelines. The committee responsible for equal opportunities should be prepared at need to deal with problems of individual placements, making use when appropriate of the assistance of local law societies. Members of ethnic minorities who have difficulty in setting up in practice should be encouraged to get in touch with the appropriate committee and seek its help.

35.43 We considered whether places for members of ethnic minorities should be reserved on the governing bodies of the profession. We reached the view that no immediate measure of this kind should be recommended, on the basis that it is more desirable to create a climate of opinion in which the profession does not consider the governing bodies to be truly representative unless they include members drawn from the ethnic minorities. The power to reserve places should, however, be avilable for use if necessary and should be used if ethnic minorities are consistently under-represented.

35.44 In relation to education, the Chief Executive of the CRE has pointed out:–

> . . . the majority of young people of ethnic minority parentage grow up in areas of multiple deprivation. It is commonplace to say that, in such neighbourhoods, the peer group ethos is anti-academic. This is, or may be, reinforced by the alleged under-performance—particularly—of children of West Indian parentage in many schools which has not yet been fully analysed. These are the two major barriers to ethnic minority group members entering the legal profession.

It was suggested by the CRE that all-graduate entry may have a discriminatory effect, but we do not share this view. We believe the best means of promoting equality of opportunity is through the national educational system. We consider therefore that the system of all-graduate entry adopted by the Bar should not be regarded as discriminatory. We recommend, however, that the responsible committees, in consultation with those responsible for education and training in the profession, should monitor the process of professional education and training with particular care in order to detect any points at which the needs of students from ethnic minorities require particular consideration.

35.45 In their annual reports, the governing bodies should in future include information about the policies they have adopted and their effect. An analysis should be given of all the information obtained by the committees during the year. Proposals for future developments should be canvassed.

Summary

35.46 In the case of sex discrimination, some progress is being made and the chief enemy of future progress is complacency. In the case of racial discrimination the present situation is not satisfactory and the trends are unfavourable. A major effort by the Bar is called for to improve the position. The Law Society should take urgent steps to develop and implement policies to prevent a similar situation arising in its branch of the profession.

Conclusions and Recommendations

			Paragraphs
Sex discrimination	R35.1	The Law Society should issue guidance to firms on their obligation to maintain equality of opportunity for women and the Senate should include such guidance in chambers guidelines.	35.21
	R35.2	The Law Society should set up a body to monitor all matters relating to equality of opportunity for women.	35.22
	R35.3	The Barristers' Clerks' Association should issue guidance to its members on the lines of the Senate's guidance to heads of chambers.	35.23
	R35.4	Arrangements should be encouraged by which work may be undertaken part-time or at home.	35.24
	R35.5	Arrangements should be made in firms and chambers to assist mothers to return to work after childbirth.	35.25
	R35.6	The possibility of establishing a crèche in or near the Inns should be further explored.	35.26
	R35.7	Courses should be provided at need for women returning to practice; if necessary the governing bodies should for this purpose register as training agencies.	35.27
	R35.8	The governing bodies should have power to reserve seats for women and exercise it if necessary.	35.29
Race discrimination	R35.9	The governing bodies should appoint committees to deal with all matters relating to equality of opportunity for lawyers who are members of ethnic minorities.	35.40

		Paragraphs
R35.10	Detailed information should be obtained about the recruitment of lawyers from ethnic minorities and their success in obtaining places in firms and chambers.	35.41
R35.11	Written guidance should be given by the Senate and the Law Society to all chambers and firms concerning equality of opportunity for ethnic minorities.	35.42
R35.12	Committees appointed under R35.9 should give assistance to members of ethnic minorities who have difficulty finding places in firms or chambers.	35.42
R35.13	The governing bodies should have power to reserve places for members from ethnic minorities and exercise it if necessary.	35.43
R35.14	Committees appointed under R35.9 should monitor the educational needs and problems of law students from ethnic minorities.	35.44
R35.15	The governing bodies should include in their annual reports statistics and information concerning policies to promote integration and their implementation.	35.45

CHAPTER 36

Remuneration

Introduction

36.1 This chapter is concerned with the earnings of lawyers. We discuss the principles and other matters we have considered in our examination and assessment of levels of remuneration in the legal profession. We give the results of surveys of the remuneration of lawyers and the comparisons we have made with remuneration in other occupations.

General Principles

The basic principle

36.2 A good working definition of the principle applicable to the earnings of lawyers was offered to us in the evidence of the Labour Party.

> The overriding principle for the remuneration of lawyers is that it should provide fair and reasonable reward for work reasonably done. Lawyers should be paid sufficiently well for what they do to attract recruits of the right calibre and to reward them in line with rewards in other comparable fields.

We accept this definition but would add that remuneration should be sufficient not only to attract recruits but to avoid undue subsequent loss of lawyers from private practice to other, better-paid, position as lawyers in industry, commerce and the government service.

36.3 We have already mentioned in Chapter 22 that among the matters for consideration by this Commission is the belief that lawyers in private practice charge fees at too high a level for all or certain classes of work and do not give an adequate service in exchange. In that chapter we dealt with adequacy of service. In this, we deal with the question whether the public, either directly or through fees paid out of public funds, is being exploited by unduly high earnings for all or particular classes of legal work. Criticism has been expressed of the fees earned by solicitors for conveyancing work; we referred to this in detail in Chapter 21, where we also gave the results of a survey undertaken at our request by the Law Society (see paragraph 21.81).

36.4 We do not in this chapter deal with grants available to students and pupils, the earnings of articled clerks and related matters because they are covered in Chapter 39.

36.5 We indicated in Chapter 8 that there was a part to be played by salaried lawyers offering services to the general public. We believe, however, that the majority of legal needs will continue to be met by members of the profession in

private practice. We have therefore been concerned mainly to examine the level of earnings of barristers and solicitors who act as self-employed principals in private practice.

Consideration of level of earnings

36.6 The earnings of lawyers are determined by the level of fees payable for work assessed on a case by case basis. The level of earnings of lawyers, derived from fees, depends in part on the industry of the practitioner, the volume of business undertaken and the speed with which it is despatched, the quality of the business and the consequent level of fees commanded and in part on the level permitted by scales and taxing masters. These factors vary widely even between lawyers of the same seniority and standing. As we show later, they are matched by a wide range of earnings. It is not therefore possible to specify a level of annual earnings, appropriate to one grade of practising lawyer or another, for use as the basis for calculating fees payable in respect of individual cases. We did, nevertheless, consider it necessary to compare the earnings of lawyers with earnings in other occupations. Our purpose was to establish whether the earnings of lawyers were in line with those of people with similar levels of education and training, bearing comparable risks and responsibilities.

Surveys of remuneration

36.7 We made detailed studies of the remuneration of both branches of the profession. The information we required was obtained with the willing co-operation of all those involved. When the intention to appoint this Commission was announced, the Senate and the Law Society set about arranging surveys on their own account. The Senate later carried out a second survey to obtain more recent information on earnings. A survey of remuneration of barristers' clerks was carried out by our consultants with the cooperation of the Barristers' Clerks' Association. The Institute of Legal Executives carried out a survey among its own members.

36.8 Our consultants have provided detailed reports on the surveys of remuneration of solicitors in private practice, barristers and barristers' clerks. They have also provided a detailed report comparing lawyers' earnings with earnings in other occupations. These reports will be found in Volume II. We summarise the information obtained in this chapter and give further details in the annexes to this chapter. In general the figures given relate to a period not later than 1976/77. Because of inflation all the earnings and figures (including expenses) shown in the text and in the annexes are likely to have increased since that time.

Comparisons of earnings

36.9 There is a lack of information about the earnings of the class of people with whom comparisons would be most apt, namely, self-employed members of other professions in practice on their own account; for example there is no information available about the earnings of self-employed accountants, engineers, surveyors,

actuaries or members of other professions. The earnings of consulting engineers were studied by the Reddaway Inquiry in 1972, but for a period now too distant to enable figures to be used for our purposes. Certain information may be obtained from Inland Revenue statistics, but these statistics are of limited value for comparative purposes.

36.10 The earnings of lawyers in central government and public bodies can be ascertained from official sources. The Bar Association for Commerce, Finance and Industry conducts biennial surveys of the earnings of its members to which we have had access. The Law Society, in consultation with our advisers, carried out a survey of the earnings of solicitors in salaried employment in commerce, finance and industry (see Volume II section 17). Information on the earnings of salaried solicitors employed in private practice was obtained as part of the Law Society survey referred to in paragraph 36.7. Information is available about the earnings of general medical practitioners, hospital doctors and consultants in the National Health Service, civil servants and executives in industry and commerce, almost all of whom are salaried employees rather than self-employed people.

36.11 The information we have been able to obtain is therefore limited and we provide a comparison of earnings only with those occupations for which figures are available. Virtually all of them are salaried occupations.

36.12 Although comparisons have been made with other occupations for which the figures are available, there are differences between salaried and self-employment which make a direct comparison of earnings misleading. These differences have been set out by our consultants in a passage of their report which is reproduced in annex 36.1. Some of the differences mentioned can, in principle, be quantified and taken into account in the comparative calculations. For example, allowance can be made for the pension contribution paid by the employer on behalf of an employee. A broad estimate can be made of the value of fringe benefits (such as the use of a motor car, medical insurance and life assurance, interest-free loans and the like) obtained by some employees, particularly in industry and commerce. The cost to a self-employed person of financing the capital requirements of his practice can be represented by including an interest charge on his capital investment—although the practical difficulties of raising the capital, to which we refer later (paragraphs 36.51 and 36.80), cannot be allowed for in adjusting the earnings.

36.13 Where it is possible to quantify a point of difference, our consultants have made the appropriate adjustment and in such cases the figures are described as "adjusted earnings". The adjustments made are described in annex 36.2. But it should be appreciated that even when differences can, in principle, be quantified, only broad approximations are possible in most cases. For example, although the salaries of employees have been increased to allow for the pension contribution which it is estimated the employer would make, the estimate can be no more than approximate since it depends on events happening many years in the future. It is

particularly difficult to make an estimate where pensions are "inflation-proofed", the value of which has been the subject of much public and professional debate. The important point, which cannot be brought into the calculations, is that an employer usually gives some measure of protection against inflation to his employees, but the self-employed person bears the risk himself.

36.14 There are a number of differences which are not quantifiable and which cannot be taken into account directly in any comparisons. One of these is security of employment, which does not exist for the self-employed person to the same extent as for the employee. The lawyer in private practice puts at risk not only the capital directly invested in the business but his personal assets. His business may fail or he may not be able to earn because of illness or incapacity. He has personal responsibility for claims at law, he will be subject from time to time to controls over his fees and he must maintain an office with the obligations to staff which that entails. To this list the Law Society would add that gross professional earnings fluctuate from one year to another, but the need to maintain an efficient office and adequate staff leads to a level of unavoidable overhead expense which increases every year.

The Comparisons

Introduction

36.15 The results set out below should be interpreted in the light of the above comments, particularly the qualifications in paragraphs 36.13-36.14.

Definition of terms

36.16 It may be helpful at this stage to explain a number of statistical and accounting terms which are used in the remainder of this chapter.

36.17 The principal statistical terms used are as follows.

(a) The *average* is the arithmetic mean.

(b) The *median* is the mid-point in a list arranged in order of magnitude. The expression *"median earnings"* indicates a level of earnings half way down the list, half of those surveyed earning more, half less.

(c) The *upper quartile* is the figure one quarter of the way down the list. One quarter of the people surveyed earn at or above this figure. (The Law Society's survey did not provide a figure for the upper quartile, and the nearest available figure, the *third decile,* has been taken in its place. This is a slightly lower figure than the upper quartile.)

(d) The *highest decile* is the figure one tenth down the list. One tenth of the people surveyed earn at or above this figure.

In considering the general level of earnings, we have preferred to use the median figure, which gives the mid-point of earnings in the profession; the average figure may be distorted by a small number either of very high or of very low earners. For information on earnings by age group, given later, it was practicable only to give average earnings.

36.18 The principal accounting terms used are as follows.

(a) *Gross fees* represent the fee income (excluding VAT) before any deduction.

(b) *Gross income* is the fee income plus other professional income, such as commission, and interest retained on clients' accounts.

(c) *Net profit* is the gross income after deducting professional expenses. The figure is struck before making any charge or allowance for:–
(i) the principal's own pension;
(ii) interest on the principal's own capital investment;
(iii) national insurance contributions;
(iv) tax.
(Some solicitors may use different terminology, referring to this as "net pre-tax income" or "gross profit".)

(d) *Adjusted earnings* are the net profits of barristers and solicitors and the salaries of employees after making approximate adjustments for the matters summarised in paragraphs 36.12-36.13 above, and set out in more detail at annex 36.2.

When appropriate the figures are shown gross of tax and net of tax.

The comparisons

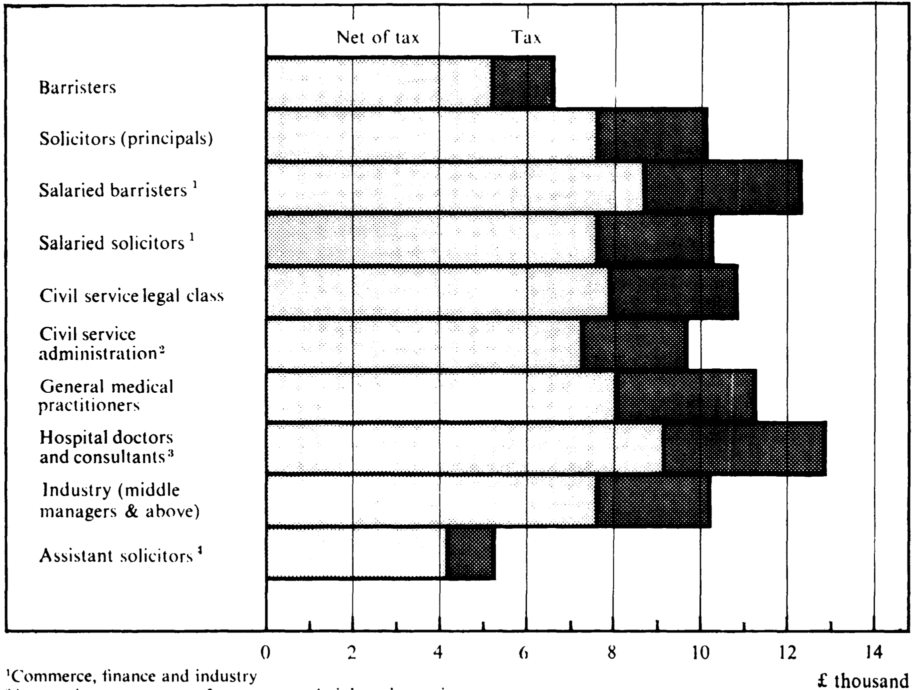
36.19 In the following paragraphs we comment on the adjusted earnings in the legal profession and in the other occupations for which information on earnings is available. We refer first to the median earnings which cover all those in the profession or occupation stated. We give average adjusted earnings by three broad age bands, and we deal separately with the higher earnings—the upper quartile and highest decile figures. Lastly we refer, in our comparisons, to the trend of earnings in recent years.

Comparison of median earnings

36.20 Figure 36.1 shows the median adjusted earnings in 1976/77 (both before and after tax) of barristers and solicitors as reported in the survey cited in paragraph 36.7 above, and of the other occupations available for comparison. The figures are shown in detail in Table 36.11 in annex 36.3.

36.21 This chart shows, as would be expected, that the earnings, when adjusted to take account of the quantifiable differences mentioned in paragraphs 36.12 and

FIGURE 36.1
Median adjusted earnings in 1976 77



[1]Commerce, finance and industry
[2]Assumed career pattern after entry as administration trainee
[3]Whole time, NHS
[4]Salaried partners and assistant solicitors in private practice

Source: Consultants report on comparisons of earnings, Volume II, section 20

36.13, vary as between different occupations. The adjusted earnings of solicitors in private practice as principals are roughly on a par with the adjusted earnings for salaried solicitors in commerce, finance and industry, middle management in industry and the legal and administrative classes in the civil service. They are lower than the adjusted earnings of salaried barristers in commerce, finance and industry and the adjusted earnings of hospital consultants employed full-time in the National Health Service. The adjusted earnings of principals (that is, partners) are higher than those of salaried assistant solicitors.

36.22 The adjusted median earnings of barristers are below those of principals in solicitors' firms. One reason for this disparity is that the Bar is a profession with a substantial number of young people: 70 per cent of the practising barristers in the survey of remuneration were less than 40 years old. We have therefore made a comparison of earnings by age groups.

Comparison of average earnings by age groups

36.23 Figure 36.2 shows comparisons of average adjusted earnings by three broad age groups as follows:–

(a) adjusted earnings in the first five years after training, corresponding in most instances to ages 25 to 29;

(b) adjusted earnings in the next ten years, corresponding in most instances to ages 30 to 39;

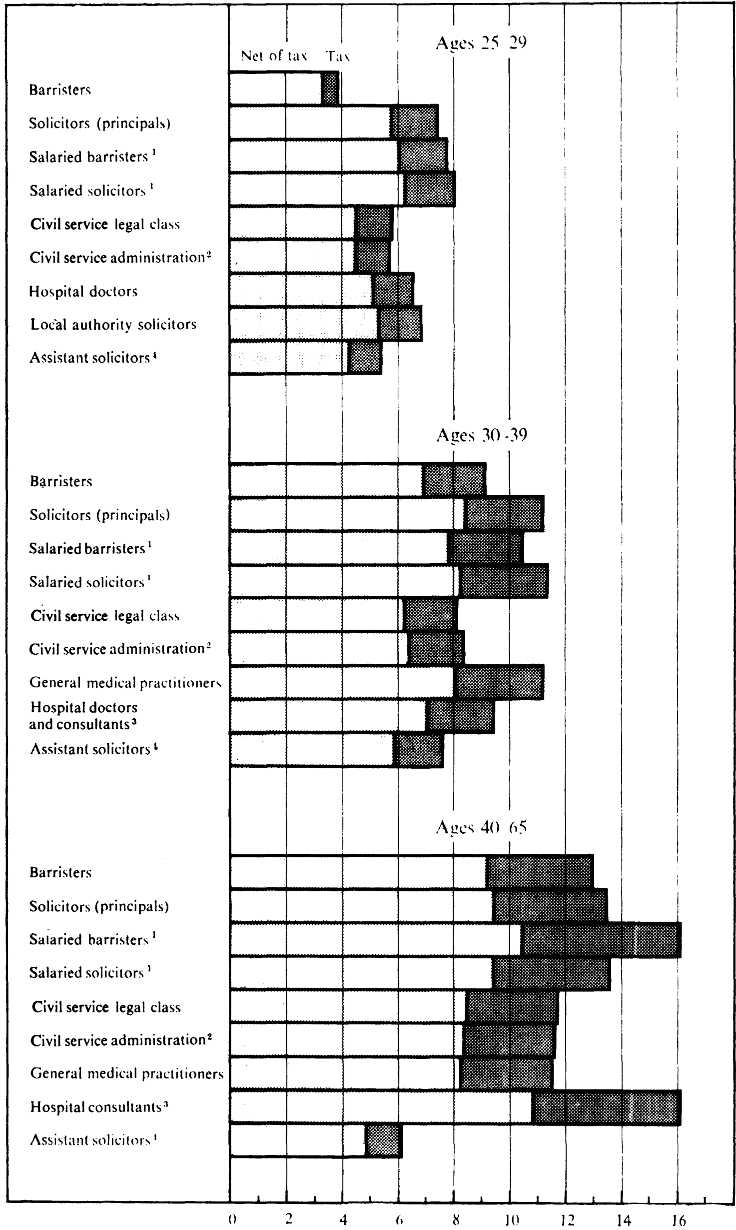
(c) adjusted earnings in the remaining years until retirement, corresponding in most instances to ages 40 to 65.

Details of the figures are shown in Tables 36.12-36.14 in annex 36.3.

36.24 Figure 36.2 shows that the level of solicitors' earnings in the early years of practice is favourable by comparison with the other occupations listed. In contrast, the earnings of barristers in the early years of practice are low. There may be many reasons including the three following: to set up in practice involves competing with many other beginners for clients with cases suitable for barristers with limited experience and there is at present a surplus of beginners seeking work; secondly, as we explain in paragraph 36.50, there is delay between doing work and receiving fees; and thirdly, the cases which young barristers commonly receive do not attract high fees.

36.25 In principle it may not be objectionable that following a vocation involves some initial sacrifice, nor is there at present any shortage of recruits for either branch of the profession. But in practice the position as regards the Bar is not satisfactory. Although an outstanding beginner is likely to receive sufficient support from scholarships and other sources to enable him to set up in practice, the Bar, like any other profession, is not composed only of people of the highest

FIGURE 36.2
Average adjusted earnings in 1976/77
By approximate age groups



[1] Commerce, finance and industry
[2] Assumed career pattern after entry as administration trainee
[3] Whole time, NHS
[4] Salaried partners and assistant solicitors in private practice

Source: Consultants report on comparisons of earnings, Volume II, section 20

ability. A valuable part is played by people of sound but not outstanding ability. Subject to the amount of work available at any given time, and the levels of fees obtaining, those in this category may not succeed in establishing themselves in practice unless they have private means or connections which enable them to survive the lean years.

36.26 The Senate recognises this problem, and the need to develop policies to meet it. In Chapter 39 we refer to various measures being taken to improve the position. We regard it as important to open the profession to all classes in society. Young barristers of promise should not be compelled to leave the Bar without a reasonable opportunity to set up in practice because of insuperable financial difficulties.

36.27 Even when a barrister has set up in practice, a supply of work cannot be assured. There are at present a large number of barristers of recent call because the size of the profession has almost doubled in the last ten years. As we say in Chapter 39, the remedy is not deliberately to restrict the number of those entering the profession, but to ensure that those who are considering entry have the best available information about their prospects.

36.28 We note from Figure 36.2 that the adjusted earnings of barristers, as we would expect, come more into line with those of other occupations from the age of 29 onwards. The figure also shows that the adjusted earnings of solicitors in the age group 30-39 compare favourably with those of other occupations, but fall more into line with those of other occupations after the age of 40.

36.29 In making comparisons it is important to bear in mind the disadvantages arising from the differences mentioned in paragraph 36.14 which cannot be quantified. Taken as a whole, there is nothing in the evidence before us to suggest that barristers or solicitors in private practice command a significantly higher return for their investment of training, professional skill and responsibility than others who provide services of a comparable character for which information on earnings is available.

High earnings

36.30 We have examined the earnings in the higher brackets and the results are shown in Figures 36.3 and 36.4 which show those in the upper quartile and the highest decile. Details of the figures are given in Tables 36.15-36.16 in annex 36.3.

36.31 As far as the upper quartile figures are concerned (Figure 36.3), the figures for barristers are noticeably lower than most of the other occupations shown, which is probably due in part to the fact that the Bar is a young profession. The upper quartile adjusted earnings of solicitors in private practice are higher than the figures for barristers, but below those for salaried barristers in commerce and industry, hospital consultants and middle management in industry.

FIGURE 36.3

Upper quartile adjusted earnings in 1976/77

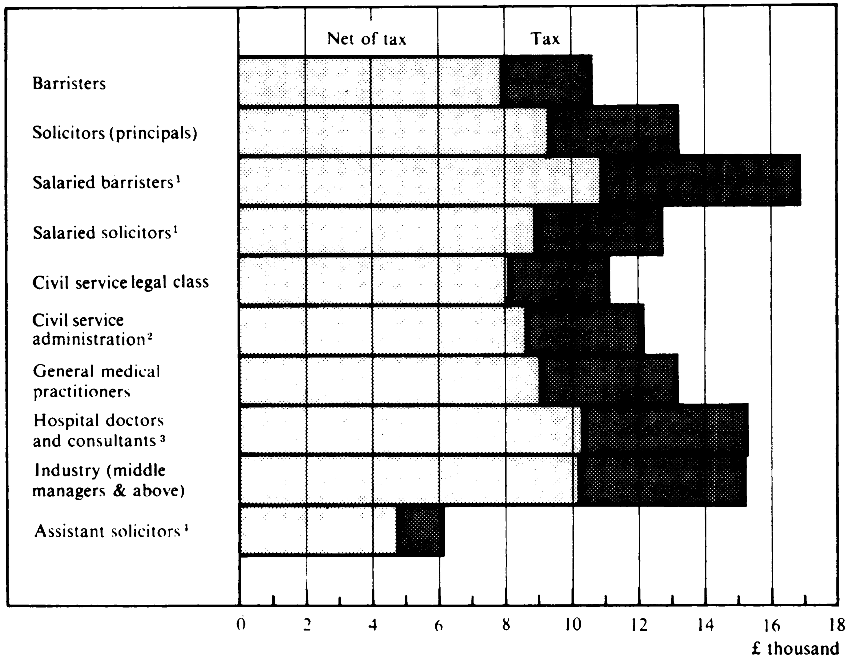
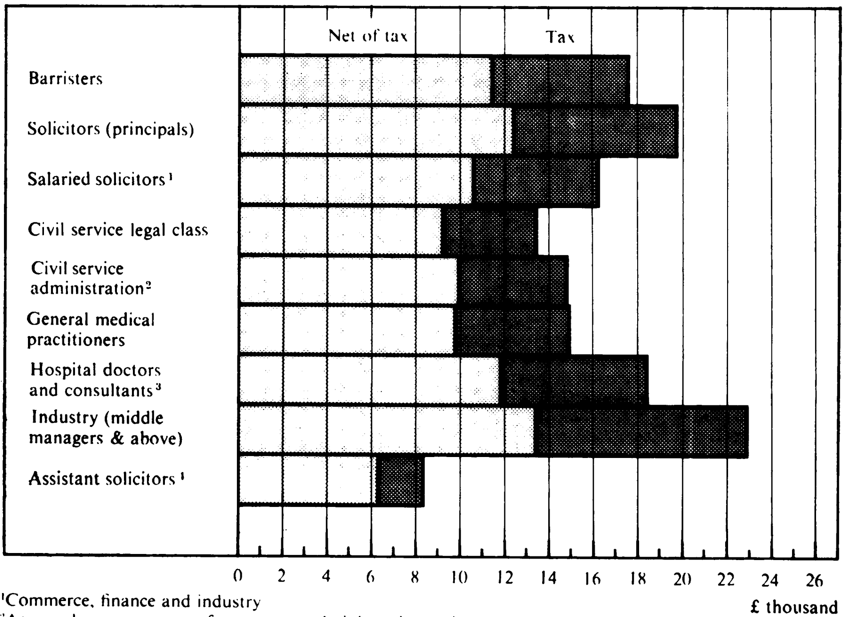


FIGURE 36.4

Highest decile adjusted earnings in 1976/77



[1]Commerce, finance and industry
[2]Assumed career pattern after entry as administration trainee
[3]Whole time, NHS
[4]Salaried partners and assistant solicitors in private practice
Source: Consultants report on comparisons of earnings, Volume II, section 20

36.32 Concerning the highest decile figures (Figure 36.4), there is even less information about the earnings in comparable occupations. The range of adjusted earnings shown is wider. The earnings of solicitors are above those in all other occupations for which information is available, except those of middle management in industry.

36.33 Figures 36.1-36.4 show that the range of earnings of lawyers is wide. Two factors are of particular importance here. The first is that because a high reputation attracts work, a lawyer who is known to possess outstanding skill in a certain class of work, particularly in the commercial sphere, will attract clients who require that type of service and are willing to pay for it.

36.34 Secondly, as a lawyer is paid on a case by case basis, if he works more quickly or for longer hours than others, he will earn more. Provided that the work is properly done, there is no objection to rewarding high output and special skill by high earnings. Poor work would soon damage a lawyer's reputation and consequently his earnings.

36.35 One witness criticised the fact that counsel who specialise in certain classes of work are able to command high fees. This criticism was made about Queen's Counsel who specialise in defamation, though there are barristers specialising in other fields of law, such as commercial, tax and planning matters, whose earnings are also high. Provided that no artificial restrictions are imposed on the right to offer specialist professional services, we see no objection in principle to allowing such services to command their market value.

TABLE 36.1
Average net profits of barristers and solicitors compared with retail prices and average earnings, 1973/74-1976/77
1974/75 = 100

	1973/74	1974/75	1975/76	1976/77
Barristers in private practice (average net profit)	92[1]	100	na[3]	115
Solicitors in private practice as principals (average net profit)	na[3]	100	111	126
Index of retail prices	85	100	125	144
Index of average weekly earnings[2]	88	100	127	151

[1]Estimated.
[2]Full-time earnings of all men aged 21 or over in Great Britain; Department of Employment New Earnings Survey.
[3]Not available.
Source: Consultants' report on comparisons of earnings, Volume II section 20.

Movement of earnings

36.36 In recent years prices and earnings have been subject to restraint. In Table 36.1 we set out the movement of net profits of barristers and solicitors in private practice, as compared with the retail price index and average male earnings as shown by the Department of Employment's earnings survey.

36.37 Within the limitations of figures relating to a short period, the table shows that the average net profits of lawyers in private practice in the period have moved upwards more slowly than either the retail price index or average male earnings. Lawyers are not the only occupational group of whom this is true. Available data suggest that members of other professions and occupations have been subject to a similarly restricted rate of increase.

Specific Points: Barristers

Introduction

36.38 In the following paragraphs we deal with certain specific points we observed in the surveys of remuneration of barristers and related evidence.

Overhead expenses

36.39 The survey results indicated that about one-third of a barrister's gross fees are applied in paying overhead expenses, although for the barristers in practice for three years or less the proportion is over 40 per cent as a result of their relatively lower fee income. The main components of the barrister's overhead expenses are the rent of chambers and clerks' fees.

36.40 Most barristers pay the same proportion of their income in rent, about 12 per cent. The higher earners therefore pay more in absolute terms than the lower and may be regarded as subsidising them. This results, in many cases, from the practice in most sets of chambers whereby a low rent is charged to barristers during the first three years of practice and, in other cases, from the arrangement, encountered by one of our members in the course of an informal visit to chambers, by which each member contributes rent in proportion to his fee income.

36.41 We dealt in Chapter 34 with the clerk's fee, which is the other main component of a barrister's overhead expenses. The clerk's fee is usually determined as a percentage of the barrister's gross fees. The percentage varies according to the arrangements made with the clerk. On average clerks' fees represented eight per cent of barristers' gross fees. Where the clerk's fee is based on a percentage of the barrister's fee income, the more junior and lower-earning barristers pay less than the senior barristers.

36.42 The impact of overhead expenses on the earnings of barristers as compared with solicitors is brought out clearly in Table 36.2.

TABLE 36.2
Average gross fees and overhead expenses, 1976/77

	Barristers		Solicitors in practice as principals	
	£	£	£	£
Gross fees		13,270		37,709
Overhead expenses:				
salaries	—		13,587	
clerk's fees	1,133		—	
rent and other expenses . .	3,422		10,496	
notional interest on principals' capital investment	—		1,771	
		4,555		25,854
Net profit before tax less interest on principals' capital investment		8,715		11,855

Sources: Consultants' report on the Law Society's remuneration survey, Volume II section 16.
Consultants' report on the survey of income at the Bar 1976/77, Volume II section 18.

36.43 Two points should be noted in connection with this table.

(a) We have shown separately the salaries paid by solicitors to their staff and the barristers' clerk's fee. The reason is that some of the salaries paid by solicitors will be to fee-earning staff who therefore contribute to the gross fees: the barrister, on the other hand, is the sole fee-earner.

(b) We have included an allowance for interest on solicitor principals' capital investment, which we consider should be brought into account for this purpose in considering overhead expenses.

36.44 This table shows that the overhead expenses (including in the case of solicitors notional interest on principals' capital investment) expressed as a percentage of gross fees, are as follows.

	Percentage of gross fees
Barristers	34.3%
Solicitors in practice as principals	68.6%

It will be seen that the proportion of a barrister's fees applied in paying overhead expenses is low by comparison with that of solicitors.

Pensions

36.45 The Bar survey showed that the provision barristers make for retirement is generally poor. Between one-third and half of the junior barristers with over

three years in practice made no provision for retirement. For the very junior, those with three years or less in practice, 85 per cent made no provision for retirement: this is perhaps not surprising, because the incomes of younger barristers are not large, the cost of providing for a premium is heavy and retirement appears a distant prospect. These considerations are not true of more senior barristers.

36.46 No doubt many barristers pin their hopes on being offered a judgeship or some other pensionable post at the peak of their careers. But the number of such offices is limited and, bearing in mind the present numbers at the Bar and the possibility of appointing solicitors to certain judicial posts, competition for them will in the future be more intense than in the recent past. No compulsion can be exercised to require a barrister to provide for a pension, but it is not in the interests of the public or the profession that barristers who have failed to make suitable provision, and have not been offered a judgeship or equivalent pensionable post, should be forced to remain in chambers past the time at which they should retire. We consider therefore that the Senate and heads of chambers should do all that is possible to encourage barristers to make provision for retirement and to ensure that their attention is drawn to suitable schemes of pension insurance and to the fact that, within certain limits, pension premiums are allowed as a charge against income for tax purposes.

Income from public funds

36.47 Barristers derive a large proportion of their income from public funds. The total gross fee income of barristers for the year 1976/77 is estimated to amount to £48 million of which some £23 million, or almost half, came from public funds. Legal aid (civil and criminal) accounted for about 65 per cent of fees from public funds and public prosecutions accounted for the remaining 35 per cent.

36.48 In general, the more senior a barrister, the less his income is drawn from public funds; and the proportions vary widely between different types of practice, as is shown in Table 36.3.

TABLE 36.3
Percentage of barristers' gross fees derived from public funds, 1976/77

Type of practice	QCs	Juniors
	%	%
London Chancery and specialist	1·5	2·8
London family and common law	23·5	40·6
London criminal	77·2	91·7
Circuit	62·8	69·4
All categories of practice	26·0	52·4

Source: Consultants' report on the survey of income at the Bar 1976/77, Volume II section 18.

36.49 Table 36.3 shows that the Chancery and specialist bars in London draw little income from public sources. Junior barristers at the criminal bar in London are almost wholly dependent on public funds. On the circuits, earnings from public funds account for some two-thirds of barristers' incomes.

Delay and capital investment

36.50 Any independent professional practice requires capital. Barristers need capital for furniture and books; but the main item requiring finance is work in progress and debtors, that is, the cost of the delay between doing work and being paid. The profession was unable to provide us with a reliable measure of this delay, but the Senate considers it to be on average about one year for the more senior barristers and somewhat less for the others.

36.51 For a barrister in an established position this may not be a serious matter; but it can add greatly to the problems of young barristers, who may be forced to live on private means or to negotiate loans or overdrafts to finance their practices. This observation reinforces our recommendations in Chapter 37 concerning the prompt payment of fees and arrangements for interim payments on account of work done.

The evidence of the Senate

36.52 In its evidence on remuneration (submission No. 13 section XVII), the Senate dealt with the problems faced by barristers and indicated a number of changes which it thought necessary. These included the following:–

(a) increased support during pupillage;

(b) increased support during early years of practice;

(c) more rapid payment of fees;

(d) revision of legal aid fees in the light of increases in the cost of living and of costs generally;

(e) tax relief for the cost of insurance against ill-health;

(f) greater tax relief for the cost (both compulsory and voluntary) of provision for retirement;

(g) tax relief for women barristers with young children.

36.53 Points (a) and (b) are taken up in Chapter 39. As to point (c), we agree that there is a case for more rapid payment of fees, and we make appropriate recommendations in Chapter 37. We agree also with point (d) and consider it essential that legal aid fees should be regularly revised. We made recommendations for this purpose in Chapter 13.

36.54 The matter of tax relief referred to in items (e) and (f) is one which affects all self-employed people and, if changes are to be made, they should be as part of a general revision of fiscal policy. We feel that, although a case can be made out for an increase in the retirement annuity premium relief, the Senate would have a stronger case if more barristers made full use of the existing relief.

36.55 The request for tax relief for women barristers with young children in item (g) is, like that of other forms of tax relief, a matter to be settled in the context of national policy. We do not believe the problems of women barristers to be such that an arrangement of this type should be made for their benefit alone. We consider therefore that this proposal merits further study by the Equal Opportunities Commission in connection with all women in employment who have young children.

Specific Points: Solicitors

Introduction

36.56 In the following paragraphs we deal with certain specific points we observed in the survey of remuneration of solicitors.

Earnings of staff

36.57 We have already dealt in general terms with earnings of solicitors and it is necessary to draw attention also to the remuneration of their fee-earning staff. This category includes consultants, salaried partners, assistant solicitors and legal executives (so described whether or not fellows of the Institute of Legal Executives). The only other category of fee-earning staff is articled clerks which, as noted earlier, we cover in Chapter 39.

36.58 Table 36.4 sets out a summary of the earnings of solicitors' staff.

TABLE 36.4
Earnings of legal staff employed by solicitors, 1976

Status of staff	Number in survey	November 1976 salaries		
		7th decile	median	3rd decile
		£	£	£
Consultants . .	945	1,208	2,020	3,458
Salaried partners and assistant solicitors	5,439	3,815	4,346	5,061
Legal executives . .	8,129	3,003	3,692	4,402

Source: Consultants' report on the Law Society's remuneration survey, Volume II section 16.

Consultants

36.59 A consultant is usually a solicitor who has retired from practice as a partner but is retained by his former firm to continue working for it on a part-time basis. There are advantages for both. For the consultant, it is possible to maintain some earned income to supplement a pension. The firm has the benefit of the consultant's knowledge and experience and of the connection and reputation he has with clients of long standing.

36.60 The figures given show that the earnings of consultants are low, but this is accounted for in part by the fact that most of them work part-time. In general, the salary paid to a consultant will reflect his personal position and is a matter to be settled between him and his firm; we do not consider that any recommendation or comment is called for in this respect.

Salaried partners and assistant solicitors

36.61 Tables 36.5 and 36.6 show the median salaries in November 1976, including bonuses, of salaried partners and assistant solicitors according to the size of the firm, and according to length of service in the profession.

TABLE 36.5
Median salaries of salaried partners and assistant solicitors by size of firm, 1976

Size of firm	Number in response	Median salary November 1976
		£
All firms	5,439	4,346
Sole practitioners	437	4,200
2 partners	614	3,990
3-4 partners	1,191	4,028
5-9 partners	1,585	4,166
10 or more partners	1,612	5,262

Source: Consultants' report on the Law Society's remuneration survey, Volume II section 16.

TABLE 36.6
Median salaries of salaried partners and assistant solicitors by seniority, 1976

Number admitted	Number in response	Median salary November 1976
		£
All	5,321	4,346
Year of admission:		
1974-76	2,997	3,980
1971-73	1,211	5,108
before 1971	1,113	5,390[1]

[1]Estimated.

Source: Consultants' report on the Law Society's remuneration survey, Volume II section 16.

36.62 Table 36.5 shows that the firms with ten or more partners which, although few in number, employ almost one-third of the total number of salaried partners and assistant solicitors, paid the highest salaries. In other cases there was no appreciable variation in the median.

36.63 The impression given by the levels of salary shown in Figures 36.1 and 36.2 is that some assistant solicitors are relatively low-paid. In our view, it would be contrary to the public interest if the pay offered by solicitors fell below the point at which competent people were willing to accept employment in the profession. A poor quality of staff leads to delays and inefficiency in all classes of work.

Legal executives

36.64 Tables 36.7 and 36.8 show the median salaries of legal executives according to the size of firm and according to age.

TABLE 36.7
Median salaries of legal executives by size of firm, 1976

Size of firm	Number in response	Median salary November 1976
		£
All firms	8,129	3,692
Sole practitioners	685	3,482
2 partners	1,039	3,481
3-4 partners	2,179	3,542
5-9 partners	2,837	3,738
10 or more partners	1,389	4,238

Source: Consultants' report on the Law Society's remuneration survey, Volume II section 16.

TABLE 36.8
Median salaries of legal executives by age, 1976

Age group	Number in response	Median salary November 1976
		£
All	8,129	3,692
Under 26	1,141	2,316
26-30	1,089	3,422
31-35	833	3,968
36-45	1,258	4,062
46-55	1,631	4,103
56-65	1,793	3,999
Over 65	384	3,141

Source: Consultants' report on the Law Society's remuneration survey, Volume II section 16.

36.65 There is a wide spread in the ages of legal executives employed by solicitors. Just under half are over 45 years of age. The Institute of Legal Executives (ILEX) itself conducted a survey in July 1976, the results of which were made available to us. It gave a median figure for earnings of Institute members of all classes in private practice slightly lower than that ascertained in the Law Society's survey for legal executives. Because the response rate of the ILEX survey was relatively low (20 per cent), and took no account of bonus payments (which were made to over 30 per cent of those in the ILEX survey), we think it likely that the Law Society survey provides a more reliable indication of legal executives' earnings in solicitors' firms. The Institute's survey in addition covered all other kinds of employment, including local and public authorities. Its figures for these kinds of employment indicated ranges of salaries about £1,000 *per annum* more than were being received in private practice employment.

Pensions for staff

36.66 Table 36.9 shows the number of firms according to their size which have made pension arrangements for any of their staff.

TABLE 36.9
Solicitors' firms not making pension arrangements for any staff, 1976

Size of firm	Total reply	Not arranged	
	No.	No.	%
Sole practitioner	1,149	908	79
2 partners	1,026	639	62
3-4 partners	1,149	460	40
5-9 partners	691	101	15
10 or more partners	149	7	5
All responding	4,164	2,115	51

Source: Consultants' report on the Law Society's remuneration survey, Volume II section 16.

36.67 Table 36.9 indicates that, the larger the firm, the more likely it is that pension arrangements for staff will be made. Whereas almost four-fifths of sole practitioners had arranged no staff pensions, nearly all firms of ten or more partners had made provision. Between these extremes there was a fairly steady increase in the proportion of firms making pension arrangements for staff.

36.68 Our consultants deal in some detail with the effect of the Social Security Pensions Act 1975 in their report on the Law Society's remuneration survey Volume II section 16, to which readers wishing to study the subject in more depth are referred. We draw attention to the point that the new state scheme does not

relate to past service, and therefore legal executives retiring in the next ten years will get little benefit from it. Moreover, the final earnings of a legal executive, according to the data from the Law Society survey, were, typically, about £4,000 in November 1976. After 20 years or more service a state scheme pension of about 40 per cent of that figure would be provided. It is regarded today as good practice for pensions to represent 50 per cent of final earnings as a minimum, and two-thirds is considered desirable, for forty years' service. An employer who contracts into the state scheme and who wishes to make provision for his staff to the level that is now generally considered appropriate must therefore top up the state scheme with supplementary arrangements.

36.69 We appreciate the difficulty created for firms, in particular smaller ones, by mounting overheads; but failure to make provision for pensions leads to difficulties for employers in obtaining competent staff and to potential hardship for those employed. We accept that provision for pensions over and above that required by the state scheme cannot be made compulsory, but we consider that the Law Society should do everything possible to persuade members of the profession to make appropriate arrangements. Moreover, when the earnings of lawyers are under consideration, the need to make this provision should always be taken into account as a necessary item of overhead expense.

Provision by principals for their own retirement

36.70 We drew attention in paragraph 36.45 to the fact that many barristers make no provision for pensions under the arrangements available for self-employed persons. We suspect that many principals in solicitors' firms are not making adequate, or indeed any, provision for pensions for themselves, but the position is uncertain, as is explained in the following extract from the report of our consultants on the Law Society's remuneration survey.

> The survey did not ask firms what actual provision was made for pensions by principals, because the Law Society did not consider that this could reasonably be included in the questionnaire. In making comparisons with other occupations it is necessary to adjust for pensions, among other matters, and we do this in the separate report on comparisons of earnings.
>
> There are, however, two points of interest from the survey regarding retirement:–
>
> (a) The 1975 results (the year for which the greatest number of replies was received) showed that there were over 700 principals in practice over the age of 65 and almost 1,000 aged 61-65, together comprising about 16 per cent of the total number of principals.
>
> (b) In the 4,230 firms which replied to the questionnaire there were employed 1,225 consultants, 368 full-time and 857 part-time. Over half the consultants in the survey were earning less than £2,000 per annum. It is possible that firms will employ retired partners as consultants and may be influenced to do so where the retired partner does not have an adequate pension. Over 80 per cent of the consultants in the survey were admitted as solicitors before 1946.

36.71 We regard it as shortsighted not to take advantage of the arrangements which allow retirement annuity premiums paid by self-employed persons (subject

to certain limits) as a charge against income for tax purposes. We consider that the Law Society should encourage all solicitors in practice as self-employed principals to do so. It is good practice to provide in the partnership deed that all partners should pay the maximum amount of premiums permitted under Inland Revenue rules.

Goodwill

36.72 In this connection it is appropriate to mention payments for goodwill. The practice of seeking payments for goodwill on admitting a partner to a solicitors' firm is declining, but still exists in a few cases. It is the means by which a sole practitioner or partner in a small firm may secure a capital sum to invest for retirement.

36.73 It has two main disadvantages.

(a) It imposes a serious financial burden on a young solicitor attempting to set up in practice. After paying tax, it is not easy to find the money for this purpose and to borrow it creates a financial burden on the young solicitor at a time when expenses of setting up a home and providing for a growing family are at their heaviest. The Law Society survey shows that an increasing number of young solicitors are starting their careers on a salaried basis. It is likely that many in such a position will, if required to pay for goodwill, be unable to afford to become partners.

(b) The sale of goodwill is an unsatisfactory method of providing for retirement. In the case of a small firm (and in particular of a sole practitioner), the amount received is unlikely to provide an adequate sum to live on during retirement for more than a short period. It is a poor alternative to pension arrangements based on premiums paid during a solicitor's working life.

36.74 For the above reasons, we recommend that the practice of buying and selling goodwill as between incoming and outgoing partners should cease.

Overhead expenses

36.75 Table 36.17 in annex 36.3 shows the average income, expenses and net profit per firm from 1974 to 1976. Total expenses excluding interest on capital rose from 61.4 per cent of total income in 1974 to 63.9 per cent in 1976. It has been suggested to us that this increase has continued and that overhead expenses are now between 65 per cent and 70 per cent of total income.

36.76 Table 36.10 shows, for 1975, overhead expenses and net profit as a percentage of gross income by size of firm. Expenses here include all professional expenses charged in the accounts of firms but exclude any charge for interest on partners' capital; if a charge for interest were included, the percentage shown for overhead expenses would be higher; this point has been explained in paragraph 36.43 (b).

TABLE 36.10
Solicitors' firms: expenses and net profit as percentages of gross income, 1975

Size of firm	Overhead expenses	Net profit
	%	%
Sole practitioners	67·0	33·0
2 partners	60·3	39·7
3-4 partners	60·9	39·1
5-9 partners	61·1	38·9
10 or more partners	64·6	35·4
All firms	62·3	37·7

Source: Consultants' report on the Law Society's remuneration survey, Volume II section 16.

36.77 Table 36.10 shows that sole practitioners have the highest overhead expenses as a proportion of income and the lowest profit margin; the next highest overhead expenses are those of the largest firms with ten or more partners; and the proportion of overhead expenses for firms between two and nine partners are approximately the same. The higher overhead expenses of sole practitioners and of the largest firms appear to arise mainly from accommodation costs.

36.78 Reductions in overhead expenses are difficult to make. Improvements in the machinery of the courts and simplification of legal procedures might lead to a reduction. Regular increases in pay, the need in future to pay improved salaries to articled clerks, the cost of implementing our recommendations in relation to staff pensions, and the provision of adequate accommodation and modern office equipment will increase them. So long as solicitors' work retains its present character, their charges will have to be at a level which enables them to meet any net increase in the burden of overheads whilst enabling their earnings to match those in comparable occupations.

Capital requirements

36.79 The capital required to maintain a solicitor's practice is dealt with in our consultants' report on the Law Society's remuneration survey. Excluding the small amount financed by long-term loans from outside the firm, the average capital investment required amounted in 1976 to over £38,000 per firm and to £12,660 per principal. A large part of a firm's investment is required to cover the cost of financing debtors and work in progress. If an allowance is made for the fact that some firms do not record work in progress in their accounts the total investment is shown to be higher: approximately £55,000 per firm and £18,000 per principal.

36.80 The capital to finance his practice must be found by the solicitor from his after-tax earnings, from private means or by borrowing. If the money is raised by borrowing, repayments will have to be met from after-tax earnings. The need to

find working capital cannot be avoided and is one of the burdens which must be faced by self-employed solicitors in private practice. The burden is particularly heavy on the young solicitor and creates the same problems as those referred to in paragraph 36.73(a) above concerning the purchase of goodwill. The recommendations which we make in Chapter 37 concerning payments on account should be of some assistance in reducing the investment required.

Earnings from legal aid

36.81 The income received by the solicitors' branch of the profession from legal aid is relatively small. As shown below, it amounts to about six per cent of gross fees. The figures we have are approximate only, but the general picture is clear. In about two-thirds of all firms, legal aid accounts for less than ten per cent of gross fees. In about one-fifth of firms it provides between a tenth and a fifth of gross fee income. Only four per cent of firms received more than 40 per cent of their gross fees from legal aid. Unlike the Bar, solicitors rely for the greater part of their income on non-contentious work. Of their total gross fees for 1975/76, estimated to be £633 million, £492 million was derived from non-contentious work and £141 million from contentious work. In the same period, payments to solicitors from the legal aid fund, net of VAT, amounted to £39 million: this represented 28 per cent of the contentious fees of £141 million but only just over six per cent of the total gross fees of £633 million.

Conclusions and Recommendations

			Paragraphs
Principles	R36.1	Remuneration of lawyers should be sufficient to provide a fair and reasonable reward for all classes of legal work, to attract recruits of the right calibre and to prevent loss of able iractitioners.	36.2
Comparisons	R36.2	The earnings of young barristers are low. With this exception, the earnings of self-employed barristers and solicitors in private practice are not out of line with those in comparable occupations for which information is available.	36.24 and 36.29
Beginners at the Bar	R36.3	Financial support for beginners at the Bar should be such as to enable persons of suitable ability from all classes of society to set up in practice.	36.25-36.26

			Paragraphs
Pensions	R36.4	Provision for adequate pensions by barristers and solicitors in practice, though it cannot be made compulsory, should be encouraged by every means; provisions to this effect should be included in the partnership deeds of solicitors' firms.	36.46 and 36.71
Payment of fees	R36.5	The prompt payment of fees is necessary to avoid imposing hardship on young barristers.	36.51
Solicitors	R36.6	By comparison with earnings in other forms of salaried employment, those of salaried solicitors in private practice appear low.	36.63
	R36.7	The Law Society should do everything possible to persuade members of the profession to make adequate provision for staff pensions.	36.69
	R36.8	Incoming and outgoing partners should no longer engage in the purchase and sale of goodwill.	36.74
	R36.9	Any net increase in the burden of overheads must be reflected in solicitors' charges.	36.78

ANNEX 36.1
An Extract from the Report of the Royal Commission's Consultants on Comparisons of Earnings

(Volume II section 20)

Distinguishing between the self-employed and employees for the purpose of the assessment of earnings

(paragraph 36.12)

Quantifiable differences	*Self-employed*	*Employed*
1. Pensions	As arranged by each individual; retirement annuities can be purchased out of net profits for which tax relief can be obtained—subject to certain limits. Self-employed persons are entitled to the present flat-rate old age pension.	Usually provided for by employer with or without contribution by employee; full tax relief is usually available for both contributions. From April 1978 employees will, unless adequately covered by their employers' scheme, participate in the new state scheme. This will provide an earnings related pension, subject to upper and lower earnings limits, in addition to the flat-rate old age pension.
2. Taxation	The self-employed will be assessed on their net profits. Tax is usually payable half-yearly on profits arising in an earlier period.	Most employees will be taxed on their income as it arises under the PAYE system.
3. Goodwill	A solicitor may start in practice by making a payment for goodwill and may receive something on ceasing to practise; however, the Law Society Survey shows that goodwill payments are now rarely made.	
4. Capital investment	Virtually all self-employed people will have to invest cash before commencing their business or professional practice, and will have to continue to invest further capital as a	There are little or no capital requirements for most employees.

	Self-employed	*Employee*
	result of inflation and business expansion. It may be possible to borrow some part of the capital. Although it should usually be possible to withdraw or realise capital after retirement, the original cash amount will by then have been reduced in value by the effect of inflation.	
5. Fringe benefits	In principle the net profits of the self-employed person will be his "total remuneration package". In practice some elements of his expenses may provide direct or indirect benefits, such as the cost of a car, depending on the nature of the occupation.	Various benefits-in-kind may be provided to an employee in addition to his salary; in recent years they have formed an increasingly important part of the "total remuneration package". Examples of the type of benefits often provided include: — a car — subsidised canteen or lunches — assistance with house purchase or loans for other purposes, at a reduced rate of interest — medical insurance — life insurance — subsidised housing — share option or purchase schemes.

Differences which cannot be quantified in money terms

6. Security of employment	The self-employed person has no security of tenure. The professional earnings of a self-employed barrister or solicitor will depend on the work he does and the fee received for that work; a solicitor in partnership may in practice be able to rely on the work of his partners, but no doubt only for a short period.	Some security of tenure will be given to all employees, either by statute or under the terms of his employment. The degree of security will vary. Some employees will have contracts of employment providing employment for a fixed term with notice periods which will give rise to compensation in the event of termination before expiry of the contract.

	Self-employed	*Employed*
7. Risk	Apart from the other matters in this list, the self-employed person is putting at risk the capital directly invested in his business and his personal assets.	The salaried employee usually has no direct capital investment.
8. Redundancy	Should his business fail, the self-employed person will himself bear the loss.	If his employer's business should fail an employee will normally be entitled to payment of outstanding earnings, as a preferential creditor, to redundancy payment and, if unemployed, he will be entitled to unemployment benfit.
9. Illness or incapacity	The self-employed person may, by paying a premium, be able to insure against sickness, but the cover available for a reasonable cost is likely to be limited and will not be deductible for tax. Any prolonged absence from his practice will do permanent damage to his future earnings.	An employee may be granted paid sickness leave by his employer and can otherwise obtain earnings-related state sickness benefit.
10. Responsibility for claims and damages	A practising professional adviser will be personally liable, usually without limit, for loss or damage attributed to his advice or actions. (Barristers may not be liable in a number of circumstances.) Insurance against such claims may be taken out, within limits, but a professional man cannot insure against damage to his professional reputation. As an example, recently there have been many cases of published criticism of professional people arising from Department of Trade enquiries.	An employee's career prospects may be damaged by claims on his employer attributed to the fault of the employee.

		Self-employed	*Employee*
11.	Professional disciplines and sanctions	All professional people, whether employed or self-employed will be subject to professional disciplines and sanctions, although they are probably directed more towards the person in professional practice.	
12.	Holidays and leave Hours and intensity of work	The surveys give information of earnings in each year, but information is not given of holidays taken or hours of work in the year. A person in practice on his own account will no doubt take holidays at times convenient to his practice, and will cease to earn fees in that period.	A salaried employee will be given stated annual holidays and terms of leave; most occupations provide for holidays with pay.
13.	Control over earnings	A practice may be subject to controls over fees, for example through the operation of government price controls or, particularly, for some legal services, because scales are set down for the payment of various classes of work. Beyond this a person may have freedom to set his fees, but subject to market pressures and to competition with others.	An employee may be subject to pay restraint from time to time in accordance with government policy. Within these limits his salary will be negotiated with his employer.
14.	Maintenance of office and obligations to staff	A practice will require an office and staff. As an employer the professional practitioner assumes personal responsibility for obligations to his staff, for which he will have to provide, particularly for pensions but also for other statutory obligations. Their extent will depend on the size of the practice, i.e. the number of staff employed.	An employee has no such obligations.

ANNEX 36.2
Adjustments made in the Comparisons
(paragraph 36.13)

Reference is made in the following annexes to "adjusted earnings". The adjustments are those made by our consultants to take account of the quantifiable differences described in paragraphs 1-5 of annex 36.1. The nature of the adjustments is as follows:–

Pensions: The salaries of employees have been increased by estimates of the superannuation payments made by the employers. These estimates were calculated by the Government Actuary's Department.

National insurance contributions: An addition has been made to the salaries of employees for national insurance contributions paid by the employer.

Fringe benefits: An addition has been made to the sàlaries of employees in commerce and industry to allow for fringe benefits.

Capital investment: A deduction has been made from the profits of solicitors to account for interest on their capital investment.

Tax: The assumptions for the calculation of tax are given in detail at annex 20.5 to the consultants' report on comparisons of earnings (Volume II section 29). The tax represents the actual tax which would have been payable on the respective earnings by a married man with no children. It has been assumed that self-employed persons obtained relief for the maximum retirement annuity premium allowable for tax.

ANNEX 36.3

TABLE 36.11

Adjusted earnings in 1976/77—median adjusted earnings (paragraph 36.20)

	Salary or net profit[1]	*Less* Interest on capital employed	*Add* Superannuation and national insurance paid by employer	*Add* Broad estimate of value of fringe benefits	Adjusted earnings	*Less* Tax	Adjusted net of tax earnings
	£	£	£	£	£	£	£
Barristers	6,643	—	—	—	6,643	(1,425)	5,218
Solicitors: principals	11,686	(1,519)	—	—	10,167	(2,524)	7,643
Salaried barristers in commerce, finance and industry	9,750	—	1,578	975	12,303	(3,549)	8,754
Salaried solicitors in commerce, finance and industry	8,063	—	1,400	806	10,269	(2,639)	7,630
Civil service legal class	8,750	—	2,073	—	10,823	(2,919)	7,904
Civil service administration[2]	7,763	—	1,946	—	9,709	(2,431)	7,278
General medical practitioners	9,740	—[3]	1,552	—	11,292	(3,214)	8,078
Hospital doctors and consultants—whole time NHS	10,689	—	2,222	—	12,911	(3,728)	9,183
Industry: middle management and above	8,000	—	1,432	800	10,232	(2,608)	7,624
Assistant solicitors[4]	4,346	—	902	—	5,248	(1,065)	4,183

[1]Net profits are before providing for pensions and interest on principals' capital. All the figures in this column are before tax.
[2]Assumed career pattern after entry as an administration trainee.
[3]In its Eighth Report (Cmnd. 7176) the Review Body on Doctors' and Dentists' Remuneration said about interest on doctors' capital investment: 'the amount of capital outstanding, and hence the interest on capital invested, cannot be established. From the information that is available on capital allowances for equipment, we would not expect the amount to be significant'.
[4]Includes salaried partners.
Source: Consultants' report on comparisons of earnings, Volume II section 20.

TABLE 36.12
Adjusted earnings in 1976/77—averages for ages 25 to 29 approximately (paragraph 36.23)

	Salary or net profit[1]	*Less* Interest on capital employed	*Add* Superannuation and national insurance paid by employer	*Add* Broad estimate of value of fringe benefits	Adjusted earnings	*Less* Tax	Adjusted net of tax earnings
	£	£	£	£	£	£	£
Barristers	3,970	—	—	—	3,970	(653)	3,317
Solicitors: principals	8,592	(1,117)	—	—	7,475	(1,666)	5,809
Salaried barristers in commerce, finance and industry	6,089	—	1,147	609	7,845	(1,752)	6,093
Salaried solicitors in commerce, finance and industry	6,264	—	1,184	625	8,074	(1,822)	6,252
Civil service legal class	4,582	—	1,260	—	5,842	(1,200)	4,642
Civil service administration[2]	4,517	—	1,276	—	5,793	(1,177)	4,616
Hospital doctors	5,482	—	1,119	—	6,601	(1,453)	5,148
Local authority solicitors	5,606	—	1,231	—	6,837	(1,465)	5,372
Assistant solicitors[3]	4,500	—	934	—	5,434	(1,117)	4,317

[1]Net profits are before providing for pensions and interest on principals' capital. All the figures in this column are before tax.
[2]Assumed career pattern after entry as an administration trainee.
[3]Includes salaried partners.
Source: Consultants' report on comparisons of earnings, Volume II section 20.

TABLE 36.13
Adjusted earnings in 1976/77—averages for ages 30 to 39 approximately (paragraph 36.23)

	Salary or net profit[1]	*Less* Interest on capital employed	*Add* Superannuation and national insurance paid by employer	*Add* Broad estimate of value of fringe benefits	Adjusted earnings	*Less* Tax	Adjusted net of tax earnings
	£	£	£	£	£	£	£
Barristers	9,043	—	—	—	9,043	(2,133)	6,910
Solicitors: principals	12,973	(1,685)	—	—	11,278	(2,955)	8,323
Salaried barristers in commerce, finance and industry	8,303	—	1,408	830	10,541	(2,759)	7,782
Salaried solicitors in commerce, finance and industry	8,957	—	1,507	986	11,360	(3,104)	8,256
Civil service legal class	6,502	—	1,651	—	8,153	(1,878)	6,275
Civil service administration[2]	6,639	—	1,727	—	8,366	(1,932)	6,434
General medical practitioners	9,658	—[3]	1,543	—	11,201	(3,171)	8,030
Hospital doctors (consultants from age 37) whole time NHS	7,881	—	1,527	—	9,408	(2,357)	7,051
Assistant solicitors[4]	6,397	—	1,200	—	7,597	(1,747)	5,850

[1]Net profits are before providing for pensions and interest on principals' capital. All the figures in this column are before tax.
[2]Assumed career pattern after entry as an administration trainee.
[3]In its Eighth Report (Cmnd. 7176) the Review Body on Doctors' and Dentists' Remuneration said about interest on doctors' capital investment: 'the amount of capital outstanding, and hence the interest on capital invested, cannot be established. From the information that is available on capital allowances for equipment, we would not expect the amount to be significant'.
[4]Includes salaried partners.
Source: Consultants' report on comparisons of earnings, Volume II section 20.

TABLE 36.14
Adjusted earnings in 1976/77—averages for ages 40 to 65 approximately (paragraph 36.23)

	Salary or net profit[1]	*Less* Interest on capital employed	*Add* Superannuation and national insurance paid by employer	*Add* Broad estimate of value of fringe benefits	Adjusted earnings	*Less* Tax	Adjusted net of tax earnings
	£	£	£	£	£	£	£
Barristers	13,024	—	—	—	13,024	(3,728)	9,296
Solicitors: principals	15,545	(2,021)	—	—	13,524	(3,964)	9,560
Salaried barristers in commerce, finance and industry	12,856	—	1,943	1,286	16,085	(5,501)	10,584
Salaried solicitors in commerce, finance and industry	10,838	—	1,733	1,084	13,655	(4,202)	9,453
Civil service legal class	9,539	—	2,221	—	11,760	(3,346)	8,414
Civil service administration[2]	9,369	—	2,259	—	11,628	(3,254)	8,374
General medical practitioners	10,034	—[3]	1,586	—	11,620	(3,366)	8,254
Hospital consultants—whole time NHS	13,486	—	2,691	—	16,177	(5,385)	10,792
Assistant solicitors[4]	5,052	—	1,038	—	6,090	(1,300)	4,790

[1]Net profits are before providing for pensions and interest on principals' capital. All the figures in this column are before tax.

[2]Assumed career pattern after entry as an administration trainee.

[3]In its Eighth Report (Cmnd. 7176) the Review Body on Doctors' and Dentists' Remuneration said about interest on doctors' capital investment: 'the amount of capital outstanding, and hence the interest on capital invested, cannot be established. From the information that is available on capital allowances for equipment, we would not expect the amount to be significant'.

[4]Includes salaried partners.

Source: Consultants' report on comparisons of earnings, Volume II section 20.

TABLE 36.15
Adjusted earnings in 1976/77—upper quartile (paragraph 36.30)

	Salary or net profit[1]	*Less* Interest on capital employed	*Add* Superannuation and national insurance paid by employer	*Add* Broad estimate of value of fringe benefits	Adjusted earnings	*Less* Tax	Adjusted net of tax earnings
	£	£	£	£	£	£	£
Barristers	10,694	—	—	—	10,694	(2,726)	7,968
Solicitors: principals[2]	15,224	(1,979)	—	—	13,245	(3,832)	9,413
Salaried barristers in commerce, finance and industry	13,545	—	2,023	1,354	16,922	(5,972)	10,950
Salaried solicitors in commerce, finance and industry	10,089	—	1,643	1,008	12,740	(3,752)	8,988
Civil service legal class	9,033	—	2,126	—	11,159	(3,072)	8,087
Civil service administration[3]	9,800	—	2,343	—	12,143	(3,491)	8,652
General medical practitioners	11,399	—[4]	1,743	—	13,142	(4,128)	9,014
Hospital doctors and consultants —whole time NHS	12,714	—	2,562	—	15,276	(4,913)	10,363
Industry: middle management and above	12,101	—	1,945	1,210	15,256	(5,010)	10,246
Assistant solicitors[2] [5]	5,061	—	1,039	—	6,100	(1,303)	4,797

[1]Net profits are before providing for pensions and interest on principals' capital. All the figures in this column are before tax.

[2]Third decile figures.

[3]Assumed career pattern after entry as an administration trainee.

[4]In its Eighth Report (Cmnd. 7176) the Review Body on Doctors' and Dentists' Remuneration said about interest on doctors' capital investment: 'the amount of capital outstanding, and hence the interest on capital invested, cannot be established. From the information that is avilable on capital allowances for equipment, we would not expect the amount to be significant'.

[5]Includes salaried partners.

Source: Consultants' report on comparisons of earnings, Volume II section 20.

TABLE 36.16
Adjusted earnings in 1976/77—highest decile (paragraph 36.30)

	Salary or net profit[1]	*Less* Interest on capital employed	*Add* Superannuation and national insurance paid by employer	*Add* Broad estimate of value of fringe benefits	Adjusted earnings	*Less* Tax	Adjusted net of tax earnings
	£	£	£	£	£	£	£
Barristers	17,514	—	—	—	17,514	(6,071)	11,443
Solicitors: principals	22,701	(2,951)	—	—	19,750	(7,333)	12,417
Salaried solicitors in commerce, finance and industry	12,919	—	1,982	1,292	16,193	(5,542)	10,651
Civil service legal class	11,000	—	2,494	—	13,494	(4,200)	9,294
Civil service administration[2]	12,000	—	2,772	—	14,772	(4,828)	9,944
General medical practitioners	12,992	—[3]	1,926	—	14,918	(5,082)	9,836
Hospital doctors and consultants —whole time NHS	15,450	—	3,020	—	18,470	(6,657)	11,813
Industry: middle management and above	18,403	—	2,732	1,840	22,975	(9,489)	13,486
Assistant solicitors[4]	7,136	—	1,288	—	8,424	(2,037)	6,387

[1]Net profits are before providing for pensions and interest on principals' capital. All the figures in this column are before tax.
[2]Assumed career pattern after entry as an administration trainee.
[3]In its Eighth Report (Cmnd. 7176) the Review Body on Doctors' and Dentists' Remuneration said about interest on doctors' capital investment: 'the amount of capital outstanding, and hence the interest on capital invested, cannot be established. From the information that is available on capital allowances for equipment, we would not expect the amount to be significant'.
[4]Includes salaried partners.
Source: Consultants' report on comparisons of earnings, Volume II section 20.

TABLE 36.17
Average income, costs and profits per firm of solicitors, 1974 to 1976 shown by the Law Society remuneration survey (paragraph 36.75)

	1974		1975		1976	
	£	%	£	%	£	%
Gross fees	72,379	92·9	84,739	93·7	101,466	95·1
Deposit interest on clients' account (net of repayments)	3,323	4·3	3,301	3·6	2,947	2·8
Commissions	1,515	1·9	1,511	1·7	1,564	1·5
Other income	682	0·9	917	1·0	679	0·6
Gross income	77,899	100·0	90,468	100·0	106,656	100·0
Gross salaries	28,476	36·5	33,038	36·5	38,415	36·0
Rent, rates and mortgage interest	4,252	5·5	5,505	6·1	6,627	6·2
Bank interest	543	0·7	609	0·7	637	0·6
Other expenses	14,565	18·7	17,204	19·0	22,504	21·1
Total expenses	47,836	61·4	56,356	62·3	68,183	63·9
Net profit per firm[1]	30,063	38·6	34,112	37·7	38,473	36·1

[1]Net profit shown is before charging interest on partners' capital and current accounts, before making provision for principals' pensions and before tax.

Source: Consultants' report on the Law Society's remuneration survey, Volume II section 16.

CHAPTER 37

Lawyers' Charges

Introduction

Scope of the chapter

37.1 The income of solicitors and barristers is derived from fees and charges paid by or on behalf of their clients. In all day-to-day business the cost of going to law is made known to the client, usually at the end of the case, by the bill which his solicitor sends to him. The way in which costs are calculated, assessed and notified to the client is dealt with in the following paragraphs. We take the topics in the order in which they are most likely to be encountered by the client, dealing first with solicitors' charges for non-contentious work, then with costs of solicitors in contentious business and finally with barristers' charges.

Background information

37.2 It may help the lay reader to have some preliminary background information about the terms used in discussing this technical subject. The work of a solicitor is divided into two broad classes, contentious and non-contentious business. Contentious business has to do with litigation and the resolution of disputes. It includes work in both the civil and criminal courts, as well as in some tribunals. In the lower courts, solicitors' contentious work includes advocacy. Non-contentious business comprises the remainder of a solicitor's work. Conveyancing is an important branch of non-contentious work.

37.3 A barrister's work is differently divided, into advocacy and paper work. The primary function of barristers is that of advocacy, of presenting a case in court. They also do a good deal of paper work, which is work done out of court, in settling documents such as pleadings required for the purpose of litigation, in advising clients on matters requiring a legal opinion and in drafting other legal documents.

37.4 The protection of clients against excessive charges is sought to be achieved by taxation of costs in the courts, certification by the Law Society and by the imposition of scale fees by Parliament. In this context the expression "taxation" has no connection with the Inland Revenue, but means the judicial examination of a lawyer's bill item by item for the purpose of deciding whether each item should be allowed, disallowed or adjusted. The process of taxation of costs is carried out by the court, in the person of a master, registrar or court official (for further details see annex 37.1). The expression "costs" includes not only the disbursements of a solicitor incurred on behalf of the client in the case, but also his professional charges.

37.5 The process of certification provides a means by which a client, dissatisfied with the amount of a bill of costs in a non-contentious matter, may apply to the Law Society to review it. After review, the Law Society will issue a certificate either confirming that the costs are reasonable, or stating that a specified lower sum is reasonable.

37.6 Scale charges fall into the following categories. A scale may be mandatory, in the sense that all persons offering the service it covers are obliged to levy the specified charge. A second type of scale, of standard charges, is not binding in the same way, and merely offers guidance to those offering and those receiving the service as to what is likely to be a reasonable charge. For a given category of work scales may specify a fixed charge, maximum and minimum charges or maximum charges only.

37.7 In this chapter we will refer to any process by which the court or one of its officers fixes the amount of a bill with binding effect as "taxation". An assessment of costs by any other person or body (of which certification by the Law Society is an example) will be referred to as an "assessment " of costs. The scales will be referred to, according to the description given above, as mandatory scales or standard scales and the charges as fixed, maximum, or maximum and minimum.

Solicitors' Non-contentious Costs

Taxation

37.8 All solicitors' charges for non-contentious work, and some for contentious work, may be subjected to taxation under section 70 of the Solicitors Act 1974; this procedure is accordingly often described as a "Solicitors Act taxation". Such taxations are not mandatory: the procedure must be initiated by the paying client and in practice is very little used. In 1978 the total number of taxations of all kinds was 97,020. Of the 9,418 taxations in the Queen's Bench and Chancery Divisions of the High Court, only 164 were taxations under the Solicitors Act 1974. The Law Society estimates that, in the relevant period, the number of bills delivered must have been in excess of 5 million; it follows that the number of bills taxed under the Solicitors Act 1974 must represent an infinitesimal proportion of the total. We deal with the probable reasons for this in paragraphs 37.11 and 37.12.

Assessment

37.9 The procedure by which a solicitor's costs may be assessed at the client's request by the Law Society is laid down by the Solicitors' Remuneration Order 1972. A client who is dissatisfied with the amount of the bill presented to him in a non-contentious matter may require his solicitor to obtain a certificate from the Law Society stating its opinion either that the sum charged is fair and reasonable or that some other sum would be fair and reasonable. If the Society states a lower sum to be fair and reasonable, that becomes (subject to taxation) the sum payable in respect of the bill. A solicitor cannot bring proceedings to recover costs on a bill for non-contentious business unless he has first informed the client of his right to

seek taxation of costs or a remuneration certificate. A client may not require his solicitor to make an application for a remuneration certificate more than one month after being informed of his right to do so, nor after paying the bill, but is not prevented from doing so by the fact that his solicitor has deducted his charges from money held on behalf of the client. Either the solicitor or the client may seek taxation of the bill in place of a remuneration certificate and may proceed to taxation following certification by the Law Society if dissatisfied with the result. No charge is made to the client in respect of the issue of a remuneration certificate. The costs of taxation are payable by the applicant if the amount challenged is reduced by one-fifth or less (see paragraph 37.13).

37.10 The Law Society supplied us with figures for remuneration certificates issued in the years 1974, 1975 and 1976. These are set out in the table following. As in the case of taxations, the number of certificates is low in relation to the total number of bills issued.

TABLE 37.1
Remuneration certificates issued, 1974-76

Year issued	Subject matter	Total	Allowed in full	Reduced
1974	Conveyancing[1] . .	518	432	86
	Probate	150	99	51
	Other matters . .	353	315	38
		1,021	846 (83%)	175 (17%)
1975	Conveyancing[1] . .	712	552	160
	Probate	203	106	97
	Other matters . .	365	293	72
		1,280	951 (74%)	329 (26%)
1976	Conveyancing[1] . .	1,295	992	303
	Probate	243	135	108
	Other matters . .	472	363	109
		2,010	1,490 (74%)	520 (26%)

[1]The heading 'Conveyancing' includes sales and purchases of freeholds and leaseholds, grants of leases and mortgage transactions, whether or not they were completed.
Source: Law Society.

Limited use of taxation and assessment

37.11 The great majority of clients feel that their solicitors have given fair value for money and our survey of users (Volume II, Section 8) showed that 74 per cent had no complaint as to the amount charged. However, it also indicated that a quarter of users in that survey were dissatisfied with their bills. This proportion is

appreciably larger than the proportion of those seeking a reduction by way of taxation or assessment, as is clear from a comparison of the profession's volume of business and the number of taxations (paragraph 37.8) and remuneration certificates (Table 37.1). A number of factors account for the difference.

37.12 A person who would like to challenge a bill may face the following difficulties:–

(a) he may not be aware of his right to do so;

(b) he may be deterred from seeking taxation by fear of incurring further expense and by the complexity of the process;

(c) he may not have confidence in the impartiality of a review of a solicitor's bill by other solicitors; or

(d) although required to pay the costs, he may not be a client of the solicitor submitting the bill (see paragraph 21.90).

Suggested improvements

37.13 The first difficulty may be remedied by giving clients more information. We recommend in paragraph 37.15 that solicitors should give new or prospective clients written information about their services and terms of business. This should include information about taxation and assessment, including the fact that assessment is a free service. The second difficulty stems from the complexity and cost of taxation. We propose below various measures to reduce this complexity and the cost, but some expense will remain and must be borne by someone. We do not think that this expense can reasonably be placed solely on the solicitor in all cases. The present rule is that if the costs claimed by the solicitor are reduced on taxation by one-fifth or less the costs of the taxation itself fall on the applicant. We consider that this rule should continue to apply.

37.14 As to the third objection, that the dissatisfied client may mistrust the impartiality of other lawyers, we believe that increased lay representation would here, as in other circumstances, be of assistance. The committees of the Law Society which deal with remuneration certificates should be enlarged by the addition of laymen who have the confidence of both the public and the profession. The composition of these bodies, which we describe hereafter as "assessment committees", and in particular the fact that suitably qualified or experienced laymen serve on them, should be included in the information given to clients. As to the fourth point we consider, as we said in paragraph 21.90, that any person required to pay a solicitor's bill should be entitled to apply for a remuneration certificate, whether or not he is the solicitor's client.

37.15 We recommend, therefore, that at the time when a solicitor receives

instructions to carry out work for a client it should be his professional duty to inform the client in writing:–

(a) of the basis on which charges are made;

(b) that the client may set a limit on the amount which may be charged, not to be exceeded without further authority;

(c) of the client's right to have the final bill either taxed by the court or in non-contentious cases reviewed by an assessment committee and the conditions which will apply in either case;

(d) if there is a possibility that the case may become contentious, of the circumstances in which the client may face a claim for the costs of an opposing party.

37.16 An estimate of charges likely to be incurred should be given whenever it is reasonable and possible to do so. It was suggested in evidence that solicitors should give a binding estimate, of the kind given by a builder or manufacturer. This cannot be expected of solicitors as a general rule, because it is not usually possible for a client to provide, as the basis of an estimate, precise information of the kind to be found in architectural or engineering drawings and specifications. Costs are also affected in an unpredictable way, particularly in litigation, by the way in which the case is handled by others involved and by the decisions and instructions of the client. The solicitor should give the best estimate he can of the charges likely to be incurred and the client should be informed at regular intervals of the amount of charges due to date and should be given an up-to-date estimate of future charges. In cases where the client has imposed a limit on the charges to be incurred and it becomes clear that it will be necessary to exceed the limit in order to conduct the case properly, the solicitor in good time should so inform the client. If the client refuses to increase the limit when it is necessary to do so, it should be open to the solicitor, in any type of case, to terminate his retainer.

37.17 We consider that the procedure described in the two preceding paragraphs is suitable for inclusion in the Professional Standards to be laid down by the Law Society as recommended in Chapter 22. Where costs are assessed by reference to a published scale, the arrangements described in the preceding paragraph are capable of some refinement; an example of this is described in paragraph 21.98.

Principles of valuation of work

37.18 To enable those responsible for the taxation of costs to approach the task in an orderly way and to achieve consistent and fair results, detailed criteria have been provided for their guidance. These vary slightly as between taxations of costs relating to non-contentious work, criminal litigation and civil litigation or advice by counsel, but are all to the same general effect. We consider that even slight

variations in the criteria for different kinds of business are unnecessary and confusing and we recommend that there should be a single set of criteria which would apply to costs in respect of any legal business.

37.19 The present criteria are capable of simplification in other respects also and we recommend that they should be grouped under the four following headings.

(a) *Time.* Time is an important criterion of costs, but it should be emphasized that the slow worker should not get higher remuneration because of additional time spent on a piece of work. Payment should be made only for time reasonably spent on the job.

(b) *Skill and knowledge.* Under this heading account should be taken of the grade of lawyer required to do the work, that is to say silk or junior counsel, senior partner, junior partner, salaried solicitor or legal executive. It should include also the complexity of the issues in the case, the difficulty or novelty of any points of law arising and any special knowledge or ability displayed in dealing with the case. Under this last heading, an allowance should be made when a lawyer, by professional ability, deals adequately with a case in a short time and in an economical way.

(c) *Responsibility.* This heading covers the importance of the case to the client, which is reflected in such matters as the amount involved, in a criminal case the gravity of the charge from the client's point of view and the "weight" of the case generally.

(d) *Effort.* This heading includes such factors as the number and difficulty of the documents to be perused, any special attention required, such as unusual expedition, the remoteness of the place of hearing and the cooperation and attitude of the client and other parties. While some factors make the case unusually laborious, others have the opposite effect and enable the total charge to be reduced. For example, if land is registered less effort is required in checking title.

Time costing

37.20 In most businesses and professions it is not disputed that a comprehensive system of time recording is indispensable to their efficient conduct. We appreciate there are practical difficulties in applying this precept to the work of solicitors. In particular, we acknowledge the objection that in the course of one working day or part of it a solicitor may deal quickly with a large number of matters on behalf of a number of clients. In spite of these problems, a number of firms, ranging in size from large to small, have set up effective time costing systems, as a rule by the use of a computer. This is evidence that with suitable equipment and techniques difficulties can be overcome. The effect of such systems is to improve efficiency, the standard of service to the client and the level of profitability of the solicitor's

firm. This is true not only of large firms. We encountered a small firm working in a poorer part of London in the field of welfare law and legally-aided work, which was able to pay its fee-earners and other staff proper remuneration and, though newly-established, expected in a reasonable time to earn adequate profits because of the care with which a time costing system was set up and managed; other examples are known to us.

37.21 Time should not be the only criterion of charges. In some cases, although expenditure of time is small, a high charge is justified for the skill, experience and responsibility involved. Moreover, it is an important feature of the process of taxation that it is not sufficient merely to show the time spent; it must also be shown that the work done justified the time spent on it. The then Chief Taxing Master observed in his evidence that the taxation system, combined with the method by which the taxing masters exercise their functions, provided an element of quality control. This is a valuable attribute of the present system, which should not be lost. However, time records used in support of a bill will be of assistance to clients, to assessment committees and to the taxing authorities, in showing how the total claim is made up. We consider that such records should be kept as a matter of course by all solicitors.

37.22 We do not propose to set out in detail the various methods of time costing. A number of commercial organisations offer their own packages. The Law Society advocates and advises on a system. An increasing number of books and pamphlets are being published on this topic. These publications bear out the point that, if solicitors are to charge on a proper basis, they must assess, and up-date, their costs and overheads regularly. It may be that for some solicitors this will mean a financial discipline to which they are not accustomed and for which they have received no formal training. Nevertheless we are satisfied that it is necessary if they are to conduct their practices efficiently. We discuss the provision of further training for qualified solicitors in Chapter 39.

Estimates of cost

37.23 An advantage of time costing is that it enables the solicitor to compile a record of the costs for certain classes of work upon which well-informed estimates can subsequently be based. This enables him to tell his clients, at the outset of a transaction, what the cost is likely to be.

Scale charges

37.24 Scales of charges for conveyancing transactions of all kinds operated until January 1973, when they were replaced by the requirement that such charges should be fair and reasonable. A mandatory scale of fixed or maximum charges has the advantage of certainty, enabling a client to budget more accurately and protecting him from an exceptionally large bill in a case involving unexpected problems. As a rule, the charge will be related to the value of the transaction; the cheaper the transaction, the less the expense. This can be to the advantage of less well-to-do clients. A mandatory scale of fixed charges has the

disadvantage that the client may be charged less or more than is justified by the amount of work involved. It also imposes a restriction on competition, though it is argued that as a result greater attention may be paid to quality rather than cheapness. Competition is not restricted to the same extent by the use of mandatory maximum charges or by standard scale charges which are intended to act only as guidelines. We make recommendations in Chapter 21 concerning standard charges for conveyancing.

Solicitors' Contentious Costs—Civil Proceedings

Taxation of costs

37.25 Costs in contentious civil work can be distinguished from costs incurred in other classes of business by the fact that, at the conclusion of contentious proceedings, as a general rule the loser is ordered to pay the winner's costs. The sole original purpose of taxation of costs was to ensure that the losing party did not pay more than the amount properly incurred by the winner and did not pay for unnecessary work or unusual expenses. Accordingly, the party to whom costs are awarded is required (if his claim for costs is not agreed) to submit a detailed bill containing particulars of every item of work for which a claim is made. Each item must be justified and is subject to scrutiny in the course of taxation by the court. The process has also come to serve the purpose, now of increasing importance, of ensuring that payments out of public funds in respect of legal costs are impartially checked.

37.26 In all but the simplest High Court cases, the bill is so intricate and detailed and the process of taxation so long and complex that many solicitors hand over the whole process to a specialist costs draftsman who may be employed by the firm or practice on his own account. There are relatively few costs draftsmen in practice and they carry a heavy burden of work. In the process of taxation, as may be seen from paragraphs 37.110—37.113, there is a long delay before bills are prepared and submitted. When a freelance costs draftsman is employed, his charge, usually in the region of seven per cent of the bill, imposes an additional overhead charge on the solicitor and ultimately on his client, as this charge is not recoverable from the losing party. This is no criticism of the costs draftsman, who has to deal with time-consuming and intricate work and is entitled to a reasonable remuneration for it. It is a reflection on the system that it is so complex that it imposes on solicitors the need to engage expert assistance in order to obtain a fair valuation of their own work.

37.27 The rule that costs in litigation follow the event is not a matter with which our terms of reference call on us to deal. Our observations and recommendations in the paragraphs following are based on the assumption that the present rule will remain.

37.28 There are two main categories of costs payable for contentious work, those paid by one party in respect of the other party's costs, either by agreement or by an order of the court, and the costs and charges which are payable by a

party to his own solicitor. In paragraph 37.31 we explain the various bases on which costs may be paid. In respect of his own solicitor's costs, the client may have recourse to taxation (though not to any form of assessment) in the same way as in the case of non-contentious costs.

37.29 In any civil litigation, subject to the leave of the court where one of the parties is a child or mentally ill, costs may be agreed between the parties without recourse to taxation, whether or not the case goes to trial and judgment. Costs are settled by agreement in the majority of cases. Such agreements however are made in the knowledge that the alternative is taxation in which costs will be assessed on well-established principles. When considering the level of fees and charges in civil litigation, therefore, the amounts allowable on taxation are of central importance.

The basis of taxation

37.30 The criteria we mentioned in paragraphs 37.18 and 37.19 are of general application in all classes of business. In contentious work, however, the basis on which they are applied may vary according to the circumstances in which costs fall to be assessed. When dealing with the costs which one party in litigation may claim from another, it is not sufficient merely to determine whether a reasonable amount is charged in respect of each item. It is necessary also to determine whether each item of work can itself be justified. The criteria of assessment are applied in the same way in respect of any item which properly forms part of the bill; but, depending on the basis of taxation, not all the items claimed may be allowed.

37.31 There are four bases for the taxation of costs.

(a) *Party and party costs.* This is the least generous scale, such costs being confined to those which are deemed to be necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed. Party and party costs do not normally cover all the charges incurred in the course of a piece of litigation.

(b) *Common fund costs.* On this basis a reasonable amount is allowed in respect of all costs reasonably incurred; in practice the basis is somewhat more generous than party and party costs. We were told by the Chief Taxing Master that in most cases a bill assessed on the common fund basis would work out between five per cent and ten per cent higher than a bill assessed on the party and the basis.

(c) *Solicitor and own client costs.* These are the costs which a solicitor is permitted to charge his own client; they include all costs incurred with the express or implied approval of the client, even where they are unreasonably incurred or unreasonable in amount, though where this is so the solicitor must first have warned the client that they would not be allowed against any other party.

(d) *Trustee costs.* Where a trustee or personal representative is a party to proceedings and his costs are to be paid out of the fund which he holds in that capacity, an order for payment on a trustee basis is made; in such cases the costs are not disallowed unless the taxing officer considers that they have been unreasonably incurred without the express or implied approval of the trustee, that they are greater than the trustee should be required to pay or, in rare cases, where they should be borne by the trustee personally.

37.32 We accept the necessity of distinguishing between costs paid by one party to another, costs paid by a client to his own solicitor and trustee costs. We believe, however, that it is difficult to justify the distinction which is drawn between party and party and common fund costs. We appreciate that it leads to a lower payment by the losing party. If, however, it is accepted that the losing party should pay the winner's costs, we see no reason in principle why he should not pay such costs as may be found to have been reasonably incurred. The Supreme Court taxing masters expressed to us the view that the party and party basis should cease to be used and that such costs should instead be calculated on the common fund basis. We favour this proposal, because it would simplify the present arrangements and have the advantage of reducing the amount by which the solicitor's charges to his own client are likely to exceed the amount recovered from the unsuccessful party. It would also remove the necessity for separate taxation of party and party and common fund costs in some cases in which a civil legal aid certificate has been granted to the successful party. It has been said that the effect of this change would be to add to the costs of the civil legal aid scheme, on the grounds that, at the moment, the scheme pays only on the basis of party and party costs; but in the view of the taxing masters the reverse would be the case. They pointed out that, at present, costs payable to solicitors and counsel for conducting a legal aid case are allowed on the common fund basis, whereas costs recovered by an assisted person, which are paid into the fund, are allowed on the less generous party and party basis. As the great majority of legally-aided plaintiffs are successful, the increase in the costs recovered would outweigh any increase in the costs ordered to be paid in a smaller number of cases to successful unassisted persons under section 13 of the Legal Aid Act 1974.

Procedure

37.33 The procedure for taxation of costs requires the party to whom costs are to be paid to prepare a detailed bill setting out the total amount he claims. The bill, with all supporting documents, is lodged in the taxing office or registry and a copy is sent to the solicitor acting for the party by whom the costs are payable. The bill and supporting documents are closely scrutinised by officials in the taxing office under the supervision of a taxing master or registrar. An appointment is then made for a hearing before the master or registrar at which the solicitors for the parties or their representatives may attend. The issues are decided in turn, after hearing each side. General issues are first disposed of: for example whether it was reasonable to employ leading as well as junior counsel and whether the work should have been undertaken by a senior solicitor, an assistant solicitor or a legal

executive. Disputed items in the bill are then considered in turn and determined. If the bill is reduced in any respect, a new total is cast, which becomes the "taxed costs".

37.34 If either party objects to the award of a master, registrar or taxing officer he may lodge objections in writing, to which the opposing party may submit answers and lodge cross-objections. The person who conducted the taxation then reappraises the items to which objection is made, save in cases taxed in the Supreme Court Taxing Office by a principal clerk, in which a taxing master deals with the objection. If either party remains dissatisfied with the decision made following this review, he may request the master or other officer to put his reasons in writing. If the dissatisfied party considers the reasons unsatisfactory, he may appeal to a judge of the High Court sitting with two assessors (one of whom will be the Chief Taxing Master or a senior taxing master, and the other a senior solicitor nominated by the Law Society); or to a circuit judge in the county court. In general, we commend this procedure; we think it is fair and should produce sound results. We make below suggestions for improvements in certain areas and some general proposals designed to lead to better coordination of this class of court business.

Form of the bill

37.35 The first step in the process of taxation is the preparation of a bill of costs. In a large case, this is so intricate a task that, as we mentioned in paragraph 37.26 above, it has been common practice for a solicitor who has no costs specialist on his staff to send out the papers to a costs draftsman so that he may prepare the bill and handle the taxation.

37.36 In annex 37.2 we reproduce a bill of costs which was prepared for a personal injury case, contested in the Queen's Bench Division, which the Commission studied in depth. The bill was drawn by an experienced costs draftsman and taxed by a senior taxing master. We are told that it took two full days to draw up and type the bill. The fee payable to the costs draftsman, in accordance with usual practice, amounted to 7 per cent of the bill drawn. Prior to the taxation, it was necessary for the taxing master to study the papers and the bill for 2½ hours. The taxation itself was attended by two costs draftsmen, two solicitors and the taxing master and lasted for over an hour. Taking all factors into account, it is estimated that the total cost of preparing and taxing this bill amounted to approximately £400. The effect of the whole procedure of taxation was that the bill was reduced by £250.

37.37 In the case described, the party to whom the costs were payable was a minor, and the law as it then stood required the costs to be taxed. Had the plaintiff been of full age it would have been possible, as it is now, for the parties to have avoided the cost of taxation and of preparing a bill for this purpose, by agreeing costs between themselves. This apart, we were told by those involved that the case provided a fair example of the procedure of taxation.

37.38 It will be seen that the bill included a series of relatively small charges for a number of specific items such as preparing, filing, and serving documents. The amount of each of these charges is set by a scale of fixed charges on which we comment further below. The bill also included a lengthy narrative describing all the professional work which had to be done; a single global figure was claimed and awarded in respect of the whole of this item.

37.39 The present arrangement which involves the listing of a large number of small fixed items is recognised to be unsatisfactory and time-consuming. They relate mainly to work carried out by typists, messengers and other junior staff and represent overhead expenses incurred in the normal professional work on the case. In our view, such overhead expenditure should be included in the charging rates which are fixed for the work necessarily carried out by a solicitor and other fee-earning staff.

37.40 Discussion of possible changes on these lines has taken place between the Lord Chancellor's Department, the taxing masters and the Law Society. As a result a new Appendix 2 to Order 62 of the Rules of the Supreme Court was introduced in April 1979. This change will lead to a significant reduction in the number of fixed items which have hitherto had to be inserted in bills of costs with a consequent saving in the time expended in drawing and preparing them.

37.41 We asked the Chief Taxing Master to revise the bill referred to in paragraph 39.36 in accordance with the new Appendix 2 to Order 62 of the Rules of the Supreme Court and a copy of this redraft is attached at annex 37.3. The figures shown are illustrative only partly because they were prepared after a considerable lapse of time and partly because some of the details have been altered to demonstrate the basic principles more clearly.

37.42 This annex shows however that the presentation of bills will be greatly simplified in form and content. It sets out the progress of the proceedings in chronological order so that the date of all interlocutory steps and the date and frequency of all attendances on counsel can be seen at a glance. The professional work involved by the partner and other fee-earning staff is then set out in an omnibus item under different headings, briefly summarising under each the work involved, the fee-earning staff involved and the time expended and the expense rate claimed by them.

37.43 We regard this as a step in the right direction but we feel that the process should be taken further and that all fixed items should be eliminated and dealt with on the basis described in paragraph 37.39 above. We had discussions on this subject with the Chief Taxing Master and his colleagues who also gave oral evidence on this subject. They told us that they were in sympathy with this point of view and looked upon the new Appendix 2 to Order 62 of the Rules of the Supreme Court as a step towards the elimination of all fixed charges. This could be achieved by making a specific charge at hourly rates including overheads for

those attendances by fee-earners which are set out in the chronological table, and the abolition of the block allowance. Furthermore, charges for documents would be made only where the number of such documents was exceptional. If this is done it will result in a further reduction in the complexity of bills and the time expended in drawing and preparing them.

37.44 We consider that further studies should be undertaken and that there should be consultations between the Chief Taxing Master, the Lord Chancellor's Department and the profession with a view to simplifying the form of bills. The Chief Taxing Master has told us he is eager to achieve this. We attach importance to this proposal because it would make it possible for solicitors to deal with their bills of costs without outside assistance, should speed up the process of taxation and bring indirect benefits such as improved cash flow. It is also essential, as we recommend elsewhere, that solicitors maintain adequate records of time expended by fee-earning staff, in order to explain and justify their charges. We turn now to the possibility of further reducing costs by the use of shortened procedures.

Short procedures

37.45 A number of procedures are available in various courts which enable the issue of costs to be determined without resort to a full-dress taxation. In the following paragraphs we give four examples of such procedures.

37.46 *Assessment of costs in the county court.* The successful litigant in the county court, who would otherwise be entitled to taxed costs, may instead ask the court to assess them. Order 47 rule 37 (3) of the County Court Rules 1936 provides that where costs are assessed without taxation the court may allow such sum as it thinks reasonable within certain prescribed limits, which include a fee for counsel where applicable. This procedure has the advantage of speed and cheapness because it does not require the solicitor to draft, lodge and tax a bill of costs.

37.47 *Fixed costs in the Family Division.* In undefended divorce cases, a procedure is available by which a solicitor may elect to accept a sum by way of fixed costs in lieu of taxed costs. If a solicitor elects for fixed costs, there is no hearing on the issue of costs. Such applications can therefore be dealt with quickly. In a system of this sort, it is indispensable for the scale to be kept up to date; a registrar of the Family Division told us that the number of applications for fixed costs is greater when the scale of allowances is up-to-date.

37.48 *Provisional taxation in the Family Division.* This procedure is available in the Principal Registry of the Family Division for taxations undertaken for the purposes of legal aid. It enables a bill of costs to be taxed on a provisional basis: that is, the bill is assessed by the taxing master in the absence of the parties and their solicitors. An appointment is fixed for their attendance only if the award following assessment is not accepted. A similar procedure is followed in suitable cases in the Supreme Court Taxing Office.

37.49 *Provisional taxation in the county court.* Provisional taxation is also available in the county court in undefended divorce cases. The procedure is that a notice is sent to the party ordered to pay costs asking him whether or not he wishes to be heard on the issue of costs. If he replies that he does not wish to be heard, or if he fails to reply within fourteen days, the bill is provisionally taxed, and notice of the taxation is sent to the solicitor for the party to whom the costs are payable and to the paying party; an appointment for formal taxation is made only if the provisional taxation is unacceptable to either party.

37.50 The procedures we have described in the preceding four paragraphs have much to commend them. We consider they could with advantage be used more frequently. We recommend that all those responsible for the procedures for fixing costs should adopt simplified procedures more widely, whether of the kind described above or some other description.

Magistrates' courts—civil jurisdiction

37.51 We were informed that where costs are payable between the parties in summary cases heard by magistrates exercising their civil domestic jurisdiction, they are fixed by the court forthwith. No criticism was made in evidence to us of these arrangements. Subject to the need to keep the scales up-to-date, with which we deal in paragraph 37.95 below, no further comment is needed.

Solicitors' Contentious Costs— Criminal Cases

Background

37.52 In criminal cases the principles on which costs are awarded differ from those in civil cases. They fall under three heads.

(a) *Costs payable out of central funds under sections 1 and 3 of the Costs in Criminal Cases Act 1973.* In the case of indictable offences, magistrates' courts and the Crown Court may order the costs of the prosecution and, in the event of an acquittal, the costs of the accused, to be paid out of central funds. Such an order is deemed to have been made in favour of the prosecution in all cases, save where, exceptionally, the court expressly orders to the contrary. Conversely, it is comparatively rare for orders to be made in favour of acquitted defendants, because most are legally-aided; the same purpose can more easily be achieved by ordering that they should not make any contribution towards their own costs. The costs must be ascertained in the magistrates' court by the clerk to the justices and in the Crown Court by a taxing officer and should be sufficient to cover the costs reasonably incurred in conducting the prosecution or the defence as the case may be. Where, however, an accused has been committed for trial to the Crown Court the amount of the costs of the prosecutors' solicitor and counsel are certified but not paid by the justices' clerk and are subject to review by the Crown Court which may reduce, but not increase, them.

(b) *Costs payable by one party to another under sections 2 and 4 of the Costs in*

Criminal Cases Act 1973. The magistrates' court and the Crown Court may order a convicted defendant to pay a specific sum, sufficient to reimburse the costs reasonably incurred by the prosecutor, or the prosecutor to pay the costs of an accused person who has been acquitted. Such orders are more frequently made in favour of the prosecutor.

(c) *Costs of legally-aided defendants payable under the Legal Aid Act 1974*. Counsel and solicitors assigned under a legal aid order are entitled to receive fair remuneration for work actually and reasonably done. Costs for work undertaken in magistrates' courts are assessed by area committees of the Law Society. Costs for work undertaken in the Crown Court are taxed by taxing officers in the Crown Court.

37.53 There is a right of appeal to the Chief Taxing Master from all taxations carried out in the Crown Court, with a further appeal to the High Court in cases in which the Chief Taxing Master or a senior taxing master certifies that a point of general importance is involved.

Magistrates' courts

37.54 With the exception of the costs of legally-aided defendants and cases in which the court has ordered payment of a specified sum by one party to another, all costs of criminal cases in the magistrates' courts are dealt with by the justices' clerk. After submission of the bill, enquiries may be made of the solicitor who is claiming costs by letter or telephone, or meetings may be held; there is no formal procedure by which to obtain a review and, unless there are grounds for an application to the Divisional Court for judicial review, there is no appeal.

37.55 Even although clerks to justices perform the duty of taxation in a sensible and competent way, the situation is not entirely satisfactory. They are given no guidelines of the kind issued to taxing officers in the Crown Court to assist them in assessing costs. There are no formal means by which they can discuss difficult issues or settle a uniform solution for common problems. In some petty sessional districts, justices' clerks confer informally, but there are no regular arrangements for consultation nor any central coordination. In these circumstances taxations in the magistrates' courts, which are only a small part of the clerk's wide and important functions, cannot be expected to achieve the level of uniformity which the public and the profession are reasonably entitled to expect.

37.56 When we first considered this matter, it appeared to us that the task of the justices' clerks of assessing costs in the cases described above might with advantage be transferred to the Crown Court. We invited comments on this proposition from the Lord Chancellor's Department, the Home Office, the Chief Taxing Master, the Justices' Clerks' Society, the Association of Magisterial Officers, the Senate, the Law Society and the Association of Law Costs Draftsmen. Having considered the evidence they gave us, we have reached the view that the responsibility for dealing with this business should remain on the

justices' clerks. We recommend that, to assist justices' clerks in achieving consistent results, the appropriate authority should issue notes for their guidance and ensure that these are regularly up-dated. We also, in paragraph 37.107, recommend the creation of a single procedure for appeals against assessments of costs.

Assessment of the costs of legally-aided defendants

37.57 If the court has made a legal aid order under Part II of the Legal Aid Act 1974, the costs of the defence in the magistrates' court are assessed by the appropriate area committee of the Law Society and paid out of the Lord Chancellor's Vote. We visited such an area committee and observed the process of assessment of costs. We were impressed by the thorough way in which the committee carried out its task. The cost to public funds is low, because the members of area committees receive only a nominal fee.

37.58 The process of assessment is not the same as that of taxation. Instead of analysing a bill item by item, the committee and its secretary and staff adopt a broad approach. They consider the papers in the case, as a whole, in order to estimate its "weight" and the time it took. The evidence we received suggested that assessments made in this way may be more generous than the allowances made by Crown Court taxing officers for similar work. But it is our view that, subject to what we say in paragraphs 37.59, 37.64 and 37.65 the process of assessment is cheap and efficient, and safeguards public funds in the majority of cases. Where a case is committed for trial from the magistrates' court to the Crown Court, we consider that the taxing officer in the Crown Court should invariably see the area committee's assessment of costs for work done in the magistrates' court, to improve coordination of the two sets of costs and reduce the risk of double charging.

37.59 The majority of cases which are dealt with wholly in the magistrates' courts do not involve large sums in defence costs. Costs incurred in committals for trial are in many cases low. For all these, assessment is satisfactory. In some cases, however, the costs reach a level at which a broad assessment ceases to be satisfactory, and taxation on a more precise basis is to be preferred. In large and complex cases committed for trial, the risk of duplicating costs in the magistrates' court and Crown Court may be greater. Therefore where the costs claimed amount to an appreciable sum (we suggest £500 or more at 1979 values) we consider that they should be subject to taxation in the Crown Court rather than to assessment by an area committee. In paragraphs 37.64—37.65 we make recommendations to improve the control and consistency of assessments of costs and also the quality of taxation in the Crown Court and the changes recommended here are linked with those recommendations.

Crown Court—procedure for taxation

37.60 In the Crown Court costs are taxed by taxing officers, who are civil servants, normally of the rank of higher executive officer, employed in the Lord

Chancellor's Department. A bill of costs is submitted in relatively short form; the Crown Court supply a pro-forma which is used by the majority of solicitors. An example is given in annex 37.4. The pro-forma is divided into three parts:–

(a) preparation for trial,

(b) conduct of the case at court,

(c) work before appeal.

After the bill has been prepared by the solicitor it is submitted to the taxing office of the Crown Court. It is considered item by item by the taxing officer and assessed in the absence of the solicitors involved.

37.61 The procedure for appeal is similar to that in civil cases. If the party, or in a legal aid case the solicitor or counsel, is dissatisfied with the amounts allowed or disallowed, he may ask for the bill to be taxed formally in his presence. Alternatively, the party, or, in a legal aid case the solicitor or counsel on his own behalf, may make an informal approach to the taxing officer, either in person or by telephone or letter. We are told this is done in about ten per cent of cases. If still not satisfied, he can make a formal request to the taxing authority for a review of the taxation and must lodge written representations specifying the items to which objection was taken and the grounds of objection in respect of each item. Where the taxation is *inter partes* a copy must be served on all other parties to the taxation who in turn may lodge and serve written answers. An appointment is then given to all the parties for the hearing of the objections. Anyone who is dissatisfied with the result of the review may ask the taxing officer to state in writing his reasons for his decision. He may then apply to the Chief Taxing Master for a further review, with a copy of his written representations and of the taxing authority's reasons. These papers are then considered by a taxing master, who hears the appellant and gives a written judgment, copies of which are sent to the appellant, to the taxing coordinator in each circuit and to the court concerned. An appeal from the taxing master's decision lies to a High Court judge only when the question to be decided involves a point of general importance and the taxing master so certifies. We have been told that only a small proportion of bills which are queried go to formal appeal, though it is of value to practitioners and the courts to settle important points of principle; in most cases practitioners find that the time taken by this procedure costs them more than they are likely to gain from any adjustment on the disputed items.

Criteria for taxation in the Crown Court

37.62 Notes for the guidance of taxing officers in the Crown Court were issued by the Chief Taxing Master in April 1979. These replaced Notes for Guidance (BM72) which were issued in 1972 by the Lord Chancellor's Department in consultation with the Home Office. The new Notes seek to explain the main principles of taxation and of costs as the law stands at present: the Notes

themselves do not bind any taxing authority or limit judicial discretion in any way but they contain references to decisions of the High Court or statutory provisions which are binding. They are to be read in the context of the facts of each individual case. We understand that the Chief Taxing Master intends to revise the Notes from time to time to take account of judicial decisions and changes in the law and practice and will issue amendments to bring them up-to-date accordingly. The Notes advise that in every case the taxing officer should take into account, in relation both to counsel and solicitor, certain factors. These are:–

(a) the importance of the case;

(b) the complexity of the matter;

(c) the skill, labour, specialised knowledge and responsibility involved;

(d) the number of documents prepared or perused with due regard to difficulty and length;

(e) the time expended;

(f) all other circumstances including travelling and hotel expenses where appropriate.

The taxing officer also takes into account the broad average cost to the solicitor of the work done, having regard to regional variations, and also takes into account any assessment of the weight of the case by its participants including the trial judge, counsel and solicitors.

37.63 Criticism was expressed to us by a number of barristers and solicitors of the manner in which the Crown Court taxing officers applied the criteria set out in the Notes for Guidance. It was said that their interpretation of the guidance was too rigid and that they were unduly reluctant to exercise their discretion to increase costs in proper cases. They were said in this respect to compare unfavourably with the legal aid area committees. It was in order to meet this criticism and to achieve a greater measure of consistency that the Lord Chancellor requested the Chief Taxing Master to prepare and issue the new Notes for Guidance mentioned in paragraph 37.62. These Notes, which deal only with the principles of taxation in criminal cases, are supplemented by tables, issued by the Lord Chancellor's Department, showing fees currently being allowed to counsel and the hourly rates being allowed to solicitors for different categories of cases in the Crown Court. These tables are to be kept up-to-date and made available to the courts and to both branches of the profession.

37.64 It is clearly undesirable that costs should be awarded at different levels for similar work. We consider that, apart from the measures mentioned above, there are four ways in which the position may be improved. First, we consider it should

be the function of the Fees Advisory Committee proposed in paragraph 37.91 to study the effect of the fees allowed on the profession's levels of remuneration for various classes of business. It should report to the responsible minister on any instance where remuneration is at a level above or below what appears reasonable. It should offer comments on special considerations affecting particular classes of work. Its studies of remuneration levels and of the appropriate fees for different kinds of work should be made public. With this guidance, area committees and taxing officers should achieve more uniform results. It must, however, be accepted that if (as is reasonable in cases of small value) the area committees retain their broad approach, then, even although consistent principles are observed, complete uniformity cannot be expected.

37.65 Secondly, it should be one of the functions of the circuit taxing masters (see paragraph 37.106) to take note of reports of cases in which wide variations are said to have occurred; they should give guidance to those involved if they find it necessary to do so.

37.66 Thirdly, dissatisfaction arises in some cases because practitioners feel that the taxing officer, having had no experience of legal practice, lacks insight into their problems and difficulties. It would be an advantage if taxing exercises and seminars were held regularly and were attended by both practising lawyers and taxing officers. Such functions should be arranged in cooperation with the local law society or with a local office of the proposed regional organisation of the Law Society (see Chapter 29).

37.67 Fourthly, a recurring complaint, similar to that made by solicitors, is that barristers' fees are sometimes unfairly assessed in the Crown Court, because of the inexperience of the Crown Court taxing officer dealing with the case. The Senate said that these officers occupied the post of taxing officer for a relatively short period in the course of a career with the responsible government department; they came to the job with no prior knowledge of it, and might not stay at it for long. The Lord Chancellor's Department undertook a survey of the taxing officers in post in 1978 and found that 37 per cent had at least six years' experience of the work, 58 per cent had more than four years' experience and only 15 per cent had less than 12 months' experience.

37.68 It is not in our view fair to say that taxing officers in general occupy their posts for too short a period to deal effectively with their work. The need for improvement has, however, been mentioned to us not only by those representing the profession but also by the Supreme Court taxing masters. There is no occasion for a general change in the present system. It must therefore be made to operate as well as possible. We consider that the circuit administrators should try to ensure that the more difficult taxations and those involving large amounts are allocated to officers who have sufficient experience and standing to deal with them adequately and that the largest and most complex cases should be taxed in the first instance by a circuit taxing master (see paragraph 37.106). We also stress the

importance of adequate training for taxing officers, both initially and during tenure of the post. It has been suggested that a period in a solicitor's office should form part of this training. The Lord Chancellor's Department doubted the value of this; but as a frequent source of complaint is the taxing officer's ignorance of the nature of a solicitor's practice, we believe that it would be of value and would provide some reassurance to the profession.

Barristers' Charges

Background

37.69 The arrangements by which barristers charge for their services differ markedly from those followed by solicitors. There are a number of reasons: a barrister is not retained directly by his lay client, but by the lay client's solicitor; by long tradition, the barrister makes no contract with the client and cannot sue for his fees; and a barrister is not continuously involved in day-to-day transactions, but is retained from time to time to perform a specific function.

37.70 We have already mentioned the two main classes of work performed by a barrister, advocacy and paper work. In relation to fees, there is a distinction also between work for a private fee-paying client and work for which payment is made out of public funds. Work in the second category includes cases conducted for legally-aided clients, prosecutions of all kinds on behalf of the Crown and cases in which the client is a government official or department.

37.71 When papers are sent by a solicitor to a barrister they are accompanied by written instructions to carry out the work required; when the instructions are to appear in court, the document is known as a brief. Both instructions and briefs have backsheets setting out the name of the court, if any, in which the case is proceeding, the title of the case (usually including the name of the client), the nature of the work and on whose behalf it is required, the names of counsel and solicitor, an indication if the client is legally-aided and, on briefs, a note of the agreed fee. Whether or not a fee is marked on the papers on delivery, the barrister and his clerk will expect a reasonable opportunity to assess the work involved so as to agree an appropriate fee. Where the instructions are for a routine piece of paper work, a fee is usually not marked or formally agreed before the work is done.

Work paid out of private funds

37.72 When a barrister undertakes a piece of work for a private fee-paying client, the appropriate fee is as a rule agreed between the solicitor and the barrister's clerk. By convention, a barrister leaves it to his clerk to negotiate fees. In cases of difficulty the solicitor on behalf of his client may negotiate fees directly with the barrister.

37.73 While it is not necessary that a fee be marked on papers on their delivery to a barrister, or in the case of paper work before it is done, it is a rule of etiquette that counsel must not appear in court on behalf of a fee-paying client unless a fee

is marked on the brief. The purpose of this rule is to avoid any risk that counsel will have a financial interest in the outcome of the case. By the same rule of conduct, no prior agreement may be made that the fee marked will be reduced in any circumstances, for example, if the case is lost, or a smaller sum is allowed on taxation.

37.74 When a piece of work is completed, the fees which have been earned by the barrister are noted and a fee note sent to the instructing solicitor. The fees payable to counsel form part of the solicitor's disbursements and are claimed accordingly in his bill of costs. A barrister has no need to sue for his fees, since the solicitor who instructs him is under a professional duty to pay him the full amount of his agreed fees, whether or not they are allowed on taxation, and whether or not the solicitor can recover them from the lay client or other party. In its evidence on this point the Senate said that if the amount of counsel's fee is reduced on taxation:–

> This of course only affects the lay client; it does not affect the obligation of the solicitor to pay the agreed fee but frequently an informal application to reduce the fee is made and in proper cases this is done.

In the event of a dispute between solicitor and barrister with regard to the barrister's fees which cannot be resolved by negotiation, it can be referred to a Joint Tribunal, composed of a member of the Council of the Law Society nominated by the President and a member of the Senate nominated by the Chairman.

Work paid out of public funds

37.75 Fees for legal aid cases, both civil and criminal, are not agreed between the solicitor and barrister's clerk nor marked on counsel's papers: they are determined at the conclusion of the proceedings on a legal aid taxation. The fees of counsel instructed to prosecute should strictly be marked or agreed in the normal way but the Bar has agreed with most public prosecuting authorities that counsel will accept as their remuneration the fees allowed by the Crown Court on taxation of costs out of central funds. The amounts allowed on taxation are subject to any limitations imposed by statute or statutory instrument. Tables of barristers' fees, the function of which is to provide taxing officers with a reference point when they start upon an assessment of an appropriate fee, were issued by the Lord Chancellor's Department to taxing officers in April 1979 for use in conjunction with the taxing officers' Notes for Guidance referred to in paragraph 37.62. These tables are based on estimates made by the circuit taxing coordinators between April and November 1978 as to the ranges of fees being paid in each circuit during that period, averaged in order to produce a national estimate. We understand that the Lord Chancellor's Department intends to replace most tables in due course with tables derived from a statistical analysis of fees being paid throughout England and Wales.

Returned briefs

37.76 It sometimes happens that counsel is unable to appear in a case for which he has accepted a brief. We were told that in the majority of cases when a

barrister returns a brief, no fee is payable to him. In a few cases, a relatively small fee may be paid to compensate counsel for the time spent perusing papers. It may also happen that there is a change in what is required after a brief has been delivered and work has been done on it. For example, a client in a criminal case may decide to change his plea from "not guilty" to "guilty" or a civil case may be settled in whole or in part. In such circumstances, a fee is allowed on taxation for work done in preparing the case. However, the brief fee is a single figure, covering both the preparation and the first day in court, and in the circumstances described, the appropriate fee payable for preparation alone has to be estimated. We suggest an improved arrangement in paragraph 37.84.

The legal relationship between barrister and client

37.77 We considered in the course of our work whether the arrangements described above should be fundamentally changed, by requiring that the barrister should enter into a direct contractual relationship with the lay client and be responsible for recovering his own fees.

37.78 Having invited and considered further evidence on this point, we reached the conclusion that the basis of the present system, which we set out below, is sensible and should be preserved but that some changes are desirable. The present basis is as follows.

(a) There is a contractual relationship between the lay client and the solicitor.

(b) The solicitor is responsible for retaining a barrister's services when required and for agreeing the proper fees.

(c) The solicitor, who may if necessary bring proceedings against his client to recover fees due, is professionally responsible for the payment of the barristers' fees.

Discussion of fee with barristers

37.79 At present a barrister discusses the amount of his fee with the solicitor only in cases of difficulty. There can be no objection to the barrister's clerk dealing with all matters relating to fees in the first instance; but in our view the solicitor should be able, whenever he wishes to do so, to discuss fees with the barrister and not merely in cases of difficulty. In any event the ultimate responsibility for the level of fees charged rests on the barrister in all cases.

Private fees subject to taxation

37.80 No difficulty arises from the fact that a brief fee payable in respect of a legally-aided client is determined by taxation at the conclusion of the proceedings. It may be undesirable, as the Senate said, that a brief fee, payable by a fee-paying client, should be settled between barrister and client after the event. Such an arrangement might well lead to an agreement for a contingency fee, high if the case is won, small if it is lost. But this objection could not apply to an agreement

that the brief fee be submitted for independent valuation, which is the essence of taxation. We consider therefore that it should be open to counsel to agree at the outset with a private client that the fee payable shall be either that marked on the papers or the amount allowed on taxation.

37.81 We do not think it necessary to go further and recommend that all barristers' fees invariably be subject to taxation in the same way as those of solicitors. The client is protected by the fact that he does not instruct the barrister directly, but through his solicitor, one of whose duties it is to advise the client on a suitable choice of counsel and the fairness of the proposed fee. It should therefore continue to be open to a barrister to agree with the solicitor on a specific fee which will remain payable whatever the result of taxation between the parties or between the solicitor and his client.

37.82 The arrangements proposed above should be clearly explained to the lay client. This is particularly important when a specific fee is to be agreed. The duty to ensure that adequate information is given to the client rests on the solicitor and is a suitable topic for a Professional Standard (see Chapter 22).

Collection of fees

37.83 The present arrangement whereby one person, the solicitor, submits a bill to, and receives payment from, the lay client, is convenient to all involved and should continue. The barrister's fee note, as we say below, should be submitted promptly to the solicitor. There should be no delay on the solicitor's part in paying over the barrister's fees in compliance with the instruction in *A Guide to the Professional Conduct of Solicitors* Chapter 5 paragraph 1.6.

> Counsel's fees should be paid (or challenged) within three months from the date of delivery of the fee note at the conclusion of a case whether or not the solicitor has been put in funds by his client or has taxed his costs.

Breakdown of the brief fee

37.84 The brief fee at present embraces a number of distinct items. These include the work of preparation, presentation of the case in court and, in cases where counsel incurs travelling or subsistence expenses, an additional sum for disbursements. A further fee (the "refresher") is payable for every day of hearing after the first. We believe it would be helpful in a number of ways if the items of preparation and presentation were separately marked. First, it would enable the lay client to understand the way in which the fee is made up. Secondly, it would assist the taxing authority in estimating the value of the work done. Thirdly, in cases which are settled shortly before trial, it would reduce uncertainty as to the amount due to counsel for the work of preparation already performed. Finally, where a case is settled at the door of the court, it would identify the amount due in respect of the first day's hearing, a proportion of which should be allowed on taxation, having regard to the amount of alternative work, in court or chambers, available to counsel on that day. We recommend therefore that in cases where a brief fee is marked, the items of preparation and presentation should be shown separately, together with the amount of the daily refresher if appropriate.

Disbursements

37.85 A number of us have reservations about the inclusion within a global brief fee of the element of travelling and subsistence expenses. If expenses were charged as a separate item it would introduce unnecessary complexities in small cases, but we are agreed that where travelling and subsistence expenses are likely to be significant and are payable by only one client, they should be shown as a separate item. This would be of assistance to the taxing authority in deciding whether the charge is allowable on taxation.

Record of work and expenses: the pink form

37.86 In cases where counsel's fees are subject to taxation, whether in legally-aided cases or by agreement with a fee-paying client, we think it would be helpful to the taxing authority to have a record of the work done and expenses incurred. A useful example of such a record may be found in the "pink form" scheme, introduced in 1976 to provide more detailed information for Crown Court taxing officers. An example of the pink form, which is now called the case form, is annexed (see annex 37.5). The nature and extent of the information provided by the form is being kept under review. This arrangement is now used in all Crown Court centres. We consider that similar records should be more widely used both to assist the process of taxation in civil as well as in criminal cases and to explain to the lay client the way in which the barrister's charges are made up. For example, where the complexity of a piece of paper work justifies an enhanced fee, it would be helpful to have a precise record of the nature of the work and of the time spent on it. It is important that, on any such form, sufficient information should be given to enable the taxing officer to assess whether the time shown has been properly spent. It is also important, as we say in paragraph 37.19(a) above, to avoid rewarding most highly the slowest or least efficient worker.

Criteria for taxation, scales and guidelines

37.87 The fact that barristers work in a free and competitive market, in relation to fee-paying clients, results in the wide range of earnings at all levels of the Bar. The level of fees allowed on taxation are, even so, of considerable importance to barristers for two reasons: first, fees are directly controlled by taxation in all legally-aided work and secondly, the level of fees allowed by taxing masters sets an acknowledged market value for services.

37.88 The Senate expressed the view that the criteria for taxing fees in the Crown Court, set out in paragraph 37.62 above, are generally acceptable, subject to certain additions for the purpose of valuing work for private clients and civil advisory work. The Senate said that when work is done for a private client, regard should be had to the financial circumstances of the client and to any special relationship with the barrister (for example that of a personal acquaintance, professional colleague or regular client). We consider that factors of this kind may properly be taken into account. The Senate also suggested that in civil advisory work, additional factors to be taken into account included:–

(a) the seniority and specialised expertise of counsel which the case requires;

(b) the amount of money involved;

(c) special attention required (such as unusual expedition); and

(d) the importance of the matter to the client.

These factors are comprised in the general headings set out in paragraphs 37.18 and 37.19.

General Issues

A body to advise on fees and charges

37.89 The level of control which is exercised over lawyers' fees enhances the important effect of scales of fees and guidance to taxing authorities as to levels of fees and charging rates. We include at annex 37.6 a table showing the authorities by whom at present scales are fixed. With the exception of the solicitor's Non-Contentious Costs Committee all the eleven bodies listed are, in effect, the rules committee of specific courts. Their authority to specify scales of fees derives from their rule-making function.

37.90 This system has operated for many years and has come under increasing strain in the recent period of economic difficulties for a number of reasons. First, the committees and their staff have no systematic access to information about the earnings of lawyers and the effect that alterations in the scales would have. Secondly, there are no formal arrangements for coordination between the different committees. Thirdly, the committees have no lay members or members chosen specifically for their financial expertise or knowledge of legal costs. Fourthly, these committees, in accordance with the usual practice of rule committees, meet in private and their deliberations are not made public. If they decide for or against a change in a scale of fees, no reasons are given. Representatives of each branch of the profession sit on the rule committees, but are not at liberty to disclose what passes at their meetings. Because the responsible minister is a member of the committee or because the scales are subject to his approval, the Government may effectively veto any increase if prevailing policies so require. If suggested changes are not made, there is no indication when the position may again be reviewed, and what the prospects then will be.

37.91 Uncertainties of the kind created by procedures of this sort are unfair and bad for morale. It is clear from the evidence submitted by the governing bodies, professional associations and individual practitioners that the present arrangements are a source of strong grievance. Having regard to the dates when some of the scales were last revised (see annex 37.6) the profession has reasonable grounds for concern. The way in which its earnings have fallen behind in a period of inflation is shown in Table 36.1. We believe the time has come to put the means

by which scales, fees and guidelines are settled on a more regular, better informed and more closely co ordinated basis. Accordingly we recommend that the committees listed in annex 37.6 should cease to fix the levels of fees and charges and should be replaced for this purpose by a single body, constituted in the way described below. We described it as the Advisory Committee on the Fees and Charges of the Legal Profession, or the Fees Advisory Committee for short.

37.92 We are aware that there are objections to the course we propose. First, unless the body's composition, terms of reference and methods of working are carefully devised and clearly laid down, the concentration within one body of the function of recommending a wide range of fees and charges could diminish the independence of the profession and erode the judicial discretion of taxing authorities. Secondly, the recommendations of a body such as this, made independently of government, might come in conflict with prevailing policies. But if this occurs, we think it more satisfactory for all concerned if the reasons why the government of the day rejects a recommendation of the Fees Advisory Committee, for example because of the need to keep down public expenditure, are openly stated.

37.93 We consider that the three important characteristics of the Fees Advisory Committee should be the following.

(a) It should be, and should be seen to be, wholly independent of the government, as regards its membership, staff and method of operation.

(b) Its function in advising on scale and other fees should be to assess a fair level of remuneration for the work done. It should not operate or be seen to operate as a means by which government policy, on incomes or on the provision of services, may be imposed.

(c) The body should give reasons for its findings, whether they involve changing a scale or not, and its findings and reasons should be published. It should also publish an annual report on its work and its future programme. It is clear that the level of fees paid for legal aid work requires urgent review.

Composition

37.94 The Committee should be appointed by the Lord Chancellor and should include at least one person with personal experience and up-to-date knowledge of the principles and practice of taxation and at least two laymen, one of whom should be chairman. The chairman should have skill and experience in financial matters and the evaluation of professional time. The chairman and all members should be part-time. It would emphasize the independence of the Committee if its secretariat were not part of the government service but were provided independently, as in the case of the Review Board for Government Contracts. This is a matter for decision by the government, but there is no doubt that the secretariat of the Committee will in any event require advice and information from

the Office of Manpower Economics, the Government Actuary and others who have given us valuable assistance in the preparation of appropriate sections of this report. It will be necessary from time to time to mount surveys of remuneration of the profession as a whole or of certain parts of it and appropriate allowances for this purpose should be made in the Committee's budget, which should be payable from public funds.

Functions of the Fees Advisory Committee

37.95 The function of this body should be advisory. It should work in consultation with both the Council for Legal Services (see Chapter 6) and other bodies advising on remuneration. It should keep under review all the fees at present under the jurisdiction of the rules committee listed in annex 37.6. The main purpose of the Committee should be to ensure that where the level of fees is directly controlled by scale or taxation, the lawyer receives fair remuneration for the work done. For this purpose, having sought informed views on the proposals before it, the Committee may find it necessary to recommend revisions in the form of guidance issued to taxing and legal aid authorities and to recommend changes in the present scales of fees. All the present scales are out of date and require review.

37.96 In some cases, it may be desirable to eliminate the scales or fixed fees altogether. As we pointed out in paragraph 37.39, we believe this would be the best course in relation to the fixed items in the bill of costs in civil litigation. In other cases, it may be desirable to introduce a system of "standard" charges as is proposed, for example, for certain types of conveyancing work (see Chapter 21). The possibility of laying down scales or standard charges for other classes of non-contentious work should be kept under consideration.

Terms of service

37.97 The initial task of the Fees Advisory Committee will be heavy and it will be some time before its work assumes a routine nature. We recommend therefore that the initial appointments, in particular that of the chairman, should be for a period of up to five years.

The rule committees

37.98 With the appointment of the Fees Advisory Committee, the rule committees would have no practical function in relation to costs. They would not add anything to the results of the work of the Committee for they could not be expected to duplicate its detailed and expert assessment of the factual material available. It would be possible to enable them to give formal authority to the findings of the review body. While we express with diffidence our views on a matter which is concerned with the machinery of government, we suggest that it would not be right to take up the time of those who at present serve on these committees for purely formal purposes. The decision whether or not to implement a recommendation should rest with the responsible minister, who would, in our view, be the appropriate rule-making authority.

The organisation of taxation

37.99 Our terms of reference do not extend generally to the machinery of justice and the structure and staffing of the courts. We are, however, specifically requested to consider whether any changes are desirable in the arrangements for determining the remuneration of the profession.

37.100 The arrangements for the taxation of costs are similar to those by which, at present, scales are settled: each court operates its own system. As long ago as 1969 the Royal Commission on Assizes and Quarter Sessions (the Beeching Commission) (Cmnd. 4153) stated in paragraph 416 that it had received some criticism of the arrangements for the taxation of parties' bills of costs, particularly in criminal cases. It went on to make three proposals. First, it considered whether there was need for a whole-time taxing master to be appointed to each circuit to deal with all the more important civil and criminal taxations and to foster consistency. It decided that it had insufficient evidence to demonstrate the need for such an appointment but suggested that the possibility should be kept under review. Secondly, in paragraph 417, it stated that in the absence of any coordinating system the costs allowed on taxations carried out in the provinces by District Registrars varied a good deal. It went on to make a firm recommendation in the following terms.

> We think that it should be made a statutory responsibility of the Chief Taxing Master to give advice and guidance to taxing officers in London and the provinces on the principles to be adopted when taxing bills of costs. For this purpose it would be desirable for him to visit centres outside London and to hold conferences at which the principles could be discussed. This would not of course affect in any way the discretion of taxing officers when taxing individual bills.

Thirdly, it recommended, in paragraph 418, that there should be a right of appeal to a taxing master in London in all cases which were taxed in the Crown Court.

37.101 The third proposal made by the Beeching Commission has been implemented by the Home Secretary but little has been done to improve communication and coordination save in criminal cases where, as the appellate authority, the Chief Taxing Master has been able to achieve a measure of co-ordination through hearing appeals, issuing Notes for Guidance and holding meetings with deputy circuit administrators. In civil cases some coordination has been achieved by the fact that appeals from district registrars in all cases other than matrimonial causes lie to a High Court judge who sits with two assessors, one of whom is the Chief Taxing Master or a senior taxing master.

37.102 A further degree of coordination in the way in which bills are presented and taxed may be achieved as a result of the issue by the Chief Taxing Master of Masters' Practice Notes which deal with the practice and principles to be followed when drawing and taxing bills of costs in civil cases under the revised Appendix 2 to Order 62 of the Rules of the Supreme Court which came into force on the 24th April 1979. Parallel practice notes have been issued for matrimonial causes by the Chief Registrar of the Family Division.

37.103 We found, however, that there was little other contact and in particular that there was virtually no official contact between those responsible for the taxation of costs in the Family Division, the masters of the Supreme Court Taxing Office and the District Registrars. Special expertise is required to deal with the work of taxation in the various divisions of the High Court; even so, we consider there should be closer contact and greater coordination than exist at present.

37.104 At present, information about the levels of costs awarded is limited. Decisions of the High Court on important points of principle appear in the Law Reports: recent examples include *Property and Reversionary Investment Corporation Ltd.* v. *Secretary of State for the Environment* [1975] 2 A11 E.R.436 and *Treasury Solicitor* v. *Regester* [1978] 2 A11 E.R. 1920. The Masters' Practice Notes relating to the new Appendix 2 Order 62 of the Rules of the Supreme Court and the notes giving guidance to taxing officers for criminal cases in the Crown Court have been published in professional journals. The results of appeals against taxing officers' decisions in criminal cases are sent to the solicitor or barrister concerned, to the court and to the circuit from which the appeal emanated but unless a point of principle (which may relate to the sum to be awarded) is involved, it is not circulated to each circuit. Most taxing authorities base their calculations on notional charging rates about which little information is published, although the tables of fees and hourly rates to be circulated with the new Notes for Guidance will go some way to remedy this deficiency in criminal cases.

37.105 We considered the possible remedy of proposing a single organisation for taxation, under a Chief Taxing Master. This proposal met with strong opposition from those mainly concerned. It is clear that the various courts regard it as important to retain responsibility for the taxation of costs arising from their business. We accept that a single structure for taxation of costs would lead to difficulties, and do not recommend it. We consider that various other measures, described below, should be taken to improve communication and coordination.

Circuit taxing masters

37.106 Having considered the recommendations of the Beeching Commission and the progress which has been made since its report was published, we consider that there is now ample evidence to justify the appointment of circuit taxing masters. Their function would be to tax the most complex and heavy civil and criminal cases arising in their circuits so as to provide a more specialised service where it is most needed. This would relieve registrars and Crown Court taxing officers of the burden of heavy taxations which would otherwise occupy an undue amount of their time to the detriment of their principal work. The circuit taxing masters should advise the circuit administrators on all matters relating to the conduct of taxation of costs.

Appeals

37.107 The coordination of taxation would be improved if there were a single

system of appeals. The present system of re-assessment, described in paragraph 37.34, appears to work adequately, and we are aware of no grounds for any change at this level. At the next level there appears to be a need for a simpler and more expeditious procedure for dealing with appeals, and for this purpose we suggest that a new system be established. We suggest that all appeals in cases involving a point of general application, including appeals from justices' clerks, should lie to the Chief Taxing Master in London and that other appeals should lie to the circuit taxing masters in the provinces. In both cases the masters should sit with assessors. There should be a further appeal to a High Court judge sitting with assessors if the High Court gives leave or if the Chief Taxing Master or a circuit taxing master certifies that an important point of principle is involved. When appropriate, an appeal on a point of principle should lie directly to the High Court, bypassing intermediate stages.

Information

37.108 It may be undesirable to specify rates too closely. This would make for inflexibility and thus could inhibit the exercise of discretion by taxing officers. If too much reliance is placed on standard rates combined with time records, work which is particularly demanding or requires special expertise but which is of short duration will be unfairly remunerated. Even so, all involved, including the lay client, should have access to official views on prevailing rates for given classes of work, and other material of the kind described in paragraph 37.104. Some steps have already been taken in the direction we advocate. For example the Chief Taxing Master has given lectures organised by the Birmingham Law Society. We consider that in addition to activities of this sort, information about taxation policy and prevailing ranges and monetary bands of costs should be made public by articles in the professional press, lectures and seminars, and by any other suitable means.

37.109 The movement of information should not be one-way. It is important that taxing officers, legal aid committees, practitioners and the public should all be able to make known any problems or difficulties they have encountered or any suggestions for improvement they can make. The responsibility should rest on taxing masters and circuit administrators to ensure that information of this kind is preserved and analysed and presented in suitable form to the proposed Fees Advisory Committee and the responsible department.

Delay—solicitors' bills

37.110 We received numerous complaints from practitioners of delay in the settlement of fees, whether from private sources or public funds. We were therefore interested in the results of two surveys which showed the delay incurred in the various stages of taxation.

37.111 As to delay in civil cases, an investigation by the Law Society in March 1977 into a sample of 90 legal aid bills for undefended divorce cases in the county court from three legal aid areas produced the following results.

	Days
Average time lag between the date of hearing and bill lodged for taxation.	305
Average time lag between date of bill lodged for taxation and taxation.	74
Average time lag between taxation and claim being sent to area secretary by solicitors.	5
Average time lag between area secretary authorising payment and sending bill to accounts department.	6
Average time lag between area secretary authorising payment and cheque being sent to the solicitors via accounts department.	15

37.112 A survey of criminal cases in the South Eastern Circuit in 1976 covering a sample of 200 bills in the Crown Court, showed the following result.

	Days
Average delay between conclusion of case and lodgment.	128
Average delay between lodgment, taxation and payment.	5

Delays may, however, build up at individual courts and lead to appreciably longer periods than shown above.

37.113 The result of these surveys suggest that the main delay in the whole process of the collection of fees and charges in contentious matters is usually in the time taken by solicitors to lodge their bills of costs for taxation with the court. There is also a long delay in the civil and some criminal cases between the date of lodging and the date of taxation. The remaining occasions of delay, for submitting the taxed bill, authorising payment and issuing a remittance are not serious. For an appreciable part of these periods in civil cases, which amount to less than one month, the papers are in the post.

37.114 It is not the solicitor alone who suffers as a result of the present delays. In civil cases, the barrister cannot be paid in full until after the bill is taxed. In legally-aided cases, an award of damages cannot be paid in full to the assisted person until after the costs have been taxed and the Law Society has been able to calculate the charge on the damages (if any) which is payable to the Legal Aid Fund. For all those concerned, including the courts, the longer the process of assessing a bill is left unfinished, the greater the overheads and expense of taxation.

37.115 At present, delay is partly the fault of the system and partly the fault of individual lawyers. The solicitor is not to blame for the fact that the present form of the bill is intricate and cumbersome. The measures already taken to simplify it could, in our view with advantage be taken further. When (but only when) the bill has been reduced to the simplest possible form, we think it will be right to impose sanctions for delay in submitting it. We understand that sanctions are under consideration and ourselves recommend that in the event of serious and inexcusable delay the taxing master should have power to order that the amount payable to the solicitors responsible be reduced by up to 20 per cent.

37.116 The length of time between lodging the bill and taxation, save where it is caused by the need to obtain further information from the parties, should also be regarded as unacceptable. We have suggested above various procedural means by which this delay may be reduced. It is in the public interest as well as in the interest of the profession that delay in dealing with taxation and the settlement of costs paid out of public funds should be avoided. It is not right that the onus of reducing delay should rest only on the practising profession.

Delay—barristers' fee notes

37.117 The Senate has said that barristers' fee notes should be sent out promptly to instructing solicitors and that the chambers machinery for collecting fees is of vital importance. It commented that the administrative arrangements in chambers for collecting fees vary widely both as to system and efficiency. Our own investigations suggest that very often counsel's chambers are not well organised for getting out their fee notes punctually. This is unsatisfactory. As the General Council of the Bar remarked in its publication *The Machinery of Fee Collection,* most firms of solicitors are willing to pay barrister's fees as soon as reasonably practicable but solicitors can hardly be expected to pay bills they have not received or always to deal promptly with stale and badly referenced fee notes. Save when a fee note is sent out at the time when a piece of work is completed, it should be issued as a routine no later than the end of each month in respect of work completed in that month.

37.118 The Barristers' Clerks' Association published in 1970 a *Methods Manual for Counsel's Clerks* containing useful guidance. Each set of chambers must adopt the system which best suits its needs, but it should be regarded as the responsibility of the head of chambers, and of every member, to ensure that an efficient system of fee rendering and collection is set up and maintained by their clerk. Either the head of chambers or a member appointed for the purpose should be responsible for ensuring that the system is working well. This topic should be included in the practical training of every student and pupil barrister; pupil masters should ensure that their pupils are properly so instructed, and this matter should be included in the guidelines issued by the Senate (see paragraph 39.64).

37.119 In the event of a failure by a barrister to submit a fee note in reasonable time, we consider the same sanction should apply as is proposed in the case of solicitors. Fee notes are easier to prepare than bills of costs and delay in submitting them is the less justifiable. If a solicitor is unable to lodge his bill for taxation for lack of information about fees claimed, the barrister or his clerk should be required to explain the reasons to the taxing master or the registrar. In serious cases, the taxing master should have power to reduce the fee payable to the barrister by up to 20 per cent.

Payments on account

37.120 Final taxation of costs, however quickly it is brought on, cannot take place until the proceedings are completed. If no payment is made until this stage is

reached, work done in the early stages of proceedings may remain unpaid for many months or indeed for years. If our proposals for the taxation of costs arising in the magistrates' courts (paragraphs 37.56 and 37.59) are accepted, there may be some delay before these costs can be taxed. In these circumstances it is desirable that both branches of the profession should be able to obtain payment on account of work done before submission of a final account.

37.121 In the case of solicitors, payments on account by fee-paying clients can be made, but the arrangement is closely controlled by the rules relating to clients' accounts. When a solicitor has taken an advance from a client, it must be paid into the client's account. It cannot be transferred to the solicitor's account as a part payment for work done unless a bill or other written intimation of the amount of costs is delivered. When a bill has been delivered the solicitor may make no further charge in respect of work done in the period covered by this bill. Possibly for this reason, it seems at present to be an uncommon practice to submit regular requests for payments on account, though many practitioners would find it helpful to receive regular payments and most clients would value information about fees incurred to date which would be given in every interim bill. We consider that solicitors would be well advised to render bills more often for payments on account in respect of work which has been done, and that if there is any professional rule which prevents this, it should be amended. This will assist them in financing their practices and reduce the capital invested in the business. It will also be an aid to efficiency in keeping their records and time-costing procedures up to date.

37.122 In the case of barristers, fee notes can be sent as soon as a piece of work is done, but payment is not normally made if the matter has not been completed and the solicitor has received no interim payment. We consider it should be regarded as normal practice to render interim bills in order to obtain payments on account. Where the fee is subject to the taxation process the payment claimed should be in the region of 75 per cent or less of the fees applicable to the work done so as to allow for the possibility of the fees being reduced on taxation; but the client should be informed of the full amount of costs incurred.

37.123 Payments on account should be made out of the legal aid fund as well as by private clients. Delay in payment of legal aid fees causes hardship, in particular to barristers of recent call and newly-established firms of solicitors. We have been told it can be two to three years and sometimes even longer before a case reaches its end and the barrister is paid. In September 1975 the Law Society and the Bar Council made proposals to the Lord Chancellor for interim payments in civil legal aid cases, but nothing has come of these proposals. One reason is the cost to public funds of accelerating payments that are due, which we are told would amount to approximately £5.5 million. It should, we think, be appreciated that the present arrangements operate unjustly, in particular to the lower paid. On these grounds we recommend that payments on account should be made in respect of work done. Payments on account of legal aid costs are made in Northern Ireland

and we understand that there are no serious practical difficulties to prevent such arrangements being made.

Computers

37.124 There are a number of commercial computer systems on the market specifically designed for use by solicitors, including a system recommended by the Law Society. They range from complete internal computer installations to systems by which, as in the case of the Law Society's recommended system, access to a computer is gained through another agency. We have ourselves seen systems in operation in firms of all sizes from the largest London firms to a small firm with only three fee-earners. In all cases, we were told that when initial difficulties had been overcome, the use of a computer as an aid to an effective time costing system had led to overall improvements in efficiency and profitability.

37.125 In the present state of the art, computer print-outs do not provide all the information needed in a taxation of costs as there is no programme which covers every type of analysis and shows the reason for all charges. The combination of simpler bills combined with more highly developed methods of programming may make it possible in the future to use computer print-outs for all purposes, including taxation; but even with the present limitation we believe that experience has shown how helpful the computer can be in establishing a system of time costing which we regard as indispensable to efficient practice. We recommend that all solicitors should review their practices and office procedures to ensure that they take full advantage of the efficiency and economy which can be obtained with the assistance of modern technology.

Conclusions and Recommendations

			Paragraphs
Solicitors' non-contentious costs	R37.1	Laymen should be appointed to serve on the Law Society's assessment committees.	37.14
	R37.2	When a solicitor recieves instructions to carry out work he should inform the client in writing of the basis of his charges in the manner set out in the text. A Professional Standard should be issued for this purpose.	37.15-37.17
	R37.3	For taxation purposes there should be one set of criteria for the assessment of the value of the work done.	37.18-37.19
	R37.4	In order to improve efficiency, all firms of solicitors should install an effective system of time costing.	37.20-37.22

			Paragraphs
Costs in civil proceedings	R37.5	Costs now taxed on a party and party basis should instead be taxed on a common fund basis; the party and party basis should cease to be used.	37.32
	R37.6	The numerous small items in a bill of costs should be replaced by including an appropriate amount for overhead expenses in the charges made by the solicitor and other fee-earning staff.	37.39
	R37.7	Improvements in the form of the bill of costs have recently been introduced. Further simplification is desirable on the lines indicated in the text.	37.40-37.44
	R37.8	Shortened procedures for taxation, on the lines indicated in the text, should be widely adopted.	37.45-37.50
Costs in criminal proceedings	R37.9	Notes should be issued for the guidance of justices' clerks when taxing costs.	37.56
	R37.10	The costs of legally-aided defendants in the magistrates' courts should be taxed, rather than assessed, when £500 or more is claimed.	37.59
	R37.11	Improved consistency as between the awards of assessment committees and Crown Court taxing officers should be achieved.	37.64-37.68
Barristers' charges	R37.12	The instructing solicitor should be entitled to discuss with the barrister personally the amount of his fee.	37.79
	R37.13	A barrister should be permitted to agree with a fee-paying client that he will accept either the fee marked on the papers or that allowed on taxation.	37.80
	R37.14	The solicitor should explain clearly to the lay client the arrangements relating to barristers' fees. A Professional Standard should be issued for the purpose.	37.82

			Paragraphs
	R37.15	Brief fees should be marked in three parts:– (a) for preparation (b) for the first day's attendance in court (c) for second and subsequent days of attendance.	37.84
	R37.16	Where a barrister's expenses of travelling and subsistence are large and payable by only one client, they should be separately identified and not comprised within the brief fee.	37.85
	R37.17	A barrister should maintain records of the time spen on preparatory work and on paper work for which a fee other than a standard fee is payable.	37.86
General issues	R37.18	A Fees Advisory Committee should be established with the composition and functions described in the text.	37.89-37.97
	R37.19	A taxing master should be appointed to coordinate taxation work in each circuit.	37.106
	R37.20	There should be a system of appeals on taxation on the lines stated in the text.	37.107
	R37.21	Information about taxation policy should be made available to the public and the profession.	37.108
	R37.22	The taxing authorities should be responsible for assembling information affecting taxation policy, for the use of the Fees Advisory Committee.	37.109
	R37.23	When the form of solicitors' bills has been simplified, sanctions should be imposed if there is inexcusable delay in sending bills.	37.115
	R37.24	Barristers should ensure that an efficient system of fee rendering and	37.119

		Paragraphs
	collection operates in their chambers and there should be sanctions in the event of inexcusable delay.	
R37.25	It should be normal practice in any lengthy matter for both solicitors and barristers to receive regular payments on account in respect of work done, whether from legal aid or private funds.	37.120-37.123
R37.26	Solicitors should make greater use of computers and modern technology in planning the administration of their practices.	37.124-37.125

ANNEX 37.1

Taxation of costs by masters, registrars and others

(paragraph 37.4)

Court	Taxing authority
The House of Lords—Civil and Criminal	the Judicial Taxing Officer
The Judicial Committee of the Privy Council	the Registrar
The Court of Appeal (Criminal Division)	the Registrar
The Court of Appeal (Civil Division).	taxing masters of the Supreme Court (except in relation to proceedings assigned to a district registry)
The Chancery and Queen's Bench Divisions of the High Court, including their divisional courts and contentious probate cases.	
Taxations Pursuant to Specific Statutes	
Foreign Evidence Act 1865	taxing masters of the Supreme Court.
Sheriffs Act 1887	
The Land Clauses (Taxation of Costs) Act 1895	
London Building Act 1930	
Local Government Act 1933	
Representation of People Act 1949 election petitions	
Finance Act 1972—Value Added Tax	
Resale Prices Act 1976	
Fair Trading Act 1976	
Restrictive Practices Act 1976	
Transport Act 1962	
Transport Arbitration Tribunal	
The Family Division of The High Court	the Registrar
Admiralty Division of the High Court	the Registrar
Employment Appeal Tribunal	taxing masters of the Supreme Court.
The District Registries of the High Court	district registrars
The Lands Tribunal	the Registrar
Arbitration under the Arbitration Act 1950	taxing masters of the Supreme Court
Findings and orders of the Disciplinary Committee under the Solicitors Act 1974	
The Crown Court	appropriate officers
Magistrates' courts	chief clerks
Non-contentious business under Part III, Solicitors Act 1974	taxing masters of the Supreme Court and the district registrars specified in R.S.C. 0.62 20A para. 3

ANNEX 37.2
(paragraph 37.38)

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited   V.A.T. REGISTRATION No. 243 6709 56

Taxed Off: Common Fund	Taxed Off: Party and Party	Date and Item	Value Added Tax	Common Fund: Disbursements	Common Fund: Profit Costs	Value Added Tax	Party and Party: Disbursements	Party and Party: Profit Costs
		IN THE HIGH COURT OF JUSTICE			1974 W. No. 5323			
		QUEENS BENCH DIVISION						
		B E T W E E N :						
		(By his Father and Next Friend)			Plaintiff			
		- and -						
					Defendants			

		BILL OF COSTS of the PLAINTIFF to be taxed on a Common Fund basis pursuant to :-						
		(a) Judgment dated the 29th March 1976						
		(b) Schedule 2 of the Legal Aid Act 1974						
		Emergency Certificate No. dated the 24th October 1974						
		Full Certificate dated the 5th December 1974						
		Amended Certificate dated the 25th March 1975						
		PART 1 - Pre-Certificate						
		1974 Oct. 14 84. Letter before action						0 15
		Oct. 23						
		26. Instructions for hearing - Part 1, Pre-certificate - of the Plaintiffs claim for damages in respect of injuries and consequential loss suffered as a result of an accident caused by the negligence of the Defendants, their servants or agents on the 7th October 1974 at the High School for Boys involving :-						
		PLAINTIFF						
		interviews with the Plaintiff's Next Friend obtaining details of the incident and of the Plaintiff's injuries : reporting on the progress of the enquiries etc.						
		2 Interviews (1½ hours)						
		2 Telephone conversations						
		5 Outgoing letters 2 Incoming letters						
		Copy documents :-						
		2 A5 sheets - photostat						
		SCHOOLMASTERS						
		requesting information as to the incident and as to the Plaintiffs scholastic ability etc.						
		(1)						0 15

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off: Common Fund	Taxed Off: Party and Party	Date and Item	Value Added Tax	Common Fund: Disbursements	Common Fund: Profit Costs	Value Added Tax	Party and Party: Disbursements	Party and Party: Profit Costs
		3 Outgoing letters						
		POLICE						
		making enquiries as to their investigation into the incident						
		1 Outgoing letter						
		1 Incoming letter						
		MEDICALS						
		communications with the General Hospital and the Hospital as to the Plaintiff's injuries						
		2 Outgoing letters						
		NEWSPAPERS						
		making enquiries as to the facts obtained by them as to the incident						
		1 Outgoing letter						
		1 Incoming letter						
		DEFENDANTS						
		communications with the Defendants solicitors as to the Plaintiffs claims and as to investigations into the incident						
		1 Telephone conversation 1 Outgoing long letter						
		1 Outgoing short letter						
		3 Incoming letters						
		PERUSALS etc.						
		perusing Incoming correspondence, newspaper Reports, etc.						
		CARE, SKILL AND ATTENTION -						
		Partner engaged throughout						55 00
		85. Letters, messengers etc. - Part 1						3 00
		PART 2 - Post-Certificate						58 00
		1974 Nov. 27						
		28. Drawing and fair copy Instructions to Counsel (Mr.) to advise in conference						2 00
		29. Attending appointing and attending conference with Counsel when Counsel advised as to liability and evidence to be pursued - Engaged 1 hr.						3 50
		Paid conference fee to Counsel				0 72	10 00	
		Dec. 6						
		1. Drawing, issuing and serving Writ of Summons						2 30
		Paid issuing					12 00	
		(2)				0 72	22 00	8 00

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off		Date and Item	Value Added Tax	Common Fund		Value Added Tax	Party and Party	
Common Fund	Party and Party			Disbursements	Profit Costs		Disbursements	Profit Costs
		Dec. 6 42(a) Attending to obtain consent of next of friend attending filing						3 00
		Paid filing					0 25	
		Paid filing Legal Aid Certificate					0 25	
		81. Preparing Notice of Legal Aid Certificate						0 10
		1975 Feb. 13 7. Drawing, filing and service of Statement of Claim						5 00
		59. Attending Counsel (Mr.) to settle						0 75
		Paid fee to Counsel to settle				1 44	20 00	
		Feb. 25 43. Attending Defendants Solicitors granting extension of time for delivery of Defence						0 75
		Apl.1 60. Attending filing amended Legal Aid Certificate						0 75
		81. Preparing Notice thereof						0 10
		89(b) Service						0 25
		May 6 8. Drawing, filing and service of Further and Better Particulars of Statement of Claim						2 00
		Paid fee to Counsel (Mr.) to settle				0 72	10 00	
		8. Drawing, filing and service of Request for Further and Better Particulars of Defence						2 50
		Paid fee to Counsel (Mr.) to settle				0 72	10 00	
		59. Attending Counsel to settle Further and Better Particulars, Request and to advise on evidence						0 75
		Paid fee to Counsel to advise				1 44	20 00	
		May 21 14(b) Drawing, issuing and service of Summons for Directions						2 50
		Paid issuing					1 00	
		May 23 22(a) Drawing, filing and service of Plaintiffs List of Documents						5 00
		June 19 19. Attending hearing of Summons for Directions when Order made						3 50
		21. Attending to draw up and enter Order						0 75
		82(b) Copy Order to file						0 10
		82(b) Copy Order to serve						0 10
		89(b) Service						0 20
		(3)				4 32	61 50	28 15

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off: Common Fund	Taxed Off: Party and Party	Date and Item	Value Added Tax	Common Fund: Disbursements	Common Fund: Profit Costs	Value Added Tax	Party and Party: Disbursements	Party and Party: Profit Costs
		July 29 82(b) Preparing 2 Bundles of Pleadings for setting down - 15 A4 sheets each-photostat						3 00
		59(a) Attending to set down for hearing						0 75
		Paid setting down					15 00	
		84. Writing Defendants solicitors that action set down for hearing						0 40
		Aug. 28 17. Attending obtaining appointment for further hearing of Summons for Directions						0 75
		81. Preparing Notice of appointment						0 10
		89(b) Service						0 25
		Oct. 31 17. Attending Clerk of the Lists for appointment to fix date for hearing						0 75
		81. Drawing Notice						0 10
		89(b) Service						0 25
		60. Attending appointment when hearing fixed for 7 days commencing on the 22nd March 1976						0 75
		17. On delivery of Defendants List of Documents attending obtaining withdrawal of further hearing of Summons for Directions						0 75
		81. Notice thereof						0 10
		89(b) Service						0 25
		Nov. 25						
		24(b) Writ of Subpoena duces Tecum to and attending issuing						0 75
		Paid issuing					1 00	
		89(a) Personal service by Agent						-- --
		Dec. 15 28. Drawing and fair copy Instructions to Leading and Junior Counsel to advise on Quantum of Damages and further on Evidence						7 50
		59. Attending Leading Counsel (Q.C.) with Instructions						1 50
		Paid fee to Leading Counsel				10 80	150 00	
		29. Attending appointing and attending consultation with Leading and Junior Counsel when Counsel advise as per Instructions engaged 1½ hrs.						4 50
		59. Attending Junior Counsel (Mr.) with Instructions						0 75
		Paid fee to Counsel				1 08	15 00	
		(4)				11 88	181 00	23 20

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off: Common Fund	Taxed Off: Party and Party	Date and Item	Value Added Tax	Common Fund: Disbursements	Common Fund: Profit Costs	Value Added Tax	Party and Party: Disbursements	Party and Party: Profit Costs
		1976 Jan. 6 24(a) Drawing and issuing 10 Writs of Subpoenas ad test						7 50
		Paid issuing					10 00	
		Jan. 29 15. Drawing, issuing and service of Summons for leave to deliver Interrogatories						2 00
		22(b) Drawing and service of Interrogatories						7 00
		59. Attending Counsel (Mr.) to settle						0 75
		Paid fee to Counsel to settle				1 08	15 00	
		Feb. 13 28. Drawing and fair copy Instructions to Counsel to advise in conference						2 50
		29. Attending appointing and attending conference with Counsel (Mr. when Counsel advised on special damages and Medicals - engaged 1 hour						3 50
		Paid conference fee to Counsel				0 72	10 00	
		Mar. 9 24(a) Drawing and issuing 2 Writs of Subpoena ad test						1 50
		Paid issuing					2 00	
		Mar.10 24(a) Drawing and issuing Writ of Subpoena ad test to						75
		Paid issuing					1 00	
		Mar. 17 16. Drawing and fair copy Brief to Counsel (Mr.) on hearing of Summons for Interrogatories						2 50
		59. Attending Counsel therewith						1 50
		Paid fee to Counsel with Brief and for conference				2 88	40 00	
		29. Attending appointing and attending conference						2 50
		19. Attending hearing of Summons when Order made for Interrogatories - engaged 1 hour						5 00
		21. Attending to draw up and enter Order						0 75
		82(b) Copy Order to file						0 10
		82(b) Copy Order for service						0 10
		89(b) Service						0 25
		Mar. 19 29. Attending appointing and attending conference with Counsel (Mr.) when Counsel advised as to evidence in respect of the Plaintiffs state of health etc. - engaged 1½ hours						4 50
		(5)				4 68	78 00	42 70

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off: Common Fund	Taxed Off: Party and Party	Date and Item	Value Added Tax	Common Fund: Disbursements	Common Fund: Profit Costs	Value Added Tax	Party and Party: Disbursements	Party and Party: Profit Costs
		Paid conference fee to Counsel				0 72	10 00	
		Mar. 23 81. Preparing Notice under the Civil Evidence Act -						0 10
		82(b) Copy Statement and letter to accompany - 4 A4 sheets - photostat						0 40
		89(b) Service						0 25
		Mar. 25 26. Instructions for hearing - PART 2, Legal Aid - involving :-						
		PLAINTIFF						
		attending the Plaintiff at Hospital obtaining details of his evidence etc. and as to the progress of the proceedings.						
		discussions with the Plaintiff's Next Friend as to details for the Special damages particularly as to the extensive Building works for the adaption of his house to enable the Plaintiff to be accommodated in his wheelchair etc.						
		obtaining information from the plaintiffs Next Friend on the enquiries made by him regarding the incident etc.						
		submitting draft of statements of evidence, going through same obtaining clarification on matters arising, resubmitting and obtaining same approved.						
		obtaining further instructions on the documents disclosed by the Defendants particularly as to the School Rules, Regulations etc.						
		making arrangements for the Plaintiff and his Next Friend to attend Court.						
		6 Interviews (8 hours)						
		15 Telephone conversations						
		1 Outgoing long letter						
		24 Outgoing short letters						
		10 Incoming letters						
		Copy documents :-						
		10 A4 sheets-photostat						
		4 A5 sheets-photostat						
		Plus Travelling (5 hours)						
		WITNESSES						
		obtaining particulars of evidence from witnesses not interviewed by Enquiry Agents; submitting statements and obtaining same approved.						
		(6)				0 72	10 00	0 75

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off		Date and Item	Value Added Tax	Common Fund		Value Added Tax	Party and Party	
Common Fund	Party and Party			Disbursements	Profit Costs		Disbursements	Profit Costs
		communications with all witnesses to the incident as to arrangements for attending Court : subsequently notifying them of the settlement of the action and requesting refunds of amount paid on Subpoenas						
		2 Interviews (1½ hours)						
		8 Telephone conversations						
		31 Outgoing letters						
		8 Incoming letters						
		MEDICALS						
		obtaining Medical Reports on the Plaintiff during the course of the proceedings : supplying copies of the Defendants Reports and obtaining information thereon :						
		Making arrangements for the attendance at the hearing of Dr.						
		4 Telephone conversations						
		2 Outgoing long letters						
		22 Outgoing letters						
		12 Incoming letters						
		Copy documents :-						
		8 A5 sheets - photostat						
		Paid Mr - Consultant Orthopaedic Surgeon						
		Fee for Report dated 30th October 1974					12.00	
		Paid Dr.						
		at Hospital						
		Fee for Report dated 23rd May 1975					30.00	
		ditto - 22nd December 1975					30.00	
		ditto - 24th March 1976					30.00	
		Paid Mr. - Consultant Ophthalmic Surgeon - Hospital						
		Fee for Report dated 11th March 1976					15.00	
		POLICE						
		discussions with the Police as to their investigations into the incident : exchanging statements obtained and obtained further information (including interview at)						
		1 Interview (1 hour)						
		3 Telephone conversations						
		10 Outgoing letters						
		7 Incoming letters						
		(7)					117.00	

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off		Date and Item	Value Added Tax	Common Fund		Value Added Tax	Party and Party	
Common Fund	Party and Party			Disbursements	Profit Costs		Disbursements	Profit Costs
		Copy documents :-						
		10 A4 sheets - photostat						
		Travelling 1½ hours						
		Paid for copy statements					8.00	
		LOCUS IN QUO						
		attending at , Essex, inspecting the scene of the incident and making sketches and notes						
		1 hour plus						
		1 hour travelling						
		ENQUIRY AGENTS						
		instructing Enquiry Agents to make extensive enquiries and interview all members of the class involved and also Schoolmasters who had left the area concerned : obtaining their Reports and statement of witnesses :						
		on the advice of Counsel instructing Agents to make further enquiries and subsequently to serve Subpoenas on the required witnesses etc. etc.						
		1 Interview (1¼ hours)						
		8 Telephone conversations						
		1 Outgoing long letter						
		18 Outgoing short letters						
		Copy documents :-						
		6 A5 sheets - photostat						
		Paid Messrs. & Co. - Enquiry Agents charges				76.55	956.90	
		NEWSPAPERS						
		further communications with Local newspapers as to information in their possession						
		1 Outgoing letter						
		1 Incoming letter						
		COLLEGE						
		obtaining information as to the progress of the Plaintiff						
		with his studies and as to evidence to be given to the Court by their representative						
		2 Telephone conversations						
		5 Outgoing letters						
		2 Incoming letters						
		BUILDERS						
		obtaining details of building works in order to adapt the Plaintiff's Next Friend's house together with estimates thereof.						
		(8)				76.55	964.90	

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off		Date and Item	Value Added Tax	Common Fund		Value Added Tax	Party and Party	
Common Fund	Party and Party			Disbursements	Profit Costs		Disbursements	Profit Costs
		4 Telephone conversations						
		6 Outgoing letters						
		5 Incoming letters						
		ENQUIRIES - Rehabilitation						
		making enquiries as to the possible rehabilitation and employment of the Plaintiff and making arrangements for the attendance of witnesses thereon.						
		7 Telephone conversations (including 1 of ½ hour)						
		9 Outgoing letters						
		6 Incoming letters						
		DEFENDANTS						
		communications with the Defendants dealing with matters arising on Pleadings, Discovery of Documents, agreeing Bundles of Documents and Correspondence for the Court, Medical Reports, inspection of scene of incident etc.						
		1 Interview (3 hours)						
		10 Telephone conversations						
		2 Outgoing long letters						
		56 Outgoing short letters						
		37 Incoming letters						
		Copy documents :-						
		19 A4 sheets - photostat						
		6 A5 sheets - photostat						
		ATTENDANCES						
		searching Cause List						
		LAW SOCIETY						
		communications with the Law Society as to Authority for Leading Counsel etc.						
		4 Outgoing letters						
		3 Incoming letters						
		BIRTH CERTIFICATE						
		attending bespeaking and obtaining copy Birth Certificate of the Plaintiff						
		Paid for copy Certificate					2 50	
		SPECIAL DAMAGES						
		preparing Schedule of Special Damages and the subsequent revision thereof (2 hours)						
		PERUSALS etc.						
		collating of documents for Counsel and the Court in anticipation of a hearing estimated at 2 weeks :-						
		(9)					2 50	

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off: Common Fund	Taxed Off: Party and Party	Date and Item	Value Added Tax	Common Fund: Disbursements	Common Fund: Profit Costs	Value Added Tax	Party and Party: Disbursements	Party and Party: Profit Costs
		Pleadings, Statements of Witnesses, Enquiry Agents Reports, Medical Reports, School and College Reports, Plans, Photographs, Statements obtained by the Police, Accounts relating to Special Damages, Documents disclosed by the Defendants, Incoming correspondence, Newspaper Reports, etc. etc.						
		26 hours (21¾ hours recorded)- Partner						
		6 hours recorded for Articled Clerk						
		CARE, SKILL AND ATTENTION - Partner engaged throughout			25 00			1500 00
		.30. Drawing Brief to Counsel - 5 A3 sheets						4 00
		82(a) 2 copies for Counsel - Top and carbon						3 00
		82(b) 2 copies of the following for Counsel :-						
		Statement of Plaintiff's Father - 1 A3 sheet - Top and carbon						1 20
		Statement of Plaintiff's Father to the Police - 1 A4 sheet						0 20
		Documents relating to Special Damages - 11 A5 sheets - photostat						1 54
		7 A4 sheets - photostat						1 40
		Medical reports - 5 A5 sheets - photostat						0 70
		24 A4 sheets - photostat						4 80
		Pleadings - 54 A4 sheets - photostat						10 80
		List of Documents - 9 A4 sheets - photostat						1 80
		Correspondence and attendance Notes - 100 A4 sheets - photostat						20 00
		Statements of witness and Notices under Civil Evidence Act - 33 A4 sheets - photostat and carbon						6 60
		Plaintiff's School History and correspondence with College - 17 A4 sheets - photostat						3 40
		Documents relating to - 36 A4 sheets - photostat						7 20
		Documents relating to 35 A4 sheets - photostat						7 00
		Documents relating to 52 A4 sheets - photostat						10 40
		Punishment Book and School Rules etc. - 35 A4 sheets - photostat						7 00
		(10)			25 00			1591 04

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off: Common Fund	Taxed Off: Party and Party	Date and Item	Value Added Tax	Common Fund: Disbursements	Common Fund: Profit Costs	Value Added Tax	Party and Party: Disbursements	Party and Party: Profit Costs
		Agreed Bundle of correspondence - 14 A4 sheets - photostat						2 80
		1 A5 sheet - photostat						0 14
		Other correspondence - 29 A4 sheets - photostat						5 80
		Miscellaneous School documents - 14 A4 sheets - photostat						2 80
		Agreement dated 19th December 1975 - 2 A4 sheets - photostat						0 40
		59. Attending Leading Counsel (Mr. Q.C.) With Brief and papers						1 50
		Paid his fee with Brief and for consultation				28 00	400 00	
		59. Attending Junior Counsel (Mr.) with Brief and papers						1 50
		Paid his fee with Brief and for consultation				19 15	266 00	
		29. Attending appointing and attending consultation						2 50
		82(b) Copies of the followng for the Court as advised by Leading Counsel and agreed with the Defendants :-						
		Documents relating to - 36 A4 sheets - photostat						3 50
		Documents relating to 35 A4 sheets - photostat						3 50
		Documents relating to - 52 A4 sheets photostat						5 20
		Punishment Book and School Rules etc. 35 A4 sheets - photostat						3 50
		82(b)2 copies of the following for the use of witnesses during an estimated hearing of 14 days as advised by Leading Counsel :-						
		Documents relating to - 36 A4 sheets - photostat						7 40
		Documents relating to 35 A4 sheets - photostat						7 40
		Documents relating to 52 A4 sheets - photostat						10 00
		Punishment Book and School Rules - 35 A4 sheets photostat						7 40
		82(b) 3 Copies of the following for the Defendants Solicitors :-						
		Correspondence - 14 A4 sheets - photostat						4 00
		1 A5 sheet - photostat						0 11
						47 95	666 00	69 45
		(11)						

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off Common Fund	Taxed Off Party and Party	Date and Item	Value Added Tax	Common Fund Disbursements	Common Fund Profit Costs	Value Added Tax	Party and Party Disbursements	Party and Party Profit Costs
		Medical Reports - 5 A5 sheets - photostat						1 05
		24 A4 sheets - photostat						7 20
		Documents relating to 36 A4 sheets - photostat						10 80
		Documents relating to 35 A4 sheets - photostat						10 50
		Documents relating to 52 A4 sheets - photostat						15 60
		Punishment Book and School Rules - 35 A4 sheets - photostat						10 50
		Mar. 29 33(b)(ii) Attending Court on hearing when after negotiations terms of settlement agreed whereby the Plaintiff would receive £25,000 with Common Fund Costs and Legal Aid Taxation						15 00
		Apl.2 34. Drawing Judgment and attending to enter						1 50
		82(a) Copy for duplicate - 2 A4 sheets						0 50
		82(b) Copy for service						0 20
		89(b) Service						0 25
		Apl. 21 15. Drawing, issuing and serving Summons for an Order for investment in the High Yield Fund administered under the Common Investment Fund Scheme 1965						1 50
		43. Attending obtaining Defendants solicitors consent thereto						0 75
		19. Attending hearing before Master when Order made for money to be transferred to Short Term Investment Account and adjourned to Master for further hearing						3 00
		21. Attending to draw up and enter Order						0 75
		82(b) Copy Order to file						0 10
		82(b) Copy Order to serve						0 10
		89(b) Service						0 25
		82(b) Copy Order for Pay Office						0 10
		60. Attending lodging						0 75
		May 3. 19. Attending hearing before Master when Order made for investment to remain in the Short Term Investment Account						3 00
		21. Attending to draw up and enter Order						0 75
		82(b) Copy Order to file						0 10
		(12)						84 25

No. 4b L/A Tax Costs Backsheets Oyez Stationery Limited

Taxed Off		Date and Item	Value Added Tax	Common Fund		Value Added Tax	Party and Party	
Common Fund	Party and Party			Disbursements	Profit Costs		Disbursements	Profit Costs
		82(b) Copy Order to serve						0 10
		89(b) Service						0 25
		82(b) Copy Order for Pay Office -						0 10
		60. Attending lodging						0 75
		82(b) Copy Judgment for Taxing Master - 2 A4 sheets - photostat						0 20
		36. Drawing Bill of Costs - 14 A3 sheets						11 20
		82(a) Copy for the Court						5 60
		82(b) Copy for Defendants solicitors 14 A3 sheets - carbon						2 80
		37. Attending obtaining reference						1 00
		38. Attending taxation, vouching and obtaining Certificate						20 00
		85. Letters, messengers etc. including £36.30 fares and telegrams - Part 2						50 00
		Paid witnesses :-						
		Plaintiff -						
		Next Friend -					18 40	
		K.J. -					18 35	
		K. -					20 66	
		A.N. -					17 30	
		S. J. -						
		£3.00 paid on Subpoena - £2.50 returned					0 50	
		L.R. -					3 00	
		P.T. -					3 00	
		C.M. -					3 00	
		M. -					3 00	
		K.W. -					3 00	
		M.S. -					3 00	
		E.J. - Department of Employment,					9 60	
		F.J. -					5 00	
		Dr. of the Hospital,					40 00	
							147 81	92 00

(13)

No. 4b L/A Tax Costs Booksheets Oyez Stationery Limited

Taxed Off		Date and Item	Value Added Tax	Common Fund		Value Added Tax	Party and Party	
Common Fund	Party and Party			Disbursements	Profit Costs		Disbursements	Profit Costs
		SUMMARY						
		Part 1 - Pre-Certificate						
		Page 1.						0 75
		2.						58 00
		Taxed off						58 75
		Authorised Increase						1 31
		Disbursements						60 06
		V. A. T. on Profit Charges						
		V. A. T. on Counsel's fees						
		V. A. T. on Other Disbursements						
		Taxing fees - PART 1						
		Total - Part 1						
		PART 2 Legal Aid						
		Page 2.				0 72	22 00	8 00
		3.				4 32	61 50	28 15
		4.				11 88	181 00	23 20
		5.				4 68	78 00	42 70
		6.				0 72	10 00	0 75
		7.				- --	117 00	- --
		8.				76 55	964 90	- --
		9.				- --	2 50	- --
		10.			25 00	- --	- --	1591 04
		11.				47 95	666 00	69 45
		12.						84 25
		13.					147 81	92 00
					25 00	146 82	2250 71	1939 54
		Taxed off						
		Authorised Increase						153 83
		Disbursements			25 00			2093 37
		V. A. T. on 90% of Profit Charges						
		V. A. T. on 90% of Counsels' fees						
		V. A. T. on other Disbursements						
		Taxing fees - PART 2						

(14)

ANNEX 37.3
(paragraph 37.41)

No. 2B Taxation Costs Backsheets Oyez Stationery Limited

Taxed Off		Value Added Tax	Disburse-ments	Profit Costs
	IN THE HIGH COURT OF JUSTICE 1974 W No. 5323 QUEEN'S BENCH DIVISION BETWEEN: (by his father and next friend Plaintiff - and - Defendant			
	BILL OF COSTS of the Plaintiff to be taxed on a common fund basis pursuant to Judgment dated the 29th March 1976 and to Schedule 2 of the Legal Aid Act 1974. (Emergency Certificate dated 24th October 1974; full certificate dated 5th December 1974; amended 25th March 1975).			
	Item PART 1 PRE CERTIFICATE 1974 14 Oct Letter before action.			
	10(a) 23 Oct Part Instructions for hearing the plaintiff's claim being for damages for personal injuries in an accident at High School on 7th October 1974 caused by the negligence of the defendants' servants or agents. The action was conducted throughout by a principal except where otherwise stated. Expense rates in this part: Partner £12 an hour, Assistant Solicitor £10, letters out and telephone calls 75p. and incoming letters 25p.			
	(i) The Client - Instructions to sue and making preliminary enquiries. 2 interviews (1¾ hours) Partner 1 hour. Asst. Sol. ¾ hour. 2 telephone conversations 5 letters out 2 letters in £25.25			
	(ii) Witnesses - obtaining information about scholastic ability from school-masters. 3 letters out - Assistant Sol. 2.25			
	(iii) Enquiries into police report. 1 letter out 1 in. Asst. Sol. 1.00			
	(iv) Medical evidence enquiries as to extent of injuries 2 letters out. 1.50			
	(v) Enquiries from newspapers. 1 letter out 1 in. Asst. Sol. 1.00			
	(vi) Defendant's solicitors - attending and corresponding them. 1 telephone conversation 2 letters out (1 long) 1 letter in 2.75 £33.75			
	10(b) care and conduct at 50% 16.88			50 00

No. 2B Taxation Costs Backsheets Oyez Stationery Limited

Taxed Off		Item	PART 2 POST CERTIFICATE	Value Added Tax		Disbursements		Profit Costs	
			1974						
		3(d)	27 Nov. Instructions to counsel to advise.						
		7	Attending conference (1 hour)					8	00
			Paid counsel's fees.		80	10	00		
		1(a)	10 Dec. Writ of Summons			12	00		
			1975						
		3(b)	15 Feb. Statement of Claim. Paid Counsel to settle.	1	60	20	00		
		"	6 May Further and better particulars. Paid Counsel to settle.		80	10	00		
		"	Request for particulars of defence Paid Counsel to settle, and for Advice		80	10	00		
			on Evidence.	1	60	20	00		
		2	1 May Summons for directions.					–	—
		3(b)	Plaintiff's list of documents.					–	—
		6	9 June Attending summons for directions when order made (½ hour) Assistant Sol.					4	50
			29 July Setting down and paid			15	00		
			31 Oct Attending Clerk of Lists. Articled Clerk.					–	—
		3(d)	15 Dec. Instructions to Leading and Junior Counsel to advise on quantum.					–	—
		7	Attending consultation (1½ hours)					12	00
			Fee to Leader	12	00	150	00		
			Fee to Junior	1	20	15	00		
			1976						
		2	29 Jan. Summons for leave to deliver interrogatories. Assistant Solicitor.					–	—
		7	Attending conference on medicals (1 hour) Assistant Solicitor					8	00
			Paid Counsel .		80	10	00		
		3(d)	10 Mar. Brief to Counsel on Summons. Paid Counsel.	3	20	40	00	–	—
		6	17 Mar. Attending hearing when order made (1 hour) costs in cause. Asst. Sol.					7	00
		7	19 Mar. Attending conference further on evidence. (1 hour)					8	00
			Paid Counsel		80	10	00		
		3(d)	29 Mar. Brief to Leader and Junior.					–	—
			Paid Leader.	32	00	400	00		
			Paid Junior.	21	28	266	00		
		8	Attending hearing when action settled (3 hours)					21	00
			Paid witness expenses as per schedule annexed.			147	81		
		2	21 Apr. Summons for investment order.					–	—
		6	Attending hearing (adjourned)(½ hour) Assistant Solicitor.					4	50
		6	3 May attending further hearing when order made. Assistant Solicitor.					4	50

No. 2B Taxation Costs Backsheets Oyez Stationery Limited

Taxed Off	Item		Value Added Tax	Disbursements	Profit Costs
	5	Block allowance			95 00
	10	Part Instructions for trial - expense rates Partner £15 an hour, Assistant Solicitor £12, letters out and routine telephone calls charged at £1 each and incoming letters at 50p.			
		(i) The Client - attendances at hospital and on the next friend. 6 interviews timed at 8 hours. Partner 4 hours. Asst. Sol. 4 hours 15 telephone calls 25 letters out (1 long) 10 letters in Travelling time 5 hours (⅔ rate) £204			
		(ii) Witnesses			
		(a) proofing those not seen by enquiry agent arranging attendance at Court of all witnesses including issue of subpoenas and paid therefor 2 interviews - Assistant Solicitor (1½ hours) 8 telephone calls. 31 letters out 8 letters in £61		14 00	
		(b) interviewing officers and correspondence. 1 interview - Asst. Sol. (1 hour) 3 telephone calls. 10 letters out 7 in. Travelling Asst. Sol. (1½ hours) £40			
		(c) further newspaper enquiries. Assistant Solicitor. £2			
		(d) Instructing enquiry agents to interview all members of the class and teachers who had left the area and to serve subpoenas. Assistant Solicitor. 1 interview (1½ hours) 8 telephone calls 19 letters out (1 long) £46			
		Paid their fees	76 55	956 90	
		(iii) Medical evidence - obtaining reports and arranging attendance. 4 telephone calls 24 letters out (1 long) 12 letters in £35			
		Paid fees to:-			
		Mr.		12 00	
		Dr. 1st report.		30 00	
		2nd report.		30 00	
		3rd report.		30 00	
		Mr.		15 00	
		(iv) Inspecting the locus in quo (1 hour and 1 hour travel) £25 £413			

No. 28 Taxation Costs Backsheets Oyez Stationery Limited

Taxed Off			Value Added Tax	Disbursements	Profit Costs
	Item	Brought forward			
		(v) Special damage - obtaining information as to scholastic progress from College. Plans and estimates for conversion of next friend's house. Investigating possibility of rehabilitation and employment. Preparing schedule (2 hours) 1 interview ½ hour) 13 telephone calls 20 letters out 13 in.	£77		
		(vi) The Defendant - discovery agreeing bundles, inspection and correspondence generally. 1 interview. Asst. Sol. (3 hours) 10 telephone calls. 58 letters out (2 long) 37 letters in	£124		
		(vii) Discovery and (viii) Consideration of documents 21¾ hours recorded - Partner. 6 hours recorded - Assistant Solicitor 5 hours estimated - Partner for drawing brief.	£474		
		Miscellaneous - Obtaining birth certificate, paid and correspondence.	£12		
			£1100		
	10 (b)	Care and conduct at 50%	550		1650 00
	4	Copy documents including agreed bundles for two counsel, court and witnesses A4 x 1979			296 85
	12(a)	Taxation			40 00

ANNEX 37.4
(paragraph 37.60)

The Crown Court

at

Messrs.
Solicitors

BILL OF COSTS

R. v

ref.

Case No.

VAT No.

Counsel for defence/ prosecution:-

Legal Aid Order/Order for costs from central funds

Date		claimed £	claimed p	allowed £	allowed p
	PREPARATION FOR TRIAL				
	ATTENDANCE				
	On the Prosecutor/Accused				
	Where did the interview take place?				
	Time engaged by hrs mins				
	Time spent in travel hrs mins				
	Detail any subsequent visits				
	On Witnesses. Alibi/Factual/Character/Expert/Professional/or Bail Sureties				
	Give names and addresses				
	Where did interview take place?				
	Time engaged by hrs mins				
	Time spent in travel hrs mins				
	Did you have to locate them? If 'Yes', give details				
	Time engaged by hrs mins				
	Time spent in travel hrs mins				
	Other (give full details)				
	Form 5251 Bill of Costs 1 C.F.				

Date		£	p	£	p
	B.F.				
	LETTERS IN (state number) OUT (Ordinary) (Long state number of pages)				
	TELEPHONE CALLS IN OUT N.B. If 5 minutes and over, state time				
	PREPARATION OF DOCUMENTS Indictment, depositions, statements, exhibits, plans, notices of additional evidence. Instructions/Brief to Counsel and any other documents. Time engaged by hrs mins Time spent in travel hrs mins				
	CONSIDERATION OF DOCUMENTS Indictment, depositions, statements, exhibits, plans, notices of additional evidence. Opinions of Counsel and any other documents. Time engaged by hrs mins Number of pages				
	CONFERENCES Where was the conference held? Time engaged by hrs mins Time spent in travel hrs mins				
	CARE AND CONDUCT Give details of any special circumstances which the taxing officer should take into consideration.				
	TYPING from dictation, State length **COPYING** State if typed, Xerox or similar Number of pages irrespective of size				
	Total costs for Preparation C.F. to P4.				

2

Date

CONDUCT OF THE CASE AT COURT

£	p	£	p

APPLICATIONS before a Crown Court Judge

Bail
To stand out
To fix a date
Any other
Time engaged at Court by hrs mins
Time spent in travel hrs mins

ATTENDANCE AT TRIAL OR HEARING with Counsel when case listed for trial

Give details of each attendance in Court. (Waiting time to be shown separately)

Day 1 by
Day 2 by

Give also time spent **daily** in travel hrs mins

Total costs of conduct of case at court C.F. to page 4

WORK BEFORE APPEAL

Give only details of work in which advice was given and notice of appeal or application for leave to appeal was not lodged.

Work by hrs mins
Time engaged in travel hrs mins

N.B. Work in connection with an appeal, when notice of appeal or application for leave to appeal is lodged on advice, forms part of the costs of the appeal which are taxed by the Registrar of Criminal Appeals.

Total costs of work before appeal C.F. to page 4

3

Messrs.

Solicitors
of

V.A.T. Reg'd No.

Costs payable under legal aid order/from central funds in the case of
Regina V.

	claimed £	claimed p	allowed £	allowed p
Costs for preparation for trial (from p.2)				
Costs for conduct of case at court (from p.3)				
Costs for work before appeal (from p.3)				
Disbursements on which V.A.T. is payable (N.B. net amount exclusive of V.A.T. must be shown) detail:-				
Total for V.A.T. purposes				
V.A.T.				
Disbursements on which V.A.T. is not payable - detail:- (e.g. agency disbursements)				
Total claimed by solicitors				
Total allowed by Taxing Officer				

Signed ....

Taxing Officer

RM 9/73

ANNEX 37.5
(paragraph 37.86)

CASE MEMORANDUM (if insufficient space provided continue on separate sheet)

CASE	CASE NO.	COUNSEL (at trial) CALL
SOLICITORS		VAT REGISTERED YES/NO REGISTRATION NUMBER
COURT	COURT FILE NO.	

A DETAILS OF CASE: (Taken from Prosecution Papers only)

NATURE OF CASE	FIGHT/PLEA How Listed How Disposed	NO. OF COUNTS	NO. OF DEFTS	NO. OF WITS
PAGES OF STATEMENTS INCLUDING NAE (in fights count corroborative, conditional and Section 9 witnesses as half pages)		NO. OF PAGES OF EXHIBITS		

B PRE-TRIAL

1. HOURS spent on getting up cases (Post committal only) (not including B 2-4)
2. CONFERENCE AND ORAL OPINIONS (a) By counsel at trial (b) By counsel not at trial

DATES	TIMES	PLACE	PURPOSE	COUNSEL (including counsel not at trial)

3. ADVICES – Written. DOCUMENTS/SCHEDULES prepared

4. APPLICATIONS and PRACTICE DIRECTIONS

DATES	TIMES	NATURE OF HEARING	COUNSEL (including counsel not at trial)

C AT TRIAL:

1. HOURS spent on the case out of Court: (not including C 2-4)
2. CONFERENCE (including with Prosecution)

DATES	TIMES	PURPOSE	COUNSEL

3. DAYS IN COURT (calculated on Court Day basis)

DATES	FULL/HALF	COUNSEL	DATES	FULL/HALF	COUNSEL

4. TIME LOST (due to factors outside Counsel's control both before and during case including waiting time)

TIME LOST	DETAILS

D COUNSELS ASSESSMENT OF CASE PROBLEMS AND RESPONSIBILITY (give details of defence and special features of case e.g.:- expert evidence, Alibi, Complications of law, Attempts, successful or not to save Court time, number of defendants represented, etc.)

E POST TRIAL ADVICE ON APPEAL – Oral or Written

F OTHER COUNSEL Give names of all other counsel, and reason for employment e.g. drawing of indictment.

G TRAVELLING and HOTEL expenses fairly attributable to this case £

The details provided on this memorandum represent an accurate description of work actually and reasonably done.

NAME & ADDRESS (Block Capitals) SIGNATURE

DATED

TEL. NO.

ANNEX 37.6

TABLE 37.2

Cases in which solicitors' charges are scale charges fixed by rule or regulation

(paragraph 37.89)

Court or other area of charge	Scale of costs fixed by	Date of last revision
Parliamentary Agents' charges	House of Commons: Speaker of the House of Commons; House of Lords: Clerk of the Parliaments, or, in his absence, his assistant.	1st October 1971
Privy Council appeals	Order in Council.	1971
House of Lords ..	Judicial Office with the approval of the Appellate Committee.	January 1971
Civil costs in the High Court, Court of Appeal and Court of Protection	A committee comprising: Lord Chancellor plus any four of the following; the Lord Chief Justice, the Master of the Rolls, the President of the Family Division, four other judges of the Supreme Court, two practising barristers, being members of the General Council of the Bar, two practising solicitors of whom one shall be a member of the Council of the Law Society and the other a member of the Law Society who is also a member of the local Law Society.	1975—The Rules of the Supreme Court (Amendment No. 2) Order 1975 increased by 35% all items, except the "skill, care and attention" items.
County court ..	A committee comprising: five judges of county courts appointed by the Lord Chancellor and six other persons so appointed of whom two shall be barristers, two shall be registrars and two shall be solicitors.	Scales last fixed in 1970 (all subsequent amendments, the last being 19th April 1977, have been made to take account of increases in jurisdiction).

TABLE 37.2 *(continued)*

Court or other area of charge	Scale of costs fixed by	Date of last revision
Matrimonial causes	A committee comprising: Lord Chancellor and any four or more of the following: President of the Family Division, one judge attached to that Division, one registrar of the Divorce Registry, two circuit judges, one county court registrar, two practising barristers being members of the General Council of the Bar and two practising solicitors one of whom shall be a member of the Council of the Law Society and the other a member of the Law Society and of a local law society.	12th July 1971 (certain limited amendments have since been made to the fixed cost items).
Criminal proceedings in the Crown Court and magistrates' courts (a) legal aid (b) costs out of central funds	(a) The Secretary of State for Home Affairs. (b) The Secretary of State for Home Affairs (no regulations yet made except as to witness expenses).	(a) The Costs in Criminal Proceedings (Fees and Expenses) Regulations 1968 came into force on 1st October 1968, repeating scales which were fixed in 1960.
Criminal proceedings in the Queen's Bench Division of the High Court and the Court of Appeal	The High Court scale. (q.v.)	1975
Domestic proceedings in the Crown Court and magistrates' courts (a) legal aid (b) non-legal aid	(a) The Lord Chancellor with the concurrence of the Treasury. (b) No scales fixed by rule or regulation.	(a) 8th May 1961
Bankruptcy costs	The Lord Chancellor with the concurrence of the President of the Board of Trade.	1st April 1967
Tribunals and arbitrations	In accordance with the Supreme Court or County Court Scale as appropriate (q.v.).	
Restrictive Practices Court and the ecclesiastical courts	In accordance with the Supreme Court or County Court Scale as appropriate (q.v.).	

TABLE 37.2 *(continued)*

Court or other area of charge	Scale of costs fixed by	Date of last revision
Solicitors' non-contentious costs	A committee comprising: Lord Chancellor, Lord Chief Justice, Master of the Rolls, the Chief Land Registrar, solicitors authorised by section 57 of the Solicitors Act 1957. NB There are also extra statutory scales agreed between the Law Society and the Building Societies Association and the local authorities associations.	1st January 1973

Source: Lord Chancellor's Departmen.t

CHAPTER 38

Legal Education

Background

The Ormrod Committee

38.1 Legal education in England and Wales was the subject of detailed study by a committee under Mr. Justice (now Lord Justice) Ormrod, appointed by the Lord Chancellor, Lord Gardiner, in 1967. Its report (Cmnd. 4595) was published in 1971.

38.2 The Ormrod Committee began its report with a historical introduction, which we need not repeat in full. But we will give a brief summary of the history of legal education up to the time of the report of the Ormrod Committee and thereafter, because it is necessary for a proper understanding of the present position.

Academic and professional education

38.3 The system of legal education in England and Wales differs from those of most other countries in one important respect, namely that qualification to practise may be obtained only by passing final qualifying examinations set and controlled by the governing bodies of the profession. Degrees or diplomas obtained from a university or law school do not in themselves provide a qualification. The reasons are historical.

38.4 Until the latter half of the nineteenth century, the law faculties of the major universities taught only the civil or Roman law but not the common law. The common law, the law applied in the courts, was taught only in the Inns of Court in London. The Inns were of greater antiquity than many of the colleges of Oxford and Cambridge, and, until the Civil War, a period spent as a student at one of the Inns was regarded as part of a liberal education and equivalent to a period at university.

38.5 At this time, the division between academic and professional qualifications was complete. The universities did not teach the law necessary for practice in the courts. No level of academic scholarship could serve to replace any part of the education provided by the Inns for intending practitioners which, as appears from the report of our predecessors, the Royal Commission of King Henry VIII, had a formal structure by the early Tudor period. The effect of this division between academic and professional qualifications was profound and is still apparent.

The Select Committee of 1846

38.6 By the middle of the nineteenth century, the provision of legal education, both in universities and by the profession, had become a scandal. Except where the efforts of one or two individuals prevailed for a time—Blackstone and Viner at Oxford, Austin and Amos at London—universities gave no formal teaching in the principles of the common law. Only a handful of students attended lectures and the only qualification for a degree was lapse of time. Qualification for the Bar could be obtained, also without examination, by joining an Inn, attending its functions, and formally participating in professional exercises. In the solicitors' branch of the profession, the examination articled clerks were required to pass was said to serve "merely as a guarantee against absolute incompetency"; the service of articles was of no value because solicitors lacked the time to direct and supervise the articled clerk's studies.

38.7 In 1846, a Select Committee was set up by the House of Commons to investigate and report on the state of legal education. The Committee pointed out the deficiencies that existed, and ascribed to them the prevailing low standard of professional attainment, the poor quality of argument in the courts, the absence of any jurists of eminence and the paucity of textbooks. To improve the position, the Committee recommended that universities should provide an education in the law, though not professional training, that special and separate institutions for students of the two branches of the profession should be set up to provide professional training and that a stricter system of qualifying examinations should be established.

Effect of the 1846 Committee's report

38.8 Within a quarter of a century of the Select Committee's report, law courses were provided at the major universities. In 1852 the BCL Degree was established at Oxford, in 1855 the LLB Degree at Cambridge, both including common law studies. The Honours School of Jurisprudence was founded at Oxford as a separate law faculty in 1872 and the Law Tripos was established at Cambridge in 1873. In London, the law schools at University College and King's College grew in size and another law school was founded at the London School of Economics. By 1908 there were altogether eight law faculties in the country.

38.9 The main effort of the profession in this period was concentrated on refining the system of qualifying examinations and providing a system of teaching for them. The Council of Legal Education was set up in 1852 to take over the educational functions of the Inns and maintained readers to give lectures in specified subjects. The Bar final examination became compulsory in 1872, though students were required to undertake no formal course of study before sitting it. In 1877, the Law Society became responsible for the education and qualifying arrangements for admission to the Roll which until then had been under the direct control of the judges. In 1903 the Law Society established

its own school of law. The main emphasis in education for the solicitors' branch of the profession remained on articled clerkship, but in 1922 a scheme was introduced under which all articled clerks except law graduates and those who had been managing clerks for ten years or more were required, before taking an intermediate examination, to spend an academic year either at the Law Society's school of law or at an institution recognised for the purpose.

38.10 The recommendations of the Select Committee of 1846 were, therefore, implemented by the provision of improved university education in the law and, in time, by the institution of professional qualifying examinations. Repeated efforts were made in the course of the nineteenth and early twentieth century to establish a foundation for professional instruction in the law, but these came to nothing. Although the Council of Legal Education extended the range of its lectures for Bar students and the Law Society's school of law was in operation, there was no coordination between the universities and the profession and, until after the first world war, the governing bodies of the profession gave no recognition to academic qualifications.

The system of exemptions

38.11 Between the first and second world wars, the position was changed. By the Solicitors Act 1922, law graduates were exempted from the intermediate examination of the Law Society. Following the report of the Atkin Committee in 1934, the content of the Part I and Part II examinations for the Bar were reorganised and law graduates were granted exemptions from papers in the Part I examination on a subject by subject basis.

Legal education after 1945

38.12 The Ormrod Committee identified three changes, occurring after 1945, of particular importance in legal education.

> First, the great expansion in higher education, which has led to a great increase in the number of students studying law; secondly, the connected introduction of the system of financial grants to students which has created a new population of potential recruits to the profession; and thirdly, the ability of young people to command much higher rates of pay in business and industry and in salaried occupations generally, coupled with their tendency to marry earlier, the inability of their parents to finance them during a long period of training for the professions, and their general reluctance to be dependent on their parents.

38.13 At the time the Ormrod Committee reported, there were some 22 university law schools, 7 colleges (of which 6 were polytechnics) granting law degrees recognised by the Committee for National Academic Awards (CNAA) and a number of other colleges providing teaching for the external London LLB. The number of undergraduate students starting law degree courses at the universities rose from about 1,850 in 1970 to 2,748 in 1978; and in the polytechnics during the same period, from 1,000 to 1,440. In 1970 64 per cent of those entering practice at the Bar and 40 per cent of newly-admitted solicitors

were law graduates. By 1978 the proportion of law graduate entrants had increased to 70 per cent at the Bar and to 60 per cent of newly-admitted solicitors.

38.14 The Ormrod Committee noted also that the system of articles had come under severe economic strain. It was no longer the practice for articled clerks to pay a premium in return for the opportunity of learning at first hand the business of the profession. Instead, they expected to be paid a salary for the work they did. There were divisions of view within the profession about the continuing value of articles, and in 1966 a committee of the Law Society (the Driver Committee) canvassed the possibility that the system of articles should be abandoned and replaced by a system of vocational training, followed by a period (after admission) of practice under supervision and with a limited practising certificate. It concluded that the cost would be prohibitive, but the proposal was advanced by the Law Society in its evidence to the Ormrod Committee.

38.15 At the time the Ormrod Committee reported, the system of pupillage at the Bar, which had become compulsory in 1959, operated in its traditional form: in return for a fee of 100 guineas, a newly-qualified barrister, the "pupil", was permitted to sit in the chambers of an established barrister, the "master", to receive instruction from the master and other members of chambers, to accompany them to court, to do whatever devilling (that is, doing background research and preparing preliminary drafts) was available, and, if chance allowed, to undertake work on his own account.

38.16 In the period between 1960 and 1970, the work of the Bar increased considerably. In the same period its numbers did not increase in the same proportion. The effect was to reverse the traditional situation and so provide a ready supply of work for newcomers to the Bar. For this reason, the Senate introduced, in 1965, the rule that no barrister should accept a brief until he had completed six months' pupillage and it proposed to the Ormrod Committee that, before undertaking pupillage, any barrister intending to set up in practice should be required to undertake a course of practical training organised by the Council of Legal Education.

38.17 The broad conclusions drawn by the Ormrod Committee from its study of the history of legal education were that the universities were providing an education in law both for intending practitioners and others; but responsibility for ensuring that lawyers were properly qualified to practise rested solely on the governing bodies of the profession. In this respect, the positions of the two branches, historically, were different. The Law Society had been required by the Solicitors' Examination Act 1877 to establish examinations that were comprehensive in scope, "touching the fitness and capacity of such persons to act as solicitors in all business and matters usually transacted by solicitors". The Bar was subject to no statutory requirements and, until the upsurge of work in the 1960s, the public was sufficiently protected by the fact that instructing solicitors were able to choose from among a number of suitable,

experienced barristers. For many years the Bar examination had been an eliminating rather than a qualifying examination and fitness to practise was established only after call to the Bar.

38.18 The Ormrod Committee also noted that the ambition of establishing a legal university or general school of law had never been realised though it retained its attraction for many members of the profession.

The recommendations of the Ormrod Committee

38.19 The main recommendations of the Ormrod Committee were that academic and vocational legal education should, as far as possible, be integrated and that legal education should be planned in three stages, namely, academic, professional (comprising both institutional training and in-training) and continuing education and training. They considered that legal education could not, of itself, provide a lawyer at qualification with a comprehensive knowledge of every subject which might be encountered in practice. The Committee identified as weaknesses of the existing system that training was haphazard and uncoordinated, competence and conscientiousness in those responsible could not be guaranteed, places as pupils or in articles were sometimes hard to find, and trainees lacked financial support. Against this, it was argued that good articles and pupillages provided the best form of professional training. The academic stage should give the student a basic knowledge of the law, including certain "core" subjects, together with the ability to find out the law for himself, an understanding of the relationship between the law and the social and economic environment in which it operated and intellectual training in handling facts and applying abstract concepts to them.

38.20 The Committee considered that, with certain exceptions, the academic stage should be provided by universities or colleges, that a law degree should be recognised as providing the academic qualification for practice, not merely as an entitlement to exemption from some of the professional examinations, and that such a degree should be the normal mode of entry into the profession. For this purpose the profession should accept all the existing three or four-year full-time first degree courses in law offered by universities and colleges in England and Wales as satisfying the educational requirement without specifying what the curricula should contain.

38.21 The Committee recommended that an alternative form of academic qualification, in the form of the Common Professional Examination (the CPE), should be provided for those graduates whose degrees did not qualify for recognition as law degrees, foreign graduates at discretion, fellows of the Institute of Legal Executives and mature students.

38.22 The Committee recommended that the academic qualification be followed by a vocational course lasting for one academic year to be followed by a period of in-training, in the form of pupillage for barristers and three years' limited practice for solicitors.

Implementation of the Ormrod report

38.23 Many of the proposals of the Ormrod Committee have been implemented by the Senate. The Senate, however, questioned the need for further integration of the academic and vocational stages, pointing out that the universities and polytechnics were doing the task for which they were best fitted in providing the academic stage and were fully committed to it by heavy demand. This raised doubts whether they would be able also to provide vocational training and whether they would be better placed than the professional organisations to recruit the staff needed for this pupose. This apart, the Senate adopted, and to some extent anticipated, the proposals of the Ormrod Committee for all-graduate entry (subject to the provision of a common professional examination for special cases) and the institution of a vocational stage as a preparation for practice. It did not, however, adopt the proposal of a common vocational stage for both branches of the profession and the present vocational course is provided by the Inns of Court School of Law rather than by universities and institutes of further education. Pupillage was retained as the appropriate system of in-training for barristers, with the improvements recommended by the Committee.

38.24 The Law Society has not implemented the proposals of the Ormrod Committee to the same extent as the Senate. In this connection, it stated in evidence to us that the economic position of the country was felt to have changed since the period in which the Ormrod Committee reported and, as the remuneration survey had shown, solicitors were under some financial pressure. It would, therefore, be difficult to make adequate financial provision for the vocational course by raising funds from the profession, and there appeared to be no prospect of direct government assistance of the kind which has been made available to the Institute of Professional Legal Studies in Northern Ireland and which the Ormrod Committee appeared to assume would be available in England and Wales. It pointed out, in addition, that the number of law graduate candidates for entry to the profession was now larger than had been projected.

38.25 In January 1974, the Council of the Law Society circulated a consultative document canvassing the views of the profession on a proposal to set up an experimental vocational course at the College of Law on the lines suggested by the Ormrod Committee. It was proposed that this course, which was intended for about 250 students, should take the place of articles.

38.26 The response of the profession was strongly to the effect that the system of articles should not be replaced by vocational training and restricted practice.

This was in part because articles were felt, if properly managed, to constitute the best form of professional training and also because the expense of providing a necessary course for all entrants to the profession would be heavy. As regards all-graduate entry, the Law Society intended originally to accept the Ormrod Committee's proposal, subject to the exceptions specified; but, according to its evidence:—

> In 1976 the Council began to doubt whether the time was appropriate for the introduction of proposals which in view of the worsening economic situation of the country and escalating costs could well have had the effect of introducing restrictions on entry into the profession, and there was evidence that this view was shared by many members of the profession. It had previously been intended that the proposals previously described should be introduced in 1980; it has now been decided to postpone this date indefinitely, so far as the requirement of graduate entry is concerned.

Solicitors' Education in England and Wales

Categories of student

38.27 A solicitor's training is based on a combination of apprenticeship (known as articles) and formal examination. Requirements for the service of articles and the sitting of examinations vary according to the previous academic and other experience of the student. Until recently, the following three main categories of student could be distinguished:—

(a) the student who had obtained a degree in law including six basic legal subjects: constitutional and administrative law, contract, torts, criminal law, land law and trusts (the "core subjects"): the "law graduate";

(b) a person with a degree in a subject other than law: the "non-law graduate" or a person such as a former member of the armed forces, certain retired officials, a mature student with other professional qualifications or considerable business or administrative experience, an experienced solicitor's clerk or an overseas graduate, who were equated with "non-law graduates";

(c) a student who had left school with passes in five subjects of the General Certificate of Education including two subjects passed at 'A' level not lower than grade C; or passes in four subjects, including three subjects at 'A' level; and in either case including a pass in either 'O' or 'A' level in an English subject: the "school leaver".

In 1977, of those who enrolled as students with the Law Society, 69.7 per cent were in category (a), 21.2 per cent were in category (b) and 9.1 per cent were in category (c). Of those in category (b), 15.5 per cent were non-law graduates, 3.4 per cent were overseas graduates and 2.3 per cent were mature students.

The examinations of the Law Society

38.28 The Law Society sets a preliminary examination for students over the age of 28 years who have no degree and no General Certificate of Education.

It comprises two papers, one on English language, composition and literature and the other a general paper. Its standard is between the 'O' and 'A' levels of the GCE.

38.29 A person wishing to qualify as a solicitor had until recently to pass or be granted exemption from the Law Society's qualifying examination which was in two parts. Part I comprised five subjects: the outlines of constitutional and administrative law and of the English legal system, contracts, torts, criminal law and land law. Part II comprised seven subjects: conveyancing, accounts, revenue law, equity and succession, commercial law, company law and partnership and either family law, local government law or magisterial law. The examinations were held twice in each year, in February and August. There was no limit to the number of attempts which a candidate might make at any of the examinations, but in both Part I and Part II a candidate had first to pass in at least three subjects at one examination. Thereafter he could, if he wished, take the outstanding papers one by one. The Law Society told us that the accounts paper in Part II could be taken separately and generally was. Importance was attached to this paper because it required knowledge of the Solicitors' Accounts Rules. The last Part II examinations in the form described above were to be held in August 1979.

38.30 A law graduate who had studied the six "core subjects" in the course of his degree work was not required to sit Part I. In other cases, exemption from specific papers was given to graduates on a subject by subject basis. All other candidates were required to take both Part I and Part II of the qualifying examination.

38.31 No limitation was imposed on the time at which a candidate might sit examinations, save that all students were required by the Law Society to complete an uninterrupted period of two years' service under articles after passing Part I and, in that period, except for the Part II paper on solicitors' accounts, they could neither sit the Part II examination nor attend a course of preparation for it. The school leaver was required to serve articles for two years. Under the new system, however, (see paragraphs 38.35–38.38) the law graduate may spend six months in a solicitor's office before the vocational course and serve eighteen months articles thereafter.

38.32 The Law Society, in its evidence, said that the normal course of studies for the various categories of student was as follows.

(a) The law graduate, after a period of study, took Part II and then served articles for two years; alternatively, he served articles for two years and then took Part II, but this was uncommon.

(b) Both the non-law graduate and the mature student, after an appropriate period of study, took Part I, served articles for two years and then took Part II.

(c) The school leaver after a period of study took Part I and entered into articles for four years; subject to the requirement of serving two years, continuous articles at some stage, he could take Part II a year after completing Part I.

Restricted practice

38.33 After serving articles and completing the qualifying examination, the student was entitled to be admitted as a qualified solicitor. For a period of three years after qualification, a solicitor was not permitted, without the consent of the Law Society, to set up in practice on his own account or to enter into partnership. This requirement, which did not apply before 1970, was intended to provide a further period of in-training and to avoid risks to the public which the Law Society had found by experience might arise if a newly-qualified solicitor was permitted to set up in practice prematurely.

Educational institutions

38.34 The Law Society maintains its own educational institution, now named the College of Law, which operates in London, Guildford and Chester. Courses for those taking Part I of the qualifying examination were provided at the College of Law and also at seven polytechnics: Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle and Trent. Only school leavers were required to attend the course for the Part I examination, but a large number of other candidates used it. Courses were available for the Part II examination at the College of Law, the polytechnics mentioned and some others. The College of Law, as well as some commercial undertakings, provided correspondence courses for both parts of the qualifying examination.

The new system of training for solicitors

38.35 In April 1979, the Council of the Law Society after the appropriate consultations formally made the Qualifying Regulations which came into force on 1st June 1979. These introduced a number of changes in the procedure described above. The academic stage of qualification is now either an approved degree course or, for non-law graduates and those equated with them, a one-year course leading to the Common Professional Examination (CPE); for mature entrants a two-year course leading to the CPE; for school leavers (non-graduates under 25) attendance at an approved polytechnic for one year to take the first part of the Solicitors' First Examination (SFE) followed by entry into five years' articles, taking the remaining SFE subjects during the first two years of articles by part-time study at a polytechnic or correspondence course.

38.36 After completing the academic stage, all students will take an approved vocational course leading to the new Final Examination. The first vocational courses will start in September 1979, leading to an examination in July 1980.

The course, which will last for approximately 36 weeks, will be held at the College of Law and the seven following approved polytechnics: Birmingham, Bristol, City of London, Leeds, Manchester, Newcastle and Trent. After qualification, there will, as at present, be three years of restricted practice (see paragraph 38.33).

38.37 In summary, the training requirements for each class of student are now as follows.

(a) *Law graduates*	*Normal period in years*
(i) Law degree	3
(ii) New final vocational course of 36 weeks	1
(iii) Final Examination	
(iv) Two years' service under articles	2
	6

(b) *Non-law graduates*	*Normal period in years*
(i) Non-law degree	3
(ii) One-year course for CPE in six core subjects	1
(iii) New final vocational course of 36 weeks	1
(iv) Final Examination	
(v) Two years' service under articles	2
	7

NOTE:

Because of the financial difficulties involved in taking full-time courses for two years after studying for a degree, students in this category will be permitted to serve articles for two years after the CPE and before the final course; in cases of exceptional hardship, full-time attendance at the CPE course may be excused.

(c) *Non-graduates over* 25 *Mature students*	*Normal period in years*
(i) Two-year course for CPE in eight subjects	2
(ii) New final vocational course of 36 weeks	1
(iii) Final Examination	
(iv) Two years' service under articles	2
	5

NOTE:

In cases of exceptional hardship, a mature student may be excused attendance at the CPE course.

(d) *Non-graduates under* 25	*Normal period in years*
(i) Attain required standard of general education	
(ii) Attend approved polytechnic for one year to take first four of the core subjects in the Solicitors' First Examination (SFE)	1
(iii) After passing four subjects in SFE, enter into articles for a minimum period of five years, one of which will be spent on the new final course	4
(iv) Take the remaining four subjects in SFE during the first two years of articles by part-time study at a polytechnic or correspondence course	
(v) After passing eight subjects in SFE and after a minimum of two years' articles, attend the new final vocational course	1
(vi) Final Examination	
(vii) Complete two of the five years' period of articles after passing the final examination	
	6

(e) *Fellow of the Institute of Legal Executives*

(i) Pass or obtain exemption for CPE core subjects

NOTE:

Exemption may be given from not more than three subjects on the basis of subjects passed in the Fellowship examination.

(ii) Either attend final course or serve two years under articles

(iii) Final Examination

(f) *Holders of the Diploma for Justices' Clerks' Assistants*

(i) Pass or obtain exemption from CPE core subjects

(ii) Attend the new vocational course

(iii) Final Examination

(iv) Two years' service under articles

38.38 The final vocational course is in four sections, namely:—

(a) the solicitor and his practice (including professional ethics, professional partnerships, office management and accounts);

(b) the solicitor and his private client (including residential conveyancing and landlord and tenant, consumer protection, family and welfare law, personal taxation and wills and the administration of estates);

(c) the solicitor and his corporate client (including commercial conveyancing, consumer protection and company work generally); and

(d) litigation (including procedure and legal aid).

The Final Examination will comprise seven papers, all to be taken and passed together. If the candidate fails not more than two papers and attains a prescribed standard in the others, he may be allowed to retake those papers in which he has failed. No candidate will in future be permitted to attempt any paper in the Final Examination more than three times.

38.39 The Education and Training Committee of the Law Society has set up two working parties, one to consider continuing education and the other to review the present system of articles. We have seen consultative documents issued by both working parties and have had the opportunity of discussing the question of articles with representatives of that working party. We revert to these matters in Chapter 39.

Barristers' Education in England and Wales

Requirements for call

38.40 A person wishing to be called to the Bar must join one of the Inns of Court as a Bar student. Since 1975 school leavers have no longer been admitted as students. Admission is now restricted to:—

(a) law graduates;

(b) non-law graduates; and

(c) mature students.

Undergraduates at United Kingdom universities are permitted to join an Inn provided that they have five passes in the General Certificate of Education, including two at 'A' level or four passes with three at 'A' level; in both cases, at Grade C or its equivalent. Mature students are required to have similar GCE passes or their equivalent and to have had experience in an academic, professional, business or administrative field.

The academic and vocational stages

38.41 Education and training for the Bar is divided into two parts, the academic and vocational stages. In the case of law graduates, the academic stage consists of the degree course, provided that it includes subjects equivalent to the six core subjects. For others, the academic stage is provided by a course, of one year's duration for non-law graduates and of two years' for mature students, leading to the Common Professional Examination. The academic stage is followed in all cases by a vocational course, one year in duration, which leads to the Part II examination, or Bar Final. After call to the Bar, a barrister is required to serve a year's pupillage with a practising barrister and for the first six months of his pupillage is not permitted to accept work on his own account. A student or a young barrister may act for a time as a judge's marshall. This is regarded as valuable experience and may count towards up to six weeks of the first six months' pupillage.

38.42 The training for the Bar is therefore arranged in the following ways.

(a) *Law graduates*	*Normal period in years*
(i) Law degree	3
(ii) Vocational course	1
(iii) Pupillage	1
	5

(b) *Non-law graduates*	*Normal period in years*
(i) Non-law degree	3
(ii) Academic course for CPE	1
(iii) Vocational course	1
(iv) Pupillage	1
	6

(c) *Mature students*	*Normal period in years*
(i) Part A course (4 subjects)	1
(ii) Part B course (4 subjects)	1
(iii) Vocational course	1
(iv) Pupillage	1
	4

Keeping terms

38.43 Before call to the Bar, a student is required not only to pass the examinations, but also to keep terms at his Inn. The purpose of keeping terms is to introduce a student to the collegiate life of the Bar and to enable him to take part in moots, mock trials and other activities intended to develop his professional interests and abilities. A student keeps term by dining at his Inn during term. There are four terms in a year. To qualify for call, a student must dine on at least 36 occasions, spread over not less than eight terms though 12 of the dinners may be deferred to the year after call.

Attendance at courses

38.44 Courses are provided at the Inns of Court School of Law, which is run by the Council of Legal Education, for both the academic and the vocational stage. The academic stage is in the process of being transferred to academic institutions. Since October 1978 a revised vocational course has been in operation. It lasts from September to July with examinations held in May or June (with an opportunity to re-sit in September). Students who intend to practise at the Bar of England and Wales will be required to participate, to the satisfaction of the Council, in practical exercises in advocacy and drafting, in court attendance and in a new project of practical exercises to be held in June and July each year, after completion of the examination.

The final examination

38.45 The syllabus for the final examination, held towards the conclusion of the vocational course, comprises four compulsory and two optional papers. The compulsory papers are:—

(a) General Paper I—practitioner problems in selected areas of tort and criminal law;

(b) General Paper II—practitioner problems in selected areas of the law of trusts and of remedies for breach of contract;

(c) procedure (civil and criminal); and

(d) evidence.

Unless a student has studied revenue law at the academic stage, he will be required to take a paper in that subject. Subject to this, students may choose two papers from the following topics:—

(e) revenue law;

(f) family law;

(g) landlord and tenant;

(h) sale of goods and hire purchase;

(j) local government and planning;

(k) practical conveyancing;

(l) conflict of laws and European Community Law;

(m) labour law and social security law; or

(n) law of international trade.

In order to provide the widest range of subjects, the CLE proposes to introduce a rule that a student may not select, as an optional subject in the Part II examination, any subject which he has earlier studied at the academic stage.

Other Matters

Northern Ireland

38.46 The report of the Ormrod Committee was concerned only with England and Wales. Legal education in Northern Ireland was reviewed in 1972-73 by a committee whose chairman, Professor Armitage, had served on the Ormrod Committee. In general, it adopted the Ormrod Committee's proposals for legal education in England and Wales, subject to certain modifications. A system of legal education and training has been established in accordance with its recommendations and is now in operation.

38.47 At the time the Armitage Committee reported, the system of legal education in Northern Ireland for barristers required them to take a degree course, followed by a one-year course at Queen's University, followed (until 1972) by the successful completion of the English Bar final examination. After call to the Bar, a barrister normally attached himself to an experienced junior for a period of six months, but there was no formal requirement as to pupillage and a newly-qualified barrister could accept briefs immediately after call. The Armitage Committee found that the heavy pressure of work caused by the emergency left junior barristers with too little time to give adequate instruction to pupils, while work was readily available for barristers immediately after call.

38.48 An intending solicitor was required to have a recognised degree, or to have served for seven years as a clerk in a solicitor's office. All candidates were required to enter into an indenture of apprenticeship with a practising solicitor, taking examinations in each of the three years of the apprenticeship. Graduate entrants might be exempted from examinations in their first and second years. The Armitage Committee found that intending apprentices could not easily find a practising solicitor in whose office an adequate range of experience was available. This led the committee to conclude that the system then prevailing could not be relied on to produce an adequate general standard of competence.

38.49 As a result of close liaison between Queen's University and the profession in Northern Ireland a new scheme of education and training is now in operation. It provides, at the academic stage, for a four-year degree course in law at Queen's University, Belfast or an acceptable degree course in law at some other recognised university. This is followed, for both intending barristers and solicitors, by a one-year vocational course at the Institute of Professional Legal Studies which has been set up, under the aegis of Queen's University, in accordance with the recommendations of the Armitage Committee. Having successfully completed the vocational course, a student receives a Certificate of Professional Legal Studies from the Institute. Provided the student is then able to satisfy the Inn of Court or the Incorporated Law Society as to his fitness of character, he may then be called to the Bar or admitted as a solicitor. Barristers then enter a twelve-month period of pupillage. Solicitors are required to engage in limited practice in the employment of an established solicitor for three years. After a transitional period, the system of apprenticeship will cease. The Committee's recommendation that more formal arrangements should be made to ensure that newly-called barristers served a period of pupillage is being implemented with effect from September 1979. We return to the subject of legal education in Northern Ireland in Chapter 42.

Comparisons

38.50 To complete this factual account of the present position, some comparisons are drawn between the arrangements made in a number of professions for practical training and the control of standards of supervision and training of students. These are set out in tabular form in annexes 38.1 and 38.2.

ANNEX 38.1

Practical training arrangements

(Paragraph 38.50)

Profession and stage	Duration	Methods of instruction and/or supervision	Monitoring arrangements by professional body
Solicitor			
Articles	Non-graduates 4 years. Graduates 2 years (must include 2 years' continuous uninterrupted service in principal's office)	By principal	Certification by principal
Barrister			
Pupillage	1 year	By principal	None
Actuary			
Pre-fellowship	4 years of which at least 2 must be post Group B examination	Experience (not training) in approved employment	Certificate completed by employers when (a) examinations are completed and (b) at the end of the 4 years
Architect			
After, and usually also during, academic course	Usually 2 years, at least one of which must be after completion of academic course	On the job training supervised by employer and overseen by school of architecture	Mandatory training record kept by student and regularly seen by employer and Practical Training Adviser from school of architecture
Certified Accountant			
During or after study for examinations	Non-graduates 3 years if taking examinations as part of a full-time course, 4 years if taking examinations while in employment. Graduates 3 years	On the job training, work experience supervised by principal or employer[1]	Certification by principal or employer
Chartered Accountant (England and Wales) Training contract	Non-graduates 4 years. Graduates 3 years	On the job training, work experience, and practical instruction in-house	Mandatory training record kept by student and reviewed with principal at least every six months, and, by the Institute, on application for membership

[1]If training is undertaken in commerce or industry, a period of 30 months, training in a practising office must be completed to qualify for a practising certificate.

Profession and stage	Duration	Methods of instruction and/or supervision	Monitoring arrangements by professional body
Chartered Accountant (Ireland)			
Training contract	Non-graduates 4 years. Graduates 3 years	On the job training, work experience, and practical instruction in-house	Mandatory training record is maintained by the student
Chartered Engineer			
Post-academic qualification (a) training (b) experience	2 years 2 years	By employer By qualified member of the appropriate CEI institution	Assessment is carried out by appropriate CEI institution
Chartered Surveyor			
Test of professional competence	2 years (3 years for quantity surveyors) of which only 1 year may be before finals	Experience in specified areas of the profession	Record kept, and each candidate must submit specified written work or pass a practical test
Dentist			
Clinical studies (pre-finals)	At least 2½ years	Study and practice in a dental hospital	By university as part of degree course
Doctor			
Clinical studies (pre-finals)	2–3 years	Study and practice in a hospital	By university as part of degree course
Pre-registration work as house officer (post-graduate)	1 year (at least 4 months in surgery and 4 months in medicine)	By consultant	Certification by principal after each job. Certification by former medical school after whole year
Patent Agent			
Pre-intermediate	Non-graduates 3 years. Graduates 1 year	On the job training and experience given by qualified members	Examination results
Pre-finals	2 years		
Statistician			
During sandwich degree course or post-graduation/ stage III examination	1 year minimum	Experience gained in employment	Referees' reports when student applies for election to membership

Profession and stage	Duration	Method of instruction and/or supervision	Monitoring arrangements by professional body
Veterinary Surgeon Undergraduate	6 months	"Seeing practice" with private practice or in other branches of the profession	By university as part of degree course

Source: The governing bodies for the professions listed.

ANNEX 38.2

Control of standards of student supervision and training

(Paragraph 38.50)

Solicitor

An articled clerk's principal must have served at least five years in practice. In certain circumstances the Law Society can prevent a solicitor from taking an articled clerk.

Barrister

A pupil-master must have not less than five years' continuous practice, and should notify the Benchers of his Inn of his intention to take a pupil (this requirement is not always observed).

Actuary

A qualified actuary has to satisfy the Institute that he can offer an adequate and appropriate range of experience. For employers who are not actuaries, cases are considered individually and approval given for 12 months at a time.

Architect

The Institute's Scheme for Practical Training requests each practice taking students to give written undertakings which impose certain basic standards of practical training, and those that do so receive a grant from the Training Services Agency. Control of standards and interpretation of the undertakings is the responsibility of the schools of architecture, whose practical training advisers liaise with employers and monitor the progress of students.

Certified Accountant

When students obtain their training in practising offices, approved principals must have practising certificates and must comply with minimum standards laid down by the Association. Members who train in industry or commerce are required to train for a further 30 months in a practising office to qualify for a practising certificate.

Chartered Accountant (England and Wales)

Newly-qualified members cannot take students during their first two years in practice. All practitioners wishing to become principals must apply to be interviewed by a panel which reports to the Board of Accreditation of Authorised Principals. The Board's aim is to ensure that the standards of student training, conditions of service, practice procedures, and office environment are satisfactory for the training of students.

Chartered Accountant (Ireland)

Newly-qualified members cannot take students during their first year in practice. Those seeking to take students for the first time must submit details of the training available in their firm for assessment by the Institute's Training Committee.

Chartered Engineer

Guidelines for training are promulgated by the CEI for member institutions to apply as appropriate to the needs of their branch of engineering. Some institutions have introduced active monitoring of industrial training schemes.

Chartered Surveyor

If the employer supervisor is a chartered surveyor who undertakes to the Royal Institution of Chartered Surveyors to provide suitable training, applications for enrolment as students are usually accepted. In other cases the local branch of the Institution may be asked to comment on the office, the nature of its work and the standards of supervision.

Dentist

The General Dental Council has statutory powers to inspect dental schools and may recommend that the Privy Council should withdraw from holders of a particular degree the right to registration in the register of dentists maintained by the Council.

Doctor

The General Medical Council has powers similar to those of the General Dental Council.

Patent Agent

Fellows sponsor the applications of candidates for admission as student members of the Institute. As the profession is small, it is possible without formal arrangements to detect consistently poor student examination results from a particular firm.

Statistician

The quality of a candidate's period of one year's post-examination practical experience is assessed by the Institute when he applies for election to membership.

Veterinary Surgeon

Practical training is under the supervision of the universities in the light of recommendations made by the Royal College of Veterinary Surgeons.

CHAPTER 39

The Future of Legal Education

General

Background

39.1 There has been considerable activity in the last 15 years in legal education and training. In this period there have been a number of inquiries and reports by groups and committees within the profession. The fullest and most comprehensive study was that carried out by the Ormrod Committee. As we indicated in the previous chapter, not all of the recommendations which were made in the report of the Ormrod Committee are reflected in the schemes of education which are now being developed by the profession. Nevertheless, we have felt that we should make our case throughout in the light of both the Ormrod recommendations and recent developments. It will be seen that our own proposals do not agree with those of the Ormrod Committee in all respects. As will later appear, we believe that the changes currently being discussed by the profession do not go far enough.

The arrangement of topics

39.2 After setting out our own views on the characteristics of professional education and the main thrust of our argument, we deal with the successive stages of the route to qualification: entry to the profession as a student, the academic stage, the vocational stage, in-training, continuing training and financial arrangements. It is necessary to consider the in-training and financial arrangements of the two branches separately.

Characteristics of education and training

39.3 Clearly, any report on legal services in the light of the public interest has to form a view of the characteristics of education and training. In our view, a lawyer serving the public well must have certain characteristics: knowledge of the law and experience in its application are obvious elements, but an understanding of the context in which the law operates and in which people's legal needs arise is equally important. Both require openness in relation to new developments as well as recruitment from as wide a reservoir as possible. We have deliberately abstained from taking part in the discussion—intermittently popular among lawyers—of whether the law is a craft, an art or a science; but it would probably not be wrong to say that it contains elements of all three and that legal education has to recognise this fact.

39.4 The main issue arising in this context is clearly that of the relationship between "theory" and "practice". Legal education in England and Wales has maintained, longer than that in most other countries, a fairly clear separation between institutional training and in-training (articles and pupillage). Moreover, university teaching of the law has not been regarded as a necessary prerequisite of legal practice nor has it been geared to its requirements. Doubts have been expressed—notably, though by no means only, by the Ormrod Committee—about the viability of such a system. The central features of the arguments and recommendations of this chapter are those concerned with the vocational stage and with in-training.

Entry

Entry requirements

39.5 Study for a professional qualification calls for certain levels of knowledge and intellectual ability. Accordingly, all professions, in common with the universities, specify that entrants shall have reached a certain standard of education, usually two or three 'A' levels or better. This requirement, though necessary, operates as a bar to children who have not had an adequate education or who left school at the earliest permitted age to earn a living. The effect is that most of those who enter the professions come from the middle and upper income groups. The professions cannot redress this by assuming the functions of schools and sixth form colleges. Only the educational system can redress social imbalance in the numbers of those reaching the required academic standard for admission to a university or profession.

39.6 An intending practitioner may also encounter difficulty from a shortage of places at universities or institutions providing academic or vocational training. This has been a source of problems in the past, but there appear at present to be sufficient places to satisfy demand. At any stage a student may face financial difficulties, and with these we deal below. At the final stage there may be found to be a shortage of work; but this is a chance which must be taken by anyone who chooses to set up in self-employed private practice.

39.7 It would be possible to impose an additional barrier at any stage by admitting only a quota of students according to the estimated needs of the profession and the public. We said in paragraphs 33.44–33.48 that schools and universities should be provided with all possible information about immediate prospects in the profession. Precise estimates of future needs are, however, notoriously difficult to achieve and we consider that even if it were thought desirable in principle to do so, there is no adequate basis on which a quota system could be operated. Such a system should not in any event be permitted to operate at the stage of university entrance because of the general value of a university degree.

Graduate entry

39.8 The Ormrod Committee recommended that the desirable, but not the exclusive, means of entering the profession should be by way of a degree in law; it considered that all entrants, with certain specific exceptions for mature students and fellows of the Institute of Legal Executives, should be university graduates.

39.9 A law degree is now the usual mode of entry to the profession: in 1978, 70 per cent of those called to the Bar were law graduates and 60 per cent of those admitted as solicitors. The Bar now accepts as entrants only graduates in law or some other discipline, mature students who are aged 25 or more and have experience elsewhere, and transferors from the solicitors' branch. The Law Society accepts as entrants graduates, certain classes of mature students, entrants under 25 years of age with certain minimum educational qualifications (mostly school leavers) and transferors from the Bar or from the legal profession in a number of other countries.

39.10 Graduate entry is said to improve the status and quality of a profession as a whole. It is thought to be of value to practitioners to know more than is immediately required for the purposes of professional practice and to have broader experience of life and thought than can be acquired through study undertaken purely for the purpose of professional qualification. Entrants to the profession are therefore held to benefit from a course of study at a university, whether in law or another discipline.

Non-law graduates

39.11 For practical reasons, it would be convenient to limit entry to those with law degrees, for this would remove the necessity of providing an academic stage in the course of study leading to professional qualification. The legal professions in most other jurisdictions limit entry in this way and a number of witnesses said that we should do the same. But examples are here well known of those who graduated first in another discipline, for example mathematics or medicine, or who joined the profession without taking a degree and who later performed distinguished service in the law. The profession would be reluctant to lose what the Ormrod Committee described as "a number of potentially promising recruits, whose knowledge of other fields would be valuable in the profession". We agree with this view.

Non-graduate entry

39.12 The categories of mature student have been developed with some care by the two branches of the profession from those proposed by the Ormrod Committee. The arrangements provide for reasonably rapid progress to qualification without making unattainable demands. We are satisfied that such provision should continue to be made for the admission of mature students.

39.13 There remains the question whether the Law Society should admit non-graduates under 25—that is to say, school leavers. The proportion of student enrolments in this category is now small, 9 per cent in 1977. It is likely to become smaller, bearing in mind that entrance requirements for universities are no stricter than for the profession and that the minimum student's grant, though means-tested, now provides for tuition fees and an additional lump sum. The trend in future will be towards all-graduate entry in the law as in other professions.

39.14 The Law Society gave evidence to the Ormrod Committee supporting all-graduate entry, which the Committee recommended. There was then a change of opinion in the Law Society, caused by pressure from the profession as a whole. Accordingly, the Law Society's latest proposals provide for a category of entrant, the non-graduate under 25, for whom a special scheme of education and training has been devised.

39.15 We see no reason to doubt that the course of education and training proposed by the Law Society for school leavers should be effective in producing solicitors of suitable ability to practise. Some of us doubt whether the period allowed for the entire course of education and training is sufficient, having regard to the fact that it totals six years, while that of non-law graduates totals seven. We are agreed that, while there is no evidence at present to justify changing the proposed period, examination results should be carefully analysed to ensure that school leavers are reaching standards comparable with others. If not, the period should be extended and the courses developed to improve any weakness exposed. Subject to this qualification, we see no objection to the Law Society's proposals for school leavers.

39.16 The Senate of the Inns of Court and the Bar, in compliance with the recommendations of the Ormrod Committee, has adopted all-graduate entry. The Senate is not in the same position as the Law Society which can provide, by means of a suitable period of articles combined with vocational training courses, for the education of the school leaver. The Senate has based its system of education and training and its allocation of resources on all-graduate entry. We do not think the Senate should go back on its decision to comply with the Ormrod Committee's views and we recommend no change.

The Academic Stage

Types of academic stage

39.17 For those taking a recognised law degree, the degree course provides the academic stage of legal education. For those who take a degree in some discipline other than law and for the various types of mature student, the academic stage is provided by a course leading to the Common Professional Examination (CPE). For non-graduates under 25, the academic stage is provided by the Solicitors' First Examination (SFE) (see paragraph 38.35).

The law degree

39.18 Both branches of the profession accept a law degree, as recommended by the Ormrod Committee, as completing the academic stage of professional education, provided the student reaches a suitable standard and the course covers a number of subjects, the core subjects, knowledge of which is regarded as indispensable to a practising lawyer. For the purpose of deciding whether a course is suitable to fulfil the academic stage, the profession studies the syllabus for each of the subjects in the course, looks at previous examination papers and obtains information about the number of hours of teaching in each subject, the general structure and content of the degree course, the marking system for the classification of honours and the extent to which essays and course work are taken into account. By this method, 71 educational establishments have been recognised and 80 degree courses, including all first degrees in law in England and Wales, have been accepted by both branches of the profession as providing the academic stage of the professional qualification. These comprise 53 degrees in law, 17 mixed and joint degrees, 3 modular degrees and 7 part time degrees. In addition there are 10 degrees for which the course as a whole is not suitable but where exemptions have been granted from certain papers in the Common Professional Examination in respect of subjects adequately covered in the degree course. Eight degrees have been considered for exemption purposes but have been rejected.

39.19 It was suggested to us that the control exercised by the profession was too strict and that universities and polytechnics should have more latitude in the content of the studies leading to a law degree recognised as completing the academic stage. We agree that the freedom of academic studies should not be inhibited. But, if reliance is to be placed on a degree course for the purpose of a professional qualification and if the studies leading to it are to be properly coordinated without gaps or duplication, there must be some requirement of instruction in essential topics. The system adopted by the profession for assessing the content of courses for the purposes of recognition should enable recognition to be given to courses in which the classification of topics cuts across traditional lines, or where the course has an appreciable non-legal content.

39.20 The Ormrod Committee referred to the desirability of including in the first degree law course some non-legal material. It thought it important—

> ... that law students should from the outset be able to relate the law to a wider context and that effort should be made to arouse their interests in other fields.

The Senate has made it clear that the profession was not opposed to wider studies, including non-law subjects. The course offered is checked, in relation to the core subjects, only to ensure that sufficient instruction in them is given. As to the rest, the Senate said:—

> Though the Council of Legal Education will wish to know the general structure of the degree so as to be able to assess what proportion of the total teaching is allocated to the core subjects, it also believes that the university must be free to develop the other part of the degree in the way they choose. Indeed, the Council of Legal Education welcomes in the non-core area the development of new ideas and approaches.

We agree with the attitude here expressed and consider that if it is followed in assessing the suitability of courses for recognition, no cause for complaint need arise.

The Open University

39.21 The Ormrod Committee suggested that the Open University should provide a law degree course. In evidence submitted to us, the University itself expressed interest in this proposal. The main question is whether, if such a course is offered, it should be a degree course or a course preparing candidates for the Common Professional Examination. We believe that a degree course, including the core subjects, should be offered. It would have the double attraction of providing the academic stage of qualification for practice in place of the Common Professional Examination and also of offering a course which would be of general interest to members of the public, not merely to those who wish to complete the academic stage of professional studies. We appreciate that to set up a new course of this character would require access to law libraries for students and an increase in expenditure for which further grants in aid would be needed by the Open University. Certain law libraries are open to the public as a condition of their arrangement with the Publishers' Association whereby they may obtain books at a discount. These may not include all academic, college or professional libraries, but lists of suitable libraries could be drawn up for the various regions. In addition it would be helpful if law libraries not open to the public made their services available to students of the Open University. In our view the value of the course would justify the expenditure involved and the Open University should be financed accordingly.

The Common Professional Examination

39.22 The Common Professional Examination (CPE) and the course leading to it provide the academic stage of qualification for entrants to the profession who have not taken a law degree. The same examination is taken by students of both branches of the profession. The examination is controlled by a board composed of representatives of the Bar, the Law Society, and law teachers.

39.23 The Ormrod Committee recommended that preparation for this examination be undertaken at suitable colleges in a two-year course, and that at least eight subjects should be covered. In accordance with this recommendation courses have been started at the Law Society's College of Law and at seven polytechnics, approved for the purpose by the CPE board. Each teaching

institution is to set its own examination papers, in the same way as for a law degree, the CPE board monitoring what is done. The duration of the course is to be two years for mature students (covering eight subjects) but, in accordance with a recommendation of the Advisory Committee on Legal Education, the profession has fixed the duration of the course for non-law graduates at one year. Because of its short duration, this course will cover only the six core subjects. Bearing in mind that students on this course are those who have obtained a degree in another discipline, spending three years or more in doing so, we think it reasonable to restrict the topics covered in order to enable the course to be dealt with in one year.

Conclusions on the academic stage

39.24 The arrangements now made for the academic stage are in line with the recommendations of the Ormrod Committee, though these are not followed in matters of detail. A great deal of thought has been given to the present arrangements and they have only recently come into effect. It would be premature to reach any conclusions on the effectiveness of the arrangements for the Common Professional Examination and the Solicitors' First Examination.

39.25 The academic institutions and the profession should keep the arrangements under review to consider what improvements can be made in the light of experience. In addition, it should be the function of the Joint Committee on Education and Training (see paragraph 39.116 below) to report at regular intervals to the governing bodies of the two branches of the profession on all matters connected with this stage of training, including the content of approved degree courses; the content and type of courses which provide exemptions from the Common Professional Examination on a subject by subject basis; comparisons of the content of courses offered by the College of Law and the polytechnics for the Common Professional Examination; success and failure rates in the CPE examinations at different centres; and any other matters of relevance. The reports of the Joint Committee should be made public and in particular should be made available to the Lord Chancellor, the Council for Legal Services and all universities, colleges and polytechnics with law faculties.

The Vocational Stage

Vocational training: principles

39.26 Legal training after the academic stage or its equivalent (the CPE) has been the subject of much debate. Its function is clear: it is meant to provide young lawyers with practical knowledge of the law and it is intended to enable them to gather relevant experience of legal practice. This means that legal training contains an institutional element as well as a period of learning "on the job". But how should these two elements be related to each other? At what stage in the process of training should they be offered? In what ways should each of them be organised?

39.27 A well-monitored, comprehensive period of articles following a period of vocational training might well be the best way of combining theory and practice in legal education. But the present system of articles is often haphazard, one-sided, and insufficiently monitored. The questions to which we directed our attention were therefore: what would have to be done in order to improve the present system of articles sufficiently to make it acceptable? If such an improvement should turn out to be impossible, what alternative system of training is there?

39.28 The argument hinges to some extent on an assessment of the capacity and readiness of the profession radically to improve articles. We were impressed by the attempts of the Law Society to reform vocational training both at the institutional and the in-training stage. We were, however, also struck by the resistance which the professional organisations have encountered in the past from their own members. The proposals of the Law Society, published in November 1978, to bring into force an improved system of training during articles are on the right lines but they do not go far enough and we make proposals in paragraph 39.76 for further improving the system. Unless these improvements are made, we consider an alternative system of vocational training to be necessary.

39.29 The structure of our argument in the following sections of this chapter is therefore as follows.

(a) We discuss first of all the "vocational stage" as at present constituted (paragraphs 36.31–36.55), considering in the process elements of institutional training which might well be developed if it were decided to extend this period.

(b) We then discuss "in-training", including articles and pupillage (paragraphs 36.56–36.79), suggesting the improvements we think necessary in the public interest.

(c) We emphasise that these changes would have to be introduced within a short period of time. We believe that two years should be sufficient to do so, allowing for a further period of three years to review the results of these changes. If the changes that are needed are not introduced within two years, or are found lacking after five years, we believe that an alternative system is preferable to the present one.

(d) This alternative system is therefore discussed in some detail in paragraph 36.80. It consists of a combination of an extended (two-year) period of vocational training, followed by a period of restricted practice, which we envisage as lasting for two or three years.

We emphasise that the profession must choose one route or the other: either bring in such changes as will produce a radical improvement in the system of articles or introduce a vocational system of training.

39.30 We consider the possibility of a system of education and training common to both branches of the profession at the vocational stage in paragraphs 36.32-36.34.

The purpose of the vocational stage

39.31 The academic stage is intended to teach the theory and principles of law. It was regarded as a defect of the former system of qualification that the switch from purely academic work to direct experience of professional work was too abrupt. The function of the vocational stage is to create a link between theory and practice. It is necessary in this period to give a theoretical background relating to professional work which must be assimilated before qualification, together with an understanding of problems encountered in practice. It is generally agreed that this can be best achieved by courses at teaching institutions which combine instruction of an academic character with practical exercises.

Separate vocational courses

39.32 There is no dispute that there should be an academic stage common to both branches of the profession. Because of the different functions of the two branches, each must provide its own system of in-training, namely articles and restricted practice in the case of solicitors and pupillage in the case of barristers. This leads to the question whether the vocational course, falling between the academic stage and in-training, should be common to both branches.

39.33 The arguments in favour of a vocational course common to both branches are that it is useful for each branch to have a good knowledge of the work and problems of the other. The greater the degree of common training, the greater the ease of transfer at later stages. It would help the two branches to understand each other better and would enable students to defer a choice between the two branches.

39.34 Where the number of students is limited and there is only one institution available for professional training, as in Northern Ireland, it is sensible to provide a common training course with optional subjects to provide for the particular requirements of each branch of the profession. In England and Wales there are many institutions of education and training. Each branch of the profession has set up its own system, based by the Bar on its own resources and by the Law Society on a combination of its own resources with those of polytechnics. We accept that, for practical reasons, it would now be difficult to make a change. But if the practical difficulties could be overcome, we think that much would be gained by a joint vocational course. We consider therefore

that on any future occasion when the present systems of training are being reviewed, the opportunity should be taken to assimilate them into a single system of vocational training. This is not to say that in the future barristers and solicitors should share all subjects of vocational training, but a considerable common core would in our view be in the public interest.

The teaching institutions

39.35 The Ormrod Committee was divided on the question whether vocational training should be provided by academic or professional institutions, the majority preferring the former. In the event, both will play a part. The Bar proposes to use only the course provided by the Inns of Court School of Law for the vocational course. The Law Society intends to provide its vocational course at a number of approved polytechnics as well as in its own institution, the College of Law, which has four establishments, two in London, one in Guildford and one in Chester. The Law Society has to date approved seven polytechnics: Birmingham, Bristol, the City of London, Leeds, Manchester, Newcastle and Trent.

39.36 In considering these arrangements, we regard two factors as of importance: the adequacy of the accommodation and teaching arrangements, with which we deal below when considering criticisms, and the convenience of students. The convenience of students is best served if courses are provided in a number of centres spread around the country, sufficient to enable the maximum number of students to attend on a daily basis thereby avoiding the difficulty and expense of finding accommodation away from home. Approximately 3,000 students will take the Law Society's vocational course in its first year. For this number, it is practicable to arrange courses in a number of centres and good progress is being made to this end.

39.37 The Bar is in a different position. The indications are that the number of students taking its vocational course reached a peak in the academic year 1978/79 of 882 and that it will eventually drop to about 650 a year. This number may not be large enough to justify the institution of courses in a large number of centres and we accept that it is convenient in many ways to mount the course in London rather than elsewhere: students in London are able to use the facilities of their Inns, including their excellent libraries, to participate in their collegiate life which is described in paragraphs 38.43–38.44 and to take part in moots and discussions. In London there is the largest pool of practitioners to conduct practical exercises. It may be desirable under present arrangements that the Bar's vocational course should be provided in London rather than elsewhere. If in the future a common system of training is provided for both branches, it would be possible for barristers to attend training courses in the provinces and combine them with dining in circuit messes.

Criticisms of the system

39.38 Education and training in both branches is in a stage of transition, and substantial changes are in hand. The new vocational course for the Bar commenced in October 1978. The Law Society's new course is to start in September 1979. No appraisal of either course is yet possible. We received, however, certain criticisms of the old system which should be borne in mind during the development of the new system.

39.39 Some criticism was expressed of the accommodation and teaching arrangements at the Inns of Court School of Law. In the course of 1978, the Senate carried out a programme of alterations at the School of Law for the purpose of improving and extending the accommodation available. It proposed to obtain the use of additional court rooms for the purpose of conducting practical exercises after court hours. Both the Senate and the Law Society have made it clear that they are aware of the importance of adequate accommodation.

39.40 Both branches stated their intention to maintain a high standard of tutorial staff. We agree that this is essential. They must also be sufficient in numbers. If the staff are too few, the size of classes will be maintained at a level at which it is difficult to provide instruction except by dictated notes of the traditional kind, on the effect of which we comment in paragraph 39.44 below. For the purpose of the Bar's vocational course, it is necessary also to obtain the services of practising barristers to conduct the practical exercises. The present arrangements have been criticised on the grounds that, on occasions, a session has had to be postponed at short notice because the barrister intended to conduct it had a professional engagement to which he had to give priority. We obtained information about the average number of postponements in 1978 of lectures, tutorial classes and practical exercise classes, conducted by practising barristers. The figures are as follows.

Lectures
Part II: 30 hours per week
Postponements: 1 hour per week

Part I: 16 hours per week
Postponements: 1 hour per week

Tutorial classes
Part II: 316 hours per week
Postponements: 4 hours per week

Part I: 136 hours per week
Postponements: 1½ hours per week

Practical exercise classes
60–65 hours per week
Postponements: 2 or 3 hours per week

39.41 These figures do not indicate a serious situation. The Senate intends to increase the number of practising barristers providing instruction so that classes can be reduced in number from about ten to five or six. Students in a smaller group receive more personal attention, have a greater chance of participation in exercises and their performances can be more accurately assessed by the instructor. Given these improvements, we consider that the advantage to students of receiving instruction from established practitioners outweighs the inconvenience of the postponements which are sometimes inevitable in such a system.

39.42 Under the Senate's proposed arrangements, the number of practitioners involved in vocational training will be large. They will all be under pressure of day-to-day professional work. We intend no discourtesy to those providing a voluntary and valuable teaching service in emphasising that the need for full and detailed preparation for this teaching function is no less, and probably greater, than that required for most other kinds of professional work.

39.43 The main criticism of the old style of course and examinations maintained by both branches of the profession was that they involved too much learning by rote. Lecture notes were dictated to a large class who did their best to learn them by heart. In the examination, success depended largely on memory, rather than on any process of constructive thought.

39.44 No-one can adequately prepare for work in the legal profession or any learned occupation without committing to memory a great deal of essential knowledge. It is important, but not enough, to know how to look up the law. To do his day's work adequately any lawyer must have a great deal at his fingertips. But vocational training should be more than an exercise in memorising facts. Such an approach has many defects. It devalues the abilities of the teaching staff and the students alike. It tests only one aspect of the student's competence, that of the ability to memorise. Other intellectual qualities of importance in professional work are neither recognised nor developed. The essential failing of this stage of instruction is that it is self-defeating. What is quickly committed to memory is often as quickly forgotten. After a course which is no more than cramming, a student may pass the examination but is likely to be left with little of lasting value.

39.45 Both branches of the profession have recognised, in their proposals for the future, the importance of avoiding this defect. The Senate in its evidence said that major changes were made in 1969.

> . . . . the whole style of the examinations was changed. The papers on academic subjects ceased to be mainly tests of memory; in style and content, they became similar to university examination papers. The papers for the Vocational Stage were of a more practical kind and included two general papers which were in the form of elementary sets of instructions to barristers.

In addition to the final Bar examination there is now a process of continuous assessment in practical exercises in the later stages of the course, in which students must reach a satisfactory standard. It is intended to expand the vocational stage further in the ways suggested by the Ormrod Committee, particularly in teaching the skills and techniques of advocacy. The Law Society has emphasised that its new final course is to be entirely different in content, nature and teaching methods from the former Part II course.

39.46 What is now proposed will call for a fundamental change of approach by those who give instruction and those who set and mark the examinations. In this connection, we repeat what was said by the Ormrod Committee.

> We hope that the importance of examinations at the conclusion of the vocational courses will not be exaggerated. It is natural that the professional bodies, which have a public responsibility for maintaining the standards of their profession, should feel obliged to test the proficiency of entrants, and examinations are still the conventional, and probably indispensable, test. They have, however, an ineradicable tendency to divert students from learning all they can in order to equip themselves for the future and, instead, to concentrate on memorising information which is likely to help them to pass the examination. And they have an equally ineradicable tendency to dictate both the nature of the courses and the methods of instruction.

Content of academic and vocational stages

39.47 We wish to emphasise also the matters we mentioned in Chapters 3 and 22. It is essential that throughout their training students should be impressed with the importance of maintaining ethical standards, rendering a high quality of personal service, maintaining a good relationship with clients, providing information about progress of work in hand for clients, avoiding unnecessary delays, maintaining a high standard in briefs and preparation for trial, promptly rendering accounts with clear explanations and attending to the other matters mentioned elsewhere in this report.

39.48 A large number of subjects might with advantage be studied at some stage before or after qualification. There are two which call for mention. The first is social welfare law. This topic has been neglected in the past. Besides its importance to those who need the services of the profession, it is of value because it cuts across the traditional classifications of legal subjects and requires knowledge of the application of statute law and understanding of the way in which tribunals operate. The second topic is company law. It is covered in the courses leading to the solicitor's qualification, but appears to be omitted in some cases from the course of studies required of law graduates reading for the Bar. These topics should be taught, but whether at the academic or vocational stage or both is a matter for the profession and the academic institutions.

Keeping terms

39.49 A Bar student before qualification is required in the course of his academic and vocational training to keep terms at his Inn, a requirement which now amounts only to dining in hall on at least 24 occasions (see paragraph 38.43). This requirement has frequently been called in question. We dined individually in hall both with benchers and with students and attended talks and moots after dinner. We received formal evidence on this matter from the Senate, members of the profession and students and discussed it informally with individuals and with groups.

39.50 In its evidence, the Senate put the case for compulsory dining in this way.

> Dining and keeping term in his Inn is part of the education of a prospective barrister. It brings him in contact with the practising Bar and with the benchers in a collegiate atmosphere and it can now be combined with the vocational course.

This evidence makes it clear that the main purpose of dining in is to promote contact, on an informal level, between students and practitioners, including both junior barristers and the most senior members of the profession represented by the benchers of the Inns.

39.51 Our own information and observations suggest that although efforts have been made by the Senate and the Inns to improve the system, the present arrangements fail to achieve all the purposes mentioned above. In hall, the benchers dine apart at a high table. There is an arrangement by which practising barristers may sponsor students and from time to time there are "sponsorship nights" when barristers dine with the students they are sponsoring. Except on these and other special occasions, such as Grand Nights, members of the practising Bar, other than newly-called barristers completing their dining obligations, do not often dine in hall. When barristers are present in hall, there appears to be little mixing with students. It is the custom to dine in a small group called a mess, which is naturally made up for the most part of acquaintances and contemporaries. The Senate remarked in its evidence that more practising barristers should dine in their Inns and mix more with students when they do.

39.52 Dining involves costs both to the student and to the Inn. The Senate estimated the total cost in 1978 to the student of dining to be £25 to £45, depending on the Inn. To this must be added the cost, to the those who live outside London, of travel and accommodation. On this point, the Senate informed us that a student could complete all his dining obligations in one year and said:—

> The problem may however be serious for young barristers and pupils who have not completed their dining terms. In these cases an Inn might be willing to make special grants to those from outside London who can show they could not complete their dining terms without financial help or to permit some part of the dining obligation to be fulfilled in a well-established Circuit Mess which dines at least once weekly.

There is also cost to the Inn, in subsidising part of the cost of the dinners (see paragraph 32.15). We believe that cost remains a serious disadvantage of compulsory dining.

39.53 Dining in hall has some attractive features. Some students and young barristers to whom we spoke said that they found it of value. There is no doubt that the custom makes a contribution to the collegiate life of the Inns. It does not follow from this that it should be compulsory for students to attend a minimum number of dinners.

39.54 If arrangements could be made to ensure that there was a reasonable level of association at dinner between practitioners and students, it would strengthen the case for retaining the rule obliging students to attend. But it must be recognised that patterns of life have changed since dining first became an institution. Barristers do not avoid eating in hall. At lunchtime the halls are always crowded with practitioners. But in the evenings there are commitments to family and friends as well as to the demands of practice and we doubt whether it would in fact prove possible to find a sufficient number of barristers willing to dine in hall on a regular basis.

39.55 We share the view of the Ormrod Committee when it said, of dining:—

> We do not wish to destroy the positive advantages of this tradition, but we think that it is essential that it should be adapted to present day conditions ......

We consider that the best course for the future would be to develop all means of promoting informal association within the Inns. As a start, for example, attendance at weekend seminars, such as those at Cumberland Lodge, could be made to count towards existing dining obligations. The programme of after dinner moots and debates should be reviewed. At the same time, arrangements for dining should be adopted which make it more likely to serve its main purpose, for example by arranging that, on regular occasions, there should be no high table and benchers and barristers should dine with students, one to a mess. Where possible students should be enabled to dine in well-established circuit messes, as proposed by the Senate. We suggest that unless these improvements are made and are found to work satisfactorily the compulsory eating of dinners should be abolished.

In-Training

Introductory

39.56 The academic and vocational stages of professional education must be accompanied or followed by a period of in-training, that is, training on the job. This has traditionally been provided in the solicitors' branch of the profession by the system of articles, in which a prospective solicitor, before qualifying to practise, is apprenticed to a solicitor and works in his office.

39.57 At the Bar the same purpose is served by the system of pupillage, in which a pupil barrister accompanies an established barrister, his master, in the course of his work, participating in it as far as he is able and, in the latter part of his pupillage, dealing with work on his own behalf under advice and guidance.

39.58 An alternative system of in-training is based on the requirement that, after his qualifying examinations, a practitioner should work in association with others more experienced for a period of time. Restricted practice by newly-qualified solicitors, proposed by the Ormrod Committee for England and Wales and now in operation in Northern Ireland, is an example of this system. We consider both systems in later paragraphs.

Pupillage

39.59 The traditional arrangement for pupillage was that a newly-called barrister, in return for a fee of 100 guineas, became the pupil of an established junior barrister, the master. Payment of the fee entitled the pupil to have accommodation in the chambers of his master, sometimes in the same room, to see his paperwork and to accompany him to court, receiving advice and instruction on what was done. At a later stage of his progress, the pupil might hope to be found a little work of his own. If he was judged to have done this well, and fitted by age, ability and disposition into his master's set of chambers, he might hope to be offered a seat in chambers when pupillage was completed.

39.60 The system described above worked well in the first half of this century for those who had the connections and the money, and the recognised ability or good fortune, to enable them to find a conscientious pupil master in a good set of chambers. The nature and quality of the instruction achieved in this way could not be equalled by any other system. In every generation of lawyers, the proportion of good pupillages was sufficient to maintain the system as the most desirable.

39.61 The system of pupillage came under strain from 1960 onwards, because of the rapid increase in numbers at the Bar and the inflow of new entrants. A doubling in size, over a short period, of a relatively small profession which depends on the efforts of individual practitioners to provide essential training for newcomers is bound to impose a considerable stress on the system. To the credit of those involved, the system did not break down. Pupillages were found for those who required them. The indications are that the number of those reading for the Bar has reached a peak, and will begin to decline in the immediate future. In view of the fact that the Bar has been able to cope with demand in previous years, there is no reason to suppose that it will not be possible in future years to provide sufficient pupillages.

Quality of pupillage

39.62 In-training must be done effectively, or it is useless. We judge, from the evidence available to us, that present arrangements are widely but not universally

effective. Some students have difficulty in finding a suitable pupillage; barristers willing to take a pupil are asked so to inform their Inns but not all do so. Except for the requirement of five years' seniority (soon to be seven years) there is no check on the suitability of a pupil master and if a pupillage is unsatisfactory, there is no easy remedy.

39.63 We said in Chapter 32 that the Senate, as governing body of the profession, might delegate functions to the Inns but should accept the final responsibility for the profession's policies. Among the more important of these responsibilities is that for entrants to the profession, in particular the training of pupils.

39.64 In exercise of this responsibility, the Senate issued guidelines in 1978 covering the obligations and functions of a pupil master. In summary, these are as follows:—

(a) to give specific and detailed instruction in settling pleadings and other documents;

(b) to ensure that the pupil is well grounded in the rules of conduct and etiquette of the Bar;

(c) to require the pupil to read the master's papers, to attempt drafting pleadings and other documents, including opinions, which may then be discussed personally with the master;

(d) to take the pupil to court frequently, instructing him in note-taking and discussing the proceedings with him afterwards;

(e) to ensure (if the master has a High Court practice) that the pupil accompanies junior members of chambers to the lower courts;

(f) to enable the pupil to attend many, though not necessarily all of the master's conferences;

(g) to encourage a relationship between the pupil, himself and other members of chambers, whereby the pupil is encouraged to discuss problems and receive information on matters relating to practice;

(h) to take a direct interest in the work obtained by the pupil in the second six months of his pupillage, in particular in his court appearances, with discussion and helpful criticism of his early efforts in advocacy.

We endorse these proposals, and consider that a record should be kept in prescribed form of the pupil's work to enable both master and pupil to be satisfied that these requirements are met. The record will also be of importance for the purpose of qualifying to practise with which we deal below.

Finding a pupillage

39.65 There are a number of methods by which a pupillage may be found. The Inns and the circuits run pupillage schemes to arrange personal contact

between potential pupils who apply to them and pupil masters. A number of individuals also promote personal contact of this kind, for example, members of a university for its graduates. The sponsorship scheme provides another link. To supplement this there is a web of personal contacts.

39.66 The main defect of the present system for arranging pupillages is the lack of coordination between the various methods, together with the lack of any check on the suitability of a prospective master to take a pupil. We think the Senate was right to issue guidelines on the content of pupillage; but we consider that, having done so, it should also accept the obligation of ensuring that a prospective pupil master is able and willing to do all that is required. The Senate told us that it was opposed to centralisation of control over pupillage schemes. We accept that a single scheme might prove cumbersome and that, while final responsibility rests with the Senate, the most suitable sub-division would be by Inns. We see no reason why the Inns should not, as proposed by the Bar Students Working Party, maintain a joint registration system for pupil masters. We recommend further that each Inn should set up a pupillage committee. The function of the pupillage committees of the four Inns should be to maintain a joint register of prospective pupil masters and prospective pupils. A barrister of sufficient seniority who is willing to take a pupil should inform his Inn's pupillage committee accordingly, and provide it with information about the nature of his practice. The committee should, if necessary, supplement this information by interview. This would enable the Inns to implement the recommendation of the Planning Committee of the Senate, which was approved in 1976, that:—

> The Inns should ensure that their information about potential pupil masters is up-to-date so that when necessary they may be pressed by their Inns to take pupils.

Fees for pupillage

39.67 The customary fee payable by a pupil to his master was 100 guineas for a year's pupillage, 50 guineas for six months. At the annual general meeting of the Bar in July 1975, it was resolved by a substantial majority that pupillage fees should not normally be charged. This was confirmed by a subsequent referendum. However, in the referendum a majority considered that pupil masters should be left with a discretion on this point. One of the recommendations made in April 1976 by the Planning Committee was that pupillage fees should be abolished. In its submission of evidence in March 1978, in answer to an enquiry on this point, the Senate confirmed that pupillage fees had been abolished. We have no doubt that this was the correct decision.

The function of chambers

39.68 A pupil need not spend all his time with his master, but may attach himself to any member of chambers dealing with a case, experience of which

would be of value to him. In this respect, the pupil is often treated as if he were a pupil of chambers as a whole. This is a helpful arrangement and is to be encouraged, though it should not, in our view, replace the direct relationship between pupil and master or their mutual responsibilities.

Authority to practise

39.69 Postponement of call to the Bar until after the first six months of pupillage would enable the pupil's performance during that period of training to be taken into account when assessing his fitness to practise on his own account. We recommend, therefore, that a pupil who intends to practise in this country should not be authorised to practise until after the end of an initial period of six months' pupillage. At the conclusion of this period, his record of work should be sent to the Inn or other appropriate authority, with a report from his pupil master confirming the accuracy of the record and stating whether the pupil is fit to practise or whether there are reasons (which should be specified) why that right should be deferred. The pupil should be authorised to practise only if the record and report are satisfactory. A student who does not intend to practise in this country should be formally called to the Bar after passing the final examination and should not be expected first to undertake a pupillage.

39.70 We suggest that, on being authorised to practise, the pupil should be entitled to appear robed in court and to take fee-paying work before the formal ceremony of call to the Bar. It would be frustrating for a pupil to miss an opportunity of gaining experience in actual practice in this period and we believe there are no reasons, other than formality, why he should not do so.

The use of English

39.71 It is essential that a lawyer should be able to express himself clearly, both in speech and writing. A student's capacity for clear expression on paper can readily be tested in the course of his written work and examinations and it is a feature to which the examining authorities rightly have regard. At present, there is no means of assessing a candidate's ability to express himself clearly and audibly by the spoken word. We have received evidence from a number of quarters and have confirmed by our own observations that standards of spoken English in court are not uniformly high and are sometimes wholly inadequate. Our court system depends on oral presentation of cases, and the administration of justice suffers if an advocate, for any reason, is unable to express his meaning clearly. We welcome, therefore, the information given us by the Senate that it intends to establish a method of ensuring that oral English in court is of a satisfactory standard. We have seen a report of a Senate working party, which we understand is to be implemented, proposing the appointment of an oral examination panel. We consider that a measure of this kind is necessary and that practitioners conducting practical exercises should be attentive to their students' abilities with the spoken word and should train them to present arguments concisely and clearly and to avoid prolixity. The Senate

or the CLE should keep information about suitable remedial courses in order to assist students who might otherwise fail to reach the necessary standard. As an example of what can be done to help those whose English is poor our attention was drawn to the work of the National Centre for Industrial Language Training which receives government funds through the Manpower Services Commission.

39.72 It has been remarked in evidence that, in an increasingly multi-racial society, measures of the kind proposed have their difficulties. We understand this, but the requirement cannot but apply to all barristers because it is indispensable to the work they do. The purpose is not discriminatory, and should not be so regarded.

Articles

39.73 The Ormrod Committee, with the support of the Law Society, recommended that the system of articles, to the weaknesses of which it drew attention (see paragraph 38.19), should be abolished and be replaced by a combination of vocational training and restricted practice. As we said earlier, the majority of the profession were against this proposal and wished to keep the system of articles.

39.74 It is generally agreed that the system of articles gives a good quality of training, if properly conducted. Criticisms we received related, not to the concept of articles, but to failure to operate the system properly. We had discussions with the Law Society's Education Committee on this point, in which it was common ground that, if the system of articles was to be preserved, considerable improvements were required. The defects of the present system were summed up as follows by the Law Society in its evidence to the Ormrod Committee.

> The present system of the training, education and examination of prospective solicitors is open to criticism on the following grounds:—
>
> (a) There is evidence that many—and an increasing number of—articled clerks do not receive satisfactory practical instruction under articles; and whether an articled clerk in fact receives satisfactory instruction is a matter of chance.
>
> (b) In some parts of the country it is difficult to find vacancies under articles; this applies particularly to non-graduates but graduates are also being lost to the profession because they cannot find solicitors who are prepared and able to pay them during the period of articles the sort of remuneration payable to graduate trainees in commerce and industry.

Proposed improvements

39.75 A working party, set up by the Law Society in 1977, recently made comprehensive and detailed proposals for the improvement of articles. We set out in annex 39.1 its recommendations which included the following.

(a) Out of a total of six specified main topics, covering the main fields of professional work, the articled clerk should receive experience in at least two. The Law Society's Education and Training Committee, commenting on the working party's report, took the view that it would not be unreasonable to require experience in three topics.

(b) Although articles may be devoted to specialised fields of practice, the principal must covenant to give training in the basic professional skills of drafting, interviewing, research and office administration, routines and procedures.

(c) The professional bodies and academic institutions should promote day study courses and articled clerks should be permitted to attend such courses for up to 20 days in the course of articles, at the expense of their principals.

(d) Articles should be in a specified form and issued separately from the notice under the Contracts of Employment Act 1963.

(e) A prospective articled clerk should receive a written offer from his prospective principal. The Law Society should be empowered to refuse to register articles if they do not correspond with the letter of offer or if the initial salary specified is so low as to appear to the Law Society to be unacceptable.

(f) An articled clerk should keep a diary of his office work in a prescribed form and retain this until after admission.

(g) Students, on enrolment, should be supplied with information relating to articles, examinations, grants and bursaries.

(h) A conciliation procedure for complaints should be established.

(j) A number of measures should be taken to assist students to find articles, including publicising the list of former principals kept by the Association of Graduate Careers Advisory Services and encouraging local law societies to maintain updated lists of principals with details of their specialisms. The possibility of providing improved information about career prospects and the feasibility of computerising information on articles and firms, in order to maintain updated lists of applicants and prospective principals, should be studied.

(k) Local law societies should prepare and review annually local rates of remuneration of articled clerks.

39.76 If the Law Society were to ensure that articled clerks were given an adequate training under the conditions proposed by the working party, a number of criticisms of the existing system would be met. We consider, however, that further improvements should be made in the following respects.

(a) A comprehensive list of prospective principals should be made available to all careers services in universities and polytechnics, with the assistance

of the Association of Graduate Careers Advisory Services, and assistance in finding articles should be given to students to avoid the large number of applications which some now have to make.

(b) The articled clerk's diary should be submitted for consideration with his application to be entered on the Roll of solicitors.

(c) The time spent each day on specific types of work should be entered in the articled clerk's diary.

(d) Although the usual two-year period of articles provides a limited time to obtain wide experience and although "topping up" courses partly meet the need, we consider that more than two topics should be included in the programme of work of an articled clerk.

(e) Fuller guidelines should be given by the Law Society on remuneration. A level of pay comparable with the standard grant to university students might be appropriate for school leavers, but a graduate who has completed the vocational course and passed the final examination should merit a salary at a level between that of a student's grant and the pay of a newly-qualified assistant solicitor.

(f) The Law Society should give detailed consideration to the support needed at national and district levels to implement the scheme, for example by appointing a Law Society Educational Advisory Officer and by arranging for education committees to be set up in the districts.

(g) A conciliation and arbitration procedure for principals and articled clerks should be set up as follows.

(i) As a first phase, either the articled clerk or the principal should have the right to apply through the principal's local law society to a "conciliation officer" appointed by that local law society. It is envisaged that ideally this person would be a well-liked and respected senior local solicitor and it would be his responsibility to interview either or both the principal and the articled clerk to try by informal means to achieve some mutually agreeable solution.

(ii) If a solution is not reached the articled clerk, either directly or through his appropriate association, should be entitled to refer the question to the Education and Training Committee of the Law Society. On receipt of a reference the Education and Training Committee should without delay arrange a conference to receive the submissions of the clerk, the representative of his association and the principal. The conciliation officer should also be invited to attend the meeting.

(iii) Additionally, the local law society should have a duty, if the conciliation officer so recommends, to refer extreme cases, involving flagrant breaches of the regulations or normal standards of conduct or terms of the articles, to the Education and Training Committee of the Law Society.

Conclusions on articles

39.77 It will be necessary for the Law Society to ensure that solicitors who accept articled clerks are in a position to give an adequate training on the lines indicated in paragraphs 39.75 and 39.76. If this is done, the system should provide a sound and adequate period of in-training. Success, however, will depend on the wholehearted support of the profession in putting these recommendations into practice and finding enough firms to do what is required. Solicitors cannot afford to spend much time away from fee-earning work. It may not prove possible, therefore, to maintain an improved system of articles because too few practitioners will be available to do what is required. The Law Society takes the view that a sufficient number of practitioners will be found. It is not certain whether this will prove to be correct or not. Should it prove incorrect, it will be necessary to consider what alternative system could be set up.

39.78 It is important in our view that the proposals now under consideration by the Law Society (but with the amendments we have suggested), which are necessary to put the education and training of students in the solicitors' branch of the profession on a proper basis, should be approved as early as possible by the profession and implemented in full at an early date. Within a period of two years the new arrangements should be introduced. A formal assessment of the effects of the arrangements should be made by the Joint Committee on Legal Education (see paragraph 39.116) at the end of a further three-year period.

39.79 If the scheme is not introduced, or if the review shows that the results have been inadequate, it will be clear that a satisfactory system of articles is unlikely ever to be established. In that event, an alternative system of training should be put into effect.

An alternative system

39.80 Without defining an alternative system in full detail, we think it should have the following characteristics.

(a) It should make the maximum use of existing educational institutions and of the system of state support for the costs of education.

(b) As at present, the academic stage of legal education should be a law degree, or courses and first examinations designed for non-law graduates, mature students and school leavers.

(c) The vocational stage should be two years in length, during which further examinations should be taken. A vocational course should be mounted at the College of Law and at any university or polytechnic willing and able to provide it. The course should be designed in such a way as to provide practical experience, real or simulated, and practitioners should take a full part. Arrangements should be made to enable trainees to spend several months working in solicitors' firms.

(d) Students taking vocational courses of this character would qualify for mandatory grants, the course being regarded, together with the preceding law degree or preliminary course and examination, as part of a single sequence of institutional education leading to the vocational degree. For this purpose a vocational course undertaken at the College of Law should be treated in the same way as a course undertaken at a university or polytechnic.

(e) Suitable measures should be taken to ensure that courses throughout the country provide vocational training to the same level. A course should lead to a final degree, which might possibly be called the "LLB (Vocational)".

(f) Following the vocational degree, there should be a period of restricted practice of two years' duration during which compulsory "topping up" and other courses would be taken. This period would not be monitored as closely as is now proposed for articles but, at the end of the period, the Law Society, before issuing an unlimited practising certificate, should be satisfied that in the period of restricted practice a solicitor, by direct experience in a range of professional work and by attendance at the compulsory courses referred to above, had obtained a sufficiently wide knowledge and experience to set up in general practice.

(g) The possibility should be examined of imposing a training levy on firms who do not give assistance in placements during the vocational period, or who do not employ a defined quota of solicitors who are undergoing their period of restricted practice.

Continuing Education

General

39.81 There are four main reasons why training after qualification is desirable.

(a) The time allowed for formal training before qualification is short and there is a need to supplement it by providing additional instruction following qualification in "topping up" courses.

(b) Knowledge gets stale upon points which happen not to arise often in the course of a practitioner's normal work.

(c) Major changes may occur in the law through the constant flow of legislation or through events such as accession to the European Communities, which make it impossible for a practitioner to rely only on the knowledge gained before qualification.

(d) Those who undertake work in specialised fields should be able to obtain systematic instruction in it.

Post-qualification training for solicitors

39.82 The College of Law has been active for a number of years in providing further education for solicitors. A Director of Continuing Education was

appointed in 1973. There has been a steady increase in the number of courses and participants: in 1972, 4,160 places were taken at 15 courses; in 1976, 9,200 places at 44 courses. The material used for courses is also made available by the College of Law in booklets and cassettes. In 1978 some 58,000 booklets and 2,000 cassettes were sold. Courses, instructional literature or cassettes are also provided in various forms by a number of commercial undertakings and by the Legal Action Group.

39.83 The College of Law provides three main types of course: "crash" courses, consisting of a series of lectures over a two-day period; one-day courses, usually intended to cover in depth an area of recent change or an unfamiliar area; and half-day courses for the benefit of practitioners who cannot leave their offices for a full day.

39.84 The Law Society has set up a working party to deal with continuing training. It has divided the subject into five main heads, "topping up" courses, refresher courses, courses in new legislation, inter-disciplinary courses and specialist courses. It has issued a paper on "topping up" courses which will provide instruction in a wide range of subjects, some of which were not taught during the courses leading to qualification and others of which were not taught in sufficient depth for those proposing to practise in that field. It recommends that "topping up" courses in communication, running a practice and revenue law should be made compulsory. The question whether any of the other topics should be made compulsory is to be kept under consideration.

Post-qualification training for barristers

39.85 The Senate intends to discuss with the Law Society the possibility of post-qualification courses for lawyers of both branches. The Council of Legal Education has it in mind to provide courses for barristers, for example, in welfare law and the law relating to the European Communities. In answer to a question from us on the desirability of establishing a policy for post-qualification education and training, the Senate replied:—

> The Senate believe that post-qualification education and training is essentially a matter for the practitioner concerned and not one for which a compulsory policy is desirable. It is the intention to make accessible information on the courses which are available.

This does not go far enough. In our view more must be done, on the lines proposed below.

Compulsory post-qualification education and training

39.86 In the period immediately after qualification, we believe it to be necessary for the Senate to introduce a system of additional compulsory education and training on the lines of the Law Society's "topping up" courses. Thereafter we think it desirable that there should be regular post-qualification education in both branches of the profession for lawyers who continue in practice.

39.87 In the case of established practitioners, there are difficulties in developing an effective compulsory system. Most practitioners cannot easily find the time to attend courses. For barristers, it may be necessary to arrange courses outside court hours or on days when they are not sitting. Attending courses involves costs which increase the overhead expenses of practice. It may lead to loss of income. Compulsion might be resented by some practitioners. To provide reasonable facilities for post-qualification training which satisfies even modest obligations for all members of the profession would be a large and expensive undertaking.

39.88 Conscientious members of the profession keep up to date by studying new legislation and professional journals and by attendance at seminars and courses. Those who fail to do so, thereby falling behind in technical knowledge and the service they can provide for clients, could be compelled to attend classes but, as the Law Society has said, could not be compelled to learn. Many senior practitioners devote themselves to work in one or two branches of the law which are of special interest to them. No useful purpose would be served by requiring such a practitioner to undergo training in subjects which he never had occasion to use in practice and it would be invidious to require him to attend a course in a subject in which his knowledge was likely to be superior to that of the instructors.

39.89 The admitted difficulties should not be allowed to obscure the principle that persons practising a profession need to keep abreast of changes and that it is the function of the governing body of a profession to ensure that every member is properly equipped with up-to-date and comprehensive knowledge, both in his own interest and those of his clients and of the profession. This is particularly true in a profession which deals with a complex and rapidly-changing subject matter.

39.90 Policies for continuing education and training are still in the process of formulation not only in the legal profession but in others. It would, therefore, be premature to propose that such education and training should forthwith be obligatory. The Law Society said in evidence:—

> The Law Society regards continuing education as a most important tool with which to improve the standards and the competence of the profession and to enable it to meet the changing demands of society in the future and sees the provision of a comprehensive system of continuing education as one of its most urgent tasks.

We agree that a comprehensive system should be developed. At the same time, both branches of the profession should study the possibility of making the issue of a practising certificate or of maintaining authority to practise conditional upon appropriate post-qualification education. The Joint Committee on Legal Education (see paragraph 39.116) should, in its regular reports, deal with the

progress made in providing the means of continuing education and in implementing a system in which every practitioner is required to undertake such further education and training as is appropriate to his needs.

Finance

Solicitors

39.91 There are various phases of education leading to qualification in the law. After leaving school, the student may attend university to read a degree in law or some other discipline; for those without a degree in law, the academic stage is provided by courses leading to the Common Professional Examination or the Solicitors' First Examination. This is followed by the vocational stage and a period of in-training. We are not here concerned with financial support at school or university.

The cost of qualifying

39.92 As will be seen from Table 39.2 in annex 39.2, the amount payable in respect of enrolment and admission fees is not large. The main cost is in the courses which, in 1979, will in some cases amount to nearly £1,600 for non-law graduates. During the period of study, students must also provide for their living expenses. In the case of non-law graduates and mature students, the Law Society may excuse full-time attendance at the CPE course to avoid exceptional hardship. Some cost also falls on the profession (see paragraphs 39.101–39.107); the control of admissions and the level of attainment required for qualification is a mark of the independence of the profession and the resulting cost is part of the price of independence.

The resources of the profession

39.93 The only funds available within the solicitors' branch of the profession for the support of students are those subscribed by the profession as a whole. There are a limited number of scholarships, but these are not a significant factor in the support of students in general before qualification. The College of Law receives an annual subvention from the Law Society, at present £75,000.

Support from public funds

39.94 Financial support for educational purposes out of public funds is administered by local education authorities. Certain classes of student, in particular those taking a first degree course, are entitled to a mandatory grant. Others may receive a grant at the discretion of the authority. Where a grant is made, it covers tuition fees in all cases. The amount paid in respect of maintenance and living expenses is variable, according to a test of the means of the student and his parents.

39.95 The College of Law carried out a survey amongst its students in 1976/77 which included questions about financial support from grants provided by local education authorities. The proportion of students receiving such grants is set out in Table 39.1 below. Further details from the survey and other surveys on this subject are to be found in Volume II section 21.

TABLE 39.1

Grants received by law students

for professional courses, 1976/77

Stage	Bar students: % receiving grant	Law Society students: % receiving grant
Academic stage	21	48
Vocational stage	68	69

Source: College of Law.

Grants at the academic stage

39.96 The proportion of students receiving grants at the academic stage is significantly lower than at the vocational stage. The reason is that a number of those taking the academic stage are already graduates in non-legal subjects. A number of local education authorities, having provided a mandatory grant for a first degree course, are reluctant to make a further grant in respect of the academic stage of professional education, which they regard as equivalent to a further degree course.

39.97 We hope it will be possible in time to make grants available for all those who have completed a degree course in an academic, rather than a vocational subject, and who, before undertaking a purely vocational course, are required to study further academic subjects. In this connection, we consider comparisons can fairly be made with the medical profession. The medical student's course lasts for six years from the time he leaves school, throughout which period he is entitled to a grant. The non-law graduate's period of study to qualification is five years, excluding the period of articles which follows the final examination. It is generally agreed to be beneficial that the legal profession should contain practitioners who have graduated in another discipline. If this were accepted, it would be reasonable to allow a grant to the non-law graduate for the academic stage.

Grants for the vocational stage

39.98 A proportion of students receive no grant for the vocational stage of professional training, which culminates in the final examination. We understand there is sympathy for the view that at this stage grants should be mandatory; but to secure this result a change in legislation would be required and we understand this would have a low priority. The purpose of providing for such a course of study, however, is not merely to confer benefit on the student, but to secure the future of a service essential to the public. For such a purpose, we consider that support from public funds should be available.

39.99 It must also be borne in mind that, unless support from public funds is given, the social balance in the profession cannot be expected to change appreciably. We agree with the observations made on this point by the Ormrod Committee.

> This is an extremely important matter for the future of the profession because it will vitally affect the character of the entry. If grants are not available for the vocational courses, recruitment to the profession will continue, to some extent, to be limited to those whose parents are able to afford to maintain them during the period of the course, and who are prepared to be dependent on their parents for this part of their training. In the present climate of opinion, this is a situation which most students dislike intensely. The inevitable result will be that a substantial number of good recruits to the legal profession will be lost to it.

Grants for studies at polytechnics

39.100 Tuition for the Common Professional Examination and for the Solicitors' Final Examination is available not only at the professional institutions but also at a number of polytechnics. The policy of some educational authorities in making grants depends on the venue of the course: a grant is available if a student attends a polytechnic, but not otherwise. In some cases, a grant will be made for a course at the professional institution only if all the places at the appropriate polytechnic are taken. This policy has capricious results so far as students are concerned. If grants for courses leading to professional qualification were made mandatory, no problem would arise. In the meantime, we think it reasonable that if discretionary grants are to be made available, their availability should not depend on the venue of an authorised course.

Financial support during in-training

39.101 A prospective solicitor's in-training is provided by a period of articles, in most cases lasting for two years after the final examination. In this period, the articled clerk depends on the salary paid to him by his principal's firm. The remuneration survey (see Volume II section 16) showed that in some cases an articled clerk was not paid a living wage. The Law Society's Working Party on Articles proposed that local law societies should settle the appropriate minimum levels of salary for articled clerks. We dealt with this point in paragraph 39.76 (e) above.

39.102 Under this system, the cost of maintaining articled clerks falls not on the profession as a whole but on the firms where articles are served. It has been suggested that a training levy should be imposed on the profession as a whole to subsidise those firms accepting articled clerks. The Law Society considers the profession would be totally opposed to such a levy, and it believes that, without any such inducement, a sufficient number of solicitors at any given time will be willing to offer articles.

39.103 The improvements proposed by the Law Society's Working Party are indispensable, but will make it more expensive for some firms, who do not at present pay adequate salaries, to take articled clerks. At the same time, as in most cases articles will be served after the final examination and after the practical training which will be provided in the new vocational course, the articled clerk should be in a position to make a contribution to the fee-earning work of his principal's firm within a reasonably short time. An articled clerk is not a full-time worker, because he is under training and must have time off for courses. He takes up the time of other fee-earners in supervision. But forward-looking firms are anxious to take articled clerks because they are a source of future assistant solicitors and partners whose qualities have been tested in the period of articles.

39.104 The Ormrod Committee pointed out that articles impose a financial burden on principals. Our proposals and the proposals of the Law Society will increase the burden on principals of time and money devoted to articled clerks. It may therefore be necessary in the future for the Law Society to charge all solicitors a training levy, the proceeds of which can be used to induce solicitors to accept articled clerks.

Barristers: the cost of qualifying

39.105 The total cost of qualifying as a barrister is higher than that of a solicitor and, from our comparative studies, appears to be higher than in most other professions (see Table 39.3 in annex 39.2). The difference is partly accounted for by the admission and call fees which stand at £82 (£85 at the Middle Temple) and £75 respectively. The Senate considers that these fees are reasonable. Under present arrangements, the subscription to an Inn and the call fee represent once for all payments for all overhead expenses of membership of an Inn and for the right to practise. As we said in Chapter 32, we think it better to rely on annual subscriptions from practitioners, which are an allowable charge for tax purposes, rather than on high entrance fees charged to newcomers, which are not. We accept that something should be paid to cover the basic administrative expenses of admitting a student to an Inn and a barrister to qualified status. We therefore recommend that the Inns should review the level of this charge when their finances have been restructured and annual subscriptions are being paid as recommended in Chapter 32.

The resources of the profession

39.106 The Inns own valuable property which returns a substantial annual income. One of the main uses of this income is to support professional education. Its allocation is therefore of major importance when considering financial support for beginners at the Bar.

Financial support for students

39.107 The Inns of Court School of Law receives an indirect subsidy in the form of a reduced rent charged by Gray's Inn for its premises. We understand that some scholarships may be available before qualification, but in general, as in the solicitors' branch of the profession, students before qualification are largely dependent on grants from local education authorities.

Grants from local education authorities

39.108 Grants are available to Bar students on the same basis as to students of the Law Society. We need not therefore repeat what we have said before in this connection. It will be recalled that we propose that formal qualification to practise as a barrister should be deferred until after the first six months of pupillage. This would then constitute a period of vocational training. If, as we recommend, grants for the vocational stage of professional training become mandatory, we hope that the first six months of pupillage, before qualification, will be regarded as part of the vocational phase of training, qualifying for a grant. This would enable the profession to concentrate its resources on support for pupils in the following six months of pupillage and thereafter.

Financial support during in-training

39.109 For all practical purposes, a pupil cannot be expected to maintain himself during his year of pupillage. He may be entitled to a scholarship or bursary; these vary, as to amount and availability, from Inn to Inn. He may be able to earn money by working in the evenings or at weekends. Such sources of finance are uncertain and not evenly distributed.

39.110 Pupils have not established themselves in practice and may not succeed in doing so. It would not, therefore, be reasonable to provide financial support by way of a loan, however generous in its terms as to interest and repayment. To provide that pupils should be paid a salary by chambers would add appreciably to the overheads of chambers without offering the chambers any compensating advantage.

39.111 The Inns administer a number of scholarships and prizes which offer some financial support to students. We appreciate that in most cases these must be dealt with in accordance with the terms of a trust. However, we believe that it is essential for the Senate to coordinate the policy on the scholarships

awarded by the Inns and on other forms of assistance. We were, therefore, pleased to hear the Senate evidence in these terms.

> The next stage is for the Senate to embark upon the consideration and formulation of a financial policy directed primarily towards meeting the needs of students and young barristers entering practice, co-ordinating the available resources ,of the Inns and the Bar.

We recommend that this should be immediately put in hand. The most practical form of financial support during pupillage is a system of non-repayable means-tested grants, provided out of the resources of the Inns.

39.112 In the period after pupillage, a barrister who succeeds in obtaining a tenancy will, even if moderately successful, pass through a lean period. In this period, many young barristers obtain bank overdrafts, the interest on which may be a burden for some years. To enable barristers who have obtained seats in chambers to make a start in practice, a committee comprising representatives of the Senate and the four Inns of Court recommended that the Senate and the Inns put aside a sufficient sum to provide the capital for a self-financing, low-interest revolving loan scheme which would be available according to need and merit to up to 40 young barristers. The loan, the interest on which would be $2\frac{1}{2}\%$, would be repayable in the fourth, fifth and sixth years of practice. We welcome this recommendation, which has been accepted by the Senate and the Bar Council. We hope that when this scheme has been established, it will be possible, in the light of the experience gained, to extend it to a larger number of young barristers.

The Advisory Committee on Legal Education

Work of the Committee

39.113 The Advisory Committee on Legal Education was set up on the recommendation of the Ormrod Committee and has been in operation since 1972 under the successive chairmanship of two distinguished judges. It is composed of representatives of the practising profession and the academic world and its secretariat is provided by the Law Society, with some financial assistance from the Senate. It has produced six reports on educational matters.

39.114 The overall impression we have been given is that the Advisory Committee has not achieved its main purpose of providing a forum in which professional and academic lawyers may meet to discuss mutual problems, of reaching conclusions which command respect on both sides and of bringing together the profession and the academic world.

Proposed changes

39.115 We recommend that an attempt should be made to set up a body to secure the results intended by the Ormrod Committee. We do not regard the

Council for Legal Services proposed in Chapter 6 as suitable for this purpose, given its intended composition and functions. We do not think it appropriate to set up an independent authority such as a legal training board to take over control of all legal education, because we consider that ultimate responsibility in this area should rest on the governing bodies of the profession.

39.116 We recommend that, to reflect its composition of members from both branches of the profession and the academic world, the body should be known as the Joint Committee on Legal Education. We recommend that the experiment should be tried of appointing a chairman who has no direct connection with either the professional or the academic side of the law. At the same time, we consider that the profession should make arrangements to strengthen the secretariat of the committee. The Council of Legal Education in Northern Ireland, which was set up as a result of the report of the Armitage Committee, serves as a good example of what can be achieved (see Chapter 42).

39.117 The terms of reference of the existing committee are wide.

> To advise the Senate of the four Inns of Court, The Law Society and the Universities, Polytechnics and Colleges of Further Education on all matters affecting the education and training of candidates for entry to the legal profession.

It has been agreed that continuing education should also fall within the purview of the present committee. With this addition, the terms of reference would be suitable for the Joint Committee which we recommend, for they comprise all the matters discussed in this chapter. We suggest that the Joint Committee should issue regular reports, preferably annually, touching on all the matters discussed in this chapter and should make occasional reports on specific topics if so requested by the Law Society, the Senate or the Lord Chancellor.

Conclusions and Recommendations

			Paragraphs
Entry	R39.1	A law degree should be the normal but not the exclusive mode of entry to the profession.	39.11
	R39.2	Non-graduates under 25 should be admitted to the solicitors' branch of the profession on the basis stated in the text.	39.15

			Paragraphs
Academic and Vocational stages	R39.3	Although separate vocational courses are necessary at present on practical grounds, the possibility of a combined course should be considered if practical difficulties can be overcome.	39.34
	R39.4	Teaching methods and the style of examinations should discourage cramming.	39.44–39.46
	R39.5	Social welfare law and company law should be taught at the academic or vocational stage or possibly at both stages.	39.48
	R39.6	The collegiate life in the Inns should be developed, and the arrangements for dining reviewed, as proposed in the text.	39.54–39.55
Pupillage	R39.7	A record of training in prescribed form should be kept during pupillage.	39.64
	R39.8	The Senate in conjunction with the Inns should set up arrangements, supported by appropriate records and statistics, for:— (a) approving the suitability of pupil masters; and (b) ensuring that pupillages are found for students who require them.	39.65–39.66
	R39.9	The practice of treating a pupil as if a pupil of chambers is to be encouraged, but should not affect the personal relationship and obligations between pupil and master.	39.68
	R39.10	At the end of the first six months of pupillage, the pupil should lodge with the appropriate authority his training record together with a report from the master confirming the pupil's fitness to practise.	39.69

			Paragraphs
	R39.11	Call to the Bar and authority to practise should be deferred until satisfactory completion of the initial period of pupillage.	39.69
	R39.12	Authority to practise should take effect at the time it is given, whether or not the formal ceremony of call to the Bar has taken place.	39.70
	R39.13	Students should be trained to express themselves in writing and speech clearly and concisely and to avoid prolixity. A barrister should not be authorised to practise at the Bar unless he can express himself clearly.	39.71
Articles	R39.14	The recommendations of the Law Society's Working Party on Articles, with the amendments shown in the text, should be implemented.	39.75–39.76
	R39.15	The Law Society should ensure that solicitors who accept articled clerks are able to give them adequate training.	39.77
	R39.16	After a short period the success of the new arrangements for articles should be assessed; if they are not implemented or are unsuccessful, a new system of training of solicitors should be introduced.	39.78–39.80
Continuing education	R39.17	A programme of continuing education should be developed and the introduction of an obligatory system kept under review.	39.90
Finance: solicitors	R39.18	It is hoped that local education authorities will in future make grants to non-law graduates at the academic stages.	39.97
	R39.19	Grants for the vocational stage should be mandatory.	39.98

			Paragraphs
	R39.20	Grants should be available whether a course is run at a polytechnic or at a professional institution.	39.100
	R39.21	Adequate minimum salaries for articled clerks should be fixed.	39.101
Barristers	R39.22	The Senate should review the level of admission and call fees in the light of income received from increased compulsory annual subscriptions.	39.105
	R39.23	Mandatory grants for the vocational stage should extend to the first six months of pupillage.	39.108
	R39.24	Subject to Recommendation 39.23, the Senate should introduce a system by which pupils may be supported by non-repayable means-tested grants.	39.111
	R39.25	The Senate's scheme of support for starters at the Bar by a revolving fund providing low interest bearing loans is welcomed.	39.112
	R39.26	The Advisory Committee on Legal Education should be reconstituted, as proposed in the text, as the Joint Committee on Legal Education.	39.116

ANNEX 39.1

Report of The Law Society's Working Party on Articles

(paragraph 39.75)

Summary of recommendations, timing and implementation

The Objective

1. THAT the recommendations in the Report be towards providing advice and guidance for the parties wherever possible, and where occasionally needed to supplying conciliation, while imposing sanctions only as a last resort.

The Experience Under Articles

2. THAT during articles an articled clerk should receive experience in at least TWO of the following basic legal topics:—

    (i) Company and Commercial Law
    (ii) Family and Welfare Law
    (iii) Litigation (Civil, Criminal or before Tribunals)
    (iv) Property (including Landlord & Tenant)
    (v) Taxation
    (vi) Wills, Probate & Trusts

3. THAT, however specialist the articles, it should be obligatory upon the principal to covenant in the articles to provide opportunities for training and for assimilating the principles of professional conduct and etiquette and of learning by practice the following basic skills:—

    Drafting,
    Interviewing,
    Research and Office Administration,
    Routines and Procedures

Courses for Articled Clerks

4. THAT locally run day study courses covering different legal topics and advocacy especially, be fostered and encouraged by The Law Society through the medium of The College of Law, local Law Societies, local polytechnics or however possible, provided these are of good standard.

5. THAT an articled clerk be permitted under the New Training Regulations to be absent to attend such courses for up to 20 days during articles, and the Education and Training Committee to have a discretionary power to permit a longer absence if deemed appropriate for approved courses.

6. THAT principals be encouraged by The Law Society to pay for the attendance of their articled clerks on such courses, as they do now in very many cases.

Articles and Contracts of Employment

7. THAT the Contracts of Employment Act notice and "Articles of Clerkship" be separate documents.

8. THAT to ensure there is no conflict between the articles and the contract of employment notice and to assist generally, that The Law Society adopt and disseminate to the profession Appendices V, VI and VII to this Report, namely (a) "Notes offering articles", which sets out the basic information to be contained in a "letter of offer" and the relationship between that, the Contract of Employment notice and the Articles of Clerkship, (b) a specimen "Contracts of Employment" notice and (c) a specimen "Articles of Clerkship".

9. THAT use of the specimen form of articles (appendix VII) shall be obligatory by principals and articled clerks.

"Monitoring" Articles and Guidance

(*a*) *Monitoring*

10. THAT a prospective articled clerk should receive from his prospective principal a "Letter of Offer" containing certain basic information.

11. THAT The Law Society should be empowered to refuse to register articles if these do not correspond with the "Letter of Offer".

12. THAT The Law Society should be empowered under The New Training Regulations to refuse to register articles if the initial salary specified therein was so low as to appear to The Law Society to be in all the circumstances totally unacceptable. The criteria to be used by The Law Society would be the relevant local Law Society guide, or in the absence of that the nearest equivalent guide and if the quoted salary falls below the salary guide figure, the principal would be asked for an explanation. If The Law Society was not satisfied with that explanation and could not reach some satisfactory arrangement with the principal direct, then the Local Law Society would be asked to intervene by approaching the principal to try and settle an acceptable salary, if necessary with the help of the local conciliation officer.

13. THAT the specimen form of "Articles of Clerkship" (Appendix VII) should contain certain entrenched provisions.

14. THAT an articled clerk be required to keep a diary of his office work in the form prescribed by Appendix VIII and retain this until after he has been admitted a solicitor.

(*b*) *Guidance*

15. THAT in addition to processes of consultation, the changes when finally agreed should be described and explained further in The Law Society's Gazette and that specific notification, together with copies of the specimen documents listed in Appendices V, VI, VII, VIII and IX should be given to the secretaries of local Law Societies.

16. THAT on enrolment as students with The Law Society, potential articled clerks should be provided with information relating to provision of articles by being sent as a package copies of the following documents:—
    (a) The Law Society's "Guide to Articled Clerks" (which will need to be revised).
    (b) The Associate Members Group booklet "Training to be a Solicitor".
    (c) Information on the common professional examination (C.P.E.) the solicitors first professional examination (S.F.P.E.) and the New Final Course.
    (d) Such information as may be available relating to bursaries, or grants and to local Law Society remuneration guides.

(e) The notes "offering articles", specimen form of Articles, specimen Contracts of Employment, and specimen Diary.

17. THAT immediately prior to executing articles, the principal should on application to The Law Society, receive free of charge the current edition of the items listed in the above package (see summary recommendation No. 16), together with any other relevant information including the "Guidance Notes" which might be in a form similar to that set out in Appendix IX.

18. THAT schools and university careers advisory services and similar bodies should, on application to The Law Society, also be supplied with all the items listed in summary recommendations 16 and 17 above.

19. THAT a conciliation procedure for complaints be introduced.

(*c*) *Sanctions*

20. THAT in the New Training Regulations, The Law Society be empowered to prohibit a principal and any other solicitor found to be culpable from taking an articled clerk for a specified period, or indefinitely and until that prohibition is removed by the Education and Training Committee following a change of circumstances.

21. THAT in the New Training Regulations, The Law Society be empowered to require an articled clerk to serve a further specified period of articles in addition to the period of good service under the original term of articles (and not merely rely on blocking his admission under the present training regulation 57).

The Search for Articles

22. THAT to accord with the new system of training, prospective principals should be encouraged to establish a general policy of recruiting prospective articled clerks some 21 months ahead.

23. THAT wide publicity be given by AGCAS and The Law Society to the existence of the Association of Graduate Careers Advisory Service (AGCAS) and to its list of firms by areas which have in the past taken articled clerks.

24. THAT local Law Societies encourage those of their members whose firms take articled clerks, to place their firm's name and where relevant its fields of legal practice on the AGCAS list, and that this list should be regularly updated.

25. THAT local Law Societies themselves be encouraged by The Law Society to maintain their own list of firms with their specialities and of those firms estimated requirements for articled clerks, and to regularly update these.

26. THAT The Law Society's recruitment and training literature be updated, on finalisation of the new training regulations.

27. THAT the Education and Training Committee and the Professional and Public Relations Committee of The Law Society examine, as a matter of urgency, the ways in which better information on prospects under articles and in the profession generally can be conveyed to those in the Vth and VIth forms at school, and at universities and polytechnics. In particular that there be examined in this connection the use of:—
    (a) Careers Occupational Information Centre (C.O.I.C.)
    (b) Careers Research and Advisory Centre (C.R.A.C.)

(c) Articles in the appropriate national newspapers whereby parents and their children are regularly kept informed of career prospects

(d) National Association of Careers and Guidance Teachers (N.A.C.G.T.)

(e) Institute of Careers Officers

(f) Independent Schools Careers Organisation.

28. THAT The Law Society should study the feasibility of computerising information on articled clerks and firms, with a view to ultimately supplying updated lists of applicant articled clerks and prospective principals, for a fee, and so as to contain some or all of the information listed at paragraph 9.6 above, and then compare its findings with any results emanating from the study being conducted by The Law Society of Scotland.

Remuneration

29. THAT each local Law Society that so far has not done so, should be urged to prepare and then maintain a remuneration guide.

30. THAT each local Law Society should review local remuneration guides annually.

31. THAT each local Law Society be asked to provide The Law Society annually with a copy of its current local remuneration guide.

32. THAT in the future when articles are lodged with The Law Society for registration, the starting salary quoted should be compared by the office with the relevant local Law Society remuneration guide. "Relevant" in this context shall mean the guides set by the local Law Society for the area in which the articles are to be served, or if no salary guide has been set for that area, or if the articles are to be served in more than one office which are in areas covered by different law societies with differing salary guidelines, then the salary quoted shall be compared with the local Law Society guide which The Law Society after due enquiry shall consider to be the most appropriate. If the quoted salary falls below the relevant local guide, the principal would be asked for an explanation. If The Law Society was not satisfied with the explanation and could not reach some satisfactory arrangement with the principal direct, then the local Law Society would be asked to intervene by approaching the principal to try to settle an acceptable salary, if necessary with the help of the local Conciliation Officer.—See also summary recommendations 12 and 13 above.

ANNEX 39.2

TABLE 39.2

Projected cost of qualification as a solicitor, 1979

(paragraph 39.92)

Item	Cost		
	Law graduate	Non-law graduate	Non-graduate under 25
	£	£	£
Common Professional Examination (CPE) course fees[1] and examination ...	—	700	700
New final (vocational) course course fees[1] and examination ...	820	820	820
Enrolment with the Law Society ...	24	24	24
Admission fee	10	10	10
First practising certificate	60	60	60
	914	1,614	1,614

[1]Course fees shown are those charged by the College of Law. The courses are also available at a number of polytechnics whose fees vary widely, but are usually less than half of those charged by the College.

Sources: Law Society.
College of Law.

TABLE 39.3

Cost of qualification as a barrister, 1978[1]

(paragraph 39.105)

Item	Cost	
	Law graduate	Non-law graduate
	£	£
Admission fee	85	85
Academic stage		
certificate of eligibility	—	6
course and examination fees	—	580
exemption fee	12	—
certificate of completion of academic stage ...	—	6
Vocational stage		
registration fee	10	10
course fee	540	540
examination fee	30	30
Dining fees	45	45
Wig and gown (new)	135	135
Call fee	75	75
	932	1,512

[1]Figures for 1979, which have been used for the Law Society in Table 39.2, are not available for the Bar.

Sources: Inns of Court.
Inns of Court School of Law.
Polytechnic of Central London.

PART V

Northern Ireland

CHAPTER 40

Northern Ireland - Introductory

Application of recommendations

40.1 Our terms of reference required us to examine the provision of legal services in Northern Ireland as well as in England and Wales. We concluded that many of the views and recommendations recorded in Parts I–IV of this report applied to Northern Ireland. There are, however, a number of differences between the two jurisdictions. In Chapters 41 and 42 we make certain recommendations which take account of these differences. Subject to these, we wish our recommendations in Parts I–IV to be regarded as applying to Northern Ireland with whatever minor variations are appropriate.

Evidence and enquiries

40.2 We invited 44 organisations and individuals in Northern Ireland to give written evidence, of whom 17 made submissions. We made numerous visits to Northern Ireland and held discussions with the professional bodies and others involved in the provision of legal services, as well as representatives of users of legal services. We later received formal oral evidence in Belfast and London from 45 witnesses from Northern Ireland. These are listed in Volume II. We wish to take this opportunity to acknowledge the valuable contribution of all those who gave us evidence, whether written or oral, or who helped us in other ways.

40.3 We commissioned a survey, described in more detail in Chapter 41, of patterns of use of legal services in Northern Ireland. In addition, the Northern Ireland Bar Council undertook a survey of the remuneration of barristers in the province. A commentary on it is to be found in Volume II section 23. A similar survey was attempted by the Incorporated Law Society of Northern Ireland, but the response was not sufficient to provide a reliable indication of solicitors' earnings.

History of the legal profession in Northern Ireland

40.4 The distinct identity of the legal profession in Northern Ireland dates from the partition of Ireland in 1920. Prior to that there was one legal profession in Ireland, based in Dublin.

40.5 The first professional organisation for lawyers in Ireland was a voluntary association established in the thirteenth century with quarters in Collett's Inn, Dublin. Its existence was abruptly terminated in 1300 as a result of a raid on the city by clansmen from the Wicklow mountains. In 1384 another Inn, known as

Preston's Inn, was established. It continued in existence until 1541, when it was superseded by the King's Inns, which occupied premises in Dublin given to the profession by Henry VIII.

40.6 The King's Inns have survived to the present day. They now form the governing body of the barristers' branch of the legal profession in the Republic of Ireland. When they were first set up membership of them was open to solicitors and attorneys as well as to barristers.

40.7 In the sixteenth and seventeenth centuries there was no system of legal education in Ireland. Aspiring barristers studied in London and were called to the English Bar before being called to the Irish Bar. For attorneys, no formal education was available. They qualified as a result of having served an apprenticeship for a term of years.

40.8 The eighteenth century saw the introduction of regulatory measures for solicitors and attorneys. From 1733 licensing became a prerequisite for practice. In 1773 examiners were appointed to enquire into the moral and educational standards of those seeking admission. However, at the end of the century, solicitors and attorneys were still under the control and regulation of the benchers of the King's Inns, a body composed exclusively of barristers and judges.

40.9 By the end of the nineteenth century solicitors (the distinction between them and attorneys having been abolished in 1877) were self-governing. The Law Society of Ireland was founded in 1830. 1841 it became known as the Society of Attorneys and Solicitors in Ireland. It became incorporated by Royal Charter in 1852 and adopted by supplemental Royal Charter in 1888 the title of the Incorporated Law Society of Ireland.

40.10 The Society concerned itself with the preservation of the rights and privileges of solicitors and the promotion of fair and honourable practice. In the middle years of the nineteenth century it concentrated on preventing the admission of unsuitable and unqualified persons as solicitors and improving legal education. It secured a large measure of success in both these endeavours. Then in 1866, the Attorneys and Solicitors (Ireland) Act was passed. This freed such practitioners of the obligation to belong to the King's Inns. Control of legal education of apprentices passed to the Society (acting with the consent of the judges), as did the issue of solicitors' annual certificates. The Solicitors (Ireland) Act 1898 conferred the Society rule-making authority over the education and qualification of solicitors. The Society also became responsible for certain disciplinary matters (receiving discretion to withhold practising certificates) and assumed custody of the Roll of solicitors.

40.11 The year 1920 saw the establishment, following partition, of a separate legal system for Northern Ireland. So far as concerned barristers, the benchers

of the King's Inns delegated all matters affecting the education and discipline of Bar students to a committee of Northern Ireland benchers. In 1926 the Northern Ireland bench, together with barristers practising in Northern Ireland, jointly decided to found an Inn of Court of Northern Ireland. The benchers subsequently made rules governing their own proceedings relating to the admission of students into the Inn and to the degree of barrister at law.

40.12 In 1922 solicitors in Northern Ireland obtained a Royal Charter setting up the Incorporated Law Society of Northern Ireland. It received, under the Solicitors' Act (Northern Ireland) 1938, power to make regulations relating to education, accounts and professional conduct. The Act also provided for the appointment by the Lord Chief Justice of Northern Ireland of a disciplinary committee, composed of present or past members of the Council of the Society, having power to censure or fine. These general arrangements, which have in the intervening years been subject to various refinements, remain in force today.

Conclusions and Recommendations

			Paragraphs
Northern Ireland	R40.1	Subject to specific recommendations made in Chapters 41 and 42, the recommendations made in Parts I to IV of the report should apply in Northern Ireland.	40.1

CHAPTER 41

Legal Services in Northern Ireland

Needs for Legal Services

Introductory

41.1 There are contrasting opinions about the level of unmet need for legal services in Northern Ireland. Some consider that the legal profession fully meets the public's needs; others, that there is an extensive area of need unmet and in some cases undetected by the profession.

41.2 In 1977 there was one solicitor's office for every 5,141 members of the population in Northern Ireland. This compares with a figure of one for every 7,000 members of the population in England and Wales in 1975. In Belfast the ratio was one office for every 2,772 people and in the rest of the province the ratio was one for every 6,939 people. It was put to us that in Belfast the majority of firms are concentrated in the city centre and that the general accessibility of legal advice and assistance in areas surrounding the city centre is more limited than the figures suggest. These figures, of themselves, neither suppport nor refute either of the contrasting views referred to in the preceding paragraph. They indicate no more than that, overall, there is a slightly higher ratio of solicitors' offices in Northern Ireland than in England and Wales.

41.3 The extent of the services provided by the profession may be measured not only by the number of firms but also by the classes of work they undertake. We found that in Northern Ireland, as in England and Wales, the work done tended to be dictated by a mixture of commercial considerations and tradition. Work in social welfare law (which includes housing, social security, family law, employment and consumer matters) is not adequately remunerated under the legal aid scheme; nor are certain forms of matrimonial proceedings. For this reason, and also because they have not formed a part of the traditional work of the profession, many solicitors lack knowledge and experience of these subjects. Some organisations concerned with consumer interests and local community problems regard the resultant dearth of expertise as serious.

41.4 If a practitioner is infrequently approached by clients with problems concerning social welfare law, he will naturally conclude that the volume of need in this field is not great. This view will be reinforced if he believes (as we were told on a number of occasions was the fact) that people in Northern Ireland are not as inhibited about approaching solicitors as they are said to be in England and Wales.

41.5 This belief is challenged by those members of the profession who have specialised in social welfare law. They take the view that people, either through ignorance of their rights or through diffidence, do not bring their problems to solicitors when they should. The same view is taken by laymen in advisory agencies, and it received some support from a survey we carried out (see paragraphs 41.9—41.12).

41.6 At the time when we were drafting our report there were 27 citizens advice bureaux (CABx) in the province, and plans existed to open a further eight. Collectively, they dealt with 34,731 enquiries in 1977/78. The pattern of usage was not markedly different from that for Great Britain as a whole (see Table 7.1), except that CABx in Northern Ireland had rather fewer enquiries, proportionately, concerning family, personal and employment matters, and rather more concerning consumer, trade, business and social security problems.

41.7 It is noteworthy that, in addition to the CABx in Northern Ireland, there is a large number of independent general advice centres which have grown up as a result of local initiatives and which usually confine their activities to their own local communities. No precise information is available about their number or workload, We did, however, receive written and oral evidence from a Belfast organisation, the Association of Local Advice Centres, which is referred to in more detail in paragraph 41.23. Its representatives told us that the 14 centres belonging to the Association had, in the course of a particular week, dealt with 227 enquiries. This suggests a substantial caseload.

The survey

41.8 In order to gain some objective assessment of the readiness of people in Northern Ireland to seek legal solutions to their problems, and to test their attitudes to the legal profession, we commissioned a survey. It was undertaken on our behalf by the Northern Ireland Department of Finance. Its detailed findings are set out in Volume II section 22.

41.9 The survey indicated that the proportion of people who had consulted lawyers in the previous year in Northern Ireland was similar to that in England and Wales, although the proportion who had ever consulted lawyers was lower (45 per cent as compared with 57 per cent). The age distribution of users in the two jurisdictions appears to be somewhat different. Whereas in England and Wales the highest proportion of users are in the age range 25–34, with declining use thereafter, in Northern Ireland there appears to be a more even pattern of use among those aged between 25 and 64.

41.10 Fifty two per cent of all adults in the province live in owner-occupied households. Of those interviewed in the survey, 64 per cent who used lawyers' services in 1978 lived in owner-occupied households. The difference is similar to that in England and Wales, though the absolute level of owner-occupation is

lower in Northern Ireland. We noted that the sample of users, when analysed by religious denomination, conformed to the overall composition of the population of the province. The survey indicated that those in professional or managerial occupations are more likely to make use of legal services than people in other forms of occupation.

41.11 The matters upon which assistance appears to be most frequently sought are buying or selling a house or flat, compensation for personal injury, dealing with the estate of a deceased person and making or altering a will. We note, however, that in Northern Ireland people consult lawyers more frequently than in England and Wales about personal injury compensation and less frequently about buying or selling property. The latter point is consistent with the slightly lower incidence of home ownership in Northern Ireland and with the apparent tendency, indicated by our survey, to move house less frequently.

41.12 There were some features of public attitudes and awareness which contrasted with the results of our corresponding survey in England and Wales; in other respects similar results were produced. The figures in parenthesis relate to the survey in England and Wales. Five per cent (compared with 9 per cent) of those interviewed were able to identify matters upon which they might appropriately have sought legal advice, but did not, in the year prior to the survey. Nine per cent (compared with 6 per cent) said that they would not know how to find a solicitor. Thirty one per cent (compared with 16 per cent) were unaware of the existence of the legal aid scheme. Forty per cent (compared with 62 per cent) knew that the scheme was for people of low income. Twenty two per cent (compared with 15 per cent) had heard of the scheme but had no idea who qualified for aid. A similarity between the results of the two surveys was that in Northern Ireland those who had consulted a solicitor in the year prior to the survey said that in 82 per cent of matters on which advice was sought, the were fairly or completely satisfied with the solicitor's handling of the matter. The corresponding figure in England and Wales was 84 per cent. A question not asked in England and Wales indicated that in Northern Ireland only a small proportion of people thought solicitors were inefficient or unapproachable. More than half of those who gave an opinion thought solicitors were expensive. The overall picture is of a population ready to seek legal assistance when they believe it to be necessary, but not well informed about how to do so or on what terms it may be obtained.

Principles

41.13 It is against this background that we have considered, in the context of Northern Ireland, the principles under which legal services should be provided. Our general views in respect of England and Wales are described in Chapter 5. We see no reasons in respect of Northern Ireland to depart from the principles there stated.

Organisation of Legal Services

Ministerial responsibility

41.14 In Northern Ireland ministerial responsibility for legal services, including legal aid, rests with the Secretary of State. A number of witnesses said that, with the transfer to the Lord Chancellor of responsibility for the court service in Northern Ireland, which took effect on 18th April 1979, it would be convenient if he also assumed responsibility for legal aid and for legal services generally. Another argument was that the proposed transfer of responsibility for legal services would remove the three-way collaboration at present required between the Northern Ireland Office, the Home Office and the Lord Chancellor's Department over legal aid. Finally, the view was urged upon us that if responsibility for legal aid rested with the minister responsible for the scheme in England and Wales, it would remove the tendency for improvements in the scheme to be delayed in Northern Ireland for some time after their introduction in England and Wales.

41.15 We recognise that a change in ministerial responsibility such as that proposed is a matter for political decision. While it is not for us to comment on the wider issues involved, we considered that we had a duty to evaluate, in purely administrative terms, the arguments summarised above. We concluded that, in this restricted sense, the arguments were valid. We accordingly recommend that, unless and until there is a change in the system for governing Northern Ireland, the Lord Chancellor should assume ministerial responsibility for all publicly-funded legal services in the province.

Northern Ireland Council for Legal Services

41.16 Chapter 6 records our view that a requirement exists in England and Wales for what we have described as a Council for Legal Services. We also proposed that committees be set up in each of the fourteen legal aid regions in England and Wales, charged with the task of coordinating, on a regional basis, the activities of all those locally concerned in the provision of legal services. Both the Council and the regional bodies proposed would report to the Lord Chancellor. We consider that a similar arrangement is needed in Northern Ireland but because of the size and population of the province there is no need for regional committees and a Northern Ireland Council for Legal Services should discharge the functions which are assigned to both the Council and the regional bodies proposed in England and Wales. These functions, which are summarised in paragraph 41.17 below, would absorb those of the present Northern Ireland Legal Aid Advisory Committee so that there would be no need to keep the Advisory Committee in being when the Council was established. We would hope, however, that in the interests of continuity and so that valuable experience will not be lost, some of the members of the present Committee would be prepared to serve on the new Council. We consider that the membership of the Council should include representatives of the legal profession and other

organisations involved in the provision of legal and advice services, and of the public.

41.17 The terms of reference of the Northern Ireland Council for Legal Services should be as follows:—

(a) to review, and carry out research on, the provision of legal services and to report to the Lord Chancellor;

(b) to prepare, for the consideration of the Lord Chancellor, proposals for the more efficient provision of legal services of any description;

(c) where proposals are accepted by the Lord Chancellor, to keep under review their implementation by whatever body is made responsible or, if so requested by the Lord Chancellor, to accept direct responsibility for implementing them;

(d) to carry out such other executive functions as are allocated to it by the Lord Chancellor;

(e) to perform in Northern Ireland those functions which it is recommended should, in England and Wales, be performed by regional legal services committees, namely:—

  (i) assessing needs and recommending how they should be met;

  (ii) coordinating the work of services and agencies.

Advisory services

41.18 We described in Chapter 7 our concept of a two-tier system for providing legal services in England and Wales. The first tier comprises generalist advisory agencies, most prominently the CABx. Clients of these agencies whose problems are diagnosed as being predominantly legal, and which require professional handling, can be referred to private practitioners or, in Belfast, to the Community Law Centre. Advisory agencies provide a means by which members of the public who need professional legal services and do not themselves approach a lawyer can be directed to the most suitable source of professional advice.

41.19 CABx in Northern Ireland would benefit from the same programme of development as that described in Chapter 7. They should be given sufficient resources to improve the training given to their workers, to employ full-time staff in the absence of suitable volunteers, and to occupy suitable premises. In addition, there are certain specific improvements that appear, from the evidence given to us, to be necessary.

41.20 We were told that, in certain areas of Belfast and also in rural areas, the CABx need more rota solicitors. Of the 27 bureaux, only four operate a rota scheme, under which solicitors voluntarily make themselves available

at the bureaux for consultation at fixed times. The Incorporated Law Society expressed itself anxious to assist in this connection, and we hope that suitable arrangements will be made for the bureaux with no rota solicitors. We consider that assistance could be provided to rural bureaux by encouraging solicitors to make themselves available, by telephone, to clients of CABx. We also support the suggestion made to us that a solicitor should be employed full-time at the Northern Ireland CABx area office, to assist the local bureaux.

41.21 We note that the Incorporated Law Society has not, as yet, formally granted a waiver allowing rota solicitors to continue to act for clients whom they advised in the course of rota sessions at bureaux. We understand that the Society is not opposed to an arrangement enabling solicitors to retain such clients, and we therefore recommend that a suitable general waiver be formally granted. We were also told that, although CABx in Northern Ireland benefit from the information service provided by the National Association of Citizens Advice Bureaux, they have no means of obtaining information concerning legislation and regulations which relate only to the province. This should be provided in future; we make a recommendation on the point in paragraph 42.68.

41.22 As we noted earlier, there are in Northern Ireland a number of independent local advice centres that have come into being as a result of local initiatives. It was put to us that the emergence of the local advice centres epitomises the self reliance which has developed within local communities; this is commonly accompanied by a rejection of externally provided assistance. Some local advice centres receive financial assistance from local authorities, while others are provided with accommodation and facilities by other local organisations. Those working in the centres are volunteers and, in some places, their efforts are supplemented by solicitors and barristers who attend at regular times in order to advise clients. Within Belfast, clients may also be referred, where appropriate, to the Belfast Community Law Centre, which we describe in later paragraphs.

41.23 In Belfast, 14 of these centres are members of the Association of Local Advice Centres (ALAC). The Association sets standards to which members have to conform before they can become affiliated, though arrangements are not made to ensure that appropriate standards are subsequently maintained. ALAC also arranges training for its centres' workers through the Belfast Community Law Centre. We recommend that well-conducted voluntary services of this sort should continue to receive financial assistance from local authorities and other sources, though we consider that their request to be financed by block grant from central funds should be acceded to only if they undertake to comply with conditions relating to administration and financial accountability and maintenance of adequate standards.

Law centres

41.24 There is one law centre in Northern Ireland, the Belfast Community Law Centre. It was set up as an experiment in April 1977, funded by the Northern Ireland Office. Its future will be reviewed following the expiry of the experimental period in 1979. The centre accepts cases on referral from first-tier advisory agencies. It normally deals with cases only on referral because it has not the resources to do otherwise. We accept that at present it may not be possible for the centre to receive callers directly, but we believe it would be desirable if, in due course, its service could be extended in this way. Moreover, we consider that a survey should be made of the need for more law centres in Northern Ireland. The Northern Ireland Council for Legal Services would be the appropriate body to undertake this task.

41.25 We consider that the conditions applying in England and Wales as set out in Chapter 8 should also apply to the Belfast Community Law Centre and to any others which it may prove necessary to open in the province. In that chapter we recommended that there should be a local advisory committee for each law centre or a group of law centres. In order to avoid a proliferation of committees, we suggest that the Northern Ireland Council for Legal Services should act as the advisory committee for the Belfast Community Law Centre. We also suggest that, initially, the law centre should be under the control of the central agency which we recommend to supervise law centres in England and Wales. As more citizens' law centres are established in the province in future, it may be found advisable to vary these arrangements.

Duty solicitor schemes

41.26 There are not as yet any duty solicitor schemes in Northern Ireland. The first reactions to our enquiries on this point showed little enthusiasm among the profession for such a scheme. Some explanation of this may lie in the results of a survey conducted in Belfast in 1971. This indicated that 95 per cent of those applying for legal aid at Belfast Petty Sessions were granted it. Whether the rate of application matched the need for representation is not known. It is, however, apparent that at present a great deal of criminal work is concentrated in a few firms. For the reasons given in Chapter 9, we think it would be desirable if it could be more widely spread.

41.27 At a late stage in our work, the Incorporated Law Society told us that it had revised its thinking on duty solicitor schemes. It considered that their value should be put to the test in Northern Ireland, and expressed itself willing to take the necessary initiative. We welcome this approach, and recommend that the Society introduce a pilot scheme at a suitable magistrates' court and monitor its progress and results with a view to a general extension of the scheme throughout the province.

Legal Aid

Availability of legal aid

41.28 Civil legal aid in its present form was introduced in Northern Ireland by the Legal Aid and Advice Act (Northern Ireland) 1965, some 16 years after the introduction of the civil legal aid scheme in England and Wales. It became progressively available in that and the following year for most civil litigation. It was later extended to include other proceedings. For example, in 1970 it became available for proceedings in the Lands Tribunal for Northern Ireland and in 1974 for proceedings under Part III of the Fair Trading Act 1973. In 1970 legal advice, under section 7 of the 1965 Act, became available and in September 1978 the legal advice and assistance scheme (green form scheme) came into operation. Legal aid in criminal proceedings has been available in various forms for a number of years, but Part II of the 1965 Act, which came into force in 1966, prescribed its present form.

41.29 Before 1975, an accused person who had been refused bail by a resident magistrate could appeal against such refusal to a judge of the Supreme Court. Under the provisions of the 1965 Act such appeals fell to be dealt with under Part I of the Act as civil legal aid. By the Northern Ireland (Emergency Provisions) (Amendment) Act 1975, legal aid in respect of applications for bail by persons charged with scheduled offences is granted by a judge of the Supreme Court in the same manner as if such legal aid had been given under Part II of the 1965 Act, that is, as criminal legal aid.

41.30 Criminal legal aid is not available under the 1965 Act for appeals to the Court of Appeal, but there is provision under the Criminal Appeal (Northern Ireland) Act 1968, and the Costs in Criminal Cases Act (Northern Ireland) 1968, for the remuneration and expenses incurred in such appeals to be defrayed up to an amount allowed by the court.

41.31 The position now reached in Northern Ireland is thus broadly in line with that obtaining in England and Wales. There are minor variations, some of which we regard as immaterial, and others which have to do with the emergency in Northern Ireland. Subject to the specific matters mentioned below, our proposals in Chapters 11–15 for legal aid in England and Wales apply also to Northern Ireland.

Administration of the legal aid schemes—general

41.32 The Secretary of State for Northern Ireland, who at present holds ministerial responsibility for legal aid in the province, has no authority to issue directions to the Incorporated Law Society in relation to its management of legal aid. Such an authority is, however, vested in the Lord Chancellor in respect of legal aid in England and Wales. In paragraph 41.15 we propose that ministerial responsibility for legal aid in Northern Ireland should pass

to the Lord Chancellor. With such responsibility we consider that he should also have the authority to issue directions to the Incorporated Law Society, and that arrangements for this purpose should be brought into line with those proposed for England and Wales in paragraphs 13.48–13.49.

41.33 From time to time in the past, increases in eligibility for legal aid have taken effect in Northern Ireland up to nine months after England and Wales, although recently changes have been introduced in both jurisdictions more or less simultaneously. We hope that this recent achievement will set the pattern for the future. It has been put to us with some force that Northern Ireland is less prosperous than other parts of the United Kingdom so that a delay in adjusting eligibility has a more serious effect.

41.34 The administration of legal aid in Northern Ireland is centralised in Belfast. In terms of its population and the number of solicitors and barristers, Northern Ireland corresponds to the smallest of the legal aid areas in England and Wales. The Legal Aid Department of the Incorporated Law Society administers the civil legal aid scheme under the provisions of Part I of the Legal Aid and Advice Act (Northern Ireland) 1965 as amended by the Legal Aid, Advice and Assistance (Northern Ireland) Order 1977. So far as financial aspects of criminal legal aid are concerned, the Legal Aid Department acts as *de facto* agent of the Secretary of State. The grant of criminal legal aid rests, as in England and Wales, with the courts. We indicate in Table 41.1 below the scale of the operation.

Civil legal aid—administration

41.35 All applications for civil legal aid certificates are considered by certifying committees appointed by the Incorporated Law Society's Legal Aid Committee. We noted in Chapter 13 that, in England and Wales, secretaries of local committees have delegated powers to grant (but not to refuse) legal aid certificates in all cases. In proposing that local committees be discontinued in England and Wales, we went on to recommend that the secretaries of area committees should assume these powers, and that cases of doubt should be considered by a panel of the area committee. We think the same principle should apply in Northern Ireland. We therefore recommend that, at an appropriate level, the staff of the Incorporated Law Society's Legal Aid Department should be empowered to approve applications for civil certificates in clear cases without having to submit them to the certifying committee.

41.36 A further benefit should flow from this proposed approach in Northern Ireland. In its evidence to us the Incorporated Law Society referred to serious administrative difficulties which have arisen in the procedure for issuing civil legal aid certificates. The Society ascribed these to shortages of staff and accommodation due, in part at least, to difficulties in obtaining approval from the appropriate government departments in Northern Ireland for increases in

TABLE 41.1

Civil and criminal legal aid in Northern Ireland—certificates, fees, disbursements and costs 1973/74 to 1977/78[1]

Serial	Item	1973/74	1974/75	1975/76	1976/77	1977/78
1.	Civil certificates issued	4,444	5,205	4,785	5,001	5,370
2.	Lawyers' fees and disbursements under civil scheme[2] ...	£185,317	£242,684	£296,977	£309,628	£423,448
3.	Costs recovered under civil scheme	£94,514	£124,495	£180,627	£186,706	£266,502
4.	Contributions received under civil scheme	£35,815	£42,902	£47,554	£51,422	£54,797
5.	Net cost of civil scheme	£59,658	£92,678	£87,519	£83,292	£125,130
6.	Criminal certificates issued	6,824	7,329	8,894	10,268	11,473
7.	Lawyers' fees and disbursements under criminal scheme	£391,908	£507,440	£581,818	£793,479	£1,187,685

[1]Year ended 31st March.

[2]Serial 2 cannot, in any given year, be related to serials 3, 4 and 5. This is because the payment of lawyers' fees and the recovery of costs and contributions are not in phase.

Source: Incorporated Law Society's annual reports and accounts.

staff and accommodation for the Legal Aid Department. As a result, the interval between the application for a certificate and its issue may be as much as four months. We believe that the revised arrangements we propose will ease the administrative workload of the Legal Aid Department. Nevertheless, we consider that the government departments concerned, together with the Society, should urgently seek to resolve the present shortages; they should also review their procedures for establishing the need for increases in complement and accommodation in order to avoid a similar situation arising in the future. This should be combined with the reorganisation of the secretariat of the Incorporated Law Society and its Legal Aid Department which we recommend in paragraph 42.44.

41.37 The Incorporated Law Society drew our attention to the fact that, if the overheads of the Supplementary Benefits Commission are aggregated with those of the Legal Aid Department, the total cost of collecting contributions for all civil cases in Northern Ireland courts of summary jurisdiction exceeds the contributions obtained. This lends force to the recommendation we have made in respect of England and Wales, that the test of means should be simplified and the assessment of eligibility and contributions dealt with under a staged process by the solicitor and the Law Society. We conclude from the evidence laid before us that such an approach would be equally appropriate in Northern Ireland, and we accordingly recommend that it be adopted.

Taxation and assessment of civil legal aid costs

41.38 In Northern Ireland the fees of solicitors and counsel in civil cases are determined by taxation except in relatively minor cases where the Legal Aid Committee is empowered by regulations to assess costs. This authority is delegated by the Committee to assessment committees drawn from the practising profession or to the staff of the Legal Aid Department. We regard these arrangements as satisfactory and, subject to the general comments made in Chapter 42 about taxation, we propose no change in them.

Criminal legal aid—administration

41.39 It is the convention in Northern Ireland to require no financial contributions from legally-aided defendants. For the reasons we described in Chapter 14, we consider that this is the correct approach in criminal proceedings in the magistrates' courts. However, for the reasons given in that chapter, we consider that the Crown Court should have a discretion to order contributions.

Taxation and assessment of criminal legal aid costs

41.40 Whereas in England and Wales the fees paid to lawyers under the criminal legal aid scheme are assessed by committees appointed by the Law Society for work done in the magistrates' courts and by taxing officials for work done in the Crown Court, all criminal legal aid costs in Northern Ireland are

assessed by committees. They comprise one barrister and two solicitors drawn from the Criminal Costs Assessment Panel, which is appointed by the Secretary of State and is made up of eight barristers and eight solicitors. Four of the barristers are nominated by the General Council of the Bar of Northern Ireland and four of the solicitors by the Incorporated Law Society. The remaining barristers and solicitors are nominated by the Secretary of State.

41.41 A number of witnesses were critical of this approach. The basis of criticism was that it is inherently wrong for the disbursement of public money to be solely in the hands of practising members of the profession. It was argued that such matters should be the responsibility of an independent public official.

41.42 It was not suggested to us that any impropriety has resulted from the present approach. The argument is one of principle with which we are in agreement in all cases where substantial sums are involved. We therefore recommend that the present arrangements be superseded and that legal aid costs in the heavier criminal cases should be subject to taxation. We set out our proposals in paragraph 42.79.

Legal aid—publicity

41.43 Before leaving the subject of legal aid, we draw attention to a feature of both schemes, and in particular of the civil scheme, that we find disturbing. It is that there appears to be widespread public ignorance of their existence and terms. The take-up rate under the civil scheme is only three-quarters that in England and Wales. The survey results mentioned in paragraph 41.12 are consistent with this. We think that this has been due in part to the delayed introduction of the green form scheme of legal advice and assistance in the province but a contributory factor has been the absence of adequate publicity for the civil legal aid scheme. The lack of publicity has brought criticism from a number of witnesses. We therefore recommend that more resources be made available to publicise the legal aid schemes in Northern Ireland, and to make people aware of the services available to them in the less traditional areas of the law.

Conclusions and Recommendations

			Paragraphs
Ministerial responsibility	R41.1	Ministerial responsibility for all publicly-funded legal services in Northern Ireland should be transferred to the Lord Chancellor.	41.15
Northern Ireland Council for Legal Services	R41.2	A Northern Ireland Council for Legal Services should be established to replace the existing Legal Aid Advisory Committee.	41.16–41.17

			Paragraphs
CABx	R41.3	CABx in Northern Ireland should be given financial support for development.	41.19
Rota schemes	R41.4	More rota schemes for solicitors in CABx should be established; a general waiver should be granted to such solicitors, a full-time solicitor should be employed at the area office; more technical information is needed by the CABx in the province.	41.20–41.21
Law centres	R41.5	Citizens' law centres in Northern Ireland should be developed and organised in the same way as is proposed in England and Wales.	41.25
Duty solicitor schemes	R41.6	With a view to its general adoption in the province in due course, the Incorporated Law Society should introduce a pilot duty solicitor scheme.	41.27
Legal aid	R41.7	Subject to certain specific modifications, the recommendations concerning legal aid which are contained in Part II of the report apply to Northern Ireland.	41.31
	R41.8	The Legal Aid Department of the Incorporated Law Society needs more staff and better accommodation to overcome serious delays which have taken place in the administration of the scheme.	41.36
	R41.9	Contributions should, at the discretion of the court, be payable by convicted legally-aided defendants in the Crown Court.	41.39
	R41.10	Publicity for the legal aid scheme should be improved.	41.43

CHAPTER 42

The Legal Profession in Northern Ireland

General

42.1 In Parts III and IV we made recommendations concerning the structure, functions and organisation of the legal profession, the maintenance of proper standards of service, conduct and client protection and lawyers' remuneration and education. Most of these recommendations apply to Northern Ireland with appropriate minor changes. A number of matters call for special comment.

Rights of Audience

The recent changes

42.2 In considering barristers' and solicitors' rights of audience in Northern Ireland, it is necessary to have regard to recent changes in the system of courts.

42.3 Until 18th April 1979, when the Judicature (Northern Ireland) Act 1978 came into operation, the court system comprised the Courts of Appeal and of Criminal Appeal, the High Court, the county courts and the magistrates' courts. The High Court and the county courts, unlike those in England and Wales, had an original criminal as well as a civil jurisdiction. The magistrates' courts also dealt (as they still do) with both criminal and civil matters; they were presided over by permanent judicial officers known as resident magistrates. Barristers, as now, had the right of audience in all courts. Solicitors had the right to appear in the county and magistrates' courts and also in certain minor proceedings in the High Court.

42.4 The Judicature (Northern Ireland) Act 1978 replaced this structure with a system more akin to, but not identical with, that existing in England and Wales, namely:—

(a) *The Supreme Court*, comprising: the Court of Appeal, dealing with both civil and criminal appeals; the High Court, which now has an exclusively civil jurisdiction; the Crown Court, which has assumed the original criminal jurisdiction formerly exercised by the High Court at sittings of assize, together with that of the county courts;

(b) *County courts*, having a mainly civil jurisdiction but continuing to hear criminal appeals from the magistrates' courts;

(c) *Magistrates' courts*, continuing virtually as at present.

42.5 The Lord Chancellor has now assumed responsibility for the administration of all the courts mentioned above as well as juvenile courts and coroners' courts. He discharges these responsibilities through the Northern Ireland Court Service, which was formally established in April 1979.

42.6 Barristers continue to have a general right of audience in all courts and solicitors will retain their existing rights of audience in the county and magistrates' courts. The Act confers upon solicitors a right of audience in the new Crown Court subject to such restrictions as may be specified in directions given by the Lord Chief Justice of Northern Ireland. At the time of drafting our report, no such directions had been given.

The future

42.7 We set out in Chapter 17 our view that barristers and solicitors should continue to work in separate branches of the legal profession, as the best means of providing the public with a high standard of service. In their evidence the judiciary and the profession in Northern Ireland took a similar line. They argued that, because of the political situation and the spread of population in the province, fusion of the branches would have a particularly adverse effect on the quality of service available to the public. We consider these arguments to be sound and recommend no change in the present position.

Protection of the Client

Solicitors' Accounts Rules and Accountant's Report Rules

42.8 The Solicitors (Northern Ireland) Order 1976 required the Incorporated Law Society to introduce rules similar in terms to those specified in the Solicitors Act 1974 to regulate the holding of clients' money. The Society introduced such rules in 1978, together with a requirement that solicitors render an annual accountant's report, in prescribed form, confirming their compliance with the rules.

Compensation fund

42.9 In Chapter 23 we described the nature and operation of the Law Society's compensation fund in England and Wales. The Solicitors (Northern Ireland) Order 1976 provided for the establishment of a similar fund in Northern Ireland. The Incorporated Law Society accordingly introduced regulations, with the concurrence of the Lord Chief Justice of Northern Ireland, and the fund came into operation in 1977. Its establishment has necessitated an annual subscription by solicitors holding practising certificates of £100 per head. When we were drafting our report the possibility existed of a number of claims arising as a result of bankruptcies of solicitors. This was not thought by the Society (which has unlimited powers of levy) to threaten the long-term viability of the fund.

Interest on clients' money

42.10 In accordance with the Solicitors (Northern Ireland) Order 1976 the Incorporated Law Society introduced in 1978 regulations relating to the treatment of interest on clients' money held by solicitors. The regulations are similar in terms to those described in paragraphs 23.16–23.17.

Indemnity insurance—solicitors

42.11 In paragraphs 23.23–23.27 we described the arrangements made by the solicitors' profession in England and Wales for indemnity insurance, and discussed the need to limit liability for claims of negligence. The Incorporated Law Society introduced in 1977 a master policy scheme similar to that negotiated on behalf of solicitors in England and Wales. The minimum level of cover it provides is, like the English scheme, £50,000 for a sole practitioner and £30,000 per partner in the case of a firm of two or more partners. These levels of cover can be increased by individual practitioners on payment of further premiums. We regard these arrangements as satisfactory. As to the extent of liability, we consider that the professions in Northern Ireland should be included in the general review proposed in Chapter 23 of limits of liability for professional negligence.

Immunity from suit and indemnity insurance—barristers

42.12 We dealt in Chapter 24 with the present rule that barristers and other advocates should be immune from proceedings for negligence in respect of the conduct of proceedings in court.

42.13 Because of the uncertainty which existed about barristers' vulnerability to proceedings arising from matters unconnected with cases in court, the Northern Ireland Bar Council introduced a rule in 1968 making professional indemnity insurance compulsory for all members of the Bar. The present minimum indemnity is for £25,000. Most junior barristers are insured for this amount, whereas Queen's Counsel are generally insured for between £50,000 and £250,000. We regard this measure as both responsible and prudent, but consider that the present minimum level of indemnity is too low and should be raised to £50,000, as proposed in Chapter 24.

Solicitors' Discipline

Practice Regulations

42.14 Solicitors in Northern Ireland are officers of the Supreme Court of Judicature of Northern Ireland, and are subject to its discipline. They are also subject to a series of Practice Regulations which are issued by the Incorporated Law Society, with the approval of the Lord Chief Justice of Northern Ireland.

42.15 The Northern Ireland Solicitors' Practice Regulations were last revised in 1978. They are summarised below, together with our comments where appropriate.

(a) A solicitor shall not attempt to gain business by touting, advertising or undercutting, or attract business by any unfair means.

As we noted in Chapter 27, we regard a measure of advertising by individual firms of solicitors as being in the public interest. We consider therefore, that this rule requires amendment.

(b) (i) A solicitor qualifying by means of the Certificate of Professional Legal Studies shall not practise on his own account during the three years immediately following his admission; during this period he shall practise under the supervision of a solicitor of at least three years' standing and shall undertake further training as prescribed by the Education Committee;

(ii) A restricted practising certificate may at the discretion of the Education Committee be issued to a solicitor qualifying other than by the Certificate of Professional Legal Studies. For as long as the restriction is in force (which may be up to three years from admission) the solicitor shall not practise on his own account, and shall practise under the supervision of a solicitor of at least three years' standing.

These regulations refer to arrangements consequent upon the introduction of the vocational training scheme described in paragraphs 42.85—42.87 below.

(c) A solicitor shall not act in association with one whose business is to make, support, or prosecute accident claims.

This regulation corresponds to one of the Solicitors' Practice Rules in England and Wales, the retention of which we recommend in Chapter 25.

(d) A solicitor shall not show on his nameplate or his professional stationery the name of a person other than a solicitor with a current practising certificate except for:—

(i) former partners or predecessors;

(ii) the established name of the firm.

We do not think that, with the exception of those retained as consultants, the names of former partners or predecessors should be subject to the exception in (i) above because it might be misleading to the public. With this exception we endorse this regulation.

(e) A solicitor shall ensure that his firm's offices are properly supervised; every office shall be managed by a solicitor or an experienced law clerk.

Our remarks on office management and supervision are to be found in Chapter 22. They apply equally to Northern Ireland.

(f) A solicitor shall:—

(i) reply promptly to the Incorporated Law Society on any matter relating to professional conduct or to the Society's functions under the legal aid scheme;

(ii) attend upon the Council or a Committee thereof when so requested;

(iii) inform the Society in writing of the address from which he practises.

42.16 There are a number of Practice Rules in England and Wales that find no equivalents among the Practice Regulations summarised above:—

(a) the rule against acting for both parties in a conveyancing transaction (see paragraph 25.8(b));

Although we recorded our view in paragraph 21.64 that in some circumstances it is acceptable for a firm to act for both parties in a conveyancing transaction, we consider that a rule should be introduced stipulating that a solicitor shall not act for both parties where the interests of the parties conflict or seem likely to conflict.

(b) the rule against the sharing of professional fees (see paragraph 25.8(c)).

As we explained in paragraphs 30.2—30.15, we attach importance to this rule, which prevents partnerships between solicitors and other persons who are not qualified lawyers. Although there is no corresponding practice regulation in Northern Ireland, the point is covered by Article 28 of the Solicitors (Northern Ireland) Order 1976.

(c) the rule against contingency fees (see paragraph 25.8(e));

The Incorporated Law Society said in its written evidence, and repeated in oral evidence, that it favoured the introduction of contingency fees, subject to certain controls. This was, however, based on the assumption that the availability of legal aid would stay the same, or roughly the same, as at the time it gave evidence. We recorded in Chapter 16 our objections to contingency fees. We do not think they should be permitted, irrespective of the level of legal aid. We consider therefore that a regulation should be made by the Incorporated Law Society comparable to the Practice Rule in England forbidding solicitors to act for a contingency fee.

42.17 In oral evidence to us the Incorporated Law Society indicated that it would be generally in favour of Practice Regulations in Northern Ireland being brought into line with the Practice Rules in England and Wales. We agree with this view.

The system of handling complaints against solicitors

42.18 The procedures adopted by the Incorporated Law Society for dealing with complaints against solicitors are comparable to those adopted by the Law Society in England and Wales. Complaints are considered in the first instance by the secretariat. Some are disposed of at that level. If they are considered to constitute an allegation of negligence, the complainant is advised to consult another solicitor. The remainder are considered by the Practice Committee of the Council. If the Committee finds inadequate an explanation provided by a solicitor against whom a complaint has been made, it may (having first so informed the individual solicitor in writing) set in hand the procedures whereby the Society can withhold, or attach conditions to, his next practising certificate. The Committee may also issue a reprimand or initiate proceedings before the Disciplinary Committee.

42.19 The Disciplinary Committee is an independent body. Its members are appointed by the Lord Chief Justice of Northern Ireland under the terms of the

Solicitors (Northern Ireland) Order 1976 from among practising solicitors of not less than ten years' standing. Three members constitute a quorum. The Disciplinary Committee, unlike its counterpart in England and Wales, does not include a lay element. The Committee has the same authority as the High Court to call for witnesses and documents.

42.20 The Disciplinary Committee has powers to:—

(a) dismiss the application or complaint;

(b) admonish the solicitor and, if thought fit, impose a fine of up to £500, to be paid to and applied for the purposes of the Incorporated Law Society;

(c) restrict the solicitor from practising on his own account;

(d) suspend the solicitor from practice;

(e) strike the solicitor off the Roll;

(f) direct the payment by any party to the enquiry of the costs of any other party;

(g) direct the payment by any party to the enquiry towards the costs incurred by the Committee;

(h) direct any party to make such restitution or satisfaction to any aggrieved party as the Disciplinary Committee thinks fit.

Proposed changes to the disciplinary system

42.21 We consider that, as in England and Wales, the Society should deal with all complaints of bad work which are not misconceived or frivolous. The approach to those complaints which concern or contain an allegation of negligence should be as described in Chapter 25, We note that it is the Society's practice to deal separately with the disciplinary aspects of a complaint, even though negligence proceedings may be in train arising from the same episode.

42.22 We further consider that the process of investigating complaints and arranging conciliation where appropriate, whether through the agency of local solicitors' associations or otherwise, should be separated from the adjudication process. We therefore recommend that the Incorporated Law Society should appoint an investigation committee with responsibilities comparable to those described in Chapter 25 and that the Practice Committee should be concerned solely with adjudication in cases of appropriate gravity. We consider that, in keeping with proposals we make elsewhere in respect of the Law Society in England and Wales, the Council of the Incorporated Law Society should have, and should delegate to the Practice Committee, authority to withdraw or impose conditions on a solicitor's practising certificate at any time during the course of the practising year and not only at the beginning. The Practice Committee should also have the additional powers set out in paragraph 25.46.

42.23 For reasons set out in Chapter 25, we consider that in Northern Ireland, as in England and Wales, the proposed investigation committee, the Practice Committee and the independent Disciplinary Committee, should, when considering complaints against solicitors, include a lay element.

42.24 The Solicitors (Northern Ireland) Order 1976 made provision for the appointment of a Lay Observer, and the first incumbent took office in October 1977. Although we endorse the principle of lay involvement in the complaints process, we consider that this can most effectively be secured by direct participation of the kind described in the foregoing paragraph. If such arrangements are introduced, the need to retain the office of the Lay Observer should be reviewed.

42.25 We also consider that, when necessary for the reasons given in paragraph 25.51, arrangements should be made for the Disciplinary Committee to hear, jointly with the disciplinary body for the Bar, complaints involving both solicitors and barristers.

42.26 We agree with the recommendation contained in the first annual report of the Northern Ireland Lay Observer that the Incorporated Law Society should prepare and promulgate information for the public on the system for handling complaints about solicitors' work. For the reasons given in paragraph 25.19, we consider that the Society should also maintain an analysis of the complaints received (including the action taken) by nature and by subject matter, and publish the outcome annually to its members.

Barristers' Discipline

Rules of conduct and etiquette

42.27 Rules of conduct and etiquette are made by the Bar Council or by the Bar in general meeting. The practice has been to announce the making of such rules by displaying them in the Bar Library. The Bar Council was, at the time when we were drafting our report, in the process of reviewing the rules and setting them out afresh in the form of a handbook. In this process, due account was being taken of the rules laid down for the Bar in England and Wales, although not all of them were considered appropriate to Northern Ireland.

42.28 We take the view that the two following rules, which are generally observed although not formally set down, should be formally adopted in Northern Ireland:—

(a) the rule that a barrister must normally accept any brief in the courts in which he professes to practise, at a proper fee (the "cab rank" rule);

(b) the rule against the formation of partnerships by barristers.

Disciplinary procedures

42.29 Complaints against barristers, whether of incompetence or misconduct, are dealt with by the Disciplinary and Complaints Committee of the Bar Council or, in serious cases of misconduct, by the benchers. The benchers alone have the power to suspend or disbar.

42.30 The Disciplinary and Complaints Committee adapts its procedures according to the nature of the complaint. Where the facts are not in dispute, and the failing relates to minor inefficiency rather than misconduct, the barrister may be spoken to privately by the chairman of the Committee. Alternatively, he may be called before the full Committee. If the complaint is one of misconduct, where the facts are often in dispute, the procedure is more formal. Written statements are obtained from both complainant and the barrister complained against. Each side is shown the other's statements. At the hearing before the Committee, court procedures are followed and representation is allowed. The maximum penalty at the disposal of the Committee is exclusion from the Bar Library. We comment on the adequacy of this measure in paragraph 42.34 below.

Proposed disciplinary procedures

42.31 In later paragraphs we propose a reorganisation of the structure of the Bar and the formation of a Senate. This would be the governing body of the profession. In succeeding paragraphs our references to "the Senate" should be taken as referring to this new body.

42.32 In the five years between 1972 and 1976 the Northern Ireland Bar Council received 24 complaints against barristers. Fifteen of these complaints came from outside the profession, either from clients or others. The remaining nine were from other members of the profession, including the judiciary. In most of the 24 complaints received in this period the facts were not in dispute. Although this suggests that the incidence of complaints requiring investigation may be low, we consider, as we say elsewhere, that such complaints should not be investigated by the body concerned with adjudication.

42.33 We recommend that the investigation of complaints should be the responsibility of a senior official of the governing body of the profession. When the complaint has been made by a lay person the official should, whenever practicable, interview the complainant. He should report the results of his enquiries to an investigation committee of the Senate. The committee should decide whether there is a *prima facie* case to answer and, if so, should remit the matter to the appropriate adjudicating body.

42.34 We recommend that less serious complaints should continue to be dealt with by a Disciplinary and Complaints Committee of the Bar Council. The Committee's present powers are limited to admonition and exclusion

from the Library. The Bar Council said in its evidence that the latter sanction, which does not prevent a barrister from practising, "is unlikely to increase the efficiency of the barrister in question". We agree. We therefore consider that it should be open to the Committee, like the Professional Conduct Committee of the Bar Council in England, to order the barrister to undergo suitable training as approved by the Bar Council.

42.35 As to the composition of the Committee, we consider that, like the Professional Conduct Committee in England, it should include a lay element, for the reasons given in paragraph 26.14.

42.36 As recommended by the Bar Council, we consider that the more serious disciplinary cases should be determined by a disciplinary tribunal appointed by the Senate; that the tribunal should include a lay element; and that there should be a right of appeal from decisions of the tribunal to the Lord Chief Justice of Northern Ireland.

Solicitors—Structure and Organisation

Numbers

42.37 Records of practising certificates issued have been maintained by the Incorporated Law Society only since 1974. The figures are set out in Table 42.1 below.

TABLE 42.1

Practising certificates, 1974-79

Year	Number
1974	562
1975	606
1976	630
1977	668
1978	772
1979	801

Source: Incorporated Law Society.

Existing arrangements

42.38 In Northern Ireland the government of the solicitors' branch is vested in the Incorporated Law Society. The Society, as in England and Wales, is also the professional association. It exercises similar functions such as issuing practising certificates, introducing and enforcing Practice Regulations (with the approval of the Lord Chief Justice of Northern Ireland) investigating complaints and conducting disciplinary proceedings. It is also responsible for the administration of the civil legal aid scheme and, under present arrangements, for the assessment of costs under the criminal legal aid scheme. It has a Council of 28, which is elected by the members of the Society each year by postal vote. Its officers are the president, two vice-presidents, the honorary treasurer and the secretary.

42.39 Like its English counterpart, the Society makes representations to the government on matters affecting the interests of solicitors and the public. It publishes twice yearly a Gazette and has a law reform committee, supplemented by working parties which study particular aspects of law reform.

42.40 There are 13 local associations which correspond to the English local law societies. The associations, like their English counterparts, vary in size and in level of activity. By far the largest is the Belfast Solicitors' Association, which has approximately 400 members. It has an executive committee which meets monthly and arranges lectures and courses for its members. Outside Belfast no association has more than 20 members. The organisation of the solicitors' branch of the profession in Northern Ireland follows closely the pattern described in Chapter 29 for England and Wales. It is self-regulating and therefore amenable to the same principles set out in paragraphs 29.12—29.16.

Recommended changes

42.41 In recent years there have been a number of major developments affecting the work of solicitors in Northern Ireland. A new system of legal education has been brought into effect; there have been a variety of measures to protect the financial interests of clients. The Incorporated Law Society has played its part in introducing and administering these arrangements, and has had to deal with the expanding task of administering the civil legal aid scheme. It now has similar responsibilities in respect of the legal advice and assistance scheme. Our recommendations will create further tasks for it to discharge.

42.42 In these circumstances it is our view that the Incorporated Law Society should be strengthened at a number of levels. The size of the Council has remained at 28 for some years. This is a small number to deal with the tasks facing the Society, however willing and competent those involved may be. We understand that the Society is contemplating an increase in the number of Council members, and we agree that such an expansion is desirable.

42.43 The Society, in the course of its oral evidence to us, mentioned that not all local solicitors' associations are as strong numerically as the Society would wish, and that the process of sounding local opinion is thereby impaired. We consider that solicitors should be encouraged to belong to their local associations, and through them, to maintain communication with the governing body and participate in the running of the profession.

42.44 The Society told us that certain parts of its secretariat were, for reasons beyond its control, already under severe pressure because of a shortage of staff. We made specific reference in paragraph 41.36 to the difficulties faced in this regard by the Society's Legal Aid Department, and the resultant delays in issuing legal aid certificates. We think that when additional staff are recruited, the opportunity should be taken to reorganise the secretariat of the Society

and its Legal Aid Department in order to bring about a better delegation of duties and a clear line of authority and direction. This will be necessary, in view both of the increased responsibilities likely to fall on the Society as a result of this report, and of the need to overcome the backlog of work in the Legal Aid Department and to ensure that a similar situation does not arise again.

42.45 Although membership of the Incorporated Law Society is voluntary, we understand that virtually all solicitors in Northern Ireland belong to it. As we said in paragraph 29.32 we consider that, as a matter of principle, the issue of a practising certificate should confer upon the holder the right to vote in the Society's elections, to hold office and to receive copies of all its communications. It should also be open to solicitors who are not required to hold practising certificates to participate in the affairs of the profession on application to the governing body and on payment of an appropriate subscription.

The Bar: Structure and Organisation

Numbers

42.46 The Bar in Northern Ireland has grown substantially in size in recent years. The numbers are shown in Table 42.2 below.

TABLE 42.2

Barristers in private practice, 1962-79

Year	Queen's Counsel	Juniors	Total
1962	18	49	67
1963	17	48	65
1964	15	48	63
1965	20	42	62
1966	21	38	59
1967	21	35	56
1968	24	36	60
1969	22	39	61
1970	21	53	74
1971	19	66	85
1972	21	65	86
1973	24	66	90
1974	23	77	100
1975	21	93	114
1976	23	87	110
1977	23	100	123
1978	23	120	143
1979	25	135	160

Source: Bar Council.

The rapid increase in the number of recruits to the Bar in the last ten years has been accompanied by a large number of appointments to judicial posts from among the senior Bar. These two trends have created a situation where

the age structure of the Bar is unbalanced. Most of the present generation of junior barristers were called to the Bar within the last ten years. Barristers have been granted silk at what, by past standards, is a young age, in order to replace those Queen's Counsel who have received judicial appointments. There is, as a result, no "middle" Bar.

The Library system

42.47 Barristers in Northern Ireland, like those in Scotland and the Republic of Ireland, practise from a Bar Library. Briefs are normally delivered to them at the Library, and clients and instructing solicitors are interviewed in adjoining rooms. The Library is situated in the Royal Courts of Justice in Belfast. The accommodation and facilities have changed little since the court buildings were erected in 1932, when the Northern Ireland Bar was very small.

42.48 As a result of the growth of the Bar the accommodation now available is cramped and inadequate. Facilities for interviewing clients are sparse and unsuitable, so conferences frequently take place in the hall or corridors of the courts. The present shortcomings, which we witnessed ourselves, are unacceptable.

42.49 For a relatively small Bar, there are benefits in a library system. Overhead costs are low and it fosters close professional association. We understand that such systems operate with success in Edinburgh and Dublin, where the Bars are larger in number than in Belfast. However, given the inadequacy of existing physical accommodation, it is necessary to consider what measures should be taken to improve the efficiency of the present system.

42.50 In Northern Ireland there is no equivalent to the barristers' clerk. Barristers arrange their own professional engagements and negotiate and collect their own fees. Administrative support is confined to a staff of four who maintain the library stock, man the reception desk and take messages. They do not accept or transfer briefs on behalf of the barristers; this is done by the barristers themselves. Each barrister makes his own arrangements for typing assistance. The most common solution is to engage a part-time typist who works at home. The Bar Council does not employ a full-time administrative secretary. This task is performed by a member of the Bar acting in an honorary capacity.

42.51 The administrative costs of this system are low. In 1979, the rates of subscriptions were as shown in Table 42.3 below.

TABLE 42.3

Subscriptions to the Bar Library, 1979

Seniority		Subscription
		£
Juniors in practice:	1 year	35
	2 years	50
	3 years	85
	4 years	110
	5 years	170
	6 years	215
	7 years	280
	8 years	310
	9 years	340
	10 years	405
over	10 years	450
Queen's Counsel:	... ...	560

Source: Bar Council.

At all levels, these rates are much less than the clerking and chambers expenses of an English barrister, but provide for a much narrower range of supporting services.

42.52 We consider that the administration of the Bar should be improved in two respects. First, we believe that the secretarial services available to barristers should be extended to include the keeping of a diary and making appointments. Secondly, the machinery for collecting fees requires improvement. We consider that the example of the Scottish Bar in Edinburgh which retains a service company for the purpose of keeping accounts and collecting fees might be followed.

42.53 We understand that additional premises will shortly be provided for the Bar Library. These are urgently needed and we think that when it is known what premises will be available, the Bar should seek outside professional advice so that the space is laid out to the best advantage and the organisation is planned on an efficient basis. The plans should make provision for some expansion of the Bar in the future so as to obviate the risk of a similar unsatisfactory situation arising within a short period.

42.54 The measures we propose will cause some increase in overhead expenses. Against this, the existing level of expenses is low and a more efficient system would free barristers from administrative work and enable them to increase the amount of their fee-earning work. We believe that more efficient administration would increase and not reduce profitability.

Crumlin Road courthouse

42.55 It is relevant in this context to draw attention to the overcrowded and uncomfortable conditions in the Crumlin Road courthouse. It is nearly impossible for either barristers or solicitors to give proper service to clients in the

prevailing conditions, quite apart from the discomfort suffered by the judiciary, court officials, litigants and the public. Although certain improvements have recently been made to the consultation facilities available to the Bar, we consider that a rebuilding programme is urgently needed and should be set in hand at an early date.

The government of the Bar

42.56 The 19 benchers of the Honorable Society of the Inn of Court of Northern Ireland are the governing body of the barristers' branch of the profession. Eight benchers are drawn from the practising Bar, nominated by the other Bar benchers. The eight judges of the Supreme Court are *ex officio* benchers, as is the Attorney General. The other two places are filled by election by the benchers, and customarily go to distinguished members of the judiciary or the Bar. The benchers have the sole power to suspend or disbar a barrister and to discipline a student. The Bar Council, elected by practising barristers, desires to maintain the standards and conduct of barristers, but the only sanction at its disposal is exclusion from the Bar Library, which does not prevent a barrister from practising.

42.57 There is, at present, no age limit for benchers. In keeping with our recommendation in paragraph 32.78, we recommend that arrangements should be made for benchers to retire at the age of 70. This will enable younger members of the Bar to take part in the management of the profession.

42.58 The Bar Council referred in its evidence to criticisms arising from the present situation, saying that the Council is regarded by some as ineffectual because of the restricted nature of its powers. It added:—

> The control that the Bar and the Bar Council have over their profession is therefore very limited. To many young barristers the Benchers are a remote body composed of judges and only the most senior members of the Bar. At present no member of the junior Bar is a Bencher. The Bar Council considers that all responsibility and power should be vested in one body representing all practising members of the Bar... and the governing body of the Inn.

42.59 The Bar Council therefore proposed the formation, as the governing body of the Bar, of a Senate consisting of four High Court judges, two county court judges, four Queen's Counsel and six junior barristers, the barristers being elected by the Bar. The Attorney General and the Solicitor General would be *ex officio* members. In addition, the body would have the power to co-opt five others, one of whom would be an employed barrister and another a barrister holding office in a judicial capacity other than that of a High Court or county court judge.

42.60 The Bar Council proposed that the officers of the Senate should be a president, a chairman (a practising barrister), a vice-chairman, a treasurer and a full-time secretary; the Senate should form a number of committees, on such

matters as education and finance; the president should appoint a disciplinary tribunal of four to six members, possibly with a lay representative. This, together with a disciplinary committee to investigate complaints would, in the view of the Bar Council, considerably strengthen the Bar's disciplinary machinery.

42.61 We consider that the present system is unsatisfactory because practising barristers, except for the few who are benchers, can take no effective part in the management of their profession. We have no doubt that a Senate should now be set up on the lines proposed by the Bar Council, though with a larger proportion of practising barristers than was proposed by the Bar Council. We consider that the Bar Council should remain in existence as a committee of the Senate to deal with matters affecting the interests of practising barristers. The functions of the benchers should be taken over by the Senate. We think that this reorganisation of the governing body is overdue; it should not be further delayed and should be put into effect during 1980.

Silks and juniors

42.62 Table 42.2 shows that the number of Queen's Counsel has remained virtually steady at around 23 for some years while the number of junior barristers has more than trebled. Even so the proportion of Queen's Counsel remains higher than in England and Wales. This is of no significance provided that no artificial restrictions are placed on the work they may undertake. In Chapter 33, we indicated that, subject to the abolition of the two-counsel rule, the retention of a two-tier structure at the Bar was in the public interest. This conclusion applies equally to Northern Ireland.

42.63 Appointments of Queen's Counsel are made by warrant by the Secretary of State on the recommendation of the Lord Chief Justice. It is not now the usual practice to apply for appointment but we were told that it was customary to do so some years ago. Because appointment as a Queen's Counsel is not a mere honour but greatly affects a barrister's working life and career, we recommend the adoption of the system in which candidates make formal application. When applications are considered there should in our view be consultations with the judiciary and members of the profession on the same pattern as those undertaken in England and Wales by the Lord Chancellor.

Relations between the Branches

The liaison committee

42.64 Working relationships between individual solicitors and barristers in Northern Ireland appear to be good, but we consider that there has been insufficient collaboration and consultation between the professional bodies. There has for some years been a joint liaison committee of the Incorporated Law Society and the Bar Council. At the time we were drafting our report in 1979 we were told that it had met only once in the previous three and a half years.

There is informal contact between members of the Bar Council and officials and council members of the Incorporated Law Society, both of whom are accommodated in the same building. Under present arrangements, however, the Bar Council lacks authority to reach agreement on all matters pertaining to barristers and their work, and there appears to be little contact between the Incorporated Law Society and the Inn of Court.

42.65 We regard close cooperation between the governing bodies as indispensable to the development of the profession. The liaison committee, which, if our recommendations in paragraph 42.61 are implemented, will become a joint committee of the Incorporated Law Society and the Senate, should meet regularly. Our own proposals for change will provide considerable material for discussion and development of the interests of both branches of the profession.

Legal Publications

Text books

42.66 Northern Ireland has its own system of law drawn partly from Irish partly from English sources. The potential readership of any legal work, however general in its application, is too small to make publication commercially worthwhile. There is, therefore, a severe shortage of text books and of more fundamental works of authority such as annotated statutes, case reports and rules of court. The use of a computer-assisted information retrieval system will not be a practical or a commercial possibility for many years to come. The profession told us in evidence that the government has in the past given direct assistance to enable a limited number of legal works to be written and published. We regard the provision of such material as essential to the proper conduct of professional work and to the administration of justice. In the circumstances we recommend that assistance should be provided out of public funds for this purpose.

Periodicals

42.67 The Northern Ireland Legal Quarterly, which provides a review of the law in Northern Ireland, is published by a company limited by guarantee, under the aegis of Queen's University, Belfast. The company told us that in order to secure the future of the Quarterly, and to enable it to produce the necessary text books, an annual subsidy of £3,750 is needed. The Quarterly is the only periodical dealing with the law in Northern Ireland and it is important to maintain this means of keeping the profession in touch with developments in the law. We recommend that it be subsidised for this purpose.

Technical material for CABx

42.68 In paragraph 41.21 we drew attention to the need for the technical material furnished to CABx in Northern Ireland to include information about the special provisions and regulations which prevail in the province so that

CAB workers can be properly informed. When arrangements are being made to provide text books and periodicals with government assistance, those responsible should, in consultation as necessary with the CAB movement, ensure that the process will enable the gaps in the material at present available to CABx to be filled.

Remuneration

Surveys

42.69 The Bar Council conducted a survey of barristers' earnings in Northern Ireland, the results of which are shown in Volume II section 23. The Incorporated Law Society circulated a questionnaire to solicitors but, regrettably, the number returned was insufficient for the purposes of statistical analysis.

The principles of remuneration

42.70 We dealt with the principles of lawyers' remuneration in Chapter 36. All that we said there applies to the profession in Northern Ireland. In Chapter 37 we dealt with matters relating to lawyers' charges. Save for those affecting the taxation of costs, our recommendations, including those concerning information to be given to the client, the value of time-recording and the importance of keeping up to date, equally apply and are not here repeated.

Taxation and Assessment

Civil costs

42.71 In Northern Ireland all lawyers' charges for civil work of a contentious nature, other than fixed costs, are subject to taxation. Work done under the civil legal aid scheme is subject to taxation by the Taxing Master or, if of a minor nature, in the manner described in paragraph 41.38. Charges to private clients may, on application, be taxed by the Taxing Master. Charges arising from contentious business in the lower courts are subject to a fixed scale of costs.

42.72 Non-contentious civil work (including conveyancing) is covered by the Solicitors' Remuneration (Northern Ireland) Order 1977 which replaced the former scale fees with the same criteria for non-contentious charges as in England and Wales. Dissatisfied clients can apply to the Incorporated Law Society for a remuneration certificate. Alternatively, they can apply to the Taxing Master for taxation. We indicate in Table 42.4 below the number and value of civil bills taxed and otherwise assessed in the period 1974–78.

Criminal costs

42.73 Costs paid out of the criminal legal aid fund are assessed in the manner described in paragraph 41.40. The costs of privately-paid criminal defences are subject to taxation by the Taxing Master, on the application of the client.

TABLE 42.4

Civil bills taxed and assessed, 1974–78

		1974	1975	1976	1977	1978
Contentious business	Number of bills taxed (number of legal aid bills shown in brackets)	405 (307)	190 (141)	369 (272)	384 (316)	465 (353)
	Total certified value (£)	70,369	39,697	89,710	91,440	145,428
	Average certified value (£)	174	209	243	238	313
Non-contentious business	Number of bills taxed	Nil	Nil	1	1	Nil
	Certified value (£)	Nil	Nil	937	321	Nil
	Number of remuneration certificates issued ...	8	10	8	3	7
	Certified value (£)	649	2,440	658	244	1,243
	Average certified value (£)	81	244	82	81	178

Sources: Taxing Master, Northern Ireland.
Incorporated Law Society.

Bodies controlling fees

42.74 The various scales and criteria for assessment and taxation of costs are at present, with the concurrence of the Lord Chancellor, settled by the Rules Committees of the Supreme Court, county court and magistrates' court, and by the Non-Contentious Costs Committee set up under the Solicitors (Northern Ireland) Order 1976.

Proposed changes for the taxation and assessment of fees

42.75 The evidence from Northern Ireland contained a number of criticisms of the present system for determining costs. It was said that:—

(a) the various bodies responsible for setting scale charges and the criteria for taxation were uncoordinated and lacking in information and recent experience of practice;

(b) as a result, scales and allowable costs were generally inadequate and in some areas of work, particularly matrimonial matters, they were so low as to discourage practitioners from engaging in them, to the detriment of the public;

(c) the process of taxation was cumbersome, taxed costs were too low and bore little relation to present day overhead costs.

42.76 To overcome these criticisms, the Incorporated Law Society and the Taxing Master proposed the setting up of an independent body to conduct regular reviews of rates of remuneration, with a view to securing proper levels of income for both barristers and solicitors. This accords with our proposals in Chapter 37 for the establishment of a Fees Advisory Committee. We do not consider it necessary or feasible to set up a separate body in Northern Ireland but recommend that the Committee's remit should cover Northern Ireland and that its membership should provide for representation from Northern Ireland.

42.77 As regards the third criticism mentioned in paragraph 42.75, it was proposed to us that taxation should be undertaken by a panel of practising solicitors, appointed by the Lord Chief Justice of Northern Ireland. We consider that an arrangement of this kind would not be acceptable to the public and would not be seen to provide an impartial judicial determination of the issue of costs between parties. In our view, taxation should continue to be dealt with by the Taxing Master, as at present. As costs are continually changing in an inflationary economy, it is difficult to secure up-to-date information and the Taxing Master has no colleagues with whom to compare notes. We suggest that regular contact with taxing masters in England and Wales might be helpful to him for the purpose of keeping his figures up to date.

42.78 The process of taxation would be less cumbersome if bills of costs were simpler and backed up by information as to the professional time spent on the

matter in question. Our recommendations in Chapter 37 here apply. At present the Taxing Master charges a fee of 5 per cent of the bill as taxed. He told us that if bills of costs were simplified, this fee could be reduced.

42.79 The Northern Ireland Legal Aid Advisory Committee and the Council of HM County Court Judges in Northern Ireland expressed support for judicial taxation of criminal legal aid costs rather than assessment by a professional body. We agree with this view, but for the sake of consistency and convenience we recommend that costs in criminal cases should, as we have proposed for England and Wales, be subject to taxation except for costs arising in cases in the magistrates' courts where less than £500 is claimed, which should continue to be subject to assessment.

42.80 Our proposals will add substantially to the work of the Taxing Master. He indicated to us in oral evidence that he favoured the formation of a taxing department. We agree that, if our recommendations are implemented, it will be necessary for him to have supporting staff.

42.81 Our general recommendations in Chapter 37, including such proposals as the replacement of the party and party basis by the common fund basis for the calculation of costs and the introduction of shortened procedures for taxation, are suitable for adoption in Northern Ireland.

Barristers' fees

42.82 The Bar Council told us that there is little variation in the fees charged by barristers of comparable standing, and that the general ranges of fees are well known to solicitors. Solicitors may discuss and agree a fee in advance with counsel but it is usually agreed after the work is done.

42.83 There are a number of recommendations in Chapter 37 which we think should be applied in Northern Ireland.

(a) A barrister should be permitted to agree with a fee-paying client that he will accept the fee allowed on taxation.

(b) The solicitor should ensure that arrangements relating to fees, in particular specific fees payable to a barrister, whether or not allowed on taxation, are clearly explained to the lay client.

(c) A barrister's fee should be paid by the solicitor within three months of receiving the fee note.

(d) Brief fees should be marked in three parts:—

  (i) for preparation;

  (ii) for the first day's attendance in court;

  (iii) for second and subsequent days of attendance.

(e) A barrister should maintain records of the time spent on preparatory work and on paper work for which a fee other than a standard fee may be payable.

Education and Training

Background

42.84 Legal education and training in Northern Ireland was reviewed by a committee under Professor Armitage (a member of the Ormrod Committee in England and Wales) which reported in 1973 (Cmd. 579). The earlier history of legal education in the province and the system in existence at the time of the Committee's appointment were fully described in its report. We confine ourselves to describing the new system which has been set up based on the recommendations of the Armitage Committee.

The Institute of Professional Legal Studies

42.85 The new system of professional legal education in Northern Ireland is centred on the Institute of Professional Legal Studies which was established within Queen's University, Belfast. Its governing body is the Council of Legal Education for Northern Ireland which comprises representatives of both branches of the profession and members of the faculty of law and the university. Its first director was appointed in 1976. The first intake of students was in October 1977, and the course led to qualification in the following year. The staff comprises the director, a senior lecturer and two lecturers. They are all members of the legal profession, and some have continued in practice.

The course

42.86 The vocational course provided by the Institute consists of instruction and training in a range of subjects. These are shown in the timetable annexed to this chapter (annex 42.1). Conventional teaching methods are supplemented by practical training sessions. Those entering the one-year course provided by the Institute are required to have a law degree. The majority of students entering the Institute have graduated after a four-year course in law at Queen's University, but graduates of other universities are accepted. The number of students who can be accepted for the present course is limited by the availability of accommodation to 69. If, as has happened at the last two intakes, the number of candidates exceeds the number of places, they are selected on merit. Usually, anyone with first or upper second class honours will get a place. A graduate with a lower second class honours degree may or may not get a place, depending on a combination of examination results, tutor's recommendation and interview.

42.87 It was acknowledged in oral evidence by the Council of Legal Education for Northern Ireland that a process of selection based mainly on academic

performance is not entirely satisfactory, because it gives no clear indication of future ability in professional practice and may exclude those who would make good practising lawyers. However, although other methods of selection have been investigated, no suitable alternative has been found.

42.88 As an alternative to a law degree, certain students may, as a preliminary to the course at the Institute, take an academic course of two years' duration at Queen's University or at an alternative institution offering a course acceptable to the Council of Legal Education. These students include:—

(a) graduates whose degrees do not qualify for recognition as law degrees;

(b) foreign graduates at the discretion of the professional bodies;

(c) unqualified persons who have worked in a solicitors' office for seven years and other mature students.

42.89 By the time he enters the Institute, the student must decide which branch of the profession he wishes to enter. In certain subjects the one-year course provided by the Institute is the same for students of both branches of the profession and, in these subjects, they take their training together. Their specialist training is taken separately. When a student has successfully completed the course and passed its final examination, the Institute certifies him as qualified to practise. For the first three years after qualifying, solicitors may only engage in restricted practice, that is, they may not practise alone or in partnership but only as assistant or employed solicitors. From September 1979 barristers, when called, will be required to undertake one year's pupillage, in the first six months of which they will not be entitled to accept fee-earning work. The course of studies and training described above is set out in the following Table 42.5.

Post-qualification education and training—present arrangements

42.90 It is accepted by the profession that further education is required in the period immediately following qualification on the same lines as the "topping up" courses proposed by the Law Society in England and Wales. Some measures have also been taken to provide further education for solicitors in established practice. A number of courses for qualified solicitors have been organised in the past, many of them under the auspices of the Belfast Solicitors' Association. The Bar Council informed us in its evidence that lectures on topics of general professional interest are held from time to time under the auspices of Queen's University, Belfast. The Incorporated Law Society expressed the intention of providing a programme of courses for post-qualification education. The Bar Council, on the other hand, held the view that continuing education (apart from pupillage) should, in the first instance, be the responsbility of the Institute of Professional Legal Studies. We deal with this issue in paragraph 42.103.

TABLE 42.5

Education and training of barristers and solicitors in Northern Ireland

Length of stage (years)	Approximate age on completion	Branch of the profession	Nature of stage	Method of support
—	18	Both	Leave school	—
4	22+	Both	Law degree at Queen's University, Belfast[1]	Mandatory means-tested grant
1	23+	Both	Vocational course at the Institute of Professional Legal Studies, leading to call or admission[2]	Government bursaries (70 available)
1	2 +	Barristers	Pupillage[3]	None during first six months, fees thereafter
3	26+	Solicitors	Restricted practice	Salary

[1]This is the only recognised faculty of law in Northern Ireland but other approved degrees may be taken.

[2]The former method of qualification will remain in operation, for those already engaged upon it, until 1980.

[3]Compulsory from September 1979.

Sources: Council of Legal Education for Northern Ireland.
Incorporated Law Society.
Inn of Court of Northern Ireland.

Finance

42.91 Table 42.5 shows that, at the academic stage, finance for university studies is provided by a mandatory grant (subject to a means test) from the local education authority. Similar financial support is available on a discretionary basis for those mentioned in paragraph 42.88 who take the two-year pre-vocational course at Queen's University or elsewhere. For the one-year vocational course, state bursaries, covering tuition fees and living expenses, have been available for 50 students and, in the future, are to be available for 70. After qualification, a solicitor may take up employment in a firm and earn a salary. At present pupil barristers may earn fees from the time of qualification and many do so. From September 1979, this will not be possible in the first six months of pupillage and in that period a pupil barrister will have no financial support from the state, the profession or from professional earnings (see paragraph 42.101 below).

Transitional arrangements

42.92 At the time the Institute's new course was set up, a number of students in both branches were preparing for qualification under the former system and are to be permitted to complete it. Candidates unable to secure places in the Institute are also to be allowed to qualify under the former system until 1980, by which time it is hoped that the number of places available will suffice to meet the demand. We return to this point in paragraph 42.96 below.

Review of the present arrangements

42.93 Those who gave evidence to us about the present system for education and training showed enthusiasm for it. The profession has welcomed it, and looks forward to the time when its benefits can be measured. A number of us visited the Institute and were impressed by the work it is doing and particularly the close working relationship that has developed between the Institute, the university and the profession itself which, from our observations, is lacking in England and Wales. All concerned recognise that it is too early to reach hard and fast conclusions about the success of the scheme but the indications are that the new educational system will in the main achieve its objectives. Apart from the quality of this new educational approach, the training together of future barristers and solicitors during this vocational year prior to entry into the profession should be of value to both branches and augurs well for their future collaboration. We think it essential to set in hand now arrangements for a comprehensive review of the new system in three years' time, with particular regard to the points made in later paragraphs.

42.94 We take this opportunity to observe that there are at present three systems of legal education in the United Kingdom which have developed in different ways. There is reason to expect that the legal professions and others

concerned in England and Wales, Northern Ireland and Scotland will take advantage of the opportunity that now exists to study the different approaches, so as to benefit by the experience and innovations of others: shortly before we signed our report, the education committees of the professions in the three jurisdictions held the first of what we understand is to be a continuing series of joint meetings.

Barriers against entry to the profession

42.95 The limited number of places available at the Institute in any year restricts entry to the profession under present conditions. Selection for places is based on academic merit. Many of those excluded would be able to provide the public with an adequate professional service.

42.96 This would not arise if the number of places available was sufficient to accommodate all candidates with sufficient educational qualifications. This is not now the case, but the present position is exceptional. The number of lawyers in practice has greatly increased during the emergency. In 1965 there were approximately 500 solicitors and 62 barristers in practice in Northern Ireland. By 1979 these numbers had increased to 801 and 160 respectively. The present demand for places at the Institute suggests that, for the time being, this growth is continuing. If it does not decline as more settled times return, the Institute should be provided with additional staff and resources to enable it to offer additional places. This is one of the questions that should be considered when the position is reviewed in three years' time, and, if necessary, periodically thereafter.

The vocational course—proposed development

42.97 We were told in oral evidence that the Institute in its vocational course did not deal with social welfare law. It appears, however, from the timetable (annex 42.1) that some of the elements of social welfare law are taught, because the course includes instruction in family law, adoption and consumer law. We understand that there are plans to introduce training in tribunal procedure and practice which will involve some instruction in employment, welfare and social security law. Social welfare law is developing in importance and instruction in it in the past was insufficient. It should be possible in a four-year academic course followed by a vocational year to deal adequately with this topic, and we recommend that this be done.

42.98 The length of the vocational course at the Institute is 27 weeks, that is, little more than half a year. In view of the amount of ground that has to be covered we consider that it could with advantage be made longer. If this were done, more time could be spent on aspects of social welfare law. Experience so far suggests that additional time might also be allocated to a greater measure of instruction for Bar students.

Restricted practice

42.99 The Incorporated Law Society of Northern Ireland told us in oral evidence that it felt that a person commencing practice as a solicitor would show a greater commitment than an articled clerk. Whether or not this is so, we are satisfied that, in the period following qualification by the Institute, there should be a period in which a person receives further instruction in the form of topping up courses, together with instruction on the job in specific classes of work, conducted under the supervision of the profession's governing body. The Incorporated Law Society said in evidence that it was willing to provide the necessary courses and expressed interest in the system of monitoring which the Law Society of England and Wales proposed to use in respect of articles. We recommend that the Incorporated Law Society set up a system of training on the job and that progress made to this end should be one of the subjects of the review recommended in paragraph 42.93.

Pupillage

42.100 We recommended in paragraphs 42.59–42.61 the establishment of a Senate for the barristers' branch of the profession in Northern Ireland. We think that one of the first tasks of such a body should be to lay down guidelines for the proper conduct of pupillage and to provide topping up courses and practical instruction to supplement that given at the Institute.

42.101 It will also be necessary for the governing body of the profession to find a way of dealing with the problem of finance for pupils during the first six months of pupillage, when they can earn no fees. We accept the difficulties that this presents to a relatively small profession with no resources beyond those which its members can provide out of their own pockets. This problem has not been acute in the immediate past, because so much work has been available that newly-qualified barristers have been able to earn fees immediately after being called to the Bar. It is unacceptable that entry to the Bar should be limited to those who have the financial resources to tide them over this period.

42.102 We drew this matter to the attention of the representatives of the Bar during oral evidence in January 1979 and they undertook to examine the problem and make proposals. Up to the date of drafting our report no proposals had been formulated. We consider that one of the possibilities to which the Bar should give consideration is the arrangement of loans from banks or other institutions for pupils, the interest thereon being paid by the profession.

Post-qualification education and training—proposed arrangements

42.103 We noted in paragraph 42.90 that while the Incorporated Law Society was willing to mount post-qualification courses itself, the Bar Council took the view that responsibility for continuing education should rest on the Institute of Professional Legal Studies. We think that the Bar should take a greater interest in this subject than its oral evidence led us to suppose it does at present.

It is important that education and training of this character should be carefully planned and coordinated and that lawyers in everyday practice should be involved in the courses provided. The provision of courses for practitioners is all the more important in Northern Ireland in view of the shortage of text books and authorities for reference purposes.

42.104 Programmes of courses are required which are of direct assistance in day to day practice, avoid duplication and anticipate forthcoming developments in law and procedure. They must be economical in time as well as cost. These factors all point to the desirability of placing responsibility for setting up a system of post-qualification education and training on a single body. The Council of Legal Education for Northern Ireland told us that it intended to extend its work in the Institute to include post-qualification courses. We consider that it should be responsible, in conjunction with the Senate and the Incorporated Law Society, for preparing a comprehensive programme of further education and training for all practitioners in the province, both barristers and solicitors.

Conclusions and Recommendations

			Paragraphs
Indemnity insurance	R42.1	Indemnity insurance for barristers should be raised to £50,000.	42.13
Practice Regulations	R42.2	The Northern Ireland Solicitors' Practice Regulations should be amended in the manner described in the text.	42.15–42.16
Disciplinary system—solicitors	R42.3	The investigation and disciplinary procedures should be changed as indicated in the text to conform as nearly as possible to those recommended for England and Wales.	42.21–42.25
Complaints	R42.4	The Incorporated Law Society should provide information for the public about complaints procedures; it should analyse and publish to its members details of complaints received and their outcome.	42.26
Barristers' discipline	R42.5	The rules of conduct and etiquette should be amended as recommended in the text.	42.28

			Paragraphs
	R42.6	Complaints against barristers should be investigated and determined as recommended in the text.	42.33–42.36
Council of the Incorporated Law Society	R42.7	The Council of the Incorporated Law Society should be increased in numbers.	42.42
Local solicitors' associations	R42.8	Solicitors should be encouraged to join their local associations.	42.43
Staffing and organisation of the Incorporated Law Society	R42.9	When the necessary additional staff are recruited, the secretariat of the Incorporated Law Society and its Legal Aid Department should be restructured.	42.44
Membership of Incorporated Law Society	R42.10	Possession of a practising certificate should entitle a solicitor to have voting rights and to participate in the work of the Incorporated Law Society.	42.45
The Bar Library	R42.11	Improvements should be made in the Bar's administrative arrangements.	42.52
	R42.12	Additional accommodation is urgently needed for the Bar Library. When this is available, independent advice should be sought to plan the layout and the administration efficiently.	42.53
Crumlin Road courthouse	R42.13	The quality of legal services is diminished by conditions in Crumlin Road Courthouse and improvements are required in the public interest.	42.55
Formation of a Senate	R42.14	Benchers should retire at the age of 70.	42.57
	R42.15	A Senate, as proposed in the text, should be created at an early date, to become the governing body of the barristers' branch of the profession. The reorganisation should be completed by 1980.	42.59–42.61

			Paragraphs
Silks and juniors	R42.16	The selection of silks should be re-organised as stated in the text.	42.63
Joint committee	R42.17	Consultation between the two branches of the profession should be improved and an effective joint committee established.	42.65
Legal publications	R42.18	Up to date legal text books and publications are urgently needed in Northern Ireland, as is technical material for CABx. Financial assistance from public funds should be provided for these purposes.	42.66–42.68
Fees Advisory Committee	R42.19	The terms of reference of the Fees Advisory Committee should embrace Northern Ireland as well as England and Wales.	42.76
Taxation	R42.20	Taxation of criminal legal aid costs above £500 should be undertaken by the Taxing Master.	42.79
	R42.21	Supporting staff for the Taxing Master will be necessary.	42.80
Barristers' fees	R42.22	The rules relating to barristers' fees should be amended as set out in the text.	42.83
Education and training	R42.23	The present arrangements for education and training should be reviewed in three years' time.	42.93
	R42.24	The review should determine whether the Institute then has a requirement for additional staff and resources.	42.96
	R42.25	Arrangements should be put in hand to provide adequate instruction in social welfare law.	42.97
	R42.26	The vocational course should be lengthened.	42.98

		Paragraphs
R42.27	Arrangements should be made for training and monitoring the progress of newly-qualified solicitors during the period of restricted practice.	42.99
R42.28	Comparable arrangements should be made for pupil barristers.	42.10
R42.29	Arrangements should be made for providing financial assistance for pupils.	42.101–42.102
R42.30	The Council of Legal Education for Northern Ireland should assume responsibility for coordinating an adequate programme of post-qualification education for both branches of the profession.	42.104

ANNEX 42.1

Institute of Professional Legal Studies: timetable, 1978/79

(paragraph 42.86)

	1978	Morning	Afternoon
1	2 Oct.	Partnership	Family Law
2	9 Oct.	Company Law	Family Law
3	16 Oct.	Company Law	Family Law
4	23 Oct.	Company Law	Family Law
5	30 Oct.	Evidence	Adoption
6	6 Nov.	Evidence	Licensing
7	13 Nov.	Evidence	Criminal Injuries
8	20 Nov.	Wills	Magistrates' Court
9	27 Nov.	Wills	Magistrates' Court
10	4 Dec. 1979	Wills	Magistrates' Court
11	8 Jan.	Accounts (General)	County Court (Debt Collection)
12	15 Jan.	Accounts (General)	County Court (Enforcement)
13	22 Jan.	Accounts (Solicitors) (Not Bar)	County Court (Equity and Appeals)
14	29 Jan.	Conveyancing	County Court (Consumer Law)
15	5 Feb.	Conveyancing	County Court (Consumer Law)
16	12 Feb.	Conveyancing	Personal Taxation
17	19 Feb.	Conveyancing	High Court
18	26 Feb.	Tribunals (Unfair Dismissal)	High Court
19	5 Mar.	Tribunals (Redundancy)	High Court
20	12 Mar.	Tribunals (Various)	High Court
21	16 April	Administration of Estates	Professional Conduct and Office Management
22	23 April	Administration of Estates (Not Bar)	Trial on Indictment
23	30 April	Administration of Estates (Not Bar)	Trial on Indictment
24	7 May	Administration of Estates (Not Bar)	Trial on Indictment
25	14 May		
26	21 May		
27	28 May	EXAMINATIONS	

PART VI

The future

CHAPTER 43

Matters outside our Terms of Reference

Introduction

43.1 Much of the evidence we received related to the substance and procedure of the law and the administration of justice, rather than the provision of legal services. Such material fell outside our terms of reference, but its preparation involved effort which should not be wasted. Moreover, we are satisfied that if real progress is to be made in developing a legal system which is less expensive and time consuming than at present, whilst maintaining or improving the quality of justice, these matters should receive attention.

43.2 Accordingly, we have listed in annex 43.1 these proposals for further examination. We ourselves have not studied any of them in depth. Because they are derived from different sources, they are not necessarily consistent one with another and they do not in all cases accord with the findings of reviews of procedure that have already taken place. They are arranged in the following sequence: High Court, county courts, civil litigation (all courts), Crown Court, magistrates' courts, criminal litigation (all courts), and miscellaneous.

Procedure and the rules of court

43.3 Apart from the list of matters for consideration we wish to draw attention here to a major point of principle. There is a close relationship between the rules of procedure and the duration and cost of litigation. The existing sets of rules are the responsibility of a number of different rules committees composed largely of judges and practising lawyers. The work of these committees has been performed with skill and close attention to detail. As a result, the rules have been developed to a high degree of refinement. However, their basic structure has remained unchanged for a number of years. We consider the time has come for full appraisal of procedure and of the operation in practice of our system of justice, in particular in all civil courts. A comprehensive review could not readily be conducted by the present rules committees acting as separate units. We consider that this observation is as applicable to Northern Ireland as it is to England and Wales.

43.4 The Royal Commission on Criminal Procedure may wish to take note of those matters set out below which relate to criminal proceedings. As to procedure in civil cases, we propose for the future that a single standing body should be given the responsibility of considering whether changes are desirable not merely in the rules themselves, but in the structure and jurisdiction of the courts, in order to reduce the cost and duration of litigation without detriment to the quality of justice. If the Law Commission, suitably expanded, were able to

undertake this task, this would implement our suggestion admirably. If it cannot, we consider a body should be set up, similar to the Law Commission in composition and standing and in its working methods. Its work would be highly technical in character. Its members would require detailed knowledge and experience of the operation of the law and the working of the courts. They should also be aware, and take full account, of the needs of litigants. The body appointed should propose a programme to implement whatever changes are found necessary and should report annually. Whether the proposed body should include in its terms of reference the task of reviewing court procedures in Northern Ireland, or whether there should be a separate parallel body for that jurisdiction is a matter for decision in the light of the implications of the Judicature (Northern Ireland) Act 1978.

43.5 A certain amount of expense will inevitably be incurred in setting up a body to review procedures. If it succeeds in the task of reducing the complexity, duration and cost of proceedings, the savings achieved both in money and manpower would be out of all proportion to this expense; they would benefit the administration of the courts, the use of judicial time and in particular litigants, many of whom will be assisted out of public funds. Apart from direct economies of this kind, simplification of legal procedures should reduce delay—a source of discontent that is clearly apparent from the evidence submitted to us.

43.6 A number of the proposals listed below may fall outside the remits of both the Royal Commission on Criminal Procedure and the new standing body we propose. It may therefore be necessary to deal with them by ministerial decision from which administrative action may flow, by further consideration in an existing or *ad hoc* committee (composed of members with appropriate knowledge and experience) and in other ways. By whatever means they are to be dealt with, it is most desirable that a programme should be laid down for their consideration and (if they are accepted) their implementation.

43.7 We accordingly recommend that with a view to improving the administration of justice, a programme be drawn up for the purpose of examining in depth each of the following proposals and for giving effect to them or some alternative method of effecting the necessary improvements. A brief summary only is given of each proposal. The evidence relating to all proposals will be made available in full to those responsible for considering them further. Criticisms expressed in the summaries in the annex are those of witnesses, not of this Commission.

Conclusions and Recommendations

			Paragraphs
Matters outside terms of reference	R43.1	The matters listed in the text should be examined by an appropriate body with a view to improving court and legal procedures and thereby saving time and expense.	43.1 and 43.7

ANNEX 43.1

Summary of Evidence Received

(paragraph 43.2)

A. High Court

A.1 *Pre-trial review*

The following proposals were put forward.

(a) There should be a pre-trial review in High Court actions, as in the county court.

(b) As many issues as possible should be disposed of at the pre-trial review.

(c) At the pre-trial review the parties and their legal advisers should be encouraged to discuss settlement.

(d) The court should have power at the pre-trial review to order trial without further pleadings or further interlocutory stages.

A.2 *Time limits*

The rules of the High Court should be changed so as to provide for more realistic periods of time to be allowed for the stages of proceedings. When realistic time limits have been set, they should be strictly enforced by the court; greater use should be made of penalties for failure to observe time limits.

A.3 *Simplification of High Court procedures*

The procedures of the High Court should be simplified in the following ways.

(a) In litigation of an "everyday" type (eg road accident and goods sold and delivered) there should be no pleadings following the statement of claim unless specifically ordered. In some cases an exchange of letters before action, setting out the issues, would be sufficient; actions should proceed to trial after an exchange of letters, or pleadings, without further interlocutory procedures. An appeal by way of case stated should be allowed only with leave of the judge.

(b) Witnesses' statements and proofs should be exchanged before trial. The parties should agree whether witnesses should be called or their written statements admitted as evidence.

(c) All documents submitted should be read by the judge before the hearing. These should include agreed witness statements and proofs of evidence. Documents should not be read at the hearing.

(d) Final submissions should, with the leave of the judge, be made wholly or partly in writing.

(e) With the consent of the parties, one or more of the interlocutory stages should be omitted.

(f) By the time interlocutory hearings take place all documents in the case should have been read and agreed by both sides, and the hearing should proceed on that assumption.

(g) There should be a greater number of abbreviated procedures, like the present Order 14 procedure (application by plaintiff for summary judgment).

(h) A standard form of writ should be used in all divisions of the High Court.

(j) To avoid delay in drawing up Chancery orders, responsibility for drawing up a judgment or order should rest with the registrar.

(k) To save time at pre-trial hearings Chancery masters should dictate their directions to the plaintiffs' solicitor instead of themselves preparing a full note during the hearing.

A.4 *High Court—administration*

The following proposals were put forward.

(a) The court should exercise closer control over the progress of cases. For this purpose more masters and registrars should be appointed.

(b) Delays occur because of difficulty in obtaining an interlocutory hearing before a master or judge. The hearings themselves often last only a few minutes. If more than one such hearing is required for any purpose, the cumulative delays can be considerable. The shortage of judges and courts also prolongs the interval between setting down and trial. The duration of proceedings at both these stages should be reduced by the appointment of

more judges and masters, and by the provision of more courts. So far as concerns ancillary disputes over children in the Family Division, the above measures require to be accompanied by the appointment, by local authorities, of more welfare officers.

(c) Proceedings concerning wardship and defaults in the purchase of land should be dealt with in regional or county courts, so as to reduce the cost and difficulty of a hearing in London.

(d) The concentration of High Court business in London makes it necessary for provincial solicitors to employ "London agents" (solicitors located near the Royal Courts of Justice), which increases the cost of litigation. The District Registries of the High Court should handle all classes of High Court business, including business in the Court of Appeal, and their staff should be trained for this purpose.

(e) During August and September the High Court and the Court of Appeal do not sit except for the hearing of urgent cases. This is a source of delay. To achieve a more efficient flow of work and to reduce inconvenience to litigants, the long vacation should be curtailed if not abolished completely.

(f) Delays result from the existing organisation of High Court offices. The administrative methods of the Chancery Division should be subjected to an organisation and methods examination. A system of filing should be adopted which would enable all Chancery documents to be filed by reference to the action or matter to which they relate.

(g) The enforcement of judgments by seizure of assets should be carried out by court employees.

A.5 *Arbitration*

More use should be made of the existing judicial arbitration procedure, especially in commercial and maritime matters. The award of the judge should be final.

A.6 *Interest*

Interest on monetary awards made by the court should be set at commercial rates. This would encourage the settlement of cases at an earlier stage of the proceedings.

A.7 *Juries*

In order to reduce the length and cost of common law actions in the High Court in Northern Ireland, the use of juries should be discontinued.

B. County courts

B.1 *Jurisdiction*

Subject to certain exceptions, summonses must at present be issued in the defendant's local court. This rule should be reversed so that they are issued in a court convenient to the plaintiff.

B.2 *Pre-trial review*

The following proposals were made concerning the pre-trial review.

(a) The court should be empowered to order the attendance of the parties or, when organisations are involved, the departmental head.

(b) There should be a duty upon the court to promote a settlement or, failing that, to ensure that only the essential issues go forward for trial.

B.3 *Small claims procedure*

A number of witnesses commented favourably upon the county court small claims arbitration scheme. Further refinements were suggested.

(a) The small claims courts should be established as a separate division of the county court.

(b) Greater use should be made of written evidence.

(c) The registrar should adopt a more inquisitorial role.

(d) The procedure should be so simplified as to remove the need for lawyers to be involved.

(e) No record should be kept of proceedings.

(f) It should be possible to proceed direct to arbitration without a pre-trial review if the parties consent. This should be drawn to parties' attention at the commencement of proceedings.

(g) All legal representation should be banned.

(h) Small claims courts and court offices should be open in the evenings and at weekends.

(j) The present limits of arbitration should be renewed at intervals, and appeals allowed on a point of law by case stated.

(k) A list of available lay arbitrators should be drawn up for each court.

(l) The official booklet describing the small claims procedure should be simplified and should contain a list of stages.

B.4 *Knowledge of procedure*

To assist litigants in person:—

(a) the rules of procedure (*The County Court Practice*) should be made available at all libraries and county courts;

(b) *The County Court Manual* (a guide to court procedures, now out of print) should be revised and republished and made available as in (a) above;

(c) all county court forms should be available at the court offices;

(d) each court should have an officer available to assist litigants in person.

B.5 *Administrative jurisdiction*

The limited jurisdiction of the magistrates' courts in administrative matters should be transferred to the county court.

C. Civil litigation (all courts)

C.1 *Commencement of civil proceedings*

The extent of the jurisdiction of the county courts is defined by a series of financial limits. Unless the parties agree, cases where the amount at issue exceeds these limits are conducted in the High Court. If the plaintiff is prepared to accept cost sanctions, cases within the county court jurisdiction can also be brought in the High Court.

Anomalies arise from these arrangements: straightforward cases where the amount at issue exceeds the county court limit (if only marginally) go to the High Court with its more complex procedures, whereas complicated legal questions may be determined in the county court if a small sum is involved. Two proposals in this connection are that:—

(a) all civil actions should be commenced in the county court; the more complex cases should be transferred to the High Court at the pre-trial review;

(b) the High Court should have discretion to transfer cases to the lower court regardless of the amount claimed, at the stage of summons for directions.

C.2 *Principles for reform*

Evidence from some witnesses stated that it is important to eliminate the element of surprise at hearings. Despite existing pre-trial procedures pleadings are put in at the last minute and discovery of documents is not properly carried out. In any procedural reform the principle should be observed that parties to court hearings should know in advance the detailed nature of the claim against them and what documents their opponents are going to produce.

C.3 *Changes in civil procedures*

The following general changes were proposed.

(a) Procedures in the High Court and county courts should be reviewed and made the same. The existing county court system should be the basic model, making use of High Court procedures only where they serve an essential purpose.

(b) There should be a standard form which could be used as a writ in the High Court and a summons in the county court.

(c) There should be a freer exchange of information between the parties during the preliminary stages of litigation to enable the strength of each case to be fairly considered.

(d) A statement should be used in place of an affidavit whenever possible.

(e) Documents should be served by post.

(f) Witnesses in civil trials should not be allowed into the court when others are giving evidence.

(g) Where a judgment creditor discovers and notifies the court of the location of a debtor's assets he should have the first claim to those assets.

(h) To avoid additional steps in proceedings, the process necessary for enforcing an order of the court should be issued when judgment is entered, suspended to allow time for payment.

(j) Court officials should have discretion to allow minor departures from procedural rules.

C.4 *Consumer problems*

Local consumer courts should be set up with a jurisdiction of up to £1,000. Such courts should be inquisitorial, not required to follow precedent, and litigants should be free to be represented by any person of their choice.

C.5 *Small claims*

Small claims arbitration schemes modelled on the London and Manchester experiments should be set up throughout the country, with their existence and purpose well publicised.

C.6 *Court time*

Parties to litigation should pay for the use of the higher courts. A realistic overall cost calculated on a time basis would save the taxpayer money, enable more courts to be properly staffed and operated without any further costs and would encourage brevity.

C.7 *Court fees and fixed costs*

Increases in the fixed costs recoverable from debtors in the High Court and the county courts should keep pace with increases in the court fees payable by those taking proceedings for debt.

C.8 *Transcripts of judgments*

Litigants wishing to appeal from the High Court or from the Court of Appeal should be provided (where the judgment has been reserved) with a copy of the written judgment. This would avoid the cost of arranging for a copy to be prepared by an official shorthand writer.

C.9 *Delivery of judgments*

In order to reduce the duration and expense of trials judges should, where the judgment is lengthy, confine their orally delivered judgments to the essential findings, leaving the full text to be delivered in writing and, if appropriate, reproduced in the law reports or (in the House of Lords) in the usual printed form.

C.10 *Registration of judgments*

The register of county court judgments has proved valuable to creditors and others. A register of High Court judgments is needed.

C.11 *Index of cases*

Many cases are not covered by law reports, and this creates difficulties for parties to litigation. The problem would be alleviated if there were to be an official index of all decisions.

C.12 *Delegation of court business*

Certain minor judicial tasks at present carried out by county court registrars should be delegated to suitably experienced assistant registrars appointed for that purpose. The posts should be at the civil service grade of principal. This would:—

(a) reduce the need for legally-qualified deputy registrars;

(b) relieve the pressure on county court registrars; and/or

(c) permit the raising of the jurisdiction of the registrar so as to relieve the pressure on the judiciary.

The corresponding work of High Court masters and registrars should be similarly devolved.

C.13 *Family disputes (ancillary proceedings)*

These proceedings concerning matters such as the custody of children, are at present formally conducted as a full dress trial, albeit in chambers. This causes the interests of the children to be subordinated to tactical considerations. Such proceedings should be conducted informally before a judge in chambers. The judge should adopt an inquisitorial role and the parents should be able to choose whether they want their advisers present.

The recommendations of the Finer Committee for reform of matrimonial law, including the creation of family courts, should be implemented.

C.14 *Winding-up petitions*

Registrars of the High Court and county courts should be given the power to order the winding-up of companies in straightforward cases.

D. Crown Court

D.1 *Procedure in Crown Court cases*

A number of judges suggested that time and expense could be saved if:—

(a) persons committed for trial were required to disclose their defence;

(b) the recommendations of the Criminal Law Revision Committee's 11th Report, on *The Right to Silence* and the admissibility of confessions (Clauses 1 and 2 of the Committee's draft bill), were implemented;

(c) verbal confessions of guilt made to police officers were admissible only if made before a magistrate or mechanically recorded.

D.2 *Alibi notices*

Under the Crown Court rules, the defence is required to give notice if an alibi is to be used as part of the defendant's case. In practice, such evidence is allowed even when the stipulated notice has not been given. The rule should be enforced more rigidly in order to encourage the proper conduct of cases. The same principle should be applied to all "special" defences. Exceptions should, however, be made where fresh evidence becomes available.

D.3 *Committal for trial*

The Crown Court rules require that the interval between committal and trial shall not exceed 8 weeks. This period is often substantially exceeded. Although cases where defendants are remanded in custody are given priority, a third of these currently take more than 8 weeks to come to trial.

Custody cases should be dealt with quickly. There is much to be said for a statutory limit on the period for which a defendant can be held in custody pending trial, such as exists in Scotland.

D.4 *Evening Crown Court sittings*

The delays referred to above are at their most serious in London. In order to reduce the backlog that has developed, evening sittings of the Crown Court should be held in London. There should be a pilot scheme, to deal with appeals against sentence in non-custody cases; these would not require the attendance of jurors, shorthand writers or prison officers.

D.5 *Plea days*

In order to test its potential for improving efficiency, a system was tried experimentally in the Crown Court whereby separate days were set aside for dealing with pleas of guilty. Juries are not required on such days. If such a scheme is found to reduce the problems associated with listing, and make the best use of resources, its more general adoption should be considered.

D.6 *Pre-trial review—Crown Court*

The pre-trial review of Crown Court cases is a recent innovation, and has taken a number of experimental forms. It is said to offer a number of advantages as a preparation for the longer and more complicated trials. It:—

(a) encourages the timely preparation of the defence;

(b) promotes early contact between defendant and counsel;

(c) facilitates the listing of cases;

(d) is more economical of the court's time; and

(e) provides an opportunity to discuss intended pleas and to clarify and refine the issues by eliminating unnecessary evidence and, where appropriate, severing the indictment.

The judge holding the review should be given authority to give directions (including sanctions as to costs), so as to enable him strongly to discourage an irresponsible or ill-considered prolongation of the trial.

It has been further suggested that in minor cases a paper procedure should be used to secure the same purposes as noted above.

D.7 *Multiple count indictments*

Some members of the judiciary and of the profession criticised the practice of including too many counts in one indictment. This is said to prolong trials unduly, particularly in conspiracy cases.

The following proposals have been made.

(a) Those responsible for prosecutions should be reminded that indictments should be reduced to essentials.

(b) The trial judge should study the indictments and depositions together and, with counsel, ensure that any unnecessary counts are eliminated.

(c) Indictments should be severed in appropriate cases and only the main offenders should be indicted. Those involved on the fringes of the offence should be excluded.

D.8 *Opening speeches*

Some members of the judiciary drew attention to a criticism of opening speeches in criminal trials, namely that they led to unfairness. They considered that abolition of opening speeches would save time and money.

Other members of the judiciary, however, did not regard opening speeches as unduly time consuming and, save when they dealt with matters of law, thought them to be helpful to the jury.

D.9 *Jury system*

The trend towards longer criminal trials poses a danger to the jury system. Few persons can be expected to spare the time for jury service in very lengthy proceedings. Moreover, the jury system is said to encourage unjustifiable pleas of not guilty. It is proposed, as an alternative to the jury, that lay assessors should sit and retire with the judge to reach a verdict. Each person should have one vote, and all verdicts should be unanimous. A panel of permanent assessors should be available as an alternative to juries for long cases.

D.10 *Special Crown Court judges*

A corps of 8-12 additional judges, ranking between High Court and circuit judge, should be appointed to the Central Criminal Court (the Old Bailey) to try the longer cases. The permanent availability of such senior and experienced judges would facilitate listing. A number of these judges should also be appointed to the busier Crown Court centres outside London.

D.11 *Abbreviated trial procedure*

For relatively minor offences (for example, those triable summarily if the defendant so elects) a simplified procedure should be introduced on an experimental basis, as follows: opening speeches (agreed with the defence beforehand) to be limited to a very brief statement of the charges; the final speech for the prosecution to be omitted; and the summing up by the trial judge to be confined to an explanation of the law.

D.12 *Costs*

The arrangements for reimbursing successful litigants in person in the civil courts (the Litigants in Person (Costs and Expenses) Act 1975) should be extended to include the very rare cases in which non-criminal matters are dealt with in the Crown Court at the suit of a private person.

E. **Magistrates' courts**

E.1 *Section 1 committals*

A large proportion of committals are dealt with under section 1 of the Criminal Justice Act 1967. Although a hearing under section 1 is brief, it often happens that those involved spend a substantial period of time on the day of the hearing waiting for it to be called.
To avoid this waste of time and expense, section 1 committals should be dealt with by correspondence, provided that:—

(a) the defendant is on bail and represented, and there is no objection to the renewal of bail;

(b) the defence do not wish to cross-examine any of the prosecution's witnesses;

(c) the defence do not want to contest the prosecution's *prima facie* case;

(d) the right to a full hearing is retained.

The arrangements for such a scheme should provide safeguards to prevent the defence assenting too readily to committals in cases where the prosecution case is weak, where visual identification is an issue or where prosecution witness statements have not been disclosed in good time to the defence.

E.2 *Witness statements*

Prosecution witness statements should be disclosed to the defence in a greater range of cases. Alternatively, in accordance with the recommendation of the Interdepartmental Committee on the Distribution of Criminal Business between the Crown Court and Magistrates' Courts (the James Committee), the police should be required to disclose on request copies of statements by prosecution witnesses. Knowledge of the strength of the prosecution's case would encourage more guilty pleas and enable defence solicitors to make more accurate estimates of the hearing times.

E.3 *Juvenile proceedings*

The following points were put forward with regard to juvenile proceedings.

(a) Since the Children and Young Persons Act 1969, the police consider jointly with social services departments whether juvenile offenders should be dealt with by prosecution or by the social services department. To minimise the delay involved in the process, fresh guidelines should be issued by central government, following a review of the operation of the consultation process.

(b) An informal pre-hearing meeting should take place in juvenile cases between the justices' clerk and the parties, so as to resolve such matters as legal aid and readiness for hearing. This procedure might also be of value in other magistrates' court proceedings.

E.4 *Remands by post*

There should be wider use of the system, introduced as an experiment in one court, whereby, following the initial appearance in court, the period of bail may be extended by post rather than by the further appearance in court of the defendant, his solicitor, the police and the surety. The following conditions should be met:—

(a) all defendants are on bail;

(b) all defendants are represented;

(c) the prosecuting solicitor is instructed.

Subject to the agreement of all parties, and to the above conditions being met, the court should have power to remand the case without the appearance of the parties.

E.5 *Attendance of parties and witnesses at hearings*

Magistrates should make more use of their powers to dispose of matters without attendance of the parties or witnesses. With agreement of the parties, evidence should be received in

documentary form, as provided in the Criminal Justice Act 1967. In road traffic cases the attendance of witnesses should be dispensed with, under existing statutory powers, when a guilty plea is entered.

The occasions on which a summons is required to be issued should be reviewed; it should be replaced wherever attendance is not required by a "notice of hearing".

E.6 *Social enquiry reports*

Delay may arise if a case is adjourned in order to obtain social enquiry reports before sentence is passed. Such delay not only lengthens proceedings, but also adds to the demands upon the probation and social services. Greater use should therefore be made of the "stand down" adjournment, to enable defendants to be interviewed by a probation officer, who could inform the court whether, in his view, a full social enquiry report is needed.

E.7 *Presentation of police prosecutions*

The conduct of police prosecutions in magistates' courts should be improved. They should either be conducted by lawyers employed by the police or the court for that purpose, or the officers conducting them should be better prepared and better trained.

E.8 *Motoring offences*

Approximately three-quarters of non-indictable offences heard in magistrates' courts are motoring offences. It is estimated that these cases take up 40 per cent of the total time spent hearing criminal cases.

Time would be saved if:—

(a) fixed penalty tickets were issued on the spot by the police for non-endorsable motoring offences (subject to prosecution for non-payment);

(b) a wider range of motoring offences were to be dealt with administratively by the justices' clerk;

(c) fixed penalties should apply to a wider range of offences. If such measures were adopted, there should be public access to information about penalties imposed.

E.9 *Liquor licensing*

Liquor licensing applications are at present heard in open court by the justices. The Departmental Committee on Liquor Licensing (the Erroll Committee), which reported in 1972, considered the transfer of this responsibility to local authorities. Although this was favoured by some magistrates and the Association of Municipal Corporations, the Committee concluded that a case strong enough to justify disturbing the *status quo* had not been made out. As the volume of criminal business is now appreciably greater than in 1972, magistates should be free to give priority to it. Further consideration should therefore be given to allowing the grant of liquor licences to be dealt with administratively by local authorities.

E.10 *Enforcement of payments*

At present magistrates deal with the enforcement of payment of rates and certain licence fees. Such matters should be transfered to the county court, which deals with all other debt cases and where the default summons procedure would provide a cheap and convenient means of resolving them.

E.11 *Financial limits*

Fines and monetary jurisdiction limits should be increased with inflation. They should be reviewed annually by a committee of the Magistrates' Association whose recommendations should go to the appropriate authorities.

E.12 *Composition of the bench*

The following proposals were put forward.

(a) All benches of magistrates should have legally-qualified chairmen with lay magistates acting as assessors. The latter should exercise the same powers as the legally-qualified chairman as to findings of fact and the penalty to be imposed but should have no power to give a ruling on law or procedure.

(b) All sections of the community should be represented within the magistracy. To this end people should be made better aware of the method of appointment.

E.13 *Stipendiary magistrates*

In order to speed up the business of the courts, particularly in the metropolitan area, more stipendiary magistrates should be appointed.

Stipendiary magistrates should be eligible for promotion to higher judicial appointments.

E.14 *Matrimonial proceedings*

The following proposals were put forward.

(a) The present law prevents the court from asking for custody reports until it has made a finding on a matrimonial complaint. This means that in a considerable number of cases where custody is in dispute, the case must proceed in two parts, separated by a long adjournment. This defect was identified in the Law Commission's Report No. 77 published in 1976, on *Matrimonial Proceedings in Magistrates' Courts*. The court should be empowered to call for a welfare report at an earlier stage of the proceedings.

(b) Matrimonial proceedings in magistrates' courts may progress slowly because of the need for the justices' clerk to take a transcript of the proceedings for possible use later in the Family Division. A tape recording or a shorthand note should be taken to save time.

(c) The Lord Chancellor should issue rules to allow affidavit evidence in non-contested matrimonial affiliation and maintenance proceedings.

E.15 *Administration*

It was put to us that:—

(a) justices' clerks often become involved in office administration, which does not require the knowledge of a qualified lawyer, while unqualified assistants act as court clerks; such administrative duties should be delegated;

(b) the procedure for increasing the staff complement of a court is cumbersome and slow; it is impossible for courts to react quickly to increases in the volume of business; the procedure should be simplified so that complements can be adjusted more rapidly when circumstances so demand.

E.16 *Court staff*

Justices' clerks are usually barristers or solicitors. It is unusual for posts to be filled on promotion by assistant clerks. There should be a course of study enabling assistants to qualify as justices' clerks or deputy clerks.

A system of examinations should be instituted enabling persons to qualify as justices' clerks. This might be based on the qualification system at present used by the Institute of Legal Executives, supplemented by a paper on magisterial law; alternatively, a new examination, administered by the Justices' Clerks' Society, might be established; qualified barristers and solicitors would be exempted from sitting certain parts.

Clerks should be professionally qualified, as is now the case in London. So as to ensure a flow of sufficiently able recruits to the magisterial service, its pay structure should be reviewed.

Magistrates' courts committees should be reminded of their obligations under the Sex Discrimination Act in so far as concerns their employment of women as court clerks.

E.17 *Court accommodation*

The inadequacy of the accommodation of magistrates' courts causes delays in the handling of business. The position should be reviewed by central government in direct consultation with justices' clerks.

F. Criminal litigation (all courts)

F.1 *Independent system for prosecutions*

There should be an independent prosecution system in England and Wales similar to the procurator fiscal service in Scotland. As an interim solution, prosecuting solicitors should be appointed in every police force, as recommended in 1962 by the Royal Commission on the Police.

F.2 *Abandonment of prosecutions*

The Prosecution of Offences Regulations should be revised to enable the prosecuting solicitor to abandon a prosecution that is considered to be misconceived.

F.3 *Oral evidence*

Criminal trials may turn on the genuineness of statements alleged to have been made by defendants under police questioning. This issue is determined by a trial within a trial, during which the jury withdraws. If the statements are ruled to be admissible, they have to be repeated when the jury has returned. This would occur less frequently if:—

(a) all questioning on which the prosecution rely was recorded on tape;

(b) the interrogation were to be conducted by an examining magistrate (as in France).

F.4 *Interpreters for the deaf*

The following proposals were made.

(a) No deaf person should be interviewed by the police, or appear in court, without a qualified interpreter.

(b) A register of qualified interpreters should be set up. Entry and standards should be determined by the National Association for the Deaf.

(c) The courts and the police should maintain a list of such interpreters.

G. Miscellaneous

G.1 *Listing of cases*

Much evidence was received criticising the arrangements existing in the various courts for the listing of cases for hearing. The point was repeatedly made that late changes to the lists led to the time of the parties, witnesses and lawyers being wasted, and to briefs having to be transferred between counsel because of cases coming forward for hearing at unexpected or inconvenient times. Such problems are referred to in Chapter 22.

It was agreed that there is an urgent need to review the arrangements made for listing in all the courts.

The following specific points were put forward.

In listing cases, regard should be paid to the need to avoid delay and waste of time, but a balance be held between the time of the court and that of lawyers, parties and witnesses.

If all cases are set down for hearing at a fixed future time, the throughput of cases would diminish. This would increase delays unless more courts, judges and court staff were made available.

An improvement in the existing situation would result from increased contact between the judiciary and those responsible for drawing up lists.

Cases in the Crown Court are sometimes listed only the day before the trial. Apart from the obvious difficulties of assembling clients and witnesses, solicitors themselves are not always able to attend court at such short notice. In addition counsel are forced to return briefs.

The following suggestions for improving listing in the Crown Court were made.

(a) Listing officers should have opportunities to observe cases being conducted in court. They should remain as listing officers long enough to have continuous experience.

(b) Listing officers should obtain from barristers' clerks information concerning the readiness of the case and availability of counsel.

(c) Lawyers should give the court more advance information as to clients' and witnesses' availability.

(d) A case marked "not before . . ." should never be taken earlier unless counsel, solicitor and clients all agree.

So far as concerns the magistrates' courts, the following improvements in listing cases were suggested.

(e) The court should monitor the readiness of impending cases: this would mean a considerable increase in the workload of court staff. Responsibility for the extra work might rest elsewhere than with the justices' clerk. It should, moreover, be incumbent upon defence lawyers and prosecution authorities to provide the court with information relevant to the expected length of the hearing.

(f) Pleas of not guilty should be listed separately.

(g) The practice of indicating the approximate time of hearing should be adopted generally, for example, "first thing"; "not before 11.30 a.m." or "not before 2.00 p.m.".

(h) Summonses and charges should be on separate lists and, where possible, taken in the morning and afternoon separately.

(j) There should be special appointments for the hearing of substantial matters, and courts assigned for hearing contested matters.

(k) Licensing applications should be listed separately from criminal matters.

(l) In disposing of their daily lists, courts should be attentive to the need to rearrange the sequence of cases so as to secure the efficient and economic despatch of business.

(m) The court should call for reports when unnecessary or unreasonable delays are brought to its attention.

G.2 *Legislation*

There is unavoidable complexity in some legislation, but the way in which statutes are written and amended is often obscure and increases the need for legal advice and representation. It makes the rights of the individual less clear, and hence causes them to go by default. The volume and quality of legislation passed each year by Parliament attracted critical comment. It was proposed that:—

(a) legislation and statutory regulations should be discussed at the draft stage with the legal profession;

(b) there should be more consolidating and codifying statutes;

(c) the numbers and staff of the Law Commission should be increased to enable it to deal more quickly with the codification, consolidation and simplification of the law. It should also have a lay element;

(d) there should be provided, at public expense:—
   (i) compendia of statutes and statutory instruments;
   (ii) an efficient, free and regularly updated service informing lawyers which statutes (and parts of statutes) are in force;
   (iii) a unified system of court libraries, run by the Lord Chancellor's Department, available to both the courts and legal profession;

(e) when legislation is amended, statutes should be re-enacted complete with amendments, as is done in Australia.

G.3 *Proposals for law reform*

We received a number of proposals for law reform.

(a) The present confusion surrounding the right to occupy the matrimonial home following the collapse of a marriage should be resolved.

(b) In the context of privacy, individuals should be given statutory property rights in information which is held on computer files concerning their personal particulars. Individuals should have equitable and legal remedies for infringements.

(c) There should be a programme approved at Cabinet level of law reform measures.

G.4 *Computers and the law*

In Chapter 22 reference is made to the value, both existing and potential, of computers to the day-to-day work of lawyers. In addition to this, it was stated in evidence that the computer could assist in:—

(a) *Legislation*
the drafting and printing of legislation, giving lawyers rapid access (by means of individual terminals) to desired texts, and enabling programs to be developed to test the internal consistency of legislation;

(b) *Court administration*
the process of listing the time and venue of cases. Computer techniques could be used to assess the nature and importance of cases and to relate this assessment to information concerning the availability of courts, judges, jurors and lawyers. Attention was also drawn to the value of computers in processing the documentation of a magistrates' cour (Huntingdon and Peterborough magistrates' court).

There is an opposing view concerning the potential value of computers in the listing process, particularly in regard to the higher courts. It is that listing depends on an experienced human judgment of how long cases are likely to last, and the probability of a "collapse" or a settlement. It is said that, in the circumstances that prevail, computerised analysis of case characteristics will not suffice.

An independent standing body should be created on the use of computers in the law to advise, coordinate, make recommendations and generally encourage research and the introduction of suitable systems. The proposed body should, while being autonomous, include representatives of the government, the Law Society and the Bar Council.

G.5 *Judicial appointments*

A greater openness is needed in the procedure for appointment to the circuit bench. Candidates are not informed when they are unsuccessful, or given reasons.

When solicitors are appointed to judicial office, it should not automatically be as circuit judges. Those who are specialists could more appropriately be appointed direct to the High Court bench, which is itself increasingly specialist in nature.

The large number of judicial appointments that followed the report of the Royal Commission on Assizes and Quarter Sessions placed a considerable strain upon the resources of the Bar. It is therefore appropriate to look to the solicitors' branch for potential appointees. A system of recommendations (perhaps by local law societies) should be introduced to enable solicitors to be considered.

A separate judicial corps with a career structure should be formed. Entrants would first pass a university law course before undergoing five years' practical training in the courts, followed by further examination. Financial incentives would exist for extra competence and specialisation through examinations.

Lawyers in academic positions should be eligible for judicial appointment, as should stipendiary magistrates. Justices of the Peace who have sat in the Crown Court should be eligible for appointment as circuit judges for criminal matters.

G.6 *Court accommodation*

The standard of court accommodation in England, Wales and Northern Ireland should be improved, in particular the interview facilities provided. Particular attention was drawn in this report to the deficiencies of the Crumlin Road Courthouse, Belfast. More generally, interview facilities should be available for use by barristers, solicitors and others.

More new courts should be built, and their design kept as simple as possible.

G.7 *Procedural reform*

Too much attention is paid to substantive law reform and too little to the reform and improvement of court procedures. The vast majority of cases turn on fact rather than law. The essential basic requirement is therefore that procedures should be devised so as to enable the correct facts to be established as rapidly as possible.

Over-complicated adjudication procedures impede this process and increase the need for legal representation.

G.8 *Administrative justice*

The development of the welfare state and the growth of social legislation have given prominence to those tribunals, statutory bodies and government agencies concerned with the application of administrative law.

The laws and regulations governing the work of such bodies should be reviewed so as to produce a comprehensive system of administrative law.

Such a review should be complemented by a rationalisation (with amalgamations where appropriate) of the tribunal system, so as to preserve the essential qualities of tribunals, namely, speed, simplicity and informality. Chapter 15 includes a recommendation which is relevant to this proposal.

One proposal was that a new division of the High Court should be established, combining all the administrative responsibilities of the higher courts and the Parliamentary Commissioner for Administration (Ombudsman).

G.9 *Tribunal procedures—general*

The following proposals were made with regard to tribunal procedures.

(a) Decisions by tribunals should be given with full reasons. These reasons should be subject to appeal to the High Court, preferably a new division thereof. Damages should be awarded, on appeal, in appropriate cases.

(b) For this purpose proper records should be kept of proceedings at the tribunal or inquiry.

(c) In those tribunals where a longhand note is at present taken by the chairman, hearings should be speeded up by the use of shorthand or tape recordings.

(d) The Law Commission should consider how far it is practicable to replace the adversary system in tribunals by an informal inquisitorial system, and whether this would save time and money.

(e) There should be more provision for conciliation in tribunals, and evidence should be should be exchanged between the parties as in the High Court.

(f) Tribunals and inquiries should be willing to hear a wider range of evidence than at present. The parties thereto should have the power to subpoena witnesses.

(g) The forms made out by appellants in order to initiate proceedings should be reviewed to ensure clarity of information.

(h) Documentation should be circulated to all members in advance of the day of the hearing, with a review of the information to be given by the parties.

(j) In order to facilitate lawyers' preparation for tribunal hearings, the procedures as between the various tribunals should be standardised.

(k) There should be a review of tribunal procedure aimed in particular at promoting pre-hearing settlements and the narrowing of issues prior to the hearing.

(l) Guidance should be given to tribunal members on the implications of the Sex Discrimination Act: conferences should be arranged at which members could discuss the application of the Act.

G.10 *Industrial tribunals*

In addition, the following proposals were made in respect of industrial tribunals.

(a) Disclosure of documentary evidence should be mandatory.

(b) Every industrial tribunal should have a library of all essential reference books. It should be open to the public and staffed by independant advisers.

(c) The parties should be able to remain alongside their representatives while giving evidence.

(d) In order to promote a better understanding of their respective roles, joint seminars should be arranged for tribunal members and representatives.

(e) Where costs are awarded against an unsuccessful party, the rules should ensure that the expenses of lay representatives are met.

(f) Contractual breaches should be brought within the jurisdiction of industrial tribunals in accordance with the Employment Protection Act 1975, section 109.

(g) The work of industrial tribunals should be transferred to the county courts.

(h) Industrial tribunals are becoming too legalistic, despite the desirability of their remaining informal. In order to secure a more satisfactory system, the procedure should be put on a basis similar to that used in National Insurance Local Tribunals: an independent investigator should arrive at a decision, against which either of the parties could appeal to the tribunal.

(j) The following procedure for industrial tribunals was proposed.

  (i) There should be a pre-trial review at a location convenient to the applicant.

  (ii) An optional summary method of hearing should be made available, before a legally-qualified chairman sitting alone. Such hearings should be on the basis of oral evidence, apart from the contract of employment and related documents.

  (iii) Other cases should be subject to procedures similar to those obtaining in civil litigation. They should be heard by the full tribunal, and a note taken in case of an appeal.

G.11 *Appointment to tribunals*

The following views were put forward in evidence.

(a) Appointments are made from too narrow a range of those eligible. Appointments should be publicly advertised and an open selection made.

(b) There is an apparent tendency for barristers appointed to tribunals to be drawn from private practice. Many appointments are such that it would be in the public interest for them to be filled by barristers working in commerce, finance or industry.

(c) The appointment of chairmen to National Insurance Appeal Tribunals should not be restricted to lawyers. There should be training courses for all tribunal members and chairmen.

(d) The lay membership of industrial tribunals should be balanced and should be based on nominations by the TUC, CBI and leading women's organisations.

e) The requirement for chairmen of industrial tribunals to be lawyers of seven years' standing should be reduced to four years.

G.12 *Arbitration services*

In the public interest an investigation should be made of those bodies offering an arbitration service; such bodies should be subject to statutory regulation.

G.13 *The oath*

In court proceedings the witnesses' oath or affirmation is an anachronism and should be no longer used.

G.14 *Notaries public*

The following proposals were made.

(a) Notaries public should, like solicitors and barristers, be exempt from jury service.

(b) The services provided by notaries public should be defined by statute.

G.15 *Administration of estates*

When trustees apply to the court to resolve a dispute over the administration of an estate, the costs should be met from the estate (subject to certain restrictions) and should, wherever possible, be dealt with by correspondence.

G.16 *House of Lords*

The appellate function of the House of Lords duplicates the role of the Court of Appeal. There should be no appeal to the House of Lords.

G.17 *Remand accommodation*

Local authorities should be required to provide secure remand accommodation for juveniles.

G.18 *Penal establishments*

In order that judges may have a current and comprehensive knowledge of the various types of penal institutions in existence, arrangements should be made for all judges to visit such institutions.

G.19 *Trial procedures*

Barristers should be encouraged to supplement their arguments with written submissions. They should submit lists of legal precedents to the trial judge for study before the hearing of oral arguments.

G.20 *Jurisdiction of courts*

The Sheriff Court of Scotland has a wide civil and criminal jurisdiction. Local courts in England, Wales and Northern Ireland should have jurisdiction to deal with all cases at first instance, reserving the superior courts for appellate work.

G.21 *Private prosecutions*

The enforcement of the criminal law is a responsibility of the community as a whole. Prosecutions should not therefore be brought by private individuals except with the consent of the

Director of Public Prosecuitons or the police authority. As a general rule, those with a grievance should seek their remedy through the civil courts, receiving legal aid for the purpose if eligible. Financial assistance should not be available for private prosecutions.

G.22 *Criminal statistics*

There should be a comprehensive statistical survey of the working of the criminal legal aid scheme since 1968.

G.23 *Economics of court administration*

In rural areas, Crown Court centres and county courts may be thinly dispersed, like the population itself. This causes inconvenience when litigants and their legal representatives have to travel long distances for a hearing of, say, a civil matter when there may be court room facilities nearby commonly used for hearing criminal cases. In such areas courts should, on a local basis, make use of each other's judges, facilities and staff so that justice can be administered more conveniently and at a reduced cost to litigants and others involved in proceedings.

G.24 *Lord Chancellor's Department*

Legislation requires that the post of Permanent Secretary to the Lord Chancellor be filled by a barrister. This conflicts with the recommendation of the Fulton Committee, that senior civil service posts should be open to those best qualified to fill them, regardless of specialism.

CHAPTER 44

A Programme for the Future

Nature of our recommendations

44.1 The recommendations we have made in this report may be divided into two groups, on the one hand those affecting the profession and its work and, on the other, those involving the public need which require action by the government, including in many instances the expenditure of public funds. We know of no reason why the task of implementing the recommendations in the first group, affecting the profession, should not be set in hand forthwith and we make further recommendations on this point later in this chapter. We deal first with the implementation of the group of recommendations involving government action and public expenditure which involves a number of considerations.

Recommendations requiring action by government

44.2 Some of our recommendations call for an organisational change but will be inexpensive. A good example is the Council for Legal Services. To set up the Council will involve relatively small cost and is in our view essential. The same is true of our proposal for the appointment of regional legal services committees. In our view immediate steps can be taken to implement changes of this character.

44.3 In implementing the remaining recommendations, we recognise that any government must pay careful regard to priorities for increased public expenditure. It is also necessary to introduce measures increasing the level of activity in any field in such a way as to avoid overloading the system at any stage. It would be particularly undesirable to create strains in the system by promoting services for those who suffer no serious disadvantages and thereby to reduce the services available to those in greatest need. If, for these reasons, it is not possible to implement all our recommendations at one time, we recommend that urgent priority be given to the measures set out below, though this should not be taken to imply that our other recommendations are not urgent and can be deferred for any length of time.

44.4 When assessing priorities it is necessary to identify social aims. We are satisfied from our investigations that the main aim should be to penetrate areas of greatest need. Part of the population suffers permanent and multiple deprivation. The reasons for this are economic and social and have proved difficult to overcome despite considerable efforts on the part of welfare services, rights organisations and many others. We consider that first priority should go to measures which would make some contribution to the relief of this sector of the population. The law is not a panacea for all social ills but its proper use will

solve certain problems and this will promote confidence that others can also be solved.

44.5 With this aim in mind, we recommend that particular attention should be paid to the recommendations which are listed below, though not necessarily in order of priority.

(a) *Generalist advice services*
In Chapter 7 we advocated the development of generalist advice services, in particular the CABx. Generalist advice services are important because people are willing to resort to them as well-recognised sources of advice and they are a means of identifying legal problems and providing access to legal services.

(b) *Services in deprived areas*
In Chapter 8 we proposed an increase in the number of law centres in deprived areas and also arrangements to encourage private practitioners to undertake the type of work needed in such areas, in particular by ensuring that the remuneration for it was adequate. Measures should also be taken to encourage solicitors to open offices in deprived areas.

(c) *Tribunals*
The need has been shown for an improved system of advice and assistance before tribunals. For the purpose of our main aim, priority should be given in this connection to tribunals dealing with welfare benefits, immigration and mental health. Legal advice and representation will be required in some cases and suitable provision should be made for this; steps should also be taken to provide finance to enable approved lay agencies to provide the necessary advice and support.

(d) *Education*
In Chapter 4 we advocated that schools should provide instruction in the law as part of their regular curricula. This should have priority as the best means of ensuring ability to recognise a legal problem and the need for legal assistance and awareness of personal rights and obligations.

44.6 We recommend that priorities should be assessed according to needs rather than according to cost. The most effective measures, in any case, are not necessarily the most expensive. In this connection, emphasis should be given to the early provision of legal advice and assistance on the basis that prevention is better than cure and a small expenditure at an early stage can prevent heavy costs arising later.

44.7 When our recommendations involving public expenditure were decided in outline we made a number of detailed enquiries for the purpose of costing them. The response satisfied us that in the great majority of cases no firm or reliable estimates can be made on the data now available. An assessment of the financial

effects of our proposals, which will take some time to complete, should be set in hand as soon as possible, and, as we have already pointed out in paragraph 12.27, a programme of reasearch will be necessary to obtain reliable information and statistics.

44.8 Not all our recommendations involve the expenditure of funds in either the public or the private sectors. Some will lead to savings of time and money which, over the years, will be substantial. Great additional savings could result from the review of some of the procedures summarised in Chapter 43, from efficient use of computers, from streamlining the administration of the legal aid system and from improvements in the system of submitting bills and assessing costs.

44.9 Some of our recommendations, though of importance in the public interest, may have to be introduced over a period because it will take time to find the necessary resources of manpower and accommodation while avoiding any disruption of existing services. By way of example, we believe it is important to arrange for duty solicitors in all magistrates' courts; it will, however, take time to set up the necessary administrative arrangements and to prepare rosters of solicitors who are able and competent to perform this task. Similar considerations apply to many of the other recommendations. It is clear that coordination of all such measures is indispensable.

Recommendations affecting the profession

44.10 Most of the recommendations made in Parts III and IV of this report affect the internal organisation or work of the legal profession. As we remarked in Chapter 1, one of the striking features of our investigation has been the willingness of both branches of the profession to respond to suggestion or criticisms. Indeed, they were quick to take up matters which were shown to call for attention. In our enquiries, we made no secret of the trend of our thoughts on some major issues. The profession did not hesitate to institute improvements where this procedure showed the need. In annexes 44.1 and 44.2 to this chapter we set out the measures that the Senate and the Law Society inform us have been, and are being, taken by the profession, since our enquiries commenced, to improve the provision of legal services and remove defects. In annex 44.3 we set out measures taken by the profession in Northern Ireland. The attitude of the profession promotes confidence that it will institute the further improvements which we recommend, but a coordinated programme is clearly necessary.

Future programme

44.11 When planning for the future on the lines we propose, each of the organisations affected by our recommendations, including government departments, should prepare an overall programme appropriate to its own needs and extending over a period of (say) five years ahead. The Commission cannot

undertake this task. Consultation will be necessary between a large number of persons and organisations including ministers, the government legal service, the judiciary, the Senate, the Law Society, the CABx and many others. Detailed costings and other estimates, related to the timetable adopted for the introduction of each item, will be needed. Research and analysis will be required in fields where reliable statistical information is at present scarce. The responsible minister should ensure that the overall programme is updated annually and adjusted, as necessary, to conform to the financial resources which Parliament is willing to make available for the improvement of legal services. A separate programme is required for the matters referred to in Chapter 43.

44.12 The cost of this Commission to public funds amounts to over £1 million. Its report is the result of three years' hard work by its members and secretariat. The two branches of the profession have spent thousands of pounds and a great deal of time for our purposes. To this must be added many thousands of hours of unrecorded work by some hundreds of people who have answered our questions, prepared detailed evidence and helped in one way or another to supply material for our conclusions. If this expenditure of time and money is not to be wasted, action must now be taken to plan for the future and make use of its results.

Conclusions and Recommendations

			Paragraphs
Future action	R44.1	A programme of future action is required as stated in the text	44.2 and 44.11

ANNEX 44.1

Action by the Senate in the last three years

1. Monopolies Commission reports on:—

(a) Two Counsel Rule;

(b) Advertising.

The recommendations in these reports have been implemented.

2. The Council of Legal Education has introduced:—

(a) a new vocational course for bar students (1978/79);

(b) a common professional examination for non-law graduates in conjunction with the Law Society.

3. Review of procedures for Professional Conduct Committee and Disciplinary Tribunals resulting in:—

(a) the introduction of a summary procedure for dealing with minor breaches of conduct and incompetence;

(b) studies in hand for improving and speeding up the process;

(c) a study in hand for introducing a code of conduct for the profession to replace catalogue rulings used hitherto;

(d) the introduction of lay representatives on the Professional Conduct Committee and Disciplinary Tribunals.

4. Major rulings have been introduced in the following professional areas:—

(a) revised rules for law centres;

(b) revised overseas practice rules and associated rules for dual practice and foreign lawyers.

5. Organisation of Chambers

(a) Guidelines for the management of chambers have been issued.

(b) Guidelines as to the duties of pupils and pupil masters have been issued.

(c) The Planning Committee has reported on financial obligations for new members of chambers.

(d) The seniority required of pupil masters has been raised to five years' continuous practice.

(e) Consideration is being given to a recommended standard contract for clerks.

6. Bar Students

(a) A report on a major loan scheme, financed by the profession. for young entrants has been accepted.

(b) A report on problems of intelligibility in oral English has been accepted and is being implemented.

7. Fees

(a) Arrangements for magistrates' courts fees have been revised and improved.

(b) New guidelines for Crown Court fees have been negotiated and will be introduced shortly.

8. Relations with Law Society

(a) An annual conference between the heads of both sides of the legal profession has been established.

(b) Regular joint meetings are held on law reform, with particular reference to EEC and company law.

9. Discrimination

(a) A report on *Women at the Bar* has been accepted and action implemented.

(b) A major report on the problems of immigrant barristers and action to be taken to resolve them is reaching a final stage.

10. Employed Barristers

Consideration has been given to the whole position of barristers in employment and a new policy formulated which it is hoped to implement in 1979.

11. Professional Negligence

Resulting from the case of *Saif Ali*, the whole question of the need for barristers to be compulsorily insured against claims of professional negligence is being reviewed.

ANNEX 44.2

Action by the Law Society in the last three years

1. Public relations

Introduction of National Information Campaign.

2. Corporate structure

(a) In February 1979 the Council Coordinating Committee decided that the Company Law Committee and the Professional Purposes Committee should give detailed study to the steps necessary to finalise the formulation of the Council's policy on incorporation.

(b) In December 1978 the Council decided that a working party of the Council Coordinating Committee should be set up to study the extent of the need in the profession for up-to-date guidance on efficient office management and to the extent that such a need was established, the methods whereby such guidance might be provided.

3. Panel of solicitors to act in cases of alleged negligence

A list has been prepared of solicitors to act locally in cases of alleged negligence by a solicitor and this scheme is now in operation.

4. Indemnity insurance

The Society's indemnity insurance scheme is under review and it is intended to inform the profession in the near future of the proposals of the Indemnity Insurance Committee and its thinking on the subject generally. It is intended to introduce rating based on claims experience from September 1979.

5. Advertising

(a) Solicitors are now permitted to send circular letters to and may also establish personal contact with all local organisations to whom the legal aid solicitors list is distributed.

(b) Solicitors are permitted to announce in one or more national newspapers and newspapers of the locality or region by four announcements at any intervals over a period not exceeding two months that they have opened a new office.

(c) Solicitors may insert two announcements only of amalgamation, new partners or retirement and of changes of name, address, office hours or telephone number. Such announcements may be made in one or more national newspapers and in newspapers of the locality or region.

(d) Solicitors may display in their waiting room a brochure about the practice giving the names of the partners and senior staff with a brief description of the work of their departments and also guidance on how the client can assist the firm to deal promptly with his business, for example by completing a questionnaire.

(e) In certain circumstances the name of a solicitors' firm may be exhibited on the fascia board or in large letters in a prominent position.

(f) Circularisation to established clients of general information which may affect them is permitted.

6. Entry, education and training

(a) *Non-law graduates and persons equated with them*

Teaching for the first common professional examinations began at the College of Law and seven polytechnics in September 1978; the first examinations are to be held in June 1979.

(b) *School leavers*

A new system of training for school leavers will come into operation in 1980 and will affect all school leaver entrants who have not attempted the Part I of the qualifying examination by September 1980.

From 1st August 1980 the minimum GCE 'A' level passes required by a school leaver entrant will be:—

(i) a Grade B and a Grade C taken at one sitting; or

(ii) three Grade C's or the equivalent from three subjects taken at one sitting; or

(iii) one Grade B and two Grade C's or the equivalent from three subjects taken at not more than two sittings.

(c) *The new Final Examination*

Teaching for the first new Final Examination will begin at the College of Law and seven polytechnics in September 1979 and the first examinations will be held in July 1980.

(d) *Continuing education*

In June 1977, the Education and Training Committee set up a sub-committee "To consider the whole field of continuing education and to report to the Committee thereon".

(e) *Articles of clerkship*

In September 1977 the Education and Training Committee set up a further working party "to review the problems to which the system of articles of clerkship presently gives rise, including the remuneration of articled clerks, and to make recommendations".
The role of this working party has now been taken over by the Standing Committee on Entry and Training referred to below.

(f) *Standing Committee*

In March 1978 the Council established a Standing Committee of the Society on Entry and Training with the following terms of reference:—

(i) to keep under review the operation of the system of training for prospective solicitors and, in particular, to consider such aspects of the system as may be referred to them by the Education and Training Committee.

(ii) To make reports and recommendations to the Education and Training Committee in respect of the above matter from time to time as they may consider necessary.

7. Conveyancing

(a) Remuneration certifying sessions have been set up in London and in the provinces to spread the understanding of costs and the manner in which non-contentious bills are certified under Schedule H.

(b) A review of the Law Society's *Conditions of Sale* is in progress with a view to creating a new edition during 1980.

(c) Schemes are currently under examination with the object of introducing a new system to facilitate the completion of sales and purchases. It is probable that a scheme will be recommended to the profession before the report of the Royal Commission is published.

(d) Also under examination is a conveyancers' insurance scheme whereby the profession will be covered for insurance of house property between exchange of contracts and completion.

(e) A list of recommended charges in respect of advances up to £25,000 where the solicitor is acting for both the building society and purchaser/borrower in simultaneous transactions has been introduced with the Building Societies Association.

8. The Common Market

In November 1978 a sub-committee of the Council's International Relations Committee was set up to study the question of the establishment of lawyers in the EEC under the Treaty of Rome, the position of foreign lawyers from non-EEC countries seeking to set up offices in England and Wales and matters of disciplinary control and regulation relating thereto.

This followed an initiative taken by the CCBE (Consultative Committee of Bars and Law Societies of the European Community) at the request of the European Commission to study the establishment of lawyers in the EEC.

9. Fees and charges

(a) In December 1978 the Council decided that a sub-committee of the Council Coordinating Committee should be set up "to keep under review all matters of solicitors' remuneration and earnings; to maintain regular liaison with the Standing Committees on Contentious and Non-Contentious Business; to conduct periodic remuneration surveys and to report to the Council Coordinating Committee with appropriate recommendations". This sub-committee has already begun its work and has so far held two meetings.

(b) The Society has, for some years, been negotiating with the Lord Chancellor's Department and the Chief Taxing Master in connection with the proposed changes in the procedure for the taxation of High Court costs. A new Appendix II came into force in April 1979.

10. Legal aid

(a) An Area Legal Services Committee has been established at Manchester staffed by an Advisory Liaison Officer.

(b) The fixed fee interview has been introduced. It is of particular relevance to clients referred from citizens advice bureaux. Under this scheme the solicitor undertakes to charge not more than £5 inclusive of VAT for an initial diagnostic interview of up to half an hour. Where the contribution under the green form scheme is nil or less than £5 the lesser amount would apply.

(c) Some improvements have been made to the legal aid solicitors list which now designates those solicitors who give a fixed fee interview and those who are prepared to offer an out of hours emergency service with an emergency telephone number.

(d) The Law Society stated that the time had come to close independent local legal aid offices. A report has now been prepared on the future of the Law Society's administration and this report recommends the establishment of one legal aid office only in each area plus improvements to the committee structure. This report is now under consideration.

(e) Since 1977 two non-lawyers, a citizens advice bureau organiser from Liverpool and a director of social services for a London borough, have been attending meetings of the Legal Aid Committee and participating in its work.

11. Law centres

Detailed rules for the operation of law centres have been established as a result of negotiations with all parties concerned. These rules are incorporated in the waiver document published in the Law Society's Gazette on 31st August 1977. There has been a substantial improvement in relationships between the law centres on the one hand and the Law Society and solicitors in private practice on the other. A joint liaison committee has been formed between members of the Law Centres' Working Group and the Law Society.

ANNEX 44.3

Action by the Profession in Northern Ireland

Action by the Incorporated Law Society of Northern Ireland in the last three years

1. Measures taken under the Solicitors (Northern Ireland) Order 1976

In accordance with the provisions of the 1976 Order, the Society established in 1977 a compensation fund and a master policy professional indemnity scheme. It has also, with the concurrence of the Lord Chief Justice of Northern Ireland, issued regulations affecting practising certificates, accounts, admission and training.

2. Professional training

The Society introduced in 1977 a transitional training scheme for university graduates unable to obtain places at the Institute of Professional Legal Studies.

3. EEC

The Society has a representative on the UK delegation to the Consultative Commission of the European Bar Association.

4. Reciprocal admission of solicitors (Republic of Ireland and Northern Ireland)

The Society is engaged in discussions with the Incorporated Law Society of Ireland, concerning the reciprocal admission of solicitors as between the two jurisdictions.

5. Liaison officer

The Society has appointed one of its assistant secretaries as a liaison officer, responsible for maintaining contact with the Belfast Community Law Centre, CABx and other advice centres. He is also responsible for assisting with the introduction of solicitor rota schemes at advice centres, and for preparing a legal aid solicitors referral list.

6. Publications

In addition to the referral list, the Society has recently produced a directory of practising solicitors and is currently promoting the writing and publication of two legal text books.

7. Discussions with the Land Registry of Northern Ireland

The Society and the Land Registry formed a joint consultative committee in 1978, following the coming into effect in 1977 of the Land Registration Act (Northern Ireland) 1970.

Action by The Inn of Court of Northern Ireland in the last three years

1. Compulsory pupillage

Under a rule applying to all those admitted as Bar students after 8th May 1978, all newly-called barristers must undergo a 12 month period of pupillage. During the first six months they may not accept instructions as counsel or conduct a case in court.

2. Reciprocal call with the Bar of the Republic of Ireland

A rule was introduced in August 1977 enabling practising members of the Bar of Ireland to be called to the Bar of Northern Ireland without undertaking study or pupillage.

3. Reciprocal call with the Bar of England and Wales

Under rules introduced in August 1977 it is no longer a requirement that members of the Bar of England and Wales seeking call in Northern Ireland should have a degree or that they must be admitted as students of the Inn of Court of Northern Ireland before call.

4. Academic qualifications

A rule was introduced in August 1977 enabling a CNAA degree to be accepted (as an alternative to a university degree) as a qualification for becoming a Bar student.

5. Transfer between the branches

Discussions are taking place with the Incorporated Law Society concerning new arrangements for facilitating the entry of solicitors into the barristers' branch of the profession.

Action by the Northern Ireland Bar Council in the last three years

The Bar Council has set up two new committees concerned, respectively, with the administration of the Bar Library and further education. It has also established a joint committee with the Benchers of the Inn of Court of Northern Ireland, to discuss matters of mutual concern.

PART VII

Conclusions

Summary of Conclusions and Recommendations

Chapter 3 The Legal Profession

			Paragraphs
Future of the profession	R3.1	The demand for the services of lawyers will grow; the profession should plan accordingly.	3.13
	R3.2	When the decisions arising out of this report have been taken and implemented, the profession should have a period of orderly development free, so far as possible, from external interventions.	3.17
Image of the profession	R3.3	In the light of the comments made in the text, the legal profession should wherever possible take measures to remove the causes of its indifferent public image.	3.27–3.40

Chapter 6 The Organisation of Legal Services

Responsibility for civil legal aid	R6.1	The Law Society should remain responsible for the administration of civil legal aid.	6.9
Council for Legal Services	R6.2	A Council for Legal Services should be appointed, with the functions proposed in paragraph 6.20, replacing the Legal Aid Advisory Committee.	6.15–6.26
	R6.3	The Council for Legal Services should maintain close contact with the other bodies mentioned in the text, in some cases sharing members.	6.27–6.31
Regional organisation	R6.4	Committees, with full-time liaison officers, should be set up to co-ordinate legal services in each of the fourteen legal aid regions.	6.32

			Paragraphs
Overall responsibility	R6.5	The overall responsibility for assessing needs and the services available to meet them should remain with the Lord Chancellor, advised by the Council for Legal Services and the regional committees.	6.39

Chapter 7 General Advice and Citizens Advice Bureaux

Generalist advice agencies	R7.1	A competent, accessible, independent national network of generalist advice agencies is needed.	7.1–7.3
Citizens advice bureaux	R7.2	The citizens advice bureaux should provide the basic generalist advice service.	7.4
Referrals	R7.3	The CABx should be backed up by a variety of advisers and agencies to whom cases can be referred.	7.9–7.10
	R7.4	Local law societies should ensure that every CAB is properly serviced by solicitors to whom CABx can refer their clients.	7.15
Rota schemes in CABx	R7.5	Rota schemes of solicitors and barristers should be established in CABx wherever needed.	7.16
Funding of CABx	R7.6	CABx should be financed out of public funds.	7.20
	R7.7	As a condition of receiving public funds, CABx should:—	
		(a) be required to maintain high standards;	7.20
		(b) draw up long-term plans defining the scope of the work to be undertaken, with supporting budgets.	7.23–7.24

			Paragraphs
Provision of services	R7.8	Legal services for individual clients of the CAB service should be provided by solicitors in private practice or by citizens' law centres.	7.25
	R7.9	Salaried lawyers should be seconded where necessary to CABx to act as internal advisers.	7.26

Chapter 8 Law Centres

Citizens' law centres	R8.1	There is a need in many localities for a legal service which should be provided by a system of law centres.	8.15
	R8.2	Law centres operate at present under a number of disadvantages; in future, this form of service should be provided by citizens' law centres (CLCs).	8.16-8.17
The work of CLCs	R8.3	The main purpose of a CLC should be to provide legal advice, assistance and representation to those in its locality, with special emphasis on social welfare law.	8.18
	R8.4	It is not appropriate for a CLC itself to undertake community work and campaigns, but it may give legal advice to individuals in respect of such matters.	8.19–8.21
	R8.5	Clients of CLCs should pay for the services they receive on the same basis as legally-aided clients of private practitioners.	8.22
Administration and finance	R8.6	There should be a small central agency appointed by government, but independent of it, to finance and manage CLCs.	8.25

			Paragraphs
	R8.7	There should be a local advisory committee for each CLC or group of CLCs.	8.26
	R8.8	CLCs should be financed wholly out of funds provided by central government.	8.27
	R8.9	Funds voted for the provision of law centres should be available only to CLCs which are managed by the central agency.	8.29
	R8.10	For the purpose of providing a high standard of administration and of professional service, guidelines should be laid down as set out in the text.	8.32
Waivers	R8.11	The Senate and the Law Society should retain responsibility for the professional standards of lawyers employed in CLCs; any necessary waivers of professional rules should be agreed between the central agency and the professional bodies.	8.35–8.36
Needs	R8.12	In setting up CLCs, regard should be had initially to the deprived areas mentioned in paragraph 8.37. Measures should also be taken to meet rural needs.	8.38

Chapter 9 Duty Solicitor Schemes

Standards	R9.1	The Law Society should take responsibility for introducing duty solicitor schemes, based on uniform and acceptable standards, in all magistrates' courts.	9.9
Information and access	R9.2	Persons in custody or awaiting a hearing should be informed in good time that a duty solicitor is available.	9.10

			Paragraphs
	R9.3	Persons taken into custody should, as a general rule, have immediate access to a solicitor.	9.11
	R9.4	Duty solicitors should normally have unrestricted access at the court to prisoners in the cells.	9.13
	R9.5	A code of practice for duty solicitors should be drawn up by the Law Society.	9.15
	R9.6	There should be an information point in all magistrates' courts which should, *inter alia,* indicate how duty solicitors can be contacted.	9.16
	R9.7	Court staff and police officers should not recommend particular solicitors to accused persons.	9.17
Remuneration	R9.8	Duty solicitors should be properly remunerated and there should be enhanced pay for work involving special inconvenience.	9.20
Prisons	R9.9	Duty solicitor schemes should be established in prisons.	9.24
	R9.10	Designated officers in the prison service should be provided with the necessary training and information under a centrally organised scheme.	9.26
	R9.11	Legal representation should be available to prisoners in future in certain disciplinary proceedings.	9.29

Chapter 11 The Organisation of Legal Aid

Ministerial responsibility	R11.1	The Lord Chancellor should be responsible for all forms of legal aid.	11.22

			Paragraphs
Division between civil and criminal legal aid	R11.2	Separate systems of criminal and civil legal aid will continue to be necessary.	11.24

Chapter 12 Legal Advice and Assistance and Civil Legal Aid: Financial Considerations

General principles	R12.1	The financial provisions of legal aid should be regularly updated in future to avoid the long downward drift which took place up to April 1979.	12.24
	R12.2	Reliable financial and statistical information concerning publicly funded legal services is necessary.	12.27
	R12.3	The principle underlying the provision of legal aid should be that an assisted person should not suffer an undue financial burden in pursuing his legal rights.	12.28
	R12.4	The eligibility limits should be abolished.	12.32
	R12.5	The green form scheme and civil legal aid should be assimilated when the financial provisions applicable to legal aid are improved.	12.34
Free limits	R12.6	The free limit of disposable income should be increased to £3,000.	12.40
	R12.7	The free limit of disposable capital should be £10,000.	12.43
Contribution	R12.8	The contribution from income and from capital above the free limits should be reduced to one-fifth, or preferably calculated by reference to a sliding scale.	12.48 and 12.52
Allowances	R12.9	Childrens' allowances against income should be simplified.	12.54

			Paragraphs
	R12.10	The method of calculating disposable capital should be revised as stated in the text.	12.55
	R12.11	Legal aid should be available to groups on the basis set out in the text.	12.62–12.63
Scope	R12.12	Legal aid should not be used for business purposes, except to the limited extent stated in the text.	12.57–12.58
	R12.13	Civil legal aid should not be available for legal charges relating to buying and selling houses.	12.59

Chapter 13 Legal Advice and Assistance and Civil Legal Aid: The Administrative Aspects

Initial half-hour	R13.1	Half an hour's legal advice and assistance from solicitors who undertake legal aid work should be available to everyone, irrespective of means, free of charge. The introduction of this proposal should be preceded by a carefully monitored pilot scheme.	13.5–13.6
Four hour scheme	R13.2	A solicitor should be able to provide legal advice and assistance for a further four hours on his own authority.	13.7–13.8
Authority of the legal aid committee	R13.3	A solicitor providing representation should be required to obtain the prior permission of the legal aid area committee.	13.10
Assessment and collection of contributions	R13.4	The assessment of means and of contributions should no longer be carried out by the Supplementary Benefits Commission.	13.15

			Paragraphs
	R13.5	The initial assessment of contribution should in all cases be made by the solicitor.	13.16
	R13.6	When providing legal services under his own authority, the solicitor should collect the client's contribution.	13.17
	R13.7	When a legal aid committee authorises representation in proceedings it should scrutinise the assessment of means and collect the contribution.	13.18
Aggregation	R13.8	The rule under which the resources of parents or guardians are aggregated with those of a minor should be abolished.	13.20
	R13.9	The aggregation of the resources of spouses should, if possible, be discontinued.	13.21
Merits of the case	R13.10	The criteria for the granting of aid by the legal aid committee should be revised as set out in the text.	13.26
Handling of applications	R13.11	The functions of local committees should be transferred to legal aid area committees.	13.29
	R13.12	The geographical boundaries of legal aid areas should be brought into line with local government boundaries.	13.30
Retrospective authority	R13.13	Retrospective authority for work done should be given only in the circumstances set out in the text.	13.34
Delays	R13.14	Delays in granting legal aid applications should be reduced in future. The Law Society should give details of the time taken to handle applications in its annual report.	13.37–13.38

			Paragraphs
Statistical support	R13.15	The Law Society's legal aid department should be provided with the services of a statistician at public expense.	13.47
Overall responsibility	R13.16	The Lord Chancellor should have access to all information relating to the administration of legal aid and should have power to issue directives to the Law Society.	13.48
Costs	R13.17	The liability of an unsuccessful legally aided litigant to pay costs should be limited to the amount of his maximum contribution.	13.55
Statutory charge	R13.18	The method of calculating the statutory charge should be changed.	13.64
Remuneration	R13.19	The rates of remuneration for legally-aided work should be fixed at a reasonable level and kept up-to-date. The ten per cent deduction from legal aid charges in the Supreme Court should no longer be made.	13.66
	R13.20	The forms and procedures governing the administration of legal aid should be revised.	13.68
Scope	R13.21	Legal aid should be extended to the proceedings listed in the text.	13.70–13.72

Chapter 14 Criminal Legal Aid

Criminal legal aid	R14.1	Defendants should have a right to legal aid in all criminal cases except those which are triable only by magistrates.	14.9
	R14.2	In cases triable only by magistrates, legal aid should be granted unless the	14.10

			Paragraphs
		court decides to the contrary on the basis of the criteria set out in the text.	
Appeals	R14.3	A person convicted of an offence should be seen after the hearing by his barrister or solicitor; in the circumstances described in the text he should be advised orally or in writing on his prospects of success in an appeal.	14.14
	R14.4	Legal aid in the Crown Court should continue up to the point at which an appeal, or application for leave to appeal, is lodged.	14.16
	R14.5	The arrangements for retaining a solicitor to attend an appeal should be confined to those stated in the text.	14.17
Applications for bail	R14.6	Legal aid for appeals against the refusal of bail should be available on the basis set out in the text.	14.21
Care proceedings	R14.7	In care proceedings, unless there is no conflict of interest, the parents should have legal aid for representation separately from the child.	14.26
Contributions	R14.8	Contributions in respect of criminal legal aid in the magistrates' courts should no longer be required.	14.30–14.31
	R14.9	In the Crown Court and appellate courts, convicted offenders should be required to pay contributions at the discretion of the judge.	14.31
Advice and assistance	R14.10	Legal advice and assistance under the civil scheme should continue to be available to a person who is at risk of	14.34

			Paragraphs
		facing a criminal charge and no contribution should be required from a person who is being questioned by the police.	

Chapter 15 Tribunals

Procedures	R15.1	The procedures of all the main tribunals need to be reviewed; this should be undertaken by the Council on Tribunals under the general oversight of the Lord Chancellor.	15.12–15.13
Lay advice and representation	R15.2	Advice and representation by lay agencies for applicants before tribunals should be encouraged.	15.19
	R15.3	Agencies wishing to provide advice and representation before tribunals should have adequate resources for the purpose.	15.20
	R15.4	Public funds should be made available to assist in the training of staff of approved lay agencies.	15.21
Informing the public	R15.5	A person appearing before a tribunal should be informed at the outset of the availability of legal aid and of lay agencies providing advice and representation.	15.22
Legal aid	R15.6	In some tribunal cases (whatever the tribunal) legal representation is necessary and should be available unless representation is prohibited by statute.	15.25
	R15.7	The criteria to be applied for the purpose of granting legal aid in tribunals are stated in the text.	15.28–15.29

Paragraphs

Chapter 16 Alternatives and Supplements to Legal Aid

Contingency fees	R16.1	The system of remunerating lawyers by contingency fees should not be permitted.	16.6
Contingency Legal Aid Fund	R16.2	A Contingency Legal Aid Fund should not be introduced.	16.12
Legal cost insurance	R16.3	Legal cost insurance on a voluntary basis may prove a useful supplement to legal aid in some cases.	16.15
Suitors' fund	R16.4	Payment should be made from public funds:—	
		(a) to reimburse costs thrown away by the illness or death of a judge; and	16.19
		(b) to pay the costs incurred in determining a point of law of public importance.	16.20
Grants and loans	R16.5	A scheme for interest-free loans to encourage private practitioners to move to areas of need should be introduced.	16.26–16.29

Chapter 17 Fusion

Structure of the legal profession	R17.1	The legal profession should continue to be organised in two branches, barristers and solicitors.	17.45–17.46

Chapter 18 Rights of Audience

Laymen	R18.1	Laymen, other than litigants in person, should not have rights of audience in the superior courts.	18.12
	R18.2	Guidelines should be issued to achieve greater consistency in the	18.20

			Paragraphs
		exercise of judicial discretion in county courts to allow laymen rights of audience in certain cases.	
	R18.3	The rights of audience of laymen in tribunals should not be further restricted.	18.21
Solicitors	R18.4	Subject to the exercise of the Lord Chancellor's power to extend the rights of audience of solicitors in specific areas, there should be no extension of such rights in Crown Court business.	18.42, 18.55 and 18.59
	R18.5	There should be no general extension of the rights of audience of solicitors.	18.60
	R18.6	A solicitor should have a right of audience to enable him to deal with formal or unopposed matters in any court.	18.61

Chapter 19 Restrictions on Practice and Competition

Access to counsel	R19.1	Registered patent agents and London notaries should be permitted access to barristers as described in the text; save for those exceptions no change should be made to the existing rules.	19.7–19.12
Work of solicitors	R19.2	An unqualified person should not be permitted to act as a solicitor and as such to conduct litigation.	19.18
	R19.3	Trust corporations should be permitted, in non-contentious cases, to apply for grants of probate without retaining a solicitor for the purpose.	19.25
	R19.4	It is unnecessary to impose a restriction on the drafting of wills for reward.	19.26

			Paragraphs
	R19.5	Charges made by executors who are not solicitors should be subject to control.	19.27
	R19.6	Pension consultants should not be exempted from the restrictions on the preparation of documents under seal relating to personal property.	19.30
	R19.7	It is unnecessary to impose a restriction on the preparation of powers of attorney.	19.31

Chapter 20 Employed Lawyers

Employed solicitors	R20.1	Employed solicitors should be permitted to deal with certain conveyances on behalf of, and to give free legal advice to, fellow employees.	20.16
	R20.2	An employed solicitor who carries on practice in his spare time should be required to take out professional indemnity insurance, whatever the size of his practice.	20.17
Employed barristers	R20.3	A barrister should be permitted to deal with conveyancing on behalf of an employer provided the Senate makes arrangements to ensure that he has the same degree of training, and can offer third parties the same level of security, as a solicitor.	20.27–20.31
	R20.4	Employed barristers should be permitted to instruct counsel to advise in non-contentious matters.	20.35
	R20.5	An employed barrister should not have a right of audience in any court by virtue only of his qualification.	20.40

Chapter 21 Conveyancing

			Paragraphs
Restrictions on practice	R21.1	A person buying or selling a house should continue to be entitled to act for himself, whether or not assisted by an unpaid friend or agent.	21.28
	R21.2	Notaries public, other than London notaries, should no longer be permitted to undertake conveyancing for reward but existing rights to practise should remain unaffected.	21.59
	R21.3	The present restrictions on conveyancing for fee or reward should be maintained and reformulated as proposed in the text.	21.61
Prosecution and penalties	R21.4	Prosecutions should be undertaken not by the Law Society but by the police or the appropriate government department.	21.62
	R21.5	The maximum penalty for contravening the statutory restrictions on conveyancing should be increased.	21.63
Acting for two or more parties	R21.6	When no conflict of interest arises and he is so authorised in writing, a solicitor should be permitted to act for both parties with an appropriate reduction in fee.	21.64
	R21.7	Building societies and solicitors should ensure that mortgagees are not represented separately from vendors or purchasers unless there is a conflict of interest.	21.65
Fees and charges	R21.8	A person who is required to pay the charges of another party to a conveyancing transaction should be entitled to apply for a remuneration certificate.	21.90

			Paragraphs
	R21.9	A bill should be submitted and agreed before fees are deducted from money received on behalf of a client.	21.91
	R21.10	A system of standard charges for conveyancing transactions should be introduced.	21.95
The future	R21.11	All concerned in conveyancing transactions should begin to plan the development of computer-based systems.	21.101

Chapter 22 Quality of Service

General	R22.1	A profession is responsible for ensuring that the quality of its members' work is of a satisfactory standard.	22.5
	R22.2	In general, the legal profession provides an adequate standard of service, but there are shortcomings.	22.17
Delay	R22.3	A sustained effort is required to reduce the length of all legal proceedings.	22.23
	R22.4	A thorough re-appraisal of the organisation and procedures of the civil courts is needed to shorten the duration of civil litigation.	22.23
	R22.5	The average time taken to dispose of cases in the Queen's Bench Division is not acceptable and should be the subject of specific inquiry.	22.26–22.28
Relations with clients	R22.6	All lawyers should be instructed in the importance of establishing a sound professional relationship with the client, and practical measures should be laid down as Professional Standards.	22.31 and 22.62

			Paragraphs
Representation	R22.7	Guidelines for listing cases should be agreed between the judiciary, the courts administration and the profession.	22.38
	R22.8	The procedure for handling briefs should be as stated in the text. Appropriate Professional Standards should be issued to that effect.	22.39–22.42 and 22.63
	R22.9	Both solicitor and barrister should consider and advise specifically whether a conference before the day of hearing is necessary for the proper presentation of a case.	22.43 and 22.63
	R22.10	Guidelines are needed to define when a solicitor or a member of his staff should attend with a barrister in court.	22.44 and 22.45
	R22.11	Measures should be taken as stated in the text to prevent parties being taken by surprise by offers of settlement at the door of the court.	22.46
Administration	R22.12	The Law Society should issue guidelines on methods of office administration.	22.52
	R22.13	Proposals for legal information retrieval services should be pressed forward without delay.	22.53
	R22.14	The use of inter-firm comparisons should be encouraged.	22.54
	R22.15	There will be an increasing need for specialisation. Practising solicitors should plan ahead for this purpose.	22.55
	R22.16	Firms of any size should appoint a partner or senior staff member to supervise internal administration.	22.56

			Paragraphs
Professional Standards	R22.17	Written Professional Standards should be issued by both branches of the profession; failure to observe them would involve disciplinary proceedings.	22.58 and 22.59
Sole practitioners	R22.18	Sole practitioners should make full use of the support facilities available to them.	22.70
Prolixity	R22.19	Prolixity in court should be discouraged by the judiciary, the taxing authorities and the profession.	22.74 and 22.75

Chapter 23 Protection of the Client: Solicitors

Clients' money	R23.1	The present rules governing the holding of clients' money by solicitors are sound and well administered.	23.7 and 23.22
	R23.2	The present compensation arrangements in the event of misuse of clients' money by solicitors are satisfactory.	23.15
Interest on clients' money	R23.3	The present arrangements for dealing with interest on clients' money are reasonable and should continue.	23.19 and 23.22
Indemnity insurance	R23.4	It is in the public interest that solicitors should be required to have indemnity insurance; the amount of cover required should be kept under review.	23.27
Limitation of liability	R23.5	An inquiry should be set up without delay into the desirability of a limit on the level of damage which may be awarded for negligence against professional persons.	23.30

			Paragraphs
Lien	R23.6	The law on lien does not require amendment in respect of solicitors alone; the present safeguards for clients should, however, be strengthened as set out in the text.	23.36–23.37

Chapter 24 Protection of the Client: Barristers

Immunity from suit	R24.1	No change is recommended in the present law relating to a barrister's immunity from suit.	24.6
	R24.2	Such immunity should extend to anyone acting as an advocate in a court of law.	24.7
Indemnity insurance	R24.3	All practising barristers should be required to have professional indemnity insurance cover against claims for negligence.	24.11
	R24.4	Minimum cover should be £50,000; this figure should be reviewed regularly.	24.12

Chapter 25 Discipline: Solicitors

Practice Rules	R25.1	The Solicitors' Practice Rules should be amended as stated in the text.	25.8
	R25.2	The procedure for approving Practice Rules should be changed.	25.10
Complaints	R25.3	The Law Society's pamphlet about complaints procedures should be updated regularly.	25.13
	R25.4	The Law Society should analyse and publish details of complaints received.	25.19

			Paragraphs
Misconduct and negligence	R25.5	It should be the responsibility of the Law Society to take action when cases of bad professional work are brought to its notice. The existence of a potential claim at law by the complainant or provisions in indemnity insurance policies do not absolve the Law Society from this responsibility.	25.24–25.29 and 25.35
	R25.6	The Law Society should ensure that independent legal advice is available for those who allege negligence against solicitors.	25.30
Investigation and adjudication	R25.7	Within the Law Society, the processes of investigation and adjudication of complaints should be separated.	25.36
	R25.8	The standard of correspondence with complainants should be improved.	25.38
	R25.9	Local law societies should, in appropriate cases, provide a conciliation service.	25.40
Lay participation	R25.10	Laymen should be involved in the processes of investigation and adjudication of complaints. The need to continue the appointment of a Lay Observer should be reconsidered.	25.45
Professional Purposes Committee	R25.11	The powers of the Professional Purposes Committee and of the Solicitors, Disciplinary Tribunal should be extended as stated in the text.	25.46 and 25.50
Appeals	R25.12	Appeals from decisions of the Professional Purposes Committee should lie to the Disciplinary Tribunal.	25.53

			Paragraphs
Complaints tribunals	R25.13	The complaints tribunals established under the criminal and civil legal aid schemes should be discontinued.	25.54

Chapter 26 Discipline: Barristers

Rules of conduct	R26.1	The present rules of conduct and the procedure whereby they are made are sound.	26.4
Complaints	R26.2	Complainants should whenever possible be interviewed.	26.12
	R26.3	The processes of investigation and adjudication of complaints should be separated.	26.13
Disciplinary sanctions	R26.4	The Senate should have the responsibility of taking action when cases of bad professional work are brought to its notice.	26.18
	R26.5	The Professional Conduct Committee should have power to order further training if a barrister is not considered to be competent.	26.20
Senate's Disciplinary Tribunal	R26.6	The Disciplinary Tribunal of the Senate should be able to compel the appearance of witnesses and the production of documents, and to impose a fine.	26.24

Chapter 27 Information for the Public

Corporate advertising	R27.1	The governing body of a profession may properly publicise the services provided by its members.	27.5

			Paragraphs
Official publicity	R27.2	There should be a substantial and sustained increase in publicity for legal services provided at public expense.	27.7–27.8
Referral lists	R27.3	The existence of the legal aid solicitors lists which contain information about solicitors should be made more widely known.	27.13
	R27.4	Legal aid solicitors lists should include further information about firms of solicitors and their working hours.	27.14
Specialisation	R27.5	When solicitors have been recognised as specialists they should be allowed to include this information in referral lists and other documents.	27.19
	R27.6	The conditions of eligibility as a specialist are set out in the text.	27.20–27.22
Individual advertising	R27.7	Individual solicitors or firms should be permitted to advertise subject to certain restrictions.	27.34
	R27.8	Advertisements should be regulated by the Law Society, in accordance with the criteria set out in the text.	27.35–27.39
	R27.9	Firms should supply detailed information about themselves to potential clients to enable clients to shop around.	27.40
Marking of premises	R27.10	The easing of restrictions on methods of marking solicitors' offices is welcome.	27.41
Touting	R27.11	The prohibition against touting should be retained.	27.43

			Paragraphs
Barristers	R27.12	It is not at present necessary for barristers to be designated as specialists.	27.47
	R27.13	Solicitors should be provided, from a central system, with information as to which barristers are available to accept briefs in particular courts.	27.48
	R27.14	The present restrictions on advertising by barristers should be retained subject to modification in respect of new chambers, changes of address and return to practice.	27.49

Chapter 29 The Structure and Organisation of the Profession: Solicitors

Principles	R29.1	The principles on which the legal profession should be organised are set out in the text.	29.13–29.15
Lack of support	R29.2	The Law Society is entitled to a greater measure of support than is at present provided by the local law societies and many solicitors.	29.23
Voting	R29.3	Every solicitor working in the capacity of a solicitor should hold a practising certificate; this should entitle him to have voting rights and to participate in the work of the professional governing body; subscription rates should be adjusted appropriately.	29.31–29.32
Overall responsibility	R29.4	Responsibility for safeguarding the general interests of the profession should not be transferred to the British Legal Association.	29.37

			Paragraphs
Laymen	R29.5	The Law Society should in appropriate cases co-opt laymen to serve on its committees but not on the Council.	29.40–29.41
District organisation	R29.6	A district organisation should be formed, by re-grouping or re-organising local societies, which would be responsible for implementing the policies of the Law Society throughout the country.	29.43–29.47

Chapter 30 Practising Arrangements: Solicitors

Inter-disciplinary partnerships	R30.1	Partnerships between solicitors and members of other professions should not be permitted.	30.15
Incorporation	R30.2	Incorporation of a solicitor's business with limited liability should not be permitted.	30.22
	R30.3	Incorporation of solicitors' firms with unlimited liability should be permitted subject to the safeguards stated in the text.	30.24
Service companies	R30.4	Subject to the safeguards stated in the text, there is no objection to service companies.	30.28

Chapter 31 Legal Executives

Role of legal executives	R31.1	The services of legal executives will continue to be of value in the foreseeable future in the provision of legal services.	31.25
	R31.2	Legal executives should continue to perform their functions as the employees of solicitors, but not as independent practitioners.	31.26

			Paragraphs
Profit sharing	R31.3	Profit sharing between solicitors and legal executives should not be permitted but discretionary bonus schemes to reward valuable service should be allowed.	31.29
Enhanced pay for qualifications	R31.4	It is impracticable to require that those who obtain qualifications in the Institute should receive enhanced pay.	31.30–31.31
Education	R31.5	Solicitors should provide facilities for further education for their unadmitted staff, but such arrangements should not be compulsory.	31.33
Rights of audience	R31.6	There should be no general extension of the rights of audience of legal executives.	31.38
The Institute of Legal Executives	R31.7	Membership of the Institute for all legal executives should be encouraged, but should not be made compulsory.	31.41
The Institute and the Law Society	R31.8	Development of the formal arrangements for consultation between the Institute of Legal Executives and the Law Society should continue.	31.42

Chapter 32 The Structure and Organisation of the Profession: Barristers

Circuits	R32.1	The organisation and functions of the circuits should be reviewed.	32.54
Main problems	R32.2	The problems identified by the Pearce Committee have not yet been solved.	32.56–32.61
Inns	R32.3	The collegiate functions of the Inns are of continuing value and should be preserved.	32.62

			Paragraphs
Composition of the Senate	R32.4	In the interests of the public and of the profession the structure of the Senate should be changed.	32.67
	R32.5	The majority of the Senate should be elected, but the judges and the Inns should be represented on it as proposed in the text.	32.70–32.74
	R32.6	Committees of the Senate should include co-opted laymen.	32.77
Property of the Inns	R32.7	The properties of the Inns should continue to be vested in them, but they should be administered in accordance with policies laid down by the Senate.	32.76
	R32.8	Budgets of the whole of the revenue and expenditure should be prepared; a fair allocation of resources between competing demands can then be made.	32.78 (b)
	R32.9	Consistent rental and leasing policies should be adopted by all the Inns.	32.78 (d)
	R32.10	Provision for major rebuilding and renewal should be charged against revenue each year. Capital expenditure should not be charged to revenue.	32.78 (e) and 32.10–32.11
Charitable status	R32.11	The Inns' present charitable status should be preserved.	32.78 (f)
Salaries and pensions	R32.12	Uniform salary scales and pension arrangements should be adopted for all administrative staff of the Inns.	32.78 (g)
Subscription	R32.13	A compulsory subscription to the Senate by barristers should be introduced.	32.78 (h) and 32.59

			Paragraphs
Accountability	R32.14	There should be an annual meeting of subscribing members. A report incorporating audited accounts should be despatched to members before the meeting.	32.78 (k)
Retirement	R32.15	Members of the Senate and benchers should retire from active administrative work on reaching 70 years of age.	32.78 (l)
Cooperation with the Law Society	R32.16	Close cooperation and working arrangements between the two branches of the profession should be maintained in the future.	32.80

Chapter 33 Practising Arrangements: Barristers

Organisation of practice	R33.1	A barrister's practice should be so organised, subject to the approval of the Senate, as to ensure that it is efficiently and properly conducted.	33.30
	R33.2	The approval of the Senate should be sought for intended arrangements for practice if they are other than in established chambers.	33.30
	R33.3	In proper cases the Senate should waive the rule against practice from a barrister's residence.	33.32
	R33.4	The Senate should have regard to the matters mentioned in recommendation 33.1 above, when considering applications to the chambers loan fund.	33.33
Organisation of chambers	R33.5	Compliance with the chambers guidelines should be a term of all professional tenancies of Inn properties.	33.35

			Paragraphs
	R33.6	An undertaking should be given on call to comply with the rules of conduct and practice of the Bar; failure to comply should attract disciplinary sanctions.	33.36
	R33.7	The Senate or circuit leader should if necessary arbitrate in internal disputes in chambers.	33.36
Recruitment	R33.8	No formal limit should be placed on the numbers recruited to the Bar.	33.39
	R33.9	Full information should be available to potential recruits.	33.45–33.46
Shortage of seats in chambers	R33.10	The Senate should maintain an up-to-date register of vacancies in chambers, containing all relevant details.	33.47
	R33.11	For planning purposes, the Inns should be treated in the same way as university colleges in respect of the balance between professional and residential accommodation.	33.51
	R33.12	The Senate should develop vigorous financial and other policies to increase the amount of properly equipped accommodation available to barristers.	33.53
Size of chambers	R33.13	No arbitrary upper limit should be imposed on the number of barristers working in a set of chambers.	33.55
Partnerships	R33.14	Barristers should not be permitted to practise in partnership.	33.66
Silks and juniors	R33.15	The two-tier system of silks and juniors should be retained.	33.84

			Paragraphs
	R33.16	Steps should be taken by all concerned to ensure that, where appropriate, the abolition of the two-counsel rule is being observed.	33.86
	R33.17	The process of consultation adopted by the Lord Chancellor when making appointments should be extended and made known to the Bar.	33.89
	R33.18	Unsuccessful applications for silk should be reconsidered each year without further application.	33.90
	R33.19	QCs should be appointed on the basis of merit and not by reference to a fixed proportion of the practising Bar.	33.91
Court dress	R33.20	If changes in court dress are thought to be required, their nature should be settled between the legal profession, the judiciary and the courts administration.	33.100

Chapter 34 Barristers' Clerks

Employment of a clerk	R34.1	A barrister should not be compelled to have a clerk but he should be under a professional obligation to see that his practice is administered efficiently.	34.7
	R34.2	A barrister should not be prevented from having a spouse as clerk.	34.8
Terms of engagement	R34.3	Subject to the revisions relating to the remuneration of clerks stated in the text, the guidelines issued by the Senate in August 1977 for the engagement of clerks should be generally adopted as soon as possible.	34.12 and 34.25–34.26

			Paragraphs
Standards	R34.4	The methods manual issued by the Barristers' Clerks' Association (BCA) should be regularly revised and re-issued.	34.13
Pensions	R34.5	The Senate and BCA should use every means to encourage the provision of adequate pensions for the staff in chambers.	34.27
Efficiency	R34.6	Barristers should ensure that staff of chambers receive adequate training in modern techniques of accounting and administration.	34.30–34.31

Chapter 35 Discrimination

Sex discrimination	R35.1	The Law Society should issue guidance to firms on their obligation to maintain equality of opportunity for women and the Senate should include such guidance in chambers guidelines.	35.21
	R35.2	The Law Society should set up a body to monitor all matters relating to equality of opportunity for women.	35.22
	R35.3	The Barristers' Clerks' Association should issue guidance to its members on the lines of the Senate's guidance to heads of chambers.	35.23
	R35.4	Arrangements should be encouraged by which work may be undertaken part-time or at home.	35.24
	R35.5	Arrangements should be made in firms and chambers to assist mothers to return to work after childbirth.	35.25
	R35.6	The possibility of establishing a crèche in or near the Inns should be further explored.	35.26

			Paragraphs
	R35.7	Courses should be provided at need for women returning to practice; if necessary the governing bodies should for this purpose register as training agencies.	35.27
	R35.8	The governing bodies should have power to reserve seats for women and exercise it if necessary.	35.29
Race discrimination	R35.9	The governing bodies should appoint committees to deal with all matters relating to equality of opportunity for lawyers who are members of ethnic minorities.	35.40
	R35.10	Detailed information should be obtained about the recruitment of lawyers from ethnic minorities and their success in obtaining places in firms and chambers.	35.41
	R35.11	Written guidance should be given by the Senate and the Law Society to all chambers and firms concerning equality of opportunity for ethnic minorities.	35.42
	R35.12	Committees appointed under R35.9 should give assistance to members of ethnic minorities who have difficulty finding places in firms or chambers.	35.42
	R35.13	The governing bodies should have power to reserve places for members from ethnic minorities and exercise it if necessary.	35.43
	R35.14	Committees appointed under R35.9 should monitor the educational needs and problems of law students from ethnic minorities.	35.44

			Paragraphs
	R35.15	The governing bodies should include in their annual reports statistics and information concerning policies to promote integration and their implementation.	35.45

Chapter 36 Remuneration

Principles	R36.1	Remuneration of lawyers should be sufficient to provide a fair and reasonable reward for all classes of legal work, to attract recruits of the right calibre and to prevent loss of able practitioners.	36.2
Comparisons	R36.2	The earnings of young barristers are low. With this exception, the earnings of self-employed barristers and solicitors in private practice are not out of line with those in comparable occupations for which information is available.	36.24 and 36.29
Beginners at the Bar	R36.3	Financial support for beginners at the Bar should be such as to enable persons of suitable ability from all classes of society to set up in practice.	36.25–36.26
Pensions	R36.4	Provision for adequate pensions by barristers and solicitors in practice, though it cannot be made compulsory, should be encouraged by every means; provisions to this effect should be included in the partnership deeds of solicitors' firms.	36.46 and 36.71
Payment of fees	R36.5	The prompt payment of fees is necessary to avoid imposing hardship on young barristers.	36.51
Solicitors	R36.6	By comparison with earnings in other forms of salaried employment, those of salaried solicitors in private practice appear low.	36.63

			Paragraphs
	R36.7	The Law Society should do everything possible to persuade members of the profession to make adequate provision for staff pensions.	36.69
	R36.8	Incoming and outgoing partners should no longer engage in the purchase and sale of goodwill.	36.74
	R36.9	Any net increase in the burden of overheads must be reflected in solicitors' charges.	36.78

Chapter 37 Lawyers' Charges

Solicitors' non-contentious costs	R37.1	Laymen should be appointed to serve on the Law Society's assessment committees.	37.14
	R37.2	When a solicitor receives instructions to carry out work he should inform the client in writing of the basis of his charges in the manner set out in the text. A Professional Standard should be issued for this purpose.	37.15–37.17
	R37.3	For taxation purposes there should be one set of criteria for the assessment of the value of the work done.	37.18–37.19
	R37.4	In order to improve efficiency, all firms of solicitors should install an effective system of time costing.	37.20–37.22
Costs in civil proceedings	R37.5	Costs now taxed on a party and party basis should instead be taxed on a common fund basis; the party and party basis should cease to be used.	37.32

			Paragraphs
	R37.6	The numerous small items in a bill of costs should be replaced by including an appropriate amount for overhead expenses in the charges made by the solicitor and other fee-earning staff.	37.39
	R37.7	Improvements in the form of the bill of costs have recently been introduced. Further simplification is desirable on the lines indicated in the text.	37.40–37.44
	R37.8	Shortened procedures for taxation, on the lines indicated in the text, should be widely adopted.	37.45–37.50
Costs in criminal proceedings	R37.9	Notes should be issued for the guidance of justices' clerks when taxing costs.	37.56
	R37.10	The costs of legally-aided defendants in the magistrates' courts should be taxed, rather than assessed, when £500 or more is claimed.	37.59
	R37.11	Improved consistency as between the awards of assessment committees and Crown Court taxing officers should be achieved.	37.64–37.68
Barristers' charges	R37.12	The instructing solicitor should be entitled to discuss with the barrister personally the amount of his fee.	37.79
	R37.13	A barrister should be permitted to agree with a fee-paying client that he will accept either the fee marked on the papers or that allowed on taxation.	37.80
	R37.14	The solicitor should explain clearly to the lay client the arrangements relating to barristers' fees. A Professional Standard should be issued for the purpose.	37.82

			Paragraphs
	R37.15	Brief fees should be marked in three parts:— (a) for preparation (b) for the first day's attendance in court (c) for second and subsequent days of attendance.	37.84
	R37.16	Where a barrister's expenses of travelling and subsistence are large and payable by only one client, they should be separately identified and not comprised within the brief fee.	37.85
	R37.17	A barrister should maintain records of the time spent on preparatory work and on paper work for which a fee other than a standard fee is payable.	37.86
General issues	R37.18	A Fees Advisory Committee should be established with the composition and functions described in the text.	37.89–37.97
	R37.19	A taxing master should be appointed to coordinate taxation work in each circuit.	37.106
	R37.20	There should be a system of appeals on taxation on the lines stated in the text.	37.107
	R37.21	Information about taxation policy should be made available to the public and the profession.	37.108
	R37.22	The taxing authorities should be responsible for assembling information affecting taxation policy, for the use of the Fees Advisory Committee.	37.109

			Paragraphs
	R37.23	When the form of solicitors' bills has been simplified, sanctions should be imposed if there is inexcusable delay in sending bills.	37.115
	R37.24	Barristers should ensure that an efficient system of fee rendering and collection operates in their chambers and there should be sanctions in the event of inexcusable delay.	37.119
	R37.25	It should be normal practice in any lengthy matter for both solicitors and barristers to receive regular payments on account in respect of work done, whether from legal aid or private funds.	37.120–37.123
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Chapter 39 The Future of Legal Education

Entry	R39.1	A law degree should be the normal but not the exclusive mode of entry to the profession.	39.11
	R39.2	Non-graduates under 25 should be admitted to the solicitors' branch of the profession on the basis stated in the text.	39.15
Academic and vocational stages	R39.3	Although separate vocational courses are necessary at present on practical grounds, the possibility of a combined course should be considered if practical difficulties can be overcome.	39.34
	R39.4	Teaching methods and the style of examinations should discourage cramming.	39.44–39.46

			Paragraphs
	R39.5	Social welfare law and company law should be taught at the academic or vocational stage or possibly at both stages.	39.48
	R39.6	The collegiate life in the Inns should be developed, and the arrangements for dining reviewed, as proposed in the text.	39.54–39.55
Pupillage	R39.7	A record of training in prescribed form should be kept during pupillage.	39.64
	R39.8	The Senate in conjunction with the Inns should set up arrangements, supported by appropriate records and statistics, for:— (a) approving the suitability of pupil masters; and (b) ensuring that pupillages are found for students who require them.	39.65–39.66
	R39.9	The practice of treating a pupil as if a pupil of chambers is to be encouraged, but should not affect the personal relationship and obligations between pupil and master.	39.68
	R39.10	At the end of the first six months of pupillage, the pupil should lodge with the appropriate authority his training record together with a report from the master confirming the pupil's fitness to practise.	39.69
	R39.11	Call to the Bar and authority to practise should be deferred until satisfactory completion of the initial period of pupillage.	39.69
	R39.12	Authority to practise should take effect at the time it is given, whether or not the formal ceremony of call to the Bar has taken place.	39.70

			Paragraphs
	R39.13	Students should be trained to express themselves in writing and speech clearly and concisely and to avoid prolixity. A barrister should not be authorised to practise at the Bar unless he can express himself clearly.	39.71
Articles	R39.14	The recommendations of the Law Society's Working Party on Articles, with the amendments shown in the text, should be implemented.	39.75–39.76
	R39.15	The Law Society should ensure that solicitors who accept articled clerks are able to give them adequate training.	39.77
	R39.16	After a short period the success of the new arrangements for articles should be assessed; if they are not implemented or are unsuccessful, a new system of training of solicitors should be introduced.	39.78–39.80
Continuing education	R39.17	A programme of continuing education should be developed and the introduction of an obligatory system kept under review.	39.90
Finance: solicitors	R39.18	It is hoped that local education authorities will in future make grants to non-law graduates at the academic stages.	39.97
	R39.19	Grants for the vocational stage should be mandatory.	39.98
	R39.20	Grants should be available whether a course is run at a polytechnic or at a professional institution.	39.100
	R39.21	Adequate minimum salaries for articled clerks should be fixed.	39.101

			Paragraphs
Barristers	R39.22	The Senate should review the level of admission and call fees in the light of income received from increased compulsory annual subscriptions.	39.105
	R39.23	Mandatory grants for the vocational stage should extend to the first six months of pupillage.	39.108
	R39.24	Subject to Recommendation 39.23, the Senate should introduce a system by which pupils may be supported by non-repayable means-tested grants.	39.111
	R39.25	The Senate's scheme of support for starters at the Bar by a revolving fund providing low interest bearing loans is welcomed.	39.112
	R39.26	The Advisory Committee on Legal Education should be reconstituted, as proposed in the text, as the Joint Committee on Legal Education.	39.116

Chapter 40 Northern Ireland—Introductory

Northern Ireland	R40.1	Subject to specific recommendations made in Chapters 41 and 42, the recommendations made in Parts I to IV of the report should apply in Northern Ireland.	40.1

Chapter 41 Legal Services in Northern Ireland

Ministerial responsibility	R41.1	Ministerial responsibility for all publicly-funded legal services in Northern Ireland should be transferred to the Lord Chancellor.	41.15
Northern Ireland Council for Legal Services	R41.2	A Northern Ireland Council for Legal Services should be established to replace the existing Legal Aid Advisory Committee.	41.16–41.17

			Paragraphs
CABx	R41.3	CABx in Northern Ireland should be given financial support for development.	41.19
Rota schemes	R41.4	More rota schemes for solicitors in CABx should be established; a general waiver should be granted to such solicitors; a full-time solicitor should be employed at the area office; more technical information is needed by the CABx in the province.	41.20–41.21
Law centres	R41.5	Citizens' law centres in Northern Ireland should be developed and organised in the same way as is proposed in England and Wales.	41.25
Duty solicitor schemes	R41.6	With a view to its general adoption in the province in due course, the Incorporated Law Society should introduce a pilot duty solicitor scheme.	41.27
Legal aid	R41.7	Subject to certain specific modifications, the recommendations concerning legal aid which are contained in Part II of the report apply to Northern Ireland.	41.31
	R41.8	The Legal Aid Department of the Incorporated Law Society needs more staff and better accommodation to overcome serious delays which have taken place in the administration of the scheme.	41.36
	R41.9	Contributions should, at the discretion of the court, be payable by convicted legally-aided defendants in the Crown Court.	41.39
	R41.10	Publicity for the legal aid scheme should be improved.	41.43

Paragraphs

Chapter 42 The Legal Profession in Northern Ireland

Indemnity insurance	R42.1	Indemnity insurance for barristers should be raised to £50,000.	42.13
Practice Regulations	R42.2	The Northern Ireland Solicitors' Practice Regulations should be amended in the manner described in the text.	42.15–42.16
Disciplinary system: solicitors	R42.3	The investigation and disciplinary procedures should be changed as indicated in the text to conform as nearly as possible to those recommended for England and Wales.	42.21–42.25
Complaints	R42.4	The Incorporated Law Society should provide information for the public about complaints procedures; it should analyse and publish to its members details of complaints received and their outcome.	46.26
Barristers' discipline	R42.5	The rules of conduct and etiquette should be amended as recommended in the text.	42.28
	R42.6	Complaints against barristers should be investigated and determined as recommended in the text.	42.33–42.36
Council of the Incorporated Law Society	R42.7	The Council of the Incorporated Law Society should be increased in numbers.	42.42
Local solicitors' associations	R42.8	Solicitors should be encouraged to join their local associations.	42.43
Staffing and organisation of the Incorporated Law Society	R42.9	When the necessary additional staff are recruited, the secretariat of the Incorporated Law Society and its Legal Aid Department should be restructured.	42.44

			Paragraphs
Membership of the Incorporated Law Society	R42.10	Possession of a practising certificate should entitle a solicitor to have voting rights and to participate in the work of the Incorporated Law Society.	42.45
The Bar Library	R42.11	Improvements should be made in the Bar's administrative arrangements.	42.52
	R42.12	Additional accommodation is urgently needed for the Bar Library. When this is available, independent advice should be sought to plan the layout and the administration efficiently.	42.53
Crumlin Road courthouse	R42.13	The quality of legal services is diminished by conditions in the Crumlin Road courthouse and improvements are required in the public interest.	42.55
Formation of a Senate	R42.14	Benchers should retire at the age of 70.	42.57
	R42.15	A Senate, as proposed in the text, should be created at an early date, to become the governing body of the barristers' branch of the profession. The reorganisation should be completed by 1980.	42.59–42.61
Silks and juniors	R42.16	The selection of silks should be reorganised as stated in the text.	42.63
Joint committee	R42.17	Consultation between the two branches of the profession should be improved and an effective joint committee established.	42.65
Legal publications	R42.18	Up-to-date legal text books and publications are urgently needed in Northern Ireland, as is technical material for CABx. Financial assistance from public funds should be provided for these purposes.	42.66–42.68

			Paragraphs
Fees Advisory Committee	R42.19	The terms of reference of the Fees Advisory Committee should embrace Northern Ireland as well as England and Wales.	42.76
Taxation	R42.20	Taxation of criminal legal aid costs above £500 should be undertaken by the Taxing Master.	42.79
	R42.21	Supporting staff for the Taxing Master will be necessary.	42.80
Barristers' fees	R42.22	The rules relating to barristers' fees should be amended as set out in the text.	42.83
Education and training	R42.23	The present arrangements for education and training should be reviewed in three years' time.	42.93
	R42.24	The review should determine whether the Institute of Professional Legal Studies then has a requirement for additional staff and resources.	42.96
	R42.25	Arrangements should be put in hand to provide adequate instruction in social welfare law.	42.97
	R42.26	The vocational course should be lengthened.	42.98
	R42.27	Arrangements should be made for training and monitoring the progress of newly-qualified solicitors during the period of restricted practice.	42.99
	R42.28	Comparable arrangements should be made for pupil barristers.	42.100
	R42.29	Arrangements should be made for providing financial assistance for pupils.	42.101–42.102

			Paragraphs
	R42.30	The Council of Legal Education for Northern Ireland should assume responsibility for coordinating an adequate programme of post-qualification education for both branches of the profession.	42.104

Chapter 43 Matters outside our Terms of Reference

Matters outside terms of reference	R43.1	The matters listed in the text should be examined by an appropriate body with a view to improving court and legal procedures and thereby saving time and expense.	43.1 and 43.7

Chapter 44 A Programme for the Future

Future action	R44.1	Future action is required as stated in the text.	44.2 and 44.11

ALL OF WHICH WE HUMBLY SUBMIT FOR YOUR MAJESTY'S GRACIOUS CONSIDERATION

Henry Benson (*Chairman*)
Ralf Dahrendorf
Leonard Edmondson
Peter Goldman
J T W Haines
Tom Harper
Mark Littman
Susan Marsden-Smedley
Peter Oppenheimer
Sally Ramsden
Alwyn Roberts
David Seligman
Sydney Templeman
Darwin Templeton
W M H Williams

John Heritage — *Secretary*

David Lewis
John de Quidt
Rodney Towner
— *Assistant Secretaries*

8th June 1979

On certain issues before the Commission notes of dissent have been written by some of its members and are set out in the following Part of the report.

PART VIII

Notes of Dissent

PART VIII

Contents

The notes of dissent contained in this Part of the report are concerned with the subjects shown below. The order of these notes of dissent conforms with the sequence of chapters in the report. Where a note of dissent deals with more than one topic, the opening topic determines the position of the note in the sequence.

Subject	*Paragraphs*
The civil legal aid and "green form" schemes	ND1. 1– 2
Legal aid before Industrial Tribunals	ND2. 1– 3
Exclusion of the TUC from financial assistance to train trade union members as advocates before tribunals	ND2. 4– 6
Barristers' clerks' remuneration	ND2. 7– 9
Control by the Master of the Rolls over the rules of the Law Society	ND2.10–11
Practising certificates and membership of the Law Society	ND2.12–13 ND6. 1– 6
Rights of audience	ND2.14–16 ND5.13–34 ND7. 7– 9
Conveyancing	ND3. 1– 6 ND4. 1–17 ND5. 3–12
The silk system	ND5.35–37 ND7.10
Education and training	ND5.38–40 ND7. 1– 6

Note of Dissent by Miss Marsden-Smedley

ND1.1 Regretfully, I am not able to associate myself with the Commission's proposals in Chapters 12 and 13 for altering the levels of eligibility for legal aid and "green form" assistance and the methods of calculating them; for modifying the means of assessment and collection of contributions; and for reducing the liabilities of assisted and unassisted parties for costs. I fully support the Commission's objectives of widening the coverage of the scheme and reducing the cost of its administration. But, in the absence of detailed data about the effects of the proposals on the operation of the scheme and about their cost (data which was not available to us), I am not convinced that all the methods proposed would be practicable or cost-effective; or that there might not be better methods of achieving these aims.

ND1.2 I am concerned also at the failure to give any guidelines as to priorities among the improvements suggested. I would put as the first priority the need to open up legal services to those groups in society who are least accustomed to using them. This leads me to disagree with the method proposed by the Commission for assimilating the financial provisions of the green form and legal aid schemes; I would favour, on the contrary, extending the principle of a low-cost scheme for initial advice and assistance, and indeed lowering the current upper contributions to the green form scheme, so as to open the door to legal services as widely as possible. I would give lower priority to proposals to raise the legal aid eligibility income limits across the board, now that there has been a recent substantial improvement in these; and I am doubtful about the Commission's proposals to remove the upper limit entirely although I would welcome a discretionary element which would enable people above the upper limit to obtain legal aid for cases that are clearly going to be expensive. Although I think that capital limits should be increased, I consider that the figure of £10,000 favoured by the majority is higher than justified. Finally, I feel I would need more data about the likely cost of the Commission's proposals to reduce the liability for costs of various assisted and unassisted parties before I could give my support, although I applaud their fairness in principle. Among these latter proposals, I would put first the need to reduce the harsh operation of the statutory charge.

Note of Dissent by Mr. Edmondson

(Paragraphs ND2.4 to ND2.6 and ND2.14 to ND2.16 are supported by Mr. Haines)

Legal aid before Industrial Tribunals

ND2.1 I dissent from the Commission's recommendation that legal aid should be granted to enable lawyers to be engaged as advocates before Industrial Tribunals. I do so on the grounds that I consider lawyers should have no place in the field of industrial relations. The presence of lawyers as advocates has destroyed the intended inquisitorial procedure of the tribunal and greatly lengthened the proceedings.

ND2.2 From 1940 to 1946 under the Essential Works Order we had tribunals to which any worker, whose employment was terminated for any reason, could appeal. Those tribunals were composed of a lawyer as chairman and two lay members. The tribunal did not award compensation for loss of employment but could and did order the employer to reinstate the worker and pay full wages for the period he was away from work. Lawyers were not allowed to appear as advocates and the tribunals operated very efficiently, being able to complete several cases in one day.

ND2.3 At present the average time taken by Industrial Tribunals is more than one day per case. The Industrial Tribunals would function much better and less expensively if lawyers were completely excluded from acting as advocates.

Exclusion of the Trades Union Congress from financial assistance to train trade union members as advocates before tribunals

ND2.4 The Commission recommends that public money should be made available to organisations, which provide lay representatives before tribunals, to train the lay representatives to become competent advocates but the Trades Union Congress should be excluded from receiving such financial aid on the grounds that trade union advocates represent only their own members. At the same time the Commission recommends that organisations which provide lay advocates will act as filters and decide which cases should be appropriate for lay representation and which cases should be appropriate for application for legal aid.

ND2.5 It will be seen from the above that the TUC affiliates will be the major organisations in controlling the situation to prevent a massive number of unjustifiable claims for legal aid which would be impossible for Legal Aid Committees to handle.

ND2.6 I disagree with the Commission's recommendation on the grounds that it would be entirely wrong that a large organisation like the TUC should through its affiliates be rendering such an extensive and useful public service whilst being

denied the financial assistance which the Commission recommends should be made available to other organisations to train advocates.

Barristers' clerks' remuneration

ND2.7 I am of the opinion that the Commission has exceeded its terms of reference when recommending that the clerk should receive a salary and any additional payment should not be any more than one per cent of the gross fees of the barrister. I accept that a case can be made out for a clerk to receive a fixed salary plus a superstructure calculated from the earnings of the barrister because if the barristers in chambers are not earning anything it would be wrong for the clerk to be denied any income. As an employee he should be entitled to at least a fall back rate in the form of a fixed salary.

ND2.8 In this note of disagreement I am not making out a case that a superstructure payment of one per cent of the barristers' fees will be too low or too high and I am not expressing any opinion whether the present payment of five per cent of the barristers' fees is too high or too low. What is very important is that the present arrangement whereby the clerk receives a minimum of five per cent of the barristers' fees was agreed between the Barristers' Clerks' Association and the Bar Council. It is, therefore, a collective agreement applicable to all clerks and one which must be honoured. Any alteration or rescinding of that agreement can be made only through negotiation and subsequent agreement between the parties which made the original agreement.

ND2.9 It is an unwarranted interference in free collective negotiations and in my opinion beyond the terms of reference of the Commission to lay down a ceiling on a future agreement to be negotiated between representatives of employees and employers.

Control by the Master of the Rolls over the rules of the Law Society

ND2.10 The Commission recommends that the Master of the Rolls should continue to have the sole authority to allow or disallow any proposed alterations to the rules of the Law Society providing the Master consults certain bodies before reaching a final decision.

ND2.11 I accept there should be some public control over the rules of the Law Society to prevent the adoption of any rule which may be prejudicial to the public interest. I do not agree, however, that such power should be vested in one person, particularly a member of the judiciary; and mere consultation with other bodies does not really widen the control beyond one person.

Practising certificates and membership of the Law Society

ND2.12 I disagree with the recommendation of the Commission on the grounds that it is neither one thing nor the other. The Commission recommends that the

granting of a practising certificate should impose on the recipient the obligation to make a payment, part of which will go to the Law Society, then go on to say that such a payment will not make the individual a member of the Law Society; but concludes by recommending that such individuals who are not members should be allowed to vote in all elections and hold office in the Law Society.

ND2.13 I would have no objection to membership of the Law Society being a condition to practise but as the Law Society does not desire compulsory membership I would not wish to impose it on the profession. I do not agree, however, to non-members having the right to vote and hold office in the Law Society. Any solicitor who desires to participate in the affairs of the Law Society should join the Society and pay his or her contributions.

Extension of solicitors' rights of audience into the Crown Court

ND2.14 The Commission recommends that there should be no extension of solicitors' rights of audience into the Crown Court in England and Wales even in pleas in mitigation.

ND2.15 One of the arguments advanced in written and oral evidence against extending the solicitor's right of audience was that to maintain a high standard of advocacy it was essential that the right of audience in the highe rcourts should be confined to those who specialised in advocacy. It was suggested that solicitors being general practitioners cannot spend as much time as barristers to act as advocates and therefore are unlikely to reach the same high standard. I agree that a high standard of advocacy should be maintained but find it difficult to believe that where a defendant has pleaded guilty and the advocate is limited to pleading for leniency that the average solicitor, who is an experienced advocate in the lower courts, would be incapable of presenting the case with the skill and advocacy equal to that of a barrister.

ND2.16 Another argument advanced was that if the solicitors' right of audience was extended into the Crown Court many barristers would be deprived of work and many solicitors would be overworked. This could possibly happen in a completely uncontrolled situation. The two professions, however, are not completely uncontrolled. The Bar Council takes a pride in how it controls the Bar and the Law Society takes a pride in controlling the solicitors' profession. Should the solicitors' right of audience be extended it should not be difficult for the two organisations to reach some arrangement to ensure that the extension works smoothly for the professions; even if it required phasing in the extension and possibly regulating entry to the professions.

Note of Dissent by Mr. Goldman

ND3.1 I dissent from the view that Parliament should preserve the solicitors' exclusive privilege to conduct conveyancing for gain. Monopolies and restrictive practices are seldom in the public interest, however lucrative for the self-interest of those who exercise and defend them.

ND3.2 The discipline and expertise of a profession undeniably provide one form of consumer protection, and those who want it may always have it. But the advantages of employing a solicitor when buying or selling a home are not always so overwhelming that people should be forced to employ one (if they employ anyone) whether they want to or not. The best form of consumer protection is healthy and innovative competition.

ND3.3 In recent years a few organisations outside the solicitors' profession have managed to provide cut-rate conveyancing of a kind. Operating on the fringes of the law, they have not done well. What they have helped to do is highlight a major problem of our modern society and a lacuna in its provision of commercial services.

ND3.4 Why should the actual processes of buying, selling and moving home—something of importance to a dramatically increased and increasing proportion of people—remain so preposterously cumbersome and diabolically expensive? Why, in particular, has no business enterprise ever offered the public a full streamlined service of estate agency, surveying, finance and even removals, together with the transfer of title and money? Such enterprises are surely needed. But the law does not allow them to exist. It is my contention that the law has become out of date.

ND3.5 I am not suggesting that all controls on property transfer can be thrown away. The Government should proceed carefully though steadily towards opening up the market. A licensing system would be necessary, and I believe the report of the Commission overstates the problems and risks involved in this. The Insurance Brokers Registration Act 1977 and the Estate Agents Act 1979 contain provisions on which suitable protection for the public could be modelled when regulating the services of licensed conveyancers. Strict financial conditions, standards of training and experience, and possibly the scope of the work to be conducted by non-solicitors could be within the discretion of the licensing authority.

ND3.6 The public needs some such safeguards against the basic dangers of fraud, loss and incompetence. But at the same time it needs, and should be allowed to enjoy, the benefits of fair and lively competition and the basic freedom to choose.

Note of Dissent by Mr. Haines

ND4.1 The decision of a majority of my colleagues to recommend the continuation of the solicitors' exclusive rights in domestic conveyancing—which, for convenience, I will describe as a monopoly—is unacceptable to me. It flies in the face of public opinion, public expectation and the public interest. It is made more unacceptable by the proposals to strengthen the monopoly, to increase the penalties upon those who seek, for profit, to infringe it and further to buttress the structure with the re-introduction of a form of scale charge.

ND4.2 If I thought it was in the public interest to defy opinion and deny expectation I would readily do so. But no argument has persuaded me that that is the case. On the contrary, I believe the public interest is suffering because of the maintenance of the monopoly. The detrimental effect is not only in the field of house purchase but upon the availability of legal services as a whole, and I would expect that effect to increase as the volume of business and profit from conveyancing grows.

ND4.3 I am less convinced than my colleagues that solicitors' charges for conveyancing are not excessive, but solicitors are not the only or, indeed, the principal beneficiaries of the process of buying and selling a house. In a large and growing proportion of transactions (at the time of writing) the solicitor receives less than does the Government through Stamp Duty and a good deal less than the estate agent. If our terms of reference had not confined us to the solicitors' role we might have asked how governments reconciled, on the one hand, substantial incentives to home buyers by way of loan, grant and tax relief yet, on the other hand, maintained a punitive Stamp Duty which added greatly to the cost of moving house.

ND4.4 It was from the Stamp Act of 1804 that the solicitors' monopoly derived. A government which needed its revenues to pay for the Napoleonic war found it could more conveniently collect the duty by confining conveyancing to a single profession. It was a fiscal requirement which has since been elevated into a legal necessity. But I cannot see why, in all circumstances, conveyancing should be treated solely as a legal problem. It is true that there may be *attendant* legal problems—for example, if the proceeds of sale have to be divided because of a break-up in the matrimonial home, or if it is part of the settlement of an estate, or if the imposition or removal of covenants is involved—in which case it would be only sensible, even essential, to employ a solicitor. But that would not be the usual case.

ND4.5 Conveyancing is now big business and is growing bigger every month. In 1976 it was estimated that solicitors' gross fees for conveyancing amounted to £300 million and accounted for half of the profession's income. The number of owner-occupiers continues to rise in both absolute and percentage terms and so, no doubt, does the aggregation of the fees. As is pointed out in Chapter 4

of the report, in 1901 only 10 per cent of homes in England and Wales were owner-occupied. Today, when the population has increased by nearly 20 million, the percentage has increased to over 50. Proposals of the present Government to sell council houses and to restrict future council building for rent—as well as the irreversible decline in privately-rented accommodation—is bound to accelerate this growth.

ND4.6 In the circumstances, the temptation for some solicitors to become, in effect, licensed conveyancers to the exclusion of general legal practice, will inevitably grow. Already some offices do little besides conveyancing, which is understandable—if deplorable—when conveyancing offers a return much greater than almost any other form of legal activity.

ND4.7 In my view this has an effect upon the availability of legal services for the population as a whole. In the Commission's report the figures for the distribution of solicitors' offices is given. They bear repeating. In Guildford and Bournemouth there is one solicitors' office for each 2,000 of the population. In Tower Hamlets, a London borough to whose residential areas the image of Acacia Avenue doesn't apply, the figure is one to 16,500. Salford, in Greater Manchester, has one in 26,000 and on Merseyside, where social and, consequently, legal, problems and needs might be thought to be at their most acute, Bootle has one in 37,000 and Huyton has one in 66,000. To each town according to its need is a principle which clearly does not work.

ND4.8 Legal aid, relatively, pays badly. Conveyancing pays extremely well, besides being easier, less wearing and less time-consuming. Some solicitors, it is said, have only found it possible to undertake legal aid work because of their substantial income from conveyancing. But this leads to an intolerable situation. An accused person should not have his defence dependent in any way upon the income a potential solicitor might draw from conveyancing. Equally, I see no reason why a young couple buying a house should make a payment which, in effect, would subsidise the defence of a man who subsequently burgles it. I hope the proposals we make for proper payment for legal aid work will be accepted and eliminate this consideration once and for all. But by so doing it will further weaken the argument for the retention of the conveyancing monopoly.

The scale charge

ND4.9 The scale charge for conveyancing was abolished in 1973 at the instigation of Lord Hailsham, then (and, again, now at the time of writing) Lord Chancellor, but it is clear that it has continued to operate informally. In an "industry" where the monetary value of the "product" has risen faster than the level of prices generally, the existence of a scale or standard charge or whatever it is called and whether it is formal or informal, represents something rather better than inflation-proofing. Our consultants found a relationship between the

price of a house and the time taken to complete the conveyance. I find that difficult to accept. I see no reason why houses which cost on average £20,000 four or five years ago should take longer to convey because inflation has put them into the £30,000 bracket. I suspect that we are dealing with an informal scale related to value and justified by an increase in the time spent on completion of the conveyance.

ND4.10 The argument for the recommendation of a "standard" (i.e., scale) charge is that the value of the property conveyed is a proper consideration to be taken into account in assessing the fee. That may be so in commercial conveyancing, where the responsibilities of a solicitor are much greater, but I cannot accept it for an ordinary domestic conveyance. The average time for such a conveyance is about four hours. The time occupied by the solicitor or his staff and the skill required are the proper criteria, not the value of the property concerned. In many cases, the intervention of a solicitor is minimal and the work is done by unqualified members of his staff. The fee charged should reflect that fact, whether the monopoly is ended or not. In any case, scale or standard charges could hardly be expected to survive if the monopoly disappeared. They inhibit competition and would wither in the face of it.

The alternative to monopoly

ND4.11 It is argued in favour of the monopoly that people require a high degree of protection against fraud, dishonesty and incompetence when undertaking a transaction which might be—though is not always—the most expensive of their lives. But it does not follow from that that *complete* protection should be ought. If we are to give people a choice in how they spend their money, if we are to encourage them to make a choice—even, so far as conveyancing is concerned, if we are to give them a choice where none exists today—then some ext a risk may be involved. It is not possible at all times to save everyone from the consequences of financial transactions freely entered into. The argument for complete security leads logically to a State Conveyancing Service, fully computerised and non-profit-making, with all property compulsorily registered with the Land Registry. We have not considered that.

ND4.12 If the monopoly goes, what should take its place? Certainly not a free-for-all; I agree with my colleagues on that.

ND4.13 A system of licensed conveyancers is the most obvious answer and the one that I favour. The Office of Fair Trading or a similar body should be the licensing authority, with a statutory duty to satisfy itself that the applicant for a licence had the necessary funds and insurance cover to protect the clients' interests. The conveyancer would have to show a proper degree of competence in conveyancing practice, such as evidence that he or she had passed an examination in conveyancing law similar to that open to solicitors or legal executives.

ND4.14 There is no doubt that the risks that might exist for the general public through an incompetently-conducted conveyance rest largely in unregistered titles. For the first few years, at least, it might be better to confine conveyancing by non-solicitors to property registered with the Land Registry, where title to the property is sure. This would be an important exclusion, though not a majority one. The whole of England and Wales is expected to become an area of compulsory registration during the 1980s. Already some 75 per cent of the country is so covered and some 80 per cent of transactions are in registered property.

ND4.15 The ending of the monopoly might also be the key to a development unknown to this country, whereby big corporations, such as banks, insurance companies or building societies, offered a package deal to home buyers, covering mortgage, conveyance, removal costs and bridging loans if necessary. That may be a long time coming, but in a market where gross profit on all these operations greatly exceeds £1,000 million a year, the opportunity is obvious. If it were no cheaper than the sum of the individual operations of today, people may still prefer to pay for the convenience. Certainly the rapid growth of computer technology would make such a development possible.

ND4.16 It is argued that the record of non-solicitors is not a happy one and that they compare badly with solicitors. Some firms have failed. Others, it is said, have aroused suspicions about their methods and their competence (though, to be fair, complaints about them appear to have been remarkably few). But no-one should be surprised. Every non-solicitor conveyancing firm has had to operate under the enormous difficulties of a law designed to prevent them operating. I am certainly not convinced that ending the monopoly will lead to a school of sharks descending on innocent prospective house buyers, anxious to devour them.

ND4.17 No firm in this business could survive suspicions of dishonesty. Custom and practice would almost certainly ensure that the vast bulk of conveyancing business for a long time to come would be handled by the solicitors' profession. The only hope for a firm of non-solicitor conveyancers would be if it could offer a service which was not only as good as that of the solicitor but was also significantly cheaper. If it doesn't it won't survive and the lawyers will maintain their monopoly. But if they do, it will be because the public has chosen to bestow the monopoly upon the solicitors. At the moment the customer has no choice.

Note of Dissent by Miss Marsden-Smedley, Mr. Oppenheimer and Mr. Seligman

Introduction

ND5.1 We cannot endorse the Commission's recommendations on certain key issues affecting the legal profession. We believe that, at the moment, both the quality of service rendered by the profession and its willingness to respond to the public's changing needs are adversely affected by various restrictive arrangements with which it is protected. The professions are currently exempted from the legislation which controls restrictive trading practices, but this does not mean that all the arguments against such practices are inapplicable to a profession. We consider that, with respect to the legal profession, there is a clear case in the public interest for relaxing some restrictions.

ND5.2 Our proposals concern: conveyancing; rights of audience; the silk system; and common training for the two branches.

Conveyancing

ND5.3 We have no doubt that in the past solicitors' exclusive rights to convey land for gain ("the conveyancing monopoly") has operated in the public interest. Before the spread of land registration and the simplifications introduced into proving title, the fact that conveyancing was done by lawyers meant that defective titles were rare. Moreover, the probity of solicitors, backed by strict professional rules and a compensation fund, ensured the safety of clients' money and facilitated house purchase transactions by enabling other institutions to accept solicitors' undertakings.

ND5.4 We agree with our colleagues that public criticism of the solicitors' monopoly is frequently ill-founded and reflects inadequate appreciation both of the responsibility carried by conveyancers and of the costs other than conveyancing charges which are incurred in buying and selling a house. However, circumstances have been changing, and for reasons outlined below we question whether the public interest will in future be best served by continuance of the present monopoly.

ND5.5 First, the monopoly has led the profession to become over dependent upon a single source of income. Conveyancing comprises about half the total earnings of solicitors (Law Society's remuneration survey, see Volume II section 16 of the Commission's report); domestic conveyancing in 1966 contributed more than nine-tenths to this (National Board for Prices and Incomes report No. 54 1968, Cmnd 3529), a proportion that is unlikely to have changed significantly. With so reliable and easily earned a source of income, solicitors lack the incentive to explore new areas of work. The conveyancing monopoly weakens the profession's response to the demand—emphasised in Chapter 4

of the Commission's report—for a broader-based legal service, covering a wider area of work and giving service in neighbourhoods where the predominant tenure is not owner-occupation.

ND5.6 This point is reinforced by the evidence on manpower structure in solicitors' offices. Contrary to popular supposition, there is no evidence that solicitors are increasingly handing over the task of conveyancing to legal executives. The opposite appears to be the case. From 1966 to 1976, the number of solicitors in private practice increased from 18,600 to 27,200. It is not clear whether the number of legal executives in solicitors' offices increased at all over that period; but it seems certain that the ratio of legal executives to solicitors declined (paragraph 31.9 and 31.10 of the report). It is highly probable that solicitors are now doing conveyancing work of the type which was formerly being done by legal executives.

ND5.7 Yet the need for legal skills in conveying property has decreased. Skilled advice, legal or otherwise, is now needed mostly on ancillary matters such as finance, tax or matrimonial questions. As regards the conveyancing itself, the spread of land registration has greatly reduced the legal element in the majority of land transfers. The conveyance of a domestic registered land title is in most instances straightforward, and can be entrusted (as in practice it often is) to people with more limited qualifications than solicitors, provided that they are trained to spot any entries on the register or answers to requisitions that are out-of-the-ordinary and refer them to someone with the necessary expertise. Indeed, office computers and word processors could perform the task of selecting and supplying the necessary text for letters or other documents at each stage of a conveyance and the computer could be programmed to alert the conveyancer to points which might vary in the course of a normal transaction (Guardian Gazette 28th March 1979 p.319). In addition, as has been pointed out in the main report (annex 21.1), the law could be simplified in a number of respects and transactions consequently made more straightforward.

ND5.8 In the longer term there is the prospect of computerising registered land titles. This is a major task, involving the conversion of millions of records at the Land Registry. There are technical difficulties such as the conversion of file plans which use colour to a digitalised black and white system, and the improvements that may be necessary in Post Office teleprocessing. A method will be needed for protecting the system against misuse when numerous users have access to it for the purpose of altering records. We are informed that the required controls are technically feasible and also that the cost of computerisation is being rapidly brought down by advances in microelectronics. The ultimate objective would be a system of conveyancing by means of authorised terminals in any approved office in the country linked to the Land Registry computer. This would enormously simplify and speed up searches, enquiries and the making of transfers. The conveyancing process would be transformed.

Our proposals

ND5.9 In short, we think that the conveyancing monopoly has unfavourable effects on the supply of legal services by solicitors, including perhaps the cost and efficiency of conveyancing itself; and that adequate safeguards for the public can now be maintained without the monopoly. We propose that the restrictions on the right to convey land be relaxed in respect of transfers of registered residential property. Conveyancers of such property should be required to be licensed by the Director General of Fair Trading. The Director already has responsibility for other participants in the property market, such as mortgage brokers, estate agents and credit grantors. We envisage that persons and organisations who fulfilled certain conditions would be licensed to carry out conveyancing. The conditions would include:—

(a) maintenance of a client account with an authorised institution;

(b) provisions for audited accounts and for accountants' certificates;

(c) either sufficient financial resources to meet any claim for negligence or dishonesty, or insurance against negligence together with bonding against dishonesty;

(d) evidence of competence.

ND5.10 The last requirement is the only problematic one. Solicitors' firms would be granted exemption from licensing. Other conveyancing bodies would have to have a certain proportion of appropriately qualified people on the staff. These could be solicitors holding practising certificates or, alternatively, legal executives holding the qualification of the Institute of Legal Executives in conveyancing and having had a minimum of, say, 5 years' practical experience in this work. This would have the beneficial side-effect of encouraging more legal executives to acquire their Institute's professional qualification. Standards would have to be laid down covering such matters as conflict of interest and referral to solicitors for specialised advice.

ND5.11 As regards computerisation of registered titles, we consider that the government should institute a feasibility study without delay, to establish the practicability and cost of computerisation with a view to making the necessary investment.

ND5.12 We believe that one result of implementing these proposals would be to encourage some of the institutions involved in the housing market, such as building societies, insurance companies and local authorities, to offer conveyancing services either directly or through a subsidiary organisation. Hitherto the lending institutions have been unwilling to rock the boat by suggesting that they might be interested in such a development. We believe that this attitude would gradually change if the government took the initiative by altering the law, and particularly if prospects for computerisation became more definite. Such

organisations would be better able than the solicitors' profession to help finance advances in technology. At the same time, the prospect of competition should spur the profession to improve its own services, perhaps using in-office computers at first. Solicitors have the confidence of the public and many people would doubtless continue to consult a solicitor over a house purchase or sale, rather than a licensed conveyancer, building society or local authority. But they should have the choice and with it the possibility of competing services which may be more efficient and economical.

The Bar

ND5.13 In this section we propose modifications in rights of audience and in the silk system. We wish to make it clear that we are not "fusionists". We think that a separate Bar is a valuable institution which must continue to flourish. We consider, however, that the public interest would be better served, and the existence of the Bar not jeopardised, by the modification of some of the restrictive rules which currently protect the Bar.

ND5.14 The most important of these rules is the restriction of rights of audience in the higher courts to barristers. Coupled with this is the professional rule which forbids barristers from accepting lay clients direct (the "access rule"). There are also subsidiary rules such as those forbidding barristers from interviewing witnesses and prohibiting the holding of conferences at solicitors' offices save in exceptional circumstances.

ND5.15 We doubt whether all these restrictions are essential to sustain a healthy Bar. The experience of other common law jurisdictions in the Commonwealth, such as New Zealand and several Australian states, suggests otherwise. A consultant branch of lawyers emerges because it is needed and the rewards for providing the service attract the necessary recruits. In Northern Ireland, where there are demarcation rules (though fewer than in this country), it is noticeable that the Bar raised no objection to solicitors being granted rights of audience in the recently established Crown Court system in the province.

ND5.16 We do not here advocate the abolition of all demarcation rules. We are concerned mainly with the question of rights of audience in the Crown Court. This seems to us the area where there is the clearest case in the public interest for relaxing restrictions. At the end of the section we deal briefly with the silk system, which at present effectively designates the types of work done by each class of barrister.

Quality of service in the criminal courts

ND5.17 The service given in the criminal courts by both barristers and solicitors leaves room for improvement. There are complaints, in particular in evidence from probation officers, that cases are often ill-prepared, that barristers rarely

meet their clients before the morning of the case and, when appearing in pleas in mitigation, too frequently have little or nothing to add to the contents of the social enquiry report. Solicitors complain that briefs are swapped at the last minute and that the barrister who turns up in court sometimes neither knows the case properly nor is sufficiently competent to handle it; and barristers say that instructions received from solicitors are often inadequate and late, that solicitors rarely send anyone from the office to sit behind counsel in the magistrates' court, and that even those sent along to the Crown Court too often know little or nothing about the case.

ND5.18 Some of these complaints relate equally to solicitor and barrister advocates. But certain of them, such as inadequate instructions and last-minute meetings with defendants, constitute a risk intrinsic to the two-tier system. In theory, in a two-tier system the two branches of the profession operate as quality controls on one another. In practice, barristers and their clerks are reluctant to risk losing work by complaining to the solicitor about inadequate or late instructions; and the solicitor rarely sees the barrister's performance in court nor, often, does an experienced staff member from the solicitor's office.

ND5.19 Research is needed to establish the prevalence of these shortcomings in different parts of the country (they may be less prevalent in provincial cities than in London), and the extent to which various factors are to blame. One factor is the court listing system—which is outside our terms of reference. But other factors, such as late delivery of briefs by solicitors, or overbooking of barristers or late distribution of briefs by barristers' clerks, come under the heading of professional practices.

ND5.20 Barristers underestimate the extent to which their practices sometimes upset clients, particularly that of not seeing the client until the morning of the trial. In research carried out in Sheffield in 1971–72, a sample of 293 defendants charged with offences triable on indictment was interviewed. Of those who pleaded not guilty in the higher court, 79 per cent did not see their barrister until the morning of the trial; and among those who pleaded guilty the figure was 96 per cent. This was, as the researchers commented, "a sore point with many defendants". Probation and prison officers have said the same to members of this Commission. The Conference of Chief Probation Officers wrote in evidence to the Commission:—

> While a solicitor may have spent considerable time taking instructions from a client . . . it is the experience of many offenders to find that the person representing them in the Crown Court . . . is someone who they see for a very short period before the proceedings and with whom they have difficulty in relating. As a result they feel their advocate cannot understand them or their case. It is not easy for some offenders to comprehend that the barrister has received instructions from the solicitor and is cognisant of the factors relating to both the offence and the offender.

This was reflected in the Sheffield research by the much lower satisfaction rating that defendants gave to barristers than to solicitor advocates: whereas 30 per

cent of the defendants thought that their barristers in the higher court had not helped at all (or worse), only 6 per cent of those who elected summary trial and were represented by solicitors thought so poorly of the solicitor (Bottoms and McLean *Defendants in the Criminal Process* Routledge and Kegan Paul 1976, pp 154–160).

ND5.21 The Commission's report proposes that practices detrimental to good service should be dealt with by means which in theory are admirable but which we submit are impracticable. The report's central proposal is that the two branches of the profession set standards that would require the preparation of thorough instructions to counsel and their delivery sufficiently in advance of the hearing; a conference to be held before the hearing day; and the presence in court of someone from the solicitor's office competent to deal with any problems on the case (Chapter 22). Although we support generally the concept of the profession setting standards of conduct, and agree that litigation is an area where such standards are appropriate, nevertheless we think that these particular proposals would achieve little improvement in the less weighty type of Crown Court case. A properly operating two-tier system of representation calls for a generous amount of skilled people's time. Thorough briefs need skilled staff to prepare them; conferences held at barristers' chambers often involve, besides the barristers' time, travelling time for staff as well as the client; and the presence in court of an informed person from the solicitor's office must mean the absence from the office of a fee-earner. This system, although justified in complex cases, where a barrister's fresh mind on the case is a genuine advantage, is disproportionately elaborate for simpler matters. Indeed, the report itself does not recommend such a system in every Crown Court case. It proposes that a conference before the day of the hearing should be held only "if required for the proper presentation of the case", taking into account "the gravity or complexity [of the case and] the circumstances of the accused, in particular young defendants and those standing trial for the first time" (paragraph 22.43 of the report); and it states that the presence of someone from the solicitor's office in court is not "invariably necessary", and that barristers should therefore be permitted to appear alone in some cases (paragraph 22.44). We think that these escape clauses would have the effect of perpetuating the present system, which is the cause of complaint. Many defendants in the simpler type of Crown Court case would still not see counsel until the morning of the case, especially if they were pleading guilty.

ND5.22 We believe that a more efficient and economical service would be attained by opening up rights of audience in the Crown Court in certain cases to solicitors. Specifically, we favour solicitors being permitted to appear in class 4 cases, guilty pleas (which we refer to as "pleas in mitigation"), appeals and committals for sentence.

ND5.23 Any proposal for change must keep in mind the need to ensure that advocates are competent in the particular courts and types of case in which they

practise. There are bound to be genuinely held doubts about the competence of solicitors to act as advocates in Crown Court jury trials. But we take the view that, provided the right of audience in the Crown Court was restricted to solicitors with a minimum number of years experience as magistrates' court advocates, those solicitors who chose to avail themselves of the right would be no less likely to be competent advocates than are barristers. Although the Bar training course includes a limited practical advocacy element, barristers learn most of their advocacy on the job, starting in the magistrates' and county courts and progressing to the higher courts. Advocacy before a jury requires a different technique from magistrates' court advocacy, but we see no reason why solicitors should not learn it in the same way as do barristers. The report lays emphasis on the need for those undertaking advocacy in the higher courts, particularly in jury trials, to be engaged in "constant practice" of advocacy to develop expertise, arguing that solicitors would not be able to combine adequate practice with ready availability to clients (paragraphs 18.37 and 18.38 of the report). We think this exaggerates the difficulty. We do not think it is necessary for a lawyer to do nothing but advocacy to become a competent advocate in the less weighty type of case. A solicitor would have sufficient opportunity to build up expertise while nevertheless maintaining the contact between advocate and client that often falls down in the present system.

ND5.24 The Bar's claim to a special expertise wears very thin indeed when it comes to pleas in mitigation, where there are no juries. Solicitors who practise in magistrates' courts present pleas in mitigation daily. The technique is no different in the Crown Court. A good plea depends to a great extent on putting before the judge information about the defendant not already available from social enquiry reports, prosecution documents and any previous convictions. It depends on knowing about the defendant as a person, about his family circumstances, job record and prospects; and on contact with any character witnesses. The solicitor is likely to have this knowledge. It is not the kind of material easy to convey in a written brief. The researchers in the survey referred to in paragraph ND5.20 noted that the greatest extent of dissatisfaction with their lawyers' services was found among the defendants who pleaded guilty and were represented by barristers in the higher courts (*op cit* p. 160).

ND5.25 We believe that the extension of rights of audience proposed here would have the important and beneficial result of enabling solicitors' firms which decided to do Crown Court advocacy to offer a better service in the less serious types of case than is frequently available today. The same job done under one roof would be more economical in skilled people's time. Even if the preparation and advocacy were done by separate people within a firm, as might be the case, an exhaustive brief would not have to be prepared since the advocate could see the file; written instructions could be supplemented by oral comments; up-to-the-minute information which barristers often lack (and which is particularly needed for pleas in mitigation) could be transmitted easily; and the

solicitor and client would not have to travel to the barrister's chambers for a conference.

ND5.26 The Commission's report points out (paragraph 18.54) that it would be contrary to the public interest if a limited number of solicitors' firms established a near monopoly of criminal business in any one area. We agree. The report adds that in some provincial areas there has been a tendency for a limited number of firms to monopolise criminal work in magistrates' courts. This may indeed have been so, but we think the tendency now is towards a wider distribution of criminal work among solicitors' firms as a result of the setting up of duty solicitor schemes. This is likely to accelerate following the Commission's recommendation in Chapter 9 for duty solicitor schemes to be set up throughout the country. Our proposals may well reinforce this tendency.

ND5.27 Solicitors' firms which did not want to avail themselves of the new audience rights would continue to use the services of the Bar—as many do at present even in the magistrates' courts. In order to improve services to the public, we recommend that the rules which prevent barristers interviewing witnesses (as they are allowed to do in Northern Ireland) and attending conferences in solicitors' offices should be abolished. Barristers would then be able to work more closely with instructing solicitors and thus overcome a number of the present problems. We also think there is scope for further decentralisation by the Bar, which would additionally help to make barristers more conveniently available to solicitors and clients. Although the number of barristers practising in the provinces has doubled over the past 10 years and sets of chambers have been established in a number of new centres, the proportion of barristers practising in the provinces is still much the same as it was 10 years ago—that is, just over a quarter. The trend towards decentralisation of court work, which has been in progress at least since the Courts Act 1971, is likely to increase as a result of the expanding jurisdiction of county courts and the policy of transferring more categories of case from the Crown Court to the magistrates' courts.

Impact on the Bar

ND5.28 The Senate predicts that, if proposals such as ours were implemented, solicitors would take over "a very substantial proportion" of Crown Court work, particularly from younger barristers; and that this would destroy the financial viability of the junior Bar, and hence ultimately of the Bar as a whole (submission No. 22, Paper "A"). We do not believe that such dire predictions will prove any more accurate in the future than they have in the past. In the 1830s the Bar sustained a successful campaign of opposition to the establishment of county courts in which solicitors would have rights of audience. County courts were nevertheless established in 1846 and barristers and solicitors have shared the work of representation in them ever since, as they do in the magistrates' courts; neither branch has squeezed out the other. More recently, the Bar opposed for 30 years the transfer of divorce from the High Court to the county

courts. The transfer of undefended divorce was nevertheless made in 1968 and the Bar took this in its stride, even though eight years later about half of divorce business was being handled by solicitors, according to estimates made from legal aid statistics which confirmed the findings of a study in the Bristol area in 1973 (Modern Law Review 1975 Volume 38 p. 609). The net result, in our judgment, was an improved service to the public without detriment to the Bar.

ND5.29 If rights of audience were widened in the way that we propose, some young barristers might in consequence leave the Bar. According to the Senate this "would be seriously damaging to the profession as a whole, since it would lose able men and women needed to supply its senior ranks in future" (*op cit* p. 4). The evidence suggests, on the contrary, that following massive recruitment to the junior Bar since the early 1970s, the seed-bed is now far too large for the size of the senior Bar needed to cope with the work available at higher levels. From 1973 to 1977 recruitment was running at an average of 339 per year and the Bar increased in size by one-third from 3,137 to 4,076. In consequence, 57 per cent of the Bar in 1977 was of 10 years' call or under compared with 34 per cent in 1966. Yet the ratio between "heavy" Crown Court cases (classes 1, 2 and 3), which provide work for the more senior criminal Bar, and the simpler work (class 4, appeals and committals for sentence), which is mainly handled by the younger juniors, stood at 1:10 in 1972 and in 1978 was slightly higher at 1:11. Even allowing for the fact that heavy cases take more time, and, for the work-load that might be available on the civil side, it is apparent that only a minority of today's seedlings can expect to reach even middling stature.

The economics of the younger Bar

ND5.30 The size and recent growth of the junior Bar is relevant also to its economic situation. The Senate survey of remuneration shows that young barristers are earning low incomes by comparison with beginners in other professions (see report, figure 36.2). The median net fees (that is, after deduction of expenses such as chambers' rent) earned by juniors of four to eight years' seniority in 1976/77 was £6,616 and by juniors of three years' or less £2,648. Junior barristers practising at the London criminal bar had the lowest net earnings of any group. The survey also shows that public funds now account for over half the earnings of the junior Bar. Dependence on public money is highest at the most junior end of the Bar (the 1–3 year group earned 66 per cent of their fees from public funds, and the 4–8 year group 59 per cent) and at the London criminal bar (where 92 per cent of juniors' fees were earned from public funds).

ND5.31 The Senate apparently attributes the low incomes at the younger end of the Bar to legal aid rates, which it says have always been low and have not risen to match inflation since the 1960s. While there may be truth in this, we must emphasise that the case is by no means clear and that there are other factors at work, in particular the tendency to overmanning of the Bar noted in

paragraph ND5.29 above and acknowledged by the Senate itself (submission No. 22 Paper "A" page 4), which must tend to lower average incomes.

ND5.32 Adequate information on barristers' (and solicitors') remuneration from public funds is not at present available. The known facts are insufficient to establish either the level or the recent rate of change in hourly remuneration rates paid to particular groups of barristers or for particular classes of work. Such evidence as there is suggests that legal aid fees for criminal work have in fact kept pace with inflation. No figures are available for Crown Court legal aid fees; but the figures for criminal cases in magistrates' courts show that legal aid payments per case (which of course include payments to solicitors) have risen by more than the general price level at least since 1973 (28th Legal Aid Annual Reports, Appendix 15). There seems no reason to suppose that Crown Court fees would show a different picture. Information about individual barrister's caseloads and the time taken per case (which would enable the level and movement of effective hourly rates to be charted) has not been collected. The fact that fees in criminal cases are related to remuneration scales set in 1960 is no indication that they have risen insufficiently since then. The 1960 order set maxima; the average fees actually being allowed at that date are not known. Nor is it known how often the "escape clause" allowing fees above the maxima is used.

ND5.33 The problem of low earnings in the early years of a barrister's career did not start with legal aid. In fact, legal aid has enabled young barristers to earn relatively more than did their predecessors of earlier generations, and may thereby even have encouraged the apparent over-recruitment of recent years. It is of course desirable that barristers be able to earn incomes commensurate with their skill and responsibility; but this principle cannot be viewed in isolation from the size of the Bar and the way in which it operates. We concur with the recommendation in the Commission's report (paragraph 39.111) that, particularly in the interests of equality of opportunity, more financial assistance should be available to barristers at the beginning of their careers. But such assistance must be combined with policies designed to ensure that the number of practising barristers does not in the long run become larger than is necessary for the available work to be efficiently performed. Unless this condition is fulfilled, the result will be either an unreasonable fall in the income of barristers or an unreasonable rise in their rates of remuneration per unit of service.

ND5.34 We consider that a detailed review is needed of the basis on which barristers (and solicitors) are paid from public funds, and of the extent to which over-manning is responsible for the unsatisfactory economic position and prospects of the younger end of the Bar. Considerations of public expenditure policy also indicate the need for such a review. The 1979 White Paper on Public Expenditure (Cmnd 7439) shows that total net expenditure on legal aid at constant prices (i.e. after taking account of inflation) rose in the period 1973/74—1978/79 by over 60 per cent (compared with 10 per cent for public expenditure

as a whole) and is projected to rise in the next four years (up to 1982/83) by another 20 per cent. Even though the sums involved are still only a tiny fraction of total public expenditure, it is unrealistic to suppose that items showing such above-average rates of increase will escape closer scrutiny in the future. Proposals which aim at improving the quality of service by seeking greater cost-effectiveness are more likely to be implemented than those which try to do the job wholly or mainly by spending more public money on existing arrangements. We believe that our proposals for widening rights of audience would promote the development of more efficient and economical arrangements.

Restrictions in the silk system

ND5.35 Although it is of much less significance than the restrictive rules and practices which we have been discussing, we cannot let the restrictions surrounding the silk system pass without comment. We see no reason why the Bar should need rules that have the effect of restricting a senior group to certain specific types of work merely to ensure that its members do not trammel themselves with small tasks. In other walks of life, people who achieve a high level of expertise in a particular field find themselves able to organise their working lives so as to ensure that they do the types of work which require that level of expertise, leaving the simpler tasks to others. The demarcation of work between the two ranks of barristers makes it difficult to by-pass the two-counsel rule in cases where the services of a silk alone would be sufficient. Evidence from the Law Society shows that the two-counsel rule is still flourishing and being paid for by the consumer and the legal aid fund (report, paragraph 33.86).

ND5.36 In addition, the immediate effect of taking silk is to inflate almost overnight the fees of the recipients. The system is also wasteful in that it can leave one barrister who has failed to obtain silk carrying the burden of paperwork which is the lot of the junior Bar, while another, who has been honoured with silk but has failed to attract the work that goes with it, is under-employed. We believe that it is clients' demand for an individual's services and not the decision of a particular Lord Chancellor that should determine the type of work a barrister does and the fees he or she receives.

ND5.37 In our view the title of Queen's Counsel should be conferred as a mark of honour only and any rules or guidelines as to the work the recipient may do should be abolished.

A common training

ND5.38 We concur with the major proposals in the report regarding education and training, and in particular with the proposal that a limited period be allowed in which the Law Society should introduce a satisfactory system of supervision for articles (report, paragraphs 39.75–39.79). If such supervision is not introduced, and in consequence a system of institutional vocational training is estab-

lished as advocated in the report (paragraph 39.80), we think that the opportunity should be taken then to introduce a common training for both branches of the profession.

ND5.39 The similarities between the two branches of the profession are much greater than their differences. Both are basically lawyers, and their work overlaps to a great extent. We think that the present system of training erects artificial barriers by requiring young people to choose at the outset which branch to join. At that stage they have had no experience of practice and so no basis on which to judge whether they should join the branch of the profession which consists predominantly of desk workers or that predominantly of advocates. We favour a common training during which advocacy would be an optional specialism which those who wanted to practise at the Bar and would-be solicitor advocates would study. Rights of audience in different levels of court would depend upon having taken the necessary course and on subsequent experience. Experience in Northern Ireland has shown that recruits to the separate branches can be trained together and then practise in independent professions.

ND5.40 The vocational training should be done in educational institutions in various parts of the country, as the report proposes. We think that it should extend for more than a single year and we would lay particular emphasis on the need for all trainees to spend a period in a solicitor's office. It would be valuable for those who represent clients in court as barristers to have had experience of dealing directly with them. The availability of training in various parts of the country would also encourage the recruitment of barristers from outside the south-east who at present have to move to live in London to qualify.

Summary

ND5.41 We recommend as follows.

(a) The statutory restrictions on the right to convey registered residential property for gain should be relaxed. A licensing system administered by the Director General of Fair Trading should be set up on the lines proposed in paragraph ND5.9 above.

(b) The Government should institute a feasibility study without delay to establish the practicability and cost of computerisation of registered land title.

(c) Solicitors should have rights of audience in the Crown Court in class 4 trials; pleas in mitigation where the defendant pleads guilty at the commencement of the trial; committals for sentence, and appeals from the magistrates' court.

(d) Barristers should be permitted to interview witnesses and to attend conferences in solicitors' offices.

(e) Detailed reviews should be undertaken of the basis on which barristers are paid from public funds, of the extent to which overmanning is responsible for the unsatisfactory economic position and prospects of the younger end of the Bar and of the adequacy of financial support for newly called barristers. A review of solicitors' remuneration rates is similarly needed. The ultimate object of these reviews would be to ensure that advocacy is properly remunerated and, at the same time, supplied in a cost-effective manner.

(f) The title of Queen's Counsel should be conferred as a mark of honour only. Rules or guidelines as to the work the recipient may do should be abolished.

(g) If a system of institutionalised vocational training for solicitors is established as outlined in the report (paragraph 39.80), the opportunity should be taken to make the training common to both branches of the profession on the lines proposed in paragraphs ND5.37 to ND5.40 above.

Note of Dissent by Mr. Haines, Mr. Oppenheimer and Mr. Roberts

ND6.1 We cannot accept the view taken by the majority of our colleagues that the payment of a practising certificate fee should entitle the payer to vote in elections or to hold office in the Law Society.

ND6.2 The Law Society performs a dual role. It performs certain public interest functions concerned with the education, registration, regulation and discipline of the solicitors' branch of the legal profession. It also acts as the guardian of the interests of the members of the profession; in other words it has a trade union function.

ND6.3 In some professions these roles are separated. In the case of the medical profession, the General Medical Council performs the public interest role leaving the representational, trade union role to other bodies, notably the British Medical Association. It would be possible to achieve this kind of separation in the case of the legal profession but the weight of evidence is against it and we do not recommend such a step. Nevertheless, we believe that this dual role played by the Law Society must be borne in mind and that it is relevant to the apparently narrow issue of the consequences of the payment of practising certificate fees.

ND6.4 We agree with our colleagues that every practising solicitor has a responsibility for meeting the costs of the public duties undertaken by the Law Society and that the compulsory practising certificate fee is an appropriate means of enforcing this responsibility. But we believe that the responsibility enforced by compulsion ends at that point.

ND6.5 When the payment of a compulsory fee carries with it the right to vote and hold office it becomes indistinguishable from a compulsory membership fee in the organisation within which elections occur and offices are held. We cannot see any grounds of public policy to justify such a compulsion however much we would wish to encourage voluntary membership.

ND6.6 Accordingly, we recommend that there should be a practising certificate fee payable by that category of solicitor defined in paragraph 29.31 of the main report; that this fee should be paid to the Law Society and fixed at a level which enables the Law Society to perform the public interest functions allotted to it; but that membership of the Law Society, including rights to vote and hold office and such other privileges as the Society determine, shall be based upon a voluntary membership fee fixed by the Society. In making this recommendation we endorse the view of the Law Society, which had statutory powers of making membership compulsory until 1974, and refused to exercise them on the ground that such a step would be contrary to the spirit of the profession.

Note of Dissent by Mr. Harper

(Paragraphs ND7.7 to ND7.9 are supported by Mr. Roberts.)

Education and training

ND7.1 The Commission's proposals for securing an improved system of "in-training" for future solicitors, set out in paragraph 39.76 of the report, are in themselves deserving of support, but they will not assist in bringing about the radical changes in the structure of legal education and training which I believe to be necessary. Only if the Commission's proposals in regard to articled clerkship are not implemented by the profession within the prescribed time limit will institutionalised vocational training become a reality at all, and even then only the solicitors' branch of the profession will be affected.

ND7.2 The essential feature of the scheme of reform which I believe to be desirable is however that there should be a common education and training system for both branches of the profession. This calls for two major changes in the present system, one related to the academic stage and the other related to the vocational stage.

ND7.3 Uniformity would be secured at the academic stage if all future entrants to both branches of the profession were, as the Ormrod Committee recommended in 1971, required to be graduates (with the single exception of "mature" students). The Bar adopted all-graduate entry in 1975, and they were, in my view, right to do so. The solicitors' branch should now do the same. Then all those beginning their professional studies with a view to entering the solicitors' branch of the profession would, like all those now beginning their professional studies for the Bar, have had the advantage of a university education. I cannot see how, in terms of that advantage, there can be any valid reason for regarding the two branches differently. Nor do I see that the adoption of all-graduate entry by the solicitors' branch would create any problems which its adoption by the Bar did not create.

ND7.4 So far as the vocational stage is concerned, I am in favour of institutionalisation because a common system cannot of course be brought about unless both articled clerkship and pupillage are replaced by a system of training provided at one or more institutions catering for both branches, on the model of the Institute of Professional Legal Studies in Belfast, which is described in Chapter 42 of the report.

ND7.5 I believe that a form of training along the same lines as that provided at the Belfast Institute could be provided in England and Wales also, though in England and Wales a larger number of institutions would of course have to be involved in providing it. The necessary institutions are however available in the shape of polytechnics, and I would envisage that in providing the kind of training I have in mind there would be the same collaboration between the

polytechnics and the practising profession as has been achieved in Northern Ireland between the Belfast Institute and the practising profession. I would also envisage that while the training provided at the polytechnics would be basically common to students for both branches of the profession, there would be sufficient flexibility in the curriculum to ensure that the special needs of practice in either branch were taken account of. This has been achieved in Northern Ireland. I would not exclude the present professional schools from participation in the proposed common scheme, though I would envisage that their role would be simply to provide training in those parts of the curriculum that were required only by those preparing to enter one branch of the profession. One advantage of institutionalised training—and it would be a great advantage—is that students would be far better placed to obtain grants from public funds during the vocational training period and if there was common vocational training students for both branches would be in the same position in this respect.

ND7.6 While I believe that a common system of education and training would have advantages in terms of the more economical and effective use of teaching resources, that is not my primary reason for advocating such a system. I am not a fusionist. I am not therefore against the two-branch structure of the profession as such. I do however believe that to the extent that it emphasises the things that distinguish the members of one branch from the members of the other, rather than the things which, as lawyers, they have in common, it has a divisive effect which is damaging to the public interest and to the interests of the profession itself. If therefore the two-branch structure is to continue, its divisive effect should, in my view, be eliminated as far as this is possible. My primary reason for advocating a common system of education and training is that I can think of nothing else that would go as far in countering the divisive effect of the two-branch structure of the profession, because it would counter it at the most impressionable stage of a lawyer's life.

Rights of audience

ND7.7 I believe that solicitors of appropriate experience should be given rights of audience in the Crown Court for pleas in mitigation, as well as for appeals and committals for sentence, where the solicitor concerned has had the conduct of the case in the court below.

ND7.8 I would not however support any further extension of solicitors' rights of audience. Any further extension of them would, in my view, create at least a grave risk that the junior Bar would lose work, and therefore income, to such an extent that a separate Bar would not survive. That would not, in my view, be in the public interest.

ND7.9 On the other hand, the expenditure of public money—or private money for that matter—in support of any particular system of representation and the rights of audience that go with it cannot be justified unless that system of

representation operates in an efficient and economical manner. Support for the Bar's rights of audience must therefore be dependent upon the effective remedying of over-manning at the junior Bar, of a distribution of barrister-advocates that is not conducive to the proper decentralisation of court work and of inadequate standards of representation.

The silk system

ND7.10 For the reasons given by Susan Marsden-Smedley, Peter Oppenheimer and David Seligman in their note of dissent, I agree that the silk system in its present form cannot be justified and that it should therefore be abolished. If it were thought desirable to retain the grant of silk as a purely honorary form of recognition of an individual's services, I too would see no objection to that.

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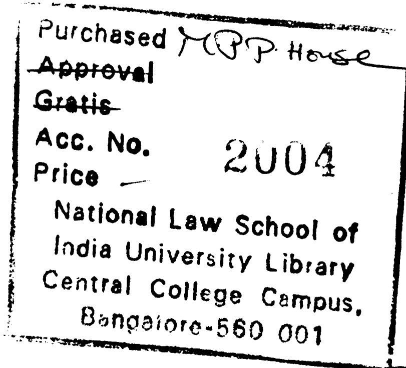

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