JUSTICE 1 COMMITTEE

AGENDA

8th Meeting, 2004 (Session 2)

Wednesday 25 February 2004

The Committee will meet at 10.30 am in the Chamber, Assembly Hall, The Mound, Edinburgh.

1. **Civil Contingencies Bill – UK legislation:** The Committee will take evidence from—

   Hugh Henry, Deputy Minister for Justice, Max Maxwell, Police and Civil Contingencies Division, and Robert Marshall, Office of the Solicitor, Scottish Executive.

2. **Petition PE477:** The Committee will consider a petition by Mr John McManus on behalf of Miscarriages Of Justice Organisation, calling for the Parliament to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a half-way home to help people who have been wrongfully incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court.

3. **Dangerous driving and the law petitions:** The Committee will consider the following petitions –

   PE29 by Alex & Margaret Dekker calling for action to be taken in relation to the Crown Office’s decisions and considerations in prosecuting road traffic deaths;

   PE55 by Tricia Donegan calling for the Parliament to conduct an investigation to establish why the full powers of the law are not enforced in all cases that involve death by dangerous driving;

   PE299 by Ms Tricia Donegan calling for the Parliament to investigate whether the additional driving offences of failure to possess the correct licence, MOT or insurance documentation should be taken into consideration at court hearings concerning a fatality caused by dangerous driving;

   PE331 by Tricia Donegan calling for the Parliament to investigate why drivers who have made deliberate decisions when driving that cause risk to the lives of others are classed as careless drivers when prosecuted, even in the event of a fatality.
4. **Petition PE111**: The Committee will consider a petition by Mr Frank Harvey calling for the Parliament to order a public inquiry into road accidents involving police responding to 999 calls.

5. **Inquiry into the effectiveness of rehabilitation programmes in prisons**: The Committee will consider its approach to the inquiry.

6. **Former Justice 1 Committee inquiry into the regulation of the legal profession**: The Committee will consider the recommendations made by the former Justice 1 Committee in its 11th Report 2002: Report on Regulation of the Legal Profession Inquiry.

   Alison Walker
   Clerk to the Committee
   Tel: 0131 348 5195
The following papers are attached for this meeting—

**Agenda item 1**

Note by the Clerk J1/S2/04/8/1
Note by the Clerk (PRIVATE PAPER) (TO FOLLOW) J1/S2/04/8/2

**Agenda item 2**

Note by the Clerk J1/S2/04/8/3

**Agenda item 3**

Note by the Clerk (attaching the following correspondence) J1/S2/04/8/4
- Minister for Justice
- Lord Advocate
- Mrs Dekker (a petitioner)

**Agenda item 4**

Note by the Clerk (attaching the following correspondence) J1/S2/04/8/5
- Association of Chief Police Officers
- Scottish Police Federation
- Chief and Assistant Chief Fire Officers Association
- Fire Brigades Union
- Scottish Ambulance Service
- Minister for Justice

Note by the Clerk (previously circulated) J1/S2/03/9/6

**Agenda item 5**

Note by the Clerk J1/S2/04/8/6

**Agenda item 6**

Note by the Clerk (TO FOLLOW) J1/S2/04/8/7

**Forthcoming business—**

Wednesday 10 March 2004 – Justice 1 Committee, Committee Room 2
Wednesday 17 March 2004 – Justice 1 Committee, Committee Room 3
Wednesday 24 March 2004 – Justice 1 Committee, Chamber
Wednesday 31 March 2004 – Justice 1 Committee, Chamber.

* denotes a change from forthcoming business previously indicated.

Late papers

Correspondence from Stewart V. MacKenzie J1/S2/04/8/9
Background

Sewel motions

1. During the passage of the Scotland Bill, it was established that, by convention, the UK Parliament would not normally legislate in relation to devolved matters in Scotland without the consent of the Scottish Parliament (“the Sewel convention”). Sewel motions are the means by which the Scottish Executive obtains the Parliament’s consent to UK legislation on devolved matters.

2. In a letter of 31 January 2004 to the Committee (attached), the Minister for Justice set out the terms of the draft Sewel motion as follows:

“That the Parliament endorses the principle of a single statutory framework for civil protection across the UK, as set out in the Civil Contingencies Bill, and agrees that the relevant provisions in the Bill should be considered by the UK Parliament”.

The Civil Contingencies Bill

3. The Civil Contingencies Bill (“the Bill”) was introduced to the House of Commons on 7 January 2004. Broadly, the Bill seeks to update emergency legislation in order to make the UK more resilient to threats of international terrorism.

4. Part 1 of the Bill confers duties on a wide range of organisations, such as local authorities and rail companies in respect of tackling emergencies. Emergency planning is a devolved matter and the application of Part 1 to Scotland therefore requires the consent of the Parliament.

5. Part 2 of the Bill provides for the update of central government powers for dealing with the most severe emergencies. Although emergency powers are reserved, clause 21 of the Bill allows UK ministers to confer functions through emergency regulations on bodies, including Scottish ministers; this aspect would require the consent of the Parliament.

6. The Scottish Executive has prepared a memorandum on the Bill which sets out the provisions in detail (attached).
Procedure

7. The Deputy Minister for Justice will attend the meeting to outline the Scottish Executive’s intentions in relation to the legislation and the Committee will have the opportunity to question the Minister on the Bill and its provisions.

8. The Standing Orders do not set out a formal procedure for the Parliament’s consideration of proposed Sewel motions. In some cases, Sewel motions have been considered directly by the whole Parliament; in other cases, proposals for Sewel motions have been considered by the relevant subject committee before they are considered by the whole Parliament, as applies in this case.

9. Following its consideration of the proposal for a Sewel motion, the Committee may report to the Parliament. Such a report need only be a short statement of the Committee’s conclusions.

10. Whatever mechanism is employed, conferring the consent of the Parliament requires a resolution of the Parliament. A Sewel motion is likely to be considered by the Parliament in plenary in early March 2004. The Committee is invited to consider the proposal for a Sewel motion and the implications for Scotland.
Dear Pauline,

CIVIL CONTINGENCIES BILL: CONSENT OF SCOTTISH PARLIAMENT TO UK PARLIAMENT LEGISLATION IN A DEVOLVED AREA

I am writing to ask the Justice 1 Committee to consider the enclosed Memorandum. This concerns powers being taken in the Civil Contingencies Bill at Westminster to put in place new statutory arrangements for civil protection across the UK. In Scotland it will enable Scottish Ministers to regulate the activities of bodies that have a role in responding to emergencies. As emergency planning is devolved, this requires the consent of the Scottish Parliament. Full details are in the attached memorandum.

If it is convenient, Hugh Henry would be happy to attend the Committee and answer any questions on the Memorandum.

For the Committee's information I have set out below the terms of a Motion which the Executive intends to lodge for consideration by the Scottish Parliament. The motion will not be considered by the Parliament until after the Committee has had an opportunity to consider the Memorandum. The draft Motion is as follows:-

"That the Parliament endorses the principle of a single statutory framework for civil protection across the UK, as set out in the Civil Contingencies Bill, and agrees that the relevant provisions in the Bill should be considered by the UK Parliament."

Best wishes,

CATHY JAMIESON
MEMORANDUM
CIVIL CONTINGENCIES BILL

Motion

1. The motion to be put to the Parliament is:

"That the Parliament endorses the principle of a single statutory framework for civil protection across the UK, as set out in the Civil Contingencies Bill, and agrees that the relevant provisions in the Bill should be considered by the UK Parliament."

Background

2. Civil protection in the UK is largely based on permissive powers and arrangements to deal with threats which range over a wide spectrum, from local incidents to those that have national implications. Recent experience of severe emergencies in the UK and the changing threat from international terrorism have indicated that civil protection arrangements should be revised in order to make the UK more resilient to the threats it faces today.

3. The Civil Contingencies Bill is one strand of work that central government is undertaking to enhance our ability to prepare for and deal with emergencies. The Bill contains 2 distinct Parts. Part 1 is concerned with contingency planning while Part 2 deals with events which require the use of emergency powers.

4. Part 1 of the Bill will place broad duties on organisations which are involved in the response to emergencies. These duties will be to assess the risk of emergencies occurring, plan for emergencies, promote business continuity advice and co-operate and share information in preparing plans. There is value in ensuring that organisations across the UK have a single framework in which they plan and prepare for emergencies. This will help ensure the use of common standards and expectations in these organisations. Emergency planning is devolved to the Scottish Parliament and the application of Part 1 of the Bill to Scotland will therefore require the consent of the Scottish Parliament.

5. Part 2 of the Bill will update the powers that central government has for dealing with the most severe emergencies. It will allow the UK Government to declare a state of emergency (including on a regional basis, for example in response to a request from Scottish Ministers to declare an emergency in Scotland) and make emergency regulations to deal with the situation. Emergency Powers are reserved to the UK Government but clause 21 provides for UK Ministers to confer functions through emergency regulations on bodies that include Scottish Ministers. This will require the consent of the Scottish Parliament.

Consultation

6. The Scottish Executive consulted on the draft Bill with stakeholders in the civil protection community during the summer of 2003. The consultation responses revealed that emergency responder organisations largely welcomed statutory duties as opposed to permissive powers, as these would provide clarity about what was expected of them and consistency in the work that was undertaken.
Financial Effects

7. The Bill is enabling legislation which will allow Scottish Ministers to make regulations specifying the actions that organisations must undertake to fulfil their duties under the Bill. Initially, these regulations will formalise existing arrangements between emergency responder organisations for planning and co-operation and should not add materially to their financial burdens. Regulations would be made following consultation which would enable any potential resource implications to be identified in advance.

Content of the Bill affecting devolved matters

Part 1 - Local arrangements for civil protection

8. The Bill sets out a number of broad duties that should be undertaken by organisations which may have to deal with the response to emergencies. The detail of the responsibilities will be set out in regulations made under the Bill. There will be two categories of responder organisation, reflecting two levels of statutory obligation: the principal bodies involved in planning for emergencies will be Category 1 responders and those that support the planning will be Category 2. Scottish Ministers will have regulation making powers to confer duties on Scottish Category 1 and 2 organisations (see paragraph 31 below).

9. The Bill sets up two parallel systems: Scottish responders will be regulated by Scottish Ministers while English and Welsh responders will be regulated by UK Ministers. A number of UK bodies operating in Scotland will be regulated by UK Ministers with agreement to consult Scottish Ministers. Likewise, a number of Scottish bodies operating in generally reserved areas of law will be regulated by Scottish Ministers after consultation with UK Ministers. The Responders which relate to Scotland are set out separately in Schedule 1 of the Bill.

10. Scottish Ministers will only have powers to regulate bodies in the Scotland in accordance with the provisions of the Bill. The main provisions of the Bill which relate to local arrangements for civil protection are described below.

Clause 1 – Meaning of “emergency”

11. This clause defines ‘emergency’ for Part 1 of the Bill and includes a possible range of events or circumstances that could meet the definition. The clause enables Scottish Ministers to clarify in regulations whether particular events or situations are or are not to be regarded as constituting an emergency for this part of the Bill.

Contingency planning

Clause 2 & 3 – Duty to assess, plan and advise

12. These clauses place general duties on Category 1 bodies to assess risk, make plans to deal with some identified risks, and publish information about these assessments and plans
that may be necessary. Clause 2 enables Scottish Ministers to make regulations that specify the manner and extent in which these duties are to be performed.

13. Clause 3 enables Scottish Ministers to issue guidance to organisations about these duties and requires bodies to comply with regulations and to have regard to guidance.

Clause 4 – Advice and assistance to business

14. This clause places a duty on Category 1 and 2 organisations to provide advice and guidance to the public about the continuance of business activities in the event of an emergency. It enables Scottish Ministers to clarify the extent of this duty in regulations and guidance. The clause also enables organisations to charge for advice or assistance.

Civil Protection

Clause 5 – General measures

15. In order to provide flexibility and accommodate future policy developments, this clause enables Scottish Ministers to impose new civil protection duties on Category 1 responders. These may only relate to the manner in which existing functions are performed.

Clause 6 – Disclosure of information

16. The Bill will require organisations to co-operate with each other and share information for the purposes of emergency planning. This clause enables Scottish Ministers to make regulations that require organisations to share information relating to emergencies and to issue guidance on the sharing of information. It also enables Scottish Ministers to issue guidance to organisations about the performance of functions under these regulations and requires bodies to comply with regulations and have regard to guidance.

General

Clause 8 - Urgency: Scotland

17. This clause enables Scottish Ministers to make directions that would normally be made by regulation under clauses 2(4), 4(3) or 6(2) in circumstances where there is insufficient time because of urgency to take action through regulation. Such directions, which may be written or oral, will be valid for up to 21 days and must be revoked as quickly as reasonably practical or replaced by regulations or order as appropriate.

Clause 9 – Monitoring by Government

18. Government will be able to obtain information from organisations to ensure compliance with the legislation. This clause enables Scottish Ministers to require a Category 1 or 2 organisation to provide information about action taken (or not taken) in compliance with duties set out in this part of the Bill.
Clause 11 – Enforcement: Scotland

19. This clause enables Scottish Ministers, or any Scottish Category 1 or 2 organisation, to bring proceedings in the Court of Session against other bodies that do not comply with duties under clauses 2(1), 3(3), 4(1) or (8), or 5(3), 6(6) or 9(4) of the Bill.

Clause 12 – Provision of Information

20. This clause enables Scottish Ministers to specify the timing or way in which information is required to be provided under clauses 2(5)(f), 5(4)(e) or 6(1) or (2) of the Bill.

Clause 13 – Amendment of List of Responders

21. This clause enables Scottish Ministers, by order, to add or remove bodies from the list of Category 1 and Category 2 responders. Any such order would be subject to the approval of a draft by the Scottish Parliament, (as set out in Clause 16(3)).

Clause 14 – Scotland: Consultation

22. There are a number of responder bodies in the Bill that are UK or GB-wide as well as others operating only in Scotland whose functions are generally reserved. This clause sets out who is responsible for regulations and orders affecting these bodies, and what consultation will be required between Ministers. The clause states that UK Ministers will regulate such bodies that operate in parts of the UK beyond Scotland but must consult with Scottish Ministers before making regulations or orders that affect such bodies where they also exercise functions in relation to Scotland.

23. The clause also sets out that organisations that operate wholly in Scotland will be subject to regulation by Scottish Ministers, but that Scottish Ministers shall consult with UK Ministers on orders and regulations affecting those bodies. This need to consult reflects the view of both the UK Government and Scottish Ministers that such dialogue will help to promote a common framework for civil protection across the UK. It does not however, give UK Ministers powers to regulate Scotland-only bodies.

Clause 16 – Regulations and Orders

24. This clause provides that regulations and orders made by Scottish Ministers under this legislation will be made by statutory instrument. Orders made under the clause 1(5), 5(2) or 13(2) will be subject to the draft affirmative procedure, whilst regulations under the Bill are to be subject to the annulment procedure. This mirrors the proposals for the regime in England and Wales.

Part 2 of the Bill

25. As already indicated, emergency powers are reserved to the UK Parliament. However, the provisions for UK Ministers to make emergency regulations may, in emergencies, impact on the responsibilities of Scottish Ministers.
Clause 21 - Scope of emergency regulations

26. Subsection (3) of this clause provides for emergency regulations made by UK Ministers to confer additional functions on a number of bodies including Scottish Ministers.

Part 3 of the Bill

Clause 23 - Commencement

27. This clause prescribes which provisions will be brought into force by UK and Scottish Ministers, some following consultation between the two.

Clause 24 - Extent

28. This clause provides for the Bill to extend to the whole of the UK.

Schedules

Schedule 1

29. Parts 1 and 3 of this schedule set out the criteria for organisations that are subject to regulation by UK Ministers.

30. Parts 2 and 4 list the responders that will be subject to regulations and orders made by Scottish Ministers.

Part 2

31. This schedule lists the criteria for Scottish Category 1 responders which will be the key organisations subject to the duties to plan for emergencies. They are:

Local Authorities
Police authorities
Fire authorities
The Scottish Ambulance Service
Scottish Health Boards
The Scottish Environmental Protection Agency
32. This schedule lists the criteria for Scottish Category 2 responders who will have lesser duties to support the planning function. They are:

Scottish Water
The Common Services Agency of the NHS (Scotland)
Gas providers that operate only in Scotland
Electricity providers that operate only in Scotland
Telecommunications companies that operate only in Scotland
Railway companies that operate only in Scotland
Airport operators that operate only in Scotland
Harbour authorities that operate only in Scotland

SCOTTISH EXECUTIVE
January 2004
JUSTICE 1 COMMITTEE

Petition PE477 by the Miscarriages of Justice Organisation

Note by the Clerk

Background

Petition
1. Petition PE477 by the Miscarriages of Justice Organisation (MOJO) was lodged on 8 March 2002 and calls for the Scottish Parliament to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a halfway home to help people who have been wrongfully incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court. The petition has been referred by the Public Petitions Committee\(^1\) to the Justice 1 Committee for further consideration. The original petition and accompanying documents are attached at Annex A.

Consideration by the Public Petitions Committee
2. The petition was considered by the Public Petitions Committee on 3 September and 12 November 2003 and by the former Public Petitions Committee on 26 March, 21 May and 10 September 2002. The relevant extract of the official report of the meeting on 12 November 2003 is attached for information at Annex B.

The Scottish Executive
3. A response from the Scottish Executive was considered at the meeting on 21 May 2002 and a further response was considered on 12 November 2003; these responses are attached at Annex C. The most recent response was made following a request from the Public Petitions Committee for clarification in respect of the level of support provided following release specifically to those suffering a miscarriage of justice.

4. The Executive’s position in each of these responses has been that, aside from the statutory supervision required for long-term prisoners after their release, there is, in practice, no distinction made between the aftercare provided for prisoners released on completion of their sentence and that provided for those released after being wrongly incarcerated. The Executive refers to aftercare services provided by local authorities to any ex-prisoner requesting them within 12 months of release; such services are funded wholly by the Executive.

5. In its most recent response, the Executive also gave details of an enhanced throughcare service that is being developed for prisoners, the aim of which is to provide more effective transitional arrangements for prisoners moving from prison back into the community. As this service will be available to those suffering a miscarriage of justice, the Executive does not consider that they require specific and targeted support.

\(^1\) Public Petitions Committee, 7th Meeting 2003 (Session 2), 12 November 2003.
6. The Executive also refers to a Home Office/Citizens Advice pilot project to assist ex-prisoners released on successful appeal against conviction, which has been running for over a year.

The petitioner
7. The former Public Petitions Committee took evidence from John McManus of MOJO on 26 March 2002 and considered a written response from Mr McManus on 10 September 2002; the new Public Petitions Committee considered further responses from the petitioner on 3 September and 12 November 2003. These written submissions are included in Annex D.

8. In its most recent submission to the Public Petitions Committee, MOJO expressed concern that the Committee had sought clarification of the level of service provided, arguing that it had already been made clear that there was a complete lack of services, help or support available. MOJO also claimed that prisoners released on appeal do not have access to pre-release counselling as, in the light of a finding of guilt, their claims of innocence are viewed as being denial of the crime and they are therefore not included in probation programmes.

9. The petitioner is also concerned that sufferers of a miscarriage of justice appear to be classified as ex-offenders and recalls that a member of the former Public Petitions Committee had expressed concern in relation to aftercare for such individuals being provided by the justice system, which had already failed them. MOJO also questions the quality of counselling available as part of the Home Office/Citizens Advice pilot project, believing it to be inadequate.

10. MOJO applied to the Scottish Executive for grant funding under section 10(1) of the Social Work (Scotland) Act 1968, with the aim of establishing its own aftercare programme. In March 2003, this application was rejected, on the basis of value for money and in the context of a number of competing bids and a tight funding application. The letter from the Scottish Executive setting out this position is attached at Annex E.

Other evidence
11. The petitioner has requested that a psychiatric report on an individual released following a successful appeal and after 17 years' incarceration be circulated to Committee members (Annex F).²

² Circulated as a private paper, J1/S2/04/8/??
Procedure

12. According to the Standing Orders, where the Public Petitions Committee has referred a petition to another committee, that committee may take such action as it considers appropriate.\(^3\)

Proposed action

13. The Committee is invited to consider and agree one of the following options in respect of the referral of petition PE477—

   a) to agree to accept the referral and carry out further consideration of the issues raised in the petition. In doing so, the Committee could:

      i. consider the issues raised by the petitioners in the context of its forthcoming inquiry into rehabilitation in prisons; or

      ii. consider whether it supports the petitioner’s suggestions and, if so, write to the Minister for Justice asking the Executive to reconsider its position on these issues. The Committee could also consider writing to SACRO, which provides support for ex-prisoners, seeking its views on the issues raised;

   or

   b) to refer the petition back to the Public Petitions Committee for further consideration, on the basis that the issues raised merit further action but that the Committee has insufficient capacity to allow it to undertake the work itself;

   or

   c) to agree that the petition does not merit further consideration and refer it back to the Public Petitions Committee, explaining the rationale for the decision.

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\(^3\) The Scottish Parliament, *Standing Orders*, Rule 15.6.2(a)
To the Scottish Parliament

The Miscarriages of Justice Organisation
C/O Scottish Centre of Human Rights,
146 Holland Street, Glasgow

We the undersigned, declare that

We take a view on a matter of public interest, and concern, that there is nothing in place to help rehabilitate victims of a miscarriage of justice. The substantive issue for M.O.J.O. (Scotland) is to seek the help of the Scottish Executive to provide assistance in setting up an aftercare programme to help people who have served long terms of incarceration, and have had their convictions quashed at the appeal court.

We therefore request that the Scottish Parliament

Aid the setting up of a half way home for those who are wrongly incarcerated and released back into society, either on bail, or once their conviction has been quashed at the appeal court. It would include therapy programmes of arts, crafts, and training programmes like computer literacy that would enable them to deal with acquiring new skills. Empowerment and choice are crucial aspects for individuals who have been psychologically scarred due to the institutionalised nature of prison life.

We have already approached a number of expert individuals

And at the present moment we already have the support of Dr Adrian Grounds (see Mission Statement), for the setting up of an aftercare programme, and we are endeavouring to link up with clinical psychologist in Scotland to study Dr Grounds findings (See Dr Adrian Grounds Report).

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Mission Statement

The Miscarriages of Justice Organisation was launched from the House of Commons on the 16th March 2001. Our patrons include Baroness Helena Kennedy, John McDonnell MP, Professor Derek Pounder, Dr Adrian Grounds, Dr Jim Thorpe and Gareth Pierce.

The Miscarriages of Justice Organisation, M.O.J.O. (Scotland), is a unique organisation that has been set up to help those who have been wrongfully convicted for crimes they know nothing about. M.O.J.O. (Scotland) is setting up to monitor and raise awareness of the treatment of innocent Scottish people in jail both before and after their release. M.O.J.O. (Scotland) has already received support from John Scott at the Scottish Centre of Human Rights, Alistair Duff Convenor of the Law Society, Dr Alan Miller and a number of Scotland's leading criminal lawyers and advocates.

Aims and Objectives

The substantive issue for M.O.J.O. (Scotland) is to seek the help of the Scottish Executive to provide assistance in setting up an aftercare programme to help people who have served long terms of incarceration, and have had their convictions quashed at the appeal court. At the present moment there is no provisions to aid innocent people on their release from Scottish prisons.

The uniqueness of M.O.J.O. (Scotland) is that the aftercare programme will be run in conjunction with professional medical expertise and individuals who have been themselves miscarriages of justice, thus helping to empower the victim. We are confident that clinical psychologist at Scotland's top Universities will work in conjunction with top forensic psychologists Dr Adrian Grounds1 to set up a programme in Scotland. We then intend to monitor the problems facing the wrongfully convicted by funding two post graduate psychology students to work with M.O.J.O. (Scotland)

We ask the Scottish Executives support in applying for funding, to provide assistance in setting up an aftercare programme. We need to purchase a property, to set up a half way home, for those who are wrongfully incarcerated and released back into society, either on bail, or once their conviction has been quashed at the appeal court. The half way home would have sleeping quarters, workshops, rest and recreational areas. In general it would be designed to be of similar communal layout to that of the natural habitat they have been accustomed to; obviously designed with the freedom to allow them to make the choice to come and go when they please. It would include therapy programmes of arts,

1 See Appendix 1 for Dr Grounds CV
crafts, and other others skills that they have acquired whilst imprisoned. We would also set up training programmes like computer literacy that would enable them to deal with acquiring new skills in this New World they find themselves in. Empowerment and choice are crucial aspects for individuals who have been psychologically scarred due to the institutionalised nature of prison life. There is no doubt about the long-term effects that wrongful incarceration has on the personality disorders of the individual.²

M.O.J.O. (Scotland) would also be a human rights monitoring watchdog. We know from our experiences, and human nature, that everything is fallible. Nothing is perfect. If we take this stance then it is imperative that a group like M.O.J.O. (Scotland) has the backing of the Scottish Executive. What we foresee is a small group of full time workers, who while few in numbers would have the access to a broad range of key people in crucial areas: experienced campaigners, lawyers, journalists. Once someone contacts M.O.J.O. (Scotland) and applies³ for help, his case would be thoroughly studied. An assessment would then be made as to whether he was indeed a victim of a miscarriage of justice. Once a case was accepted the expertise of people who had led previous campaigns would be used. Lawyers with the right experience for a particular case would be approached; the media and MSPs would be presented with details and lobbied to take an interest. With the ultimate aim to get the innocent back into court quickly and ensure that all the facts be presented to the court so that freedom would be the only outcome.

At the present moment our Memorandum and Articles of Association are being drawn up by lawyers at the Scottish Centre of Human Rights for Companies House and should be completed by the end of February. It is in our opinion that M.O.J.O. (Scotland) is a necessary organisation that will benefit Scotland, and the Scottish people, in restoring public confidence in the police and judicial systems. Consequently we are hoping for the help of the Scottish Executive to provide core funding, as well as support for the Thru-Care application programme.

Yours Sincerely

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² See Appendix 2 for Dr Adrian Grounds Report
³ See Appendix 3 for application form
The Miscarriages of Justice Project is a nationwide service based at the Royal Courts of Justice Citizens Advice Bureau.

This project provides advice and assistance to the victims of Miscarriages of Justice. It is aimed at people who are:

- In custody awaiting an appeal on conviction or
- Released, following a successful appeal, and in need of support.

This leaflet explains more about how the service works, the areas we advise on and the levels of practical support and assistance we provide.

How the project works

Cases are referred to us through the Criminal Cases Review Commission and initially we make contact with our clients through their solicitor or probation officer. It is recognised that most people will need a lot of assistance in the period leading up to their release and in the 2 to 3 months following.

Initially you will be seen by a project worker to assess what help you might need. The priorities we deal with are:

- Establishing income
- Organising accommodation
- Dealing with emotional /psychological needs
- Claiming compensation and arranging financial advice.

Your adviser will work very closely with you until all of these needs have been met. In most cases an adviser will visit you at least once while in custody as well as provide ongoing support in the months following release.

Your adviser will attend the appeal hearing and will help organise the discharge grant and travel warrant, if you are released. Advisers can also assist with arranging accommodation on release if this is required.

Even if your appeal is unsuccessful your adviser can arrange a final visit to see if there is any further support we can provide.
In the event of your release, advice and assistance can be given in order to help with specific resettlement needs. This may include help with:

- Claiming Benefits
- Registering with a GP
- Opening a bank account / Budgeting
- Obtaining / Keeping accommodation
- Help with dependency issues
- Employment / Training needs
- Counselling / Befriending
- Family / Relationship issues.

Your adviser will be able to give practical help including help with filling in forms, writing letters, booking appointments and accompanying you to other services. Throughout our work we will be aiming towards helping you feel confident about dealing with your own problems. We are also able to advise on specialist services and funding, and can refer you on to these if appropriate.

The Miscarriages of Justice Project is part of the RCJ Citizens Advice Bureau and our advice is free, confidential and impartial. The project is based in London but is working closely with other Citizens Advice Bureaux throughout the country, so those people living away from London will still be able to use this service.

There is no time limit as to how long you can access this service, though it is estimated that most will use this service for up to 6 months following release. You will be able to access the Bureau’s generalist advice services once the role of the project worker is completed.

For more information on this project you can call 020 7947 7822 / 0207 947 7645, or email office@rcjadvice.org.uk, or you can ask your probation officer or solicitor to contact us.
**Miscarriages of Justice (Aftercare) (PE477)**

**The Convener:** The next current petition is PE477, which concerns aftercare programmes for those who suffer miscarriages of justice. Additional information on the petition has been passed to members.

The petition is in the name of John McManus, on behalf of the Miscarriages of Justice Organisation. The petitioners call on the Parliament

“to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a half way home to help people who have been wrongfully incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court”.

They are concerned about the long-term effects of

periods of incarceration in prison on people who have been wrongly convicted of crimes, and about the absence of aftercare provision when such people’s convictions are quashed by appeal.

We considered the response from the petitioners on 3 September, when we noted that their application for funding for the development of MOJO Scotland had been turned down by the Executive. We agreed to write to the Executive to seek clarification of the level of support that is provided on release, specifically to those who have suffered a miscarriage of justice. A response has now been received, together with further letters from the petitioners.

It is clear that the petitioners and the Executive are at cross-purposes on the issue. The Executive considers that the services that are available to ex-prisoners, which include the enhanced throughcare system that is about to come on stream, are also available to those who have suffered a miscarriage of justice and that, therefore, those people do not require targeted support. That argument hinges on the fact that those services are designed to address a wide range of difficulties that ex-prisoners and their families may experience, regardless of the circumstances of their release.

The Executive states that a report on the joint Home Office and Citizens Advice pilot to assist ex-prisoners who are released on successful appeal against conviction in England and Wales will be published by the end of the year. A copy of that report will be passed to the committee as soon as it is available.

The petitioners are concerned that the committee agreed to ask the Executive for clarification of the level of service that is provided; they argue that they have made it clear that no services, help and support are available. They claim that prisoners who are released on appeal are not given counselling before release, because they have not been on probation programmes. They state that the type of counselling that they propose would be specialised and tailored to the needs of those who have suffered wrongful incarceration.
ANNEX B

The petitioners are concerned that those who suffer a miscarriage of justice appear to be classified as ex-offenders. They remind members that a member of the committee in the previous session expressed concern about the justice system and prisons providing aftercare for individuals whom that system had failed. The petitioners also question the adequacy of the counselling that is available as part of the Home Office and Citizens Advice pilot project.

Do members have comments?

Linda Fabiani: The Executive’s response

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disappointed me. It gave only the facts, so I am disappointed that no services are provided specifically for people who suffer miscarriages of justice and that such people are dealt with in the same way as ex-offenders are. That is sad.

I would like to see the results of the pilot and to go a wee bit further. I would be happy for us to pass the petition to one of the justice committees, along with the report of the pilot when it is issued, and to ask a committee to investigate the matter.

The Convener: I will take that as a recommendation.

Mike Watson: I endorse the recommendation. I, too, am disappointed with the Executive’s response. I would not say that it is flippant, because it runs to two and a half pages, but the Executive has failed to grasp the seriousness of the issue. Sharon Grant’s letter says:

"As the enhanced throughcare service being developed in Scotland will be available to those suffering from a miscarriage of justice we do not consider that they require specific and targeted support."

I am astonished by that.

A few minutes ago, we were handed a revealing article from the Toronto Star that contains comments from Dr Adrian Grounds, who is a forensic psychiatrist from the University of Cambridge. He makes a couple of points that are obvious when they are read, but perhaps we did not think of them.

Most prisoners probably proclaim their innocence, but those who were wrongly convicted are telling the truth. They carry that burden all the time that they are in jail, which puts them in a different frame of mind from people who say, "Okay, I did it, although I may claim that I didn't because it might make me or my family feel better." Those who know that they are innocent carry that burden.

Let us say, for the sake of argument, that two people are each given sentences of 10 years. The person who committed the crime knows that he will stay in prison for that period and will gradually prepare for release. He may or may not have remission, but he will know well in advance when he will leave prison. However, a campaign could be conducted for the individual who was wrongly convicted and is also in prison for
10 years, and he might be told with just days' notice that he is free to go. That individual would have had no means of preparing for release and his situation could not be compared, even broadly, with that of someone who was put in prison for a crime that they had committed.

I am concerned that that has not been taken into account. The comments from Adrian Grounds highlight the issue. He says that, sometimes,

"the wrongly convicted suffer the kind of trauma experienced by victims of war crimes."

We should not forget that such people are victims. The Executive's response fails to comprehend that we are dealing with different situations.

The letter by Kirsten Davidson of the Executive, which dates from April, talks about reducing the risk of reoffending. How can people reoffend when they did not offend in the first place? That shows the level of misunderstanding that exists in the Executive. We should refer the petition to one of the justice committees and highlight in the strongest terms those points and others that members may want to raise.

The Convener: I apologise for not mentioning at the outset that Tommy Sheridan is here to speak about the petition.

Carolyn Leckie: I concur with what Mike Watson and Linda Fabiani have said. Petition PE477 was submitted some time ago and there is no need for further delay. The petition should be referred to one of the justice committees. When one of those committees considers the petition, it might want to take account of the Home Office investigation in England and Wales.

The Executive has failed miserably to acknowledge the specific situation that is the subject of the petition. An assessment needs to be made of what support is necessary in cases that involve a miscarriage of justice. Because the people in such cases do not admit guilt—they are innocent, so why should they admit guilt—they do not get the rehabilitation and support services prior to release that would allow them to plan for their release. It is a complete and utter insult to suggest that those services should form part of the same strategy as the one that applies to offenders.

I am really quite upset on the petitioners' behalf. I imagine that the Executive's response to petition PE477 has compounded their suffering. It is a disgrace. Like other members, I argue strongly that we should move forward on the petition. We need to find a solution. A disservice has been done to these people in the past and that needs to be corrected.

12:15

John Scott: I have nothing to add to what has been said so eloquently by other members, other than to say that I, too, am dismayed by the surprisingly unsympathetic response from the Executive—it is almost bizarre. I endorse totally
what other members have said. We should refer petition PE477 to one of the justice committees.

**Tommy Sheridan (Glasgow) (SSP):** The disappointment in the Executive's response can be contrasted with the positive comments from the committee. It is definitely helpful to hear those comments. In a previous life, I had occasion to spend four months in a training-for-freedom unit in a prison not far from this committee room. It is interesting to note that the training was called "training for freedom". It was aimed at prisoners who had been convicted, had accepted their guilt and were being trained to be reintegrated into society.

What about the people who are innocent? What happens when they are released as the result of an appeal decision or a campaign? The term "training for freedom" does not apply. People including Robert Brown, Joe Steele, Tommy Campbell and Stuart Gair were detained for crimes that they did not commit. Mike Watson highlighted the most important paragraph in the Executive letter. The Executive says there is no need for "specific and targeted support". It is incredible that it can say that.

If a miscarriage of justice takes place—unfortunately it is a fact of life that that happens—surely we must have a package of aftercare to target those who have been the victims of miscarriage of justice. I am pleased by the response of committee members, but saddened by the Executive's response.

**The Convener:** I think that there is unanimity around the table with regard to our disappointment at the Scottish Executive's position. We have to convey that to the justice committees when we ask them to look into the issue quickly and forcibly. It is certainly an issue that needs to be addressed.

**John Scott:** Our recommendation should include the suggestion that we should write to the Executive again saying that we note its response but that we are not content with it.

**Linda Fabiani:** There may well be an issue about that but, if we write back to the Executive, we should split what we say into two parts. We asked for the facts about what was in place and the Executive gave us the facts. However, from the way in which the Executive responded, the language that it used and the suppositions that it made it appears that it completely misunderstood the point. The Executive has to take that on board.

**Jackie Baillie:** I support what Linda Fabiani said. The Executive's response was unhelpful; it missed the point substantially. We have therefore not been able to progress our consideration of PE477. The recommendation that we should send the petition to one of the justice committees, along with a copy of the report from the pilot project that the Home Office is conducting, is sensible. There would be no harm in writing to the Executive in the terms that have been outlined.
ANNEX B

Mike Watson: When our clerk writes to the justice committees and the Executive, I ask that he

specifies the comments that members have made.

The Convener: It is standard procedure for the clerks to write back to the Executive to say what the committee has done with a petition. It would be worth pointing out to the Executive not only that it missed the point, but that that was the second time that it had missed it—the matter has been before the committee and been pursued previously. All the comments that members have made and members’ strength of feeling will be conveyed in the letter to the Scottish Executive, which will emphasise the points that have been made about the extent of the correspondence and members’ disappointment with the responses that have been received.
Dear Steve

PETITION PE477 – MISCARRIAGES OF JUSTICE ORGANISATION

Thank you for your letter of 27 March to Jackie Knox. I have been asked to co-ordinate the following response on the areas dealt with by the Justice Department.

As the Committee is aware, the Scottish Criminal Cases Review Commission was set up in 1997 by the then Secretary of State for Scotland to look into cases where a miscarriage of justice is alleged to have taken place. The Commission, which is based at Portland House, 17 Renfield Street, Glasgow, commenced its role on 1 April 1999. If after proper investigation, the Commission believes that a miscarriage of justice may have occurred, and that it is in the interests of justice that a reference should be made, it may refer the case to the High Court for determination. If an individual considers that he may have been the victim of a miscarriage of justice, he may submit an application to the Commission to consider his case. The Commission has the power to review a case and consider whether it warrants referral to the High Court, even where an appeal has not previously been heard. However, the Commission has a strict policy whereby it will not agree to review a case while an appeal is pending. The Commission also has a strict policy that where there has been no appeal, it will require to be satisfied that there are special reasons for considering such an application.

Scottish Ministers consider that the establishment of the Commission should enhance the confidence of the public in the ability of the criminal justice system to cure miscarriages of justice.

Where it has been proved that an individual was wrongly convicted there are circumstances in which payment of compensation may be made, and two main mechanisms by which it may be paid. Firstly there is a statutory compensation scheme. Put simply, in terms of section 133 of the Criminal Justice Act 1988, to qualify for a payment of compensation, the claimant must have been convicted and:

a) his conviction has been reversed or he has been pardoned on the ground that a new/newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice; or

b) he has had his conviction reversed (quashed) either as an appeal out of time or on a reference from the Scottish Criminal Cases Review Commission (section 194B of the Criminal Procedure
(Scotland) Act 1995, as inserted by section 25 of the Crime and Punishment (Scotland) Act 1997. However, no payment of compensation will be made under this section unless an application is submitted to Scottish Ministers and in the event that an application is submitted, Scottish Ministers are responsible for deciding if an applicant qualifies for payment.

In addition to the statutory compensation scheme, there exist circumstances in which Scottish Ministers may be prepared to consider the payment of an ex gratia sum. In brief, this could arise where it can be demonstrated that there has been a serious default on the part of a member of a police force or some other public authority resulting in a wrongful conviction, or where there are exceptional circumstances, for example where facts emerge at trial, or on appeal within time that completely exonerate the accused.

The Committee also asked about the Scottish Executive's position regarding aftercare for those released after being wrongly incarcerated. Aside from the statutory supervision which is required for long-term prisoners on their release, there is, in practice, no distinction made between the aftercare provided for prisoners released on completion of their sentence, and that provided for those who are released after being wrongly incarcerated. The Social Work (Scotland) Act 1968 places a statutory duty on local authorities to provide an aftercare service to any ex-prisoner who asks for it within 12 months of his/her release. The objective of this voluntary assistance is to provide a range of services which will assist the reintegration of an ex-prisoner into the community and, for those released on completion of their sentence, reduce the risk of reoffending. Such services might be in the form of advice, guidance and assistance on accessing benefits, accommodation, education and training, or drug/alcohol rehabilitation. The Scottish Executive provides 100% funding to local authority criminal justice social work services for the provision of this service.

Turning finally to the issue of funding for non-statutory aftercare programmes, the Scottish Executive currently provides funding through Section 10 of the Social Work (Scotland) Act 1968 to various voluntary organisations which provide specific services to criminal justice social work. Applications for Section 10 funding should be submitted to Bill Ellis, Scottish Executive Justice Department, Community Justice Services Division, Ground West (Rear), St Andrew’s House.

I hope that this information is helpful to the Committee.

Yours sincerely

Kirsten Davidson
Dear Steve

PETITION PE477 – MISCARRIAGES OF JUSTICE ORGANISATION

Thank you for your letter of 5 September to Scott Rogerson in relation to Petition PE477 from the Miscarriage of Justice Organisation (MOJO) calling for the Scottish Parliament to provide assistance in setting up an aftercare programme in the form of a halfway home to help people who have been wrongly incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court.

You previously wrote to the Department on 27 March 2002 on this matter and a copy of the response dated 23 April is attached for ease of reference.

There is no separate aftercare service in Scotland aimed at persons who have suffered a miscarriage of justice. However under the Social Work (Scotland) Act 1968, ex-prisoners including those released following an appeal against conviction and/or sentence, may voluntarily request assistance from their local authority within 12 months of their release from prison. Under these provisions, local authorities provide and facilitate a range of supportive services to help prisoners and their families with resettlement. The Scottish Executive provides 100% funding to local authority criminal justice social work services for the provision of this service.

Social Workers in Scotland work to standards laid down in the “National Objectives and Standards for Social Work Services in the Criminal Justice System.” These National Standards describe some of the objectives of voluntary assistance as follows:

- to provide and facilitate a range of services for prisoners and ex-prisoners and, where appropriate, their families to deal with any problems they may face particularly following release;

- to seek to limit and redress the damaging consequences of imprisonment including the dislocation of family and community ties, the loss of personal choice and the resultant stigma;
• to help prisoners and their families to develop their ability to tackle their own problems;
• to help prisoners and their families, on request, to prepare for release;
• to assist the families of released prisoners to adjust to the changed circumstances arising from
the prisoner’s return where such a service is needed and requested; and
• to assist ex-prisoners to re-integrate successfully into the community.

Relatives may contact the Scottish charity “Families Outside” to seek assistance. Families Outside is
located at 17 Waterloo Place, Edinburgh, EH1 3BG and it offers support to families affected by
imprisonment regardless of the circumstances that resulted in custody. It also operates a confidential
free phone helpline for families and recognises that the imprisonment of a relation can have a huge
impact on the family in terms of risk to housing tenure, financial difficulties, problems in caring
for children, anxiety, stress and health problems and rejection and stigma by neighbours.

Funding for non-statutory aftercare programmes is made available through Section 10 of the Social
Work (Scotland) Act 1968 to various voluntary organisations which provide specific services to
criminal justice social work. I understand however that an application for Section 10 Funding from
MOJO was unsuccessful.

The Committee has expressed concern that there may be a gap in support services provided
specifically to those suffering miscarriages of justice on their release and has asked the Executive for
clarification as to the level of service provided. Although no distinct service is made available to this
particular group the Executive is fully committed to developing the throughcare service.

You may be aware that Ministers have endorsed the development of an enhanced throughcare policy
based on the recommendations of the Tripartite Group Report “Throughcare- Developing the
Service” which was published in January this year. The Tripartite Group with representation from
the Scottish Executive, Scottish Prison Service and Local Authorities was established in 2001 with
the remit of looking at ways of promoting closer partnership working especially in relation to the
transitional arrangements for prisoners moving on release from prison back into the community. It
took the view that successful resettlement of an offender is probably the best guarantee against
offending and that effective preparation for release is a good investment. It made no distinction
between prisoners being released at the end of their sentence and those being released after a
miscarriage of justice as the same level of service would be made available to both groups. Funding
will be made available for the enhanced service and the recommendations will be implemented in
partnership with SPS and Local Authorities on a phased plan from 2003 onwards.

The Tripartite Group Report can be found at www.scotland.gov.uk/library5/justice/tcds-00.asp

As the enhanced throughcare service being developed in Scotland will be available to those suffering
from a miscarriage of justice we do not consider that they require specific and targeted support.

The Home Office pilot project to assist ex-prisoners released on successful appeal against conviction
has now been running for over a year. It was launched informally in August 2002 and formally by
Ministers in January 2003 and I understand that the Citizens’ Advice (formerly NACAB) is due to
submit its Annual Report at a meeting with Home Office Ministers before the end of the year. We
are keeping in close contact with our colleagues in the Home Office on this matter and I will arrange
for a copy of the Report to be forwarded to the Public Petitions Committee as soon as it becomes
available.
A copy of the Home Office Report of the Working Group dated April 2002 is also attached for your information.

www.probation.homeoffice.gov.uk/files/pdf/assistance_for_ex_prisoners_who_are_released_on_successful_appeal_against_conviction.pdf

I hope that this information is helpful to the Committee.

Yours sincerely

[Signature]

SHARON GRANT
Steve Farrell  
Room 516  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP  

24 June 2002  

Dear Mr Farrell  

THE SCOTTISH PARLIAMENT-SUBMISSION OF PUBLIC PETITION - PE477  

In response to your letter dated 22 May 2002, I would like to apologise for the length of time that it has taken to reply to the Committee in relation to the Executives view regarding the current statutory and non-statutory aftercare provisions available to those suffering miscarriages of justice.  

I endeavoured to clear up some of the confusion in relation to statutory supervision and the lack of distinction between the guilty and those who are released after wrongful incarceration. Unfortunately in reply to the comments from Kirsten Davidson founded fruitless as she has now left the Justice department, and I am waiting for comments from her successor Jackie Knox. However it would seem that all statutory bodies available only deal with the ex-offenders - a category that should, and could not, be included for those who were a miscarriage of justice. At the hearing of the petition the MSP Rhoda Grant voiced her concerns at asking the justice and prison system for help, as all the victims of a miscarriage of justice had already been failed by that system.  

As for the non-statutory aftercare programmes, and funding through section 10 of the Social Work (Scotland) Act, I have approached Bill Ellis, and I am awaiting his reply. However there seems to be confusion about which criteria M.O.J.O. (Scotland) should fall under. As M.O.J.O. (Scotland) is such a unique organisation there was some confusion to what category of funding we apply too, as we are hoping to set up both counselling service (HEALTH), which we are waiting to hear from Dr Ian Stephens and the possibility of overseeing a counselling programme in conjunction with Dr Adrian Grounds, an education and re-integration service (EDUCATION), and also finding housing for victims on their release (HOMELESSNESS). All however should fall under criminal justice and social work (COMMUNITY JUSTICE).
I would also like to take this time and inquire about the possibilities of the Miscarriages of Justice Organisation addressing one of the justice committees, particularly in relation to inviting Dr Adrian Grounds to address the committee about the psychological damage that wrongful incarceration has on the individual. Dr Grounds is one of the leading world authorities on this condition, and has already been invited by the Canadian government to give a testament on these damages at the inquiry of Tom Sophonow (see http://www.gov.mb.ca/justice/sophonow/toe.html).

I hope this has helped to clear the way for funding for M.O.J.O. (Scotland), as at the present moment we are still functioning way below our capability due to the lack of resources.

A recent report carried out by the Home Office "found significant evidence that many individuals suffer serious psychological or psychiatric problems as a result of their wrongful imprisonment and that these problems are often not apparent until after release. The study found that expert facilities do not exist for addressing these problems. The report goes on to say about M.O.J.O. "that MOJO already aims to do all the work described in the project specification" and "it was felt that they have the obvious advantage, in terms of credibility, of having been through the experience themselves."

The report does go on to say that the "consultant's view was that MOJO were not sufficiently well developed as an organisation to provide the type of service engaged. However it was nearly two years ago when Peter Shore met with one of MOJO representatives, which even then never fully represented the highly skilled volunteers working with M.O.J.O. at that time. Since then MOJO has been set up as a non profit making Limited Company, both in England and Wales, as well as a separate company in Scotland (we wait to hear about charitable status). I'm sure if Peter Shore were to approach M.O.J.O. now he would find that a well-developed organisation functions on very limited resources.

Yours sincerely

John McManus
Director

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0141 564 1245
Steve Farrell  
Room 5.16  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP

Dear Mr Farrell  

1st April, 2003

SCOTTISH PARLIAMENT – SUBMISSION OF PUBLIC PETITION – PE477

Following a correspondent from your colleague Franck David, on the 12th September 2002, in which the Public Petitions Committee would defer consideration of our petition, pending the outcome of our funding application to the Scottish Executive. We eventually received a reply from the Scottish Executive (which I have enclosed) after five months from applying. Our application proved unsuccessful, the reasons I find astonishing, considering the nature of our work.

Firstly we lost out because of “the backdrop of a number of competing bids and a tight funding situation”. I have been informed that the “competing bids” were from organisations dealing with guilty offenders.

Second reason given was “regard to the value for money aspects…we noted the restricted number of clients”. I find this comment, “regard to the value for money, distasteful considering we are talking about individuals who have been wrongfully incarcerated, for possibly ten, fifteen or twenty years. They have the money to lock them up and destroy their, and their families, lives. Surely finance shouldn’t be an issue, when it comes to repairing the tragic mistakes of the state.

Also “the restricted number of clients”, which I was told was due to the lack of appeals over the last 10 years. This, however, says more about the failures within the Scottish legal system than its successes. Considering when the Scottish Criminal Case Review Commission was set up in April 1, 1999 it had 27 cases by March 2002 it had 304, if this doesn’t highlight the growing number of our clients then I don’t know what does.
Mr Cole goes on to mention the setting up of the pilot project by the National Association of Citizens Advice Bureau. The NACAB has a narrow remit, that does not take on board the counselling after release programme, nor does it assist the families of the wrongfully convicted and to be quite honest it took the British Government 14 years, after the release of the Guildford Four and over a hundred other cases, before being embarrassed by our sister organisation in England before they put there hands up to their responsibilities.

This funding should be made available right away as that wrongfully convicted person could be you or a member of your family. It would seem we are been told that the only money available is for guilty offenders e.g. rapists, murderers and child abusers. I can’t help wondering what the Scottish public would think of this situation.

Since we last spoke the Miscarriages of Justice Organisation (Scotland) has received charitable status. Therefore I would implore that this situation be considered again, and if the funding isn’t available through any existing channels then maybe the Scottish Executive could take the lead on human rights and set aside funding for this humanitarian concern.

Yours sincerely

John McManus
Project Co-ordinator
Steve Farrell  
Room 5.16  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP

Dear Mr Farrell  

11th September 2003

SCOTTISH PARLIAMENT – SUBMISSION OF PUBLIC PETITION – PE477

To all members of the Petitions Committee I would like to express my sadness and frustration at what I witnessed from the public gallery last Wednesday 3rd September. I would like to point out that this is not directed at any individual, but due to the length of time, and changing faces on the committee since we where originally heard, I feel after eighteen months we are back to square one.

Frustration at the fact that you are now seeking clarification from the Scottish Executive as to exactly what level of service is provided. The lack of services, help or support was brought to the attention of the Public Petitions Committee a year and a half ago at the original petitions hearing on the 16 March 2002. Time is a precious concept that so many of us take for granted, but if you had lost 25 years of your life, like Robert Brown and others, then maybe we would all realise the importance of moving quickly to help those released at appeal. The quicker they are given the support they need the quicker their re-adjustment back into society.

Let me spell it out there are no provisions available for innocent men and women being released from the appeal court. They will not be given any counselling pre-release, as they are not allowed on the probation programmes as they are seen as in denial of the crime and will serve the whole sentence. For someone doing a life sentence this can mean, very often doing way beyond your original tariff. Once they win their freedom there are no other organisations set up to help them. We are the only organisation that is prepared to help with housing, benefits and also counselling.

The counselling we propose is very specialised, and would be carried out by people who have gone through the same traumatic experience. Something Dr Adrian Grounds of the Institute of Criminology at Cambridge University agrees with. Dr Grounds was asked 12 years ago to assess the Birmingham Six for
compensation for the psychological damages that wrongful incarceration has on
the individual. Dr Grounds has been invited to speak on this subject by the
Canadian Government and is a world-renowned expert on these matters. We have
already approached a similar psychiatrist, Dr Ian Stephens, who is willing to
oversee a counselling programme that we would like to establish in Scotland, with
the full cooperation of Dr Grounds.

My sadness and bemusement was the suggestion relating to the access to existing
rehabilitation programmes for ex-offenders. Can we all, please, understand these
people are not offenders, and should not be treated as such, and to even think
about classify them in this way is a gross insult to each and every one of them. At
our original petition hearing one of your own MSP’s, Rhoda Grant, had at least the
understanding and the humanity to point out, when we where asked to approach
the criminal justice department for funding, that she was a little concerned that we
are asking for the justice system and prisons to look into providing such aftercare
system. The people whom we are talking about have already failed by that
system. Perhaps the issue should go through another department. I don’t want to
sound harsh but innocent people are continued to be treated worse than the guilty.

You are also talking about seeking further details of the Home Office pilot scheme
ran by Citizens Advice Bureau at the Royal Court of Justice in London. Well for
housing and benefit information I have no problem with that, but I question their
knowledge on the counselling side. I’m sure they are well intentioned, but the
reality is they do not have a clue what they are dealing with, which I believe
compounds the miscarriage of justice that has already befallen these unfortunate
individuals. I implore all of you even if you don’t want to give us the funding,
please set it up in the correct manner. Put it to the justice committee to have a full
and extensive debate, call Dr Adrian Grounds and hear what he has to say. I have
enclosed one of his reports on our founder Paddy Hill, one of the men more
commonly know as the Birmingham Six, read the last 5 pages about the general
overall damages that Dr Grounds has collated on the damages that we, the state,
have inflicted on innocent people and their families and for the sake of humanity
start and help us to put it right.

Yours sincerely

[Signature]

John McManus

Project Co-ordinator
Dear Mr. McManus,

GRANT UNDER SECTION 10(1) OF THE SOCIAL WORK (SCOTLAND) ACT 1968
FUNDING APPLICATION

Thank you for your letter and enclosed application for grant under Section 10 of the Social Work (Scotland) Act 1968.

We have received a number of applications for Section 10 funding in 2003-04 financial year (and beyond) for work in the justice field. Your own application for a substantial amount of funding over a 3 years period has therefore been considered against the backdrop of a number of competing bids and a tight funding situation. I regret to inform you that your application for Section 10 funding has on this occasion proved unsuccessful.

In considering your organisation’s bid we have had particular regard to the value for money aspects of the application. Specifically we noted the restricted number of clients, anticipated to be dealt with through the project and the significant level of funding being sought. The application also provided little information of the outcomes the project was seeking to achieve.

We understand that the Home Office is presently introducing a pilot project in partnership with the National Association of Citizen Advice Bureaux to offer advice and assistance to individuals leaving prison, who have had their sentences quashed. Should the pilot scheme in England and Wales prove to be successful, consideration will be given to the possibility of appropriate additional funding being made available for a similar scheme to be introduced in Scotland.

Yours sincerely,

Brian Cole

BRIAN COLE
Justice 1 Committee

Dangerous Driving and the Law

Petitions PE29 by Alex and Margaret Dekker, PE55, PE299 and PE331 by Ms Tricia Donegan

Note by the Clerk

Background

Petitions
1. The Committee considered public petitions PE29 by Alex and Margaret Dekker, PE55, PE299 and PE331 by Ms Tricia Donegan concerning dangerous driving and the law at its meeting on 8 October 2003 and agreed to write to the Minister for Justice asking: when the steering group considering the report by the former Department for Transport, Local Government and the Regions (DTLR), Dangerous Driving and the Law, will reach conclusive decisions on the report; whether the Integration of Scottish Criminal Justice Information Systems (ISCJIS) programme will hold data on serious injuries caused by dangerous driving and careless driving; and the timescale and any outcome of the survey of convicted careless and dangerous drivers.

2. The Committee further agreed to write to the Lord Advocate requesting an update on: when the progress report on the 80 recommendations outlined in the Review of the Investigation of Road Deaths in Scotland by the Crown Office and Procurator Fiscal Service will be available; how many offences under sections 1 and 3A of the Road Traffic Act 1988 are now prosecuted in the High Court; and how many cases that were tried in the sheriff court and were thought appropriate to be remitted to the High Court for sentencing were so referred.

Correspondence from Minister for Justice
3. The Minister advised that there have been a number of developments in this area (letter attached at Annex A). The Criminal Justice Bill which came into effect on 20 November 2003 increased the maximum penalty for “causing death by dangerous driving” and “death by careless driving when under the influence of drink or drugs” from 10 years to 14 years imprisonment. With regard to progress of the Steering Group’s considerations, the Minister advises that an announcement on progress, and possibly a consultation paper, on the issues raised by DTLR is expected early this year.

4. In response to whether the ISCJIS programme will hold data on serious injuries caused by dangerous driving and careless driving, the Minister reports that the SCOTSTAT Crime and Justice Committee has
considered detailing cases involving road accident serious injuries, however, for practical reasons this is not possible. However, police representatives are looking at the feasibility of correlating road statistical returns with court disposal records.

5. With regard to the Committee’s concerns about the timescale for the outcome of the survey of convicted careless and dangerous drivers, the Minister advises that DTLR are expected to publish the results of the survey early in 2004.

Correspondence from the Lord Advocate
6. The Lord Advocate advises that the progress report on the 80 recommendations outlined in the *Review of the Investigation of Road Deaths in Scotland* by the Crown Office and Procurator Fiscal Service will be forthcoming in spring of this year (letter attached at Annex B).

7. In relation to how many offences under sections 1 and 3A of the Road Traffic Act 1988 (“the 1988 Act”) are now prosecuted in the High Court, the Lord Advocates states that since 13 January 2003, 15 cases have been indicted under section 1 of the 1988 Act. Of these 13 have been prosecuted in the High Court, the other 2 cases were prosecuted under solemn procedure in the Sheriff Court. The Lord Advocate has given a commitment to provide the Committee with figures in relation to section 3A of the 1988 Act as soon as possible. No cases have been remitted from the Sheriff Court to the High Court for sentencing.

Correspondence from Mrs Margaret Dekker, Scotland’s Campaign against Irresponsible Drivers (SCID)
8. The petitioner has written to the Convener highlighting some outstanding issues arising from the dangerous driving petitions (letter attached at Annex C). Mrs Dekker remains concerned that frequently a lesser charge of careless driving is brought in Scotland where the more appropriate charge is dangerous driving. The petitioner suggests that the DTLR report is flawed due to the lack of input of the various Scottish agencies into the report and that as the 1988 Act is being applied and administered by two criminal justice systems, the report cannot achieve its aim to evaluate the working of the Act throughout the UK. As such, Mrs Dekker states that she has no confidence in the Steering Group set up to examine the findings of the DTLR report because of the level of participation of the Scottish agencies.

9. Other issues concerning the Victims’ Statement Scheme and Fatal Accident Inquires have been raised by the petitioner but as these do not relate to the initial petition, the Convener will write separately to Mrs Dekker on these matters.
Procedure

10. The Standing Orders make clear that, where the Public Petitions Committee refers a petition to another committee, it is for that committee then to take “such action as they consider appropriate” (Rule 15.6.2(a)).

Options

11. On the basis of the information received the Committee may wish to pursue one or more of the following options:

a) to write back to the Lord Advocate and the Executive asking that they be forwarded all outstanding information as soon as possible and reconsider the petitions thereafter. Information awaited is as follows:

i) announcement on progress of the steering group on the DTLR report, and perhaps a consultation paper, expected in early in 2004;

ii) information on the feasibility of a new approach to collection of statistical information on road accident injuries linked to any criminal charges arising (currently being considered with police force representatives);

iii) DTLR report on survey of convicted careless and dangerous drivers (and their families), expected in early 2004;

iv) Update on the recommendations outlined in the Review of the Investigation of Road Deaths in Scotland, expected in Spring 2004;

v) Information on offences under section 3A of the Road Traffic Act (The Lord Advocate offered to provide this “as soon as possible”); and/or

b) to write to the Minister for Justice seeking her views on the validity of the DTLR report given the lack of involvement from Scottish agencies and seeking an assurance that the Steering Group will adequately address the Scottish perspective.¹

¹ The former Justice 1 Committee has written on this matter previously, but the option is available for the Committee to do this again as this is a new administration.
PUBLIC PETITIONS: DANGEROUS DRIVING AND THE LAW

Thank you for your letter dated 27 November requesting information on the current position regarding the Transport Research Laboratory (TRL’s) report ‘Dangerous Driving and the Law’; the Integration of Scottish Criminal Justice Information Systems (ISCJIS) programme concerning data on serious injuries caused by careless and dangerous driving; and the timescale and any outcome of the subsequent survey of convicted careless and dangerous drivers.

There have been a number of developments since the publication of the TRL report. A re-organised, Home Office-led, Steering Group was set up last year to continue the review of road traffic offences for bad driving and to look especially at ways of updating the law on serious driving offences, particularly where death or injury results. Also, the Criminal Justice Bill, which came into effect on 20 November 2003, increased the maximum penalty for ‘causing death by dangerous driving’ and ‘causing death by careless driving when under the influence of drink or drugs’ from 10 to 14 years’ imprisonment.

The current Steering Group is comprised of officials from the Home Office, Department for Transport, Crown Prosecution Service, Department for Constitutional Affairs, Northern Ireland Office, the Executive’s Justice Department, and the Crown Office. The Group met on a number of occasions last year and we would expect an announcement on progress, and perhaps a consultation paper on the issues raised by the TLR report, early in 2004.
The feasibility of linking statistical information on road accident injuries with that of any criminal charges arising has been considered by the SCOTSTAT Crime and Justice Committee. In particular, the possibility was discussed of introducing suitable ISCJIS offence aggravator codes and amending the Justice Department's classification of crimes and offences so as to enable separate identification of cases involving road accident serious injuries within the statistics on offences of dangerous and careless driving. However, police force representatives felt that there would be a number of practical difficulties with this approach. They suggested instead that a better option would be for the crime reference number to be included as a data item in the road accident statistical returns, which could then be used to enable data matching with court disposal records. The feasibility of this approach is now being pursued with the consultation group responsible for the collection of road accident statistics.

With regard to the survey of convicted careless and dangerous drivers (and their families) referred to in your correspondence, I understand that the Department for Transport is likely to be issuing a TRL report incorporating the results of both exercises early in 2004.

I hope that this is helpful.

Best wishes,

CATHY JAMIESON
Dear Pauline,

PUBLIC PETITIONS: DANGEROUS DRIVING AND THE LAW

Thank you for your letter of 27 November 2003 requesting an update on the recommendations outlined in the Review of the Investigation of Road Deaths in Scotland. Please accept my apologies for the delay in replying. Further work is being done on appraisal of the review recommendations and I hope to provide the committee with an update in the spring.

You also asked for information about the way in which cases of causing death by dangerous driving have been dealt with since the move to a presumption that such cases should go to the High Court.

Of the 15 cases indicted in relation to a charge under section 1 of the Road Traffic Act 1988 since 13 January 2003, 13 been prosecuted in the High Court. The other 2 were considered by Crown Counsel and deemed appropriate for prosecution as Sheriff and Jury cases in line with the policy I announced in January last year. One of these cases was given a nine-month prison sentence following conviction. The other case has yet to be brought to trial.

Unfortunately, I am unable to provide information on offences under section 3A of the Road Traffic Act at present, but undertake to provide this information as soon as possible.

Your final question asked how many cases tried in the Sheriff Court were remitted to the High Court for sentencing. There have been no such cases.

I hope this information assists the Committee in its further consideration of the Public Petitions on dangerous driving.

Yours sincerely,

COLIN BOYD

Investor in People
The Scottish Executive
Scotland’s Campaign against Irresponsible Drivers

21 Jul 2004

Pauline McNeill MSP
Convener of Justice 1 Committee
The Scottish Parliament
Edinburgh
EH99 1SP

19th January 2004

Dear Pauline,

Petitions on Road Traffic Deaths

Thank you most sincerely for arranging the meeting on 12th December 2003.

As discussed the petitions before the Committee on the application and administration of the Road Traffic Act in Scotland raise many issues. It is our understanding that the petitions on road deaths will be discussed by the Committee sometime in February.

We hope the enclosed information will be helpful in your consideration of the vexing issues families, bereaved by irresponsible drivers, are currently having to deal with at a time when they are most vulnerable.

Yours sincerely,

[Signature]

Margaret Dekker (Petitioner)
SCID Researcher/Secretary
Scotland's Campaign against Irresponsible Drivers

Margaret Dekker
SCID Researcher
17 Scott Drive
CUMBERNAULD
G67 4LB
Tel No: 01236 610234
e-mail: SCID@blueyonder.co.uk

Alison Taylor
Clerk to the Justice 1 Committee,
Room 3.11
Committee Chambers,
George IV Bridge,
Edinburgh
EH9 1SP.

19th January 2004

Dear Clerks to Justice 1 Committee,

Road Traffic Deaths (PE29)
Dangerous Driving Deaths (PE55, PE299, PE331)

SCID would like to thank the convener Pauline McNeill, members of Justice 1 Committee and the clerks to the Committee for the action they are taking in relation to the above petitions on road deaths, viz;

To write to the Executive requesting an update on:
(a) when the steering Group for the DTLR report will reach conclusive decisions on the report.
(i) whether the ISCJIS will hold data on serious injuries caused by dangerous and careless driving and
(ii) the timescale and outcome (if appropriate) of the survey of convicted careless and dangerous drivers.

(b) To write to the Lord Advocate requesting an update on when the progress report on the 80 recommendations outlined in the Review of the Investigation of Road Deaths in Scotland by the Crown Office and Procurator Fiscal Service will be available.
Following a meeting with Pauline McNeill, convener of Justice 1 and Alison Walker clerk to the Committee on 12\textsuperscript{th} December 2003, the petitioners (now SCID) wish to highlight the main areas of concern arising from death and serious injuries caused by dangerous and careless drivers as they relate to the petitions on road deaths before Justice 1. These are:

1. Transport Research Laboratory (TRL) research study \textit{Dangerous driving and the law}.

2. The administration and application of the Victims’ Statement Scheme (VSS).

3. The procedure for Fatal Accident Inquiries (FAI).

1. TRL Research Study \textit{Dangerous driving and the law}

1.1 Background to Petitions.

The petitions before the Scottish Parliament on road traffic deaths were put on hold pending the completion of the Transport Research Laboratory (TRL) research study. This 2½ year research study was to \textit{Evaluate the Working of the Road Traffic Act}. The findings were published by the DTLR in January 2002 as \textit{Dangerous driving and the law}.

The remit of the TRL study stated “this exploration will seek to identify whether ‘less’er’ charges of for example, careless driving are being brought where a charge of dangerous driving might be more appropriate.” The subject of PE 29, PE55 and PE 331.

During the 2½ year TRL study approximately 800,000 people were injured as a result of road crashes in Great Britain, of which approximately 8,500 people were fatally injured.

1.2 Scottish Participation in the TRL Research Study

A previous submission by SCID to the Justice Committee on 11\textsuperscript{th} April 2002 detailed the lack of participation by the Scottish Criminal Justice agencies in the TRL research project, and consequently the subject of the petitions to Parliament, that frequently a ‘less’er’ charge of careless driving is brought in Scotland where the more appropriate charge would be one of dangerous driving, \textit{remains unanswered}.

To summarise the participation of Scottish v England & Wales agencies;
<table>
<thead>
<tr>
<th>Methodology and Participation (Dangerous driving and the law)</th>
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<tr>
<td><strong>England &amp; Wales</strong></td>
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<tr>
<td>Analysis of Fatal Accident Files</td>
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<tr>
<td>Analysis of Re-offending</td>
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<tr>
<td>Police Force participation</td>
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<tr>
<td>Decision to Prosecute</td>
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<tr>
<td>Incorrect charging</td>
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<td>Interviews</td>
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<td>Total of 79 police officers participated - no breakdown of figures given.</td>
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'The researchers state in their report, "It was not possible to obtain views from a sample of sheriffs, (in Scotland on incorrect charging) but a brief statement was provided from the Council of Sheriffs' Association, stating that their members find no difficulty in convicting or sentencing drivers under the current legislation."

What the Transport Research Laboratory's study did record was that:

- **Section 3 Careless driving** - there are different criteria being applied in England & Wales than that used in Scotland, giving rise to two forms of the offence. The TRL study states "These two different forms of the offence require quite different types of evidence; they are often referred to under the general heading of Careless driving."

- "Dissatisfaction with a system which defines a relatively small number of behaviours as Dangerous whilst leaving everything else as Careless, regardless of whether it was minor or serious".

This lack of participation by the Scottish agencies, together with the facts that UK Road Traffic Act is applied and administered by two different criminal justice systems in which case law is not shared, points to a **major flaw in the TRL study** whose remit was to evaluate the working of the Road Traffic Act **throughout the UK.**
1.3 The Role of the Scottish Executive in the TRL study

Jim Wallace, as Minister for Justice, stated to the Justice Committee that a Steering Group had been set up to monitor the TRL study and to advise if further research was needed. This Steering Group is now examining the findings of the TRL report and comprises of representatives from the Home Office, Department for Transport, Lord Chancellor’s Department, Crown Prosecution Service and the Scottish Executive’s Justice Department (SEJD) and Crown Office as well as the author of the DTLR report, i.e. the Scottish representatives are from SEJD and Crown Office. We can have no confidence in this representation given the level of participation by the Scottish agencies. SCID is extremely disappointed that there were, and continue to be, no representatives on the Steering Group to put forward Scottish victims’ issues and indeed road traffic policing issues.

Can the Committee inquire from the relevant agencies;

(a) Why innocent victims’ road deaths and serious injury cases were treated so casually by the Scottish agencies who were asked to participate in the 2½ year research study commissioned by the DTLR?

(b) Why the representatives from the SEJD and Crown Office on the Steering Group did not monitor what was happening (lack of participation) and take steps to correct?
2. The Administration and Application of the Victims Statement Scheme (VSS)
PE29 (point 4) requested that the Scottish Parliament; Monitor the Scottish situation in dealing with road deaths.

SCID would draw attention to the VSS currently being piloted.

2.1 Application of VSS - Road Traffic Offences

The Deputy Minister for Justice, Hugh Henry, when giving evidence to Justice 1 Committee on the 8th October 2002 stated; "Road traffic offences have also been included. (in VSS) I am sure that most MSP's have come across cases in which the family of a person who has been injured as a result of a road traffic offence feels aggrieved. There have been some high-profile cases in which the victims' families have felt that insufficient attention was paid to their circumstances. There is a good reason for including road traffic offences."

Attached is a copy of the relevant section from the Scottish Executive's publication Victim Statements Pilot Schemes (General Guidance for Practitioners) From the prescribed offences as they relate to the Victim Statements, it is clear that families bereaved by careless drivers are excluded from the scheme.

SCID would ask to Committee to:

- Confirm which Road Traffic Offences\(^1\) will be included in The Victim Statement (Prescribed Offences) (Scotland) Order 2003.

- Inquire what provision has been made, for victims seriously injured as the result of a road traffic crash, to participate in The Victim Statement Scheme as stated by the deputy Justice Minister in his evidence to the Committee?

From the petitions on Road Deaths before Parliament and past evidence SCID has presented, the Committee will be well aware of the aggravated grief and alienation the present careless driving offence (Section 3 of the RTA) causes families so bereaved and the distress caused to families by the exclusion of serious injury from all road traffic offences.

Recommendation:

(a) To seek inclusion of Section 3 of the RTA (Careless Driving), where there has been fatal consequences, in The Victim Statement (Prescribed Offences) (Scotland) Order 2003.

(b) Victims seriously injured, following a road crash where there is culpability, be included in The Victim Statement (Prescribed Offences) (Scotland) Order 2003.

\(^1\)The Scottish Statutory Instrument 2003 No. 441, Article 2 (Offence prescribed for the purposes of section 14(2) of the Criminal Justice (Scotland) Act 2003) point 21 and 22 states that only offences under section 1 of the RTA (Causing death by dangerous driving) and section 3A of the RTA (Causing death by careless driving under the influence of drink and drugs) will be included in the Order
2.2 Administration of VSS - Road Traffic Offences

SCID welcomes the general principle of the VSS currently being piloted. However, Part 2 section 14 (Victims’ Rights) The Criminal Justice (Scotland) Act¹ 2003 which states;

(4) A copy of any-

(a) victim statement made; or

(b) statement made by virtue of subsection (3) in relation to a victim statement,
is, if the accused tender a plea of guilty to, or is found guilty of, the offence in question, to be provided forthwith to the accused by the prosecutor.

Concerns include;

• A victim’s/victim family’s emotions and problems arising from the crime will be put in the public domain whilst defence agents always advise their clients, for sound reasons, to be economic with information, this means the offender keeps his/her privacy. For example;
  i) Parents whose sons were victims of a dangerous driver, one being killed and the other very seriously injured, stated that they would not want their surviving 16 year old son to know the difficulties they were experiencing, coping with his injuries, in so much, that he was only recognisable by his voice.
  ii) Another bereaved family have stated that they would not wish a mother’s attempted suicide to be in the public domain.

• The victims/victim family’s statement gives personal information to the defence, on which the victim could be cross examined (perhaps brutally). The defence agent by having access to victim/s statement containing personal and sensitive information could take advantage of the victim/s vulnerabilities. It is only too predictable that some defence agents will take the opportunity to present a view that the victim had “problems” before the bereavement.

• Victims/victim family’s have real fears that by divulging the content of their personal statement to offenders, all sorts of problems can arise at the completion of the offenders’ punishment.

• Contrary to the position of the defence agent the victim/victim family cannot express a view on a sentence.

• if victim/victim family’s do not take the option to make a statement what inferences will be drawn?

¹The Act defines those persons as having a relationship with the victim viz Section 14 para(10). Any four will be eligible to make an individual statement. For the purposes of this submission individual statements will collectively be named “victim family” statement.
Recommendation

To safeguard the interests of victims/victim families and to allow them to participate in the criminal justice system, SCID puts forward the view that victims/victim families should have as a minimum right:

(a) The option of making a verbal statement in court at the conclusion of a case but before sentencing. This would balance the defence agent's plea in mitigation. The judge/sheriff may or may not take into account either statement. Any sensitive information could be made available to the judge/sheriff through a medical report. Again this would balance social reports etc frequently made available to sheriffs/judges before sentencing the offender.

(b) There should be a further option for victims/victim families to make an additional statement e.g. to assist the considerations of the Parole Board and to assist the court in their decisions to return an offender's driving licence before the disqualification period was completed.
3. Fatal Accident Inquiries (FAI's)
PE29 (point 4) requested that the Scottish Parliament;
Monitor the Scottish situation in dealing with road deaths.

3.1 Guidelines v Practice

The Crown Office and Procurator Fiscal Service publication Criminal Proceedings and Fatal Accident Inquiries states:

"An FAI must be heard in the following circumstances;
(i) where it appears that the death has resulted from an accident occurring in Scotland while the deceased, if an employee, was in the course of his employment, or, if an employer or self-employed, was engaged in his occupation as such; and
(ii) where the person who has died was at the time of his death in legal custody."

By way of anomaly - where a lorry driver, in the course of his/her employment, is involved in a road crash which results in his death - a FAI will be a mandatory, whether the next of kin wants it or not. Conversely, if a similar road crash involves a lorry driver and another road user, resulting in the death of the road user, a FAI will be discretionary, even if the next of kin express a desire for one.

A discretionary FAI following a road death is a very rare occurrence and can only be obtained in practice when a bereaved family actively campaigns to seek representation from MSP’s, MP’s, councillors and support groups, ie when there is public interest.

Criminal Proceedings and Fatal Accident Inquiries publication also gives clear guidelines to bereaved families;

"Liaison with relatives in death cases
You will be asked whether you wish a Fatal Accident Inquiry to be held, unless there are to be criminal proceedings or the law requires that a Fatal Accident Inquiry is held. The Procurator Fiscal will make your views known to Crown Office, however, the final decision as to whether there should be a Fatal Accident Inquiry rests with the Lord Advocate."

SCID can categorically state that the views of bereaved families are not sought. Many families have stated their desire for a FAI to be held only to be told by fiscals "there was no point, nothing would be gained." In reality an FAI will not even be considered by a fiscal unless there have been 4-5 deaths at the locus.

3.2 Reasons why a bereaved family might seek a FAI

There three main reasons for a family seeking a FAI:

(a) Information
Bereaved families have a great need for information about their loved ones death and the subsequent investigation – it is part of the grieving process. While SCID understands that VIA is in its early stages there remains a clear need for families to know by right; What, When and How they can access information on their loved ones death. Bereaved families wait patiently (sub judicue rule) until any investigation and or criminal proceedings (in some cases this can take 2 years or more) are concluded for further information. Frequently, at the conclusion of a
case families have asked to have sight of the police report to be told that it is confidential. SCID had hoped that the Freedom of Information Bill might have provided a means for families to access these reports, but nothing has changed. This lack of openness leads to the perception rightly/wrongly that there is "something to hide."

SCID campaigns for the right of bereaved families to have access to the police report with any sensitive information eg witness names and addresses deleted.

(b) Road Safety
When a road death occurs and where there has been, in a community, recorded concern of road safety on a particular stretch of road, a bereaved family may seek a FAI to prevent a similar occurrence in the future (One of the stated criteria of a FAI) Communities can not sit by and wait until 4 or 5 deaths occur before action is taken!

(c) Recognition
As the victim is of "no consequence" in a "careless" driving charge, families would seek a FAI to obtain legal recognition that their loved one was killed by the actions of a "careless" driver. (To ventilate the facts in public and to ascertain the circumstances of the death)
The obvious solution, and one which SCID campaigns for, is a change in the Road Traffic Act to put death (including serious injury) uppermost in the charge. However, as a FAI is a product of the Scottish legal system and the Road Traffic Act is a reserved matter there is presently no alternative other than for a bereaved family’s views to be positively sought.

Recommendation:
In keeping with the Scottish Executive’s Strategy for Victims; To put victims at the ‘heart of the criminal justice system’;

(a) Procurators fiscal should have procedures in place whereby next of kin’s views (whether they wish/not a FAI) will be formally recorded and forwarded to Crown Office for consideration.

(b) Crown Office should acknowledge to a bereaved family that their views on an FAI have been forwarded for consideration.

(c) Finally, it is only right and proper that the reasons on the final decision taken by Crown Office be explained to next of kin.

SCID wishes to thank the Committee and the clerks for the support they have already given, in what are usually, very negative circumstances for families bereaved by irresponsible drivers.

Yours sincerely,

Margaret Dekker
SCID Researcher/secretary
Annex A

Victim Statements: Prescribed Offences

Non-sexual crimes of violence
Murder
Culpable homicide
Abduction
Assault
Robbery
Cruel and unnatural treatment
An offence under section 12 of the Children and Young Person's (Scotland) Act 1937 (c. 37) (cruelty to persons under 16).
An offence under section 41(1)(a) of the Police (Scotland) Act 1967 (c. 77) but only in respect of an assault on a constable (assault on constables, etc).

Sexual crimes of violence and indecent crimes
Rape
Sodomy
Abduction of a woman or girl with intent to rape
Assault with intent to rape or ravish
Indecent assault
Lewd, indecent or libidinous behaviour or practices
An offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (c. 36) (unlawful sexual intercourse with mentally handicapped female or with patient).
An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39): sections 1 to 3 (incest and related offences);
section 5 (unlawful sexual intercourse with girl under 16);
section 6 (indecent behaviour towards girl between 12 and 16);
section 7(2) and (3) (procuring);
section 8 (abduction and unlawful detention);
section 10 (seduction, prostitution, etc. of girl under 16);
section 13(3)(b) or (c) (homosexual offences)

An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust).
Any offence where there was a significant sexual aspect to the offender's behaviour in committing the offence.

Housebreaking etc
Theft by housebreaking.

Racially motivated crimes
An offence under section 96 of the Crime and Disorder Act 1998 (c. 37) (offences racially aggravated).

Road Traffic
An offence under section 1 of the Road Traffic Act 1998 (c. 52) (causing death by dangerous driving).
An offence under section 3A of that Act (causing death by careless driving when under influence of drink or drugs).

Other
Fire-raising.

Inchoate offences
An offence of conspiring or inciting the commission of an offence specified in this Schedule.
An offence of aiding, abetting, counselling or procuring the commission of such an offence.
Justice 1 Committee

Dangerous Driving and the Emergency Services

Petition PE111 by Mr Frank Harvey

Note by the Clerk

Background

Petition

1. Petition PE111 by Mr Frank Harvey, calling for the Scottish Parliament to inquire into road traffic accidents involving police responding to emergency calls was last considered by the Committee at its meeting on 8 October 2003. At that meeting, the Committee agreed to write to the Scottish Executive requesting information on how statistics relating to road traffic accidents involving the emergency services are recorded; how many such accidents there have been in each of the last 5 years, broken down by region, and how many related deaths or injuries there were in each year. The Committee also agreed to write to the providers of emergency services enquiring what guidelines are given to drivers of emergency vehicles.

Correspondence received

2. The Committee has received responses from the Association of Chief Police Officers in Scotland (ACPOS), the Scottish Police Federation (SPF), Chief and Assistant Chief Fire Officers Association (CACFOA), the Fire Brigades Union (FBU), the Scottish Ambulance Service and the Minister for Justice. These responses are attached to this paper.

Police organisations

3. ACPOS advises that in April 2003 all Scottish police forces adopted the ACPOS Police Driver Training Programme to ensure common practice. The programme is accredited by the Driving Standard Agency. All operational police officers undertake a standard driving course to equip them to drive police vehicles under operational conditions, including emergency response situations. Participants have to pass a written examination and undertake a final driving assessment. If the requirements are satisfied then the police officer moves on to undertake the Emergency Response Driver Training. The Road Policing Division and senior officers are currently preparing a policy document on “pursuit management” which will be published this year. It builds on the current Codes of Practice and will be supported through a training programme.

4. The SPF points out that the petition should be considered in the context of the role of the police “to apprehend criminals and the safety
of the public, offenders and the police”. It is hoped by the SPF that the information provided by ACPOS will reassure members of the Committee. The Federation states that it has an interest in safe working practices for its members and in them being able to do their jobs efficiently and effectively. The SPF says that while there are clear guidelines and procedures, it will be for the individual police driver to decide how to react to a call for assistance. However every police driver knows that in the event of an accident there is no protection from prosecution. As such the SPF believes that the current guidance and procedures are appropriate. With regard to persons that fail to stop or attempt to avoid arrest, SPF suggests that the Committee may wish to examine whether the existing maximum penalty of £1,000 is a sufficient deterrent.

Fire organisations
5. The FBU advises that at present, different Brigades operate different driver training programmes for “wholetime” drivers. In respect of retained or volunteer fire personnel, training again varies. Some Brigades do not offer any training for senior officers. The FBU goes on to highlight that it appears that training of temporary promoted officers is not provided. The inconsistency of training across Brigades causes the FBU great concern and it raises the need for skid-pan training for drivers to be introduced.

6. CACFOA explains that all Scottish Brigades are working together to progress a draft national standard for Response Driver Training. This work is nearly completed.

Scottish Ambulance Service
7. Since 2002 emergency calls for medical assistance have been prioritised as follows: (a) serious life threatening; (b) serious, not life threatening; (c) not serious/not life threatening. Class (c) emergency calls are not responded to with blue lights/sirens. Paramedics and technicians in the Scottish Ambulance Service need to pass a specialist emergency driving course accredited by the Institute of Health Care Development. There is a theory aspect to this training and in Scotland instruction on skid avoidance is also covered.

8. The Ambulance Service records incidents involving ambulances and advises that the number of incidents is relatively low, with none last year which caused serious injury to patients and members of the public. In view of the Service’s good track record in this area it does not consider there to be sufficient value in an investigation into road traffic incidents involving the ambulance service.

Minister for Justice
9. The Minister for Justice advised that information on the number of accidents involving emergency vehicles is not held centrally. However, the Minister confirmed that it has recently been agreed by the Standing Committee on Road Accident Statistics to identify cases where in the
opinion of the reporting officer, an emergency vehicle on call contributed to the occurrence of a road accident resulting in injury.

**Procedure**

10. The Standing Orders make clear that, where the Public Petitions Committee refers a petition to another committee, it is for that committee then to take “such action as they consider appropriate” (Rule 15.6.2(a)).

**Options**

11. In view of the correspondence received, the Committee may wish to consider pursuing one or more of the following options:

a) to write to the Chief and Assistant Chief Fire Officers Association seeking clarification of the concerns raised by the Fire Brigades Union about uniformity of driver training in Scotland, particularly in relation to training for senior officers (including those on temporary promotion to senior officer level) and retained and volunteer fire personnel and the need for the introduction of “skid-pan” training;

b) although the subject matter of the Road Traffic Act 1988 (“1988 Act”) is reserved, the Committee may wish to write to the Executive asking when the maximum penalty of £1,000 for not complying with section 163 of the 1988 Act was last reviewed. Section 163 states a person driving a vehicle on a road must stop on being required to do so by a uniformed constable; and whether the Executive considers the current maximum penalty to be a sufficient deterrent; or

c) to end its consideration of the petition at this stage, copying all correspondence to the petitioner.
Ms Claire Menzies-Smith  
The Scottish Parliament  
Justice 1 Committee  
3.11cc  
Edinburgh  
EH99 1SP

Dear Ms Menzies-Smith

PUBLIC PETITION PE111 ROAD TRAFFIC ACCIDENTS INVOLVING THE EMERGENCY SERVICES

I refer to your correspondence dated 27 November 2003 in relation to the above subject, which has been considered by members of the Road Policing Standing Committee and can now offer the following by way of comment.

During April 2003 the ACPOS Police Driver Training Programme was adopted by all Scottish police forces. This programme ensures common practice in the Scottish police service and is accredited by the Driving Standards Agency.

All operational police officers are required to undertake a Standard Driving Course designed to equip them with the skills and knowledge to drive police vehicles under operational conditions, including emergency response situations. The course is designed to provide a minimum of 70 hours contact time per student. Prior to attending the course, students are required to participate in a medical examination, in accordance with National guidelines.

The training programme that follows is extremely demanding and students are expected to display a high level of competence in all areas. During the course students will undertake objective written examinations on the following subjects:-

Hon Sec : William Rae QPM
1. Roadcraft – 50 questions
2. Highway Code – 50 questions
3. Human Aspects of Police Driving – 25 questions
4. ACPOS – Code of Practice in relation to Pursuit and Emergency Call Responses – 25 questions

Students are required to attain a 75% pass mark in each paper or this will result in failure of the course. Upon successfully completing the examinations and displaying a good standard of driving throughout the course, students then undertake a final driving assessment. If an ability to drive to the required standard is demonstrated they move on to undergo Emergency Response Driver Training. This additional training involves further instruction in respect of hazard perception and positioning whilst the emergency equipment is in operation and also focuses on the attitudinal features outlined in Dr Gordon Sharp’s book “Human Aspect of Police Driving”. This additional training takes place over two days and concludes with a further assessed drive.

The ‘Training of Trainers’ in respect of Response Driver Training was implemented early in 2003 by staff from the Road Policing Division at the Scottish Police College. Identified Police Driving Instructors from all of the Scottish forces attended a course at the college, which was very well received.

The Road Policing Division at the Scottish Police College, in collaboration with senior officers from around the country, is currently preparing an ACPOS policy document on pursuit management. This document is scheduled to be complete and ready for publication during 2004. It builds on the existing good practice described in the current Codes of Practice and will be accompanied by an appropriate training programme.

I trust that the foregoing is of assistance to you.

Yours sincerely

[Signature]

Chief Constable
(Hon. Secretary)
SCOTTISH POLICE FEDERATION
Established by Act of Parliament
E-mail: djk@scottishpolicefederation.org.uk

Ms. Claire Menzies Smith,
Senior Assistant Clerk,
Justice 1 Committee,
The Scottish Parliament,
Edinburgh,
EH99 1SP.


Dear Claire,

**Public Petition PE 111 on Road Traffic Accidents Involving the Emergency Services.**

Thank you for your letter of 27th November seeking the Federation's views on the above petition and information about what guidelines there are for drivers of emergency vehicles responding to blue-light emergencies. I fully understand the need for all parties involved, public, politicians and police officers, to be reassured that the police carry out their duties in as safe a manner as possible.

**Guidelines and Training.**

To deal with the latter point first, guidelines are contained in the ACPOS Driver Training Manual the latest version of which was published in April 2003. Mr. Ian Latimer, MA, Chief Constable of Northern Constabulary and Chairman of the ACPOS Road Policing Standing Committee, should be able to supply information about the Manual and training.

**The Petition.**

As to the petition itself, I cannot comment on the particular cases raised by the petitioner or provide statistics on road accidents involving the emergency services.

**Comment.**

It seems to be that this matter has to be considered in light of the role of the police in apprehending criminals and the safety of the public, offenders and the police. I have a great deal of sympathy for anyone injured in a road accident involving a police car and for the relatives of anyone who is killed in such an accident. All accidents involving

Please address all communications to: General Secretary, 5 Woodside Place, Glasgow G3 7QF
Tel: 0141 332 5234 Fax: 0141 331 2436
Website: www.spf.org.uk
Police vehicles are regrettable but in the circumstances I cannot envisage a time when we could eradicate them entirely. What we can do is ensure that:

- Police driver training is appropriate.
- Guidance to police drivers is appropriate.
- Suitable sanctions are in place to deter any driver from failing to stop when required to do so or accelerating away from the police to avoid arrest.

The Federation's remit is 'welfare and efficiency' and this subject fits into both categories. We have an interest in safe working practices for our members and an interest in them being able to do their jobs efficiently and effectively.

**Emergencies and Pursuits.**

The information you should obtain from Mr. Latimer on training and guidance should reassure members of the Committee.

**The Police Driver.**

Police drivers have a very difficult job to do, very often under extreme stress.

While there are clear and substantial guidelines and procedures, very often it is left to the individual police officer's discretion as to whether he or she can proceed to an incident driving in a normal manner or in emergency conditions. Police driver training and guidance to officers has improved greatly over the years and continues to be amended and updated where necessary. However, no amount of training or guidance will alter the fact that ultimately the police driver will have to decide how to react to the initial call for assistance and how to react to the situation on the road which of course can change from second to second. In the event of an emergency or a pursuit the individual police driver will have to make extremely important split-second decisions in stressful situations. Where an accident results the actions which took a millisecond to decide will be scrutinised for hours in a court with the benefit of hindsight.

In one of the circumstances mentioned by the petitioner it would appear that armed robbery was the cause of the emergency and in the other an armed suspect was being pursued. On the face of these incidents most reasonable people would accept them as emergencies and accept that a police driver should proceed quickly using emergency horns and lights and the legal exemptions that can apply. (See Appendix.)

In the circumstances mentioned by the petitioner, it is reported that both police drivers were convicted and fined by the court. Every police driver knows that, while there are certain legal exemptions which may apply to them in given situations relative to speed limits, traffic lights and other road signs, in the event of an accident there is no protection from prosecution for actions deemed to be reckless or careless. Police officers accept this as a matter of law provided the court gives sufficient weight to the operational requirements and the circumstances of the police driver in these conditions.
The Federation would consider any proposal which would improve road safety. However, we have to say that given the nature of the job we cannot foresee a situation where society would accept that the police should never make haste to an emergency or pursue a dangerous criminal where there is no proportionate alternative. We believe that current guidance is appropriate and sufficient and advocates procedures which are proportionate in light of the job that requires to be done.

**Failing to stop or Attempting to avoid arrest.**

As soon as a driver elects to fail to stop or accelerates away from the police to avoid arrest they make a decision to enter an extremely high risk situation where lives can be put at risk. The driver’s reasons for attempting to escape may include that he or she has been drinking, has stolen the vehicle, is a disqualified driver or has committed some other crime or offence.

It is an offence under section 163 of the Road Traffic Act 1988 for a person driving a vehicle on the road not to stop when required to do so by a uniformed constable. The maximum penalty is £1,000. The Committee may care to examine whether this is set at an appropriate level to deter or whether, when passing sentence on someone who fails to stop, the courts give sufficient weight to this whether a pursuit or accident result or not.

Yours sincerely,

[Signature]

Douglas J. Keil, QPM,
General Secretary.
Dear Ms Smith

PUBLIC PETITION PE111 ON ROAD TRAFFIC ACCIDENTS INVOLVING THE EMERGENCY SERVICES

I refer to your letter and attached petition dated 27 November 2003 and reply accordingly.

The chair of CACFOA P&T (Scotland), Assistant Firemaster Keith McGillivary of Strathclyde Fire Brigade, formed a group with representation from all 8 Scottish Brigades to progress a draft national standard for Response Driver Training. I believe this work is nearing completion.

All emergency drivers in Grampian Fire and Rescue Service who respond to blue-light emergencies have been assessed against an existing standard, which is the same as is being proposed for the draft national standard.

With regards to guidelines for drivers responding to blue-light emergencies, I will confine my information to what is currently applied in Grampian Fire and Rescue Service. The service has a 14-page document covering everything from speed limits to load security, I will include some of the more appropriate extracts pertaining to your letter.

Service policy: -

"The law requires that every vehicle shall be driven with the care and prudence of a reasonable person. At no time must a vehicle be driven in a manner, or at a speed, dangerous to the public or other road users. It must be borne in mind that attending an emergency call does not relieve a driver of the responsibility to drive safely at all times."
“Most of the law affecting emergency appliance drivers will, of course, be the Road Traffic Law. The law demands the highest standard of driving and behaviour of all persons using the public highways. For emergency appliance drivers however, the requirements are even higher, because these drivers are subject to certain exemptions in the law, which are granted because of the emergency nature of their duties. These additional responsibilities and the added dangers must be compensated by an increased skill in driving. For normal non-emergency use, the Road Traffic Law, as set out in the Highway Code, applies at all times.”

“The Highway Code is issued with the authority of Parliament under the Road Traffic Act. Whilst failure on the part of a person to observe a provision of the Highway Code does not in itself render that person liable to criminal proceedings, any failure of an individual to adhere to the Code’s principles can be used to establish or negate any liability in civil or criminal proceedings.”

Service Guidance:

Road Traffic Regulations Act 1984 Section 87 - Exemption of Fire Appliances from Speed Limits.

“The above exemption does not give drivers of emergency vehicles the authority to exceed the speed limit on all occasions, but authorise non-compliance in certain emergency situations. This places the responsibility on the drivers of emergency vehicles who may have to justify their actions at a later date.”

“ Appliances mobilised for stand-by or relief duties, or to special services of a non-humanitarian nature must proceed at normal road speeds and not use audible or visual warning devices”. 

“When appliances are proceeding together to an incident, sufficient distance is to be maintained between them in order to obviate the risk of an accident occurring. In normal circumstances appliance drivers must never attempt to overtake each other whilst responding to an incident.”

Service Policy on Traffic Signs:

Full compliance with regulations and guidance.

Service Guidance on Traffic Lights:

“Drivers of emergency vehicles are under the same obligations to obey light signals as the drivers of other vehicles. Fire Service drivers are reminded that to the majority of the public a green light is a go signal and as such are proceeding with a mental “Go intention”. The split second decision required if an emergency vehicle is proceeding against a red light is often insufficient for them to take the necessary action expected by the driver of an emergency vehicle”.
Service Policy on Controlled Road Junctions:

"On approach to controlled road junctions in an emergency situation, drivers must plan a route in advance and position the vehicle on the roadway, in such a manner as to indicate to other road users the line and direction the emergency vehicle intends to take. When arriving at a red traffic light, the vehicle must be stopped, a low gear selected and the vehicle presented prominently at the junction. The driver must observe traffic movement within the controlled area and only proceed slowly through the junction when it is safe to do so. Where a Police Officer or traffic Warden indicates it is clear to proceed through a controlled junction, this must be undertaken with extreme caution and at a reduced speed."

"All signals given by unofficial persons and other drivers at light controlled junctions are to be ignored entirely."

Service guidance on motorway/dual carriageway:

"In view of the dangerous traffic conditions encountered on motorways and dual carriageways, advantage of this exemption should only be taken when essential and be carried out so as to minimise any danger or inconvenience to other road users. Manoeuvres involving movement against the flow of traffic will only be undertaken on the direction of the Police."

"All Fire Service drivers must approach incidents with extreme caution and bear in mind that further incidents may have occurred at locations prior to the one identified on the original call. If additional incidents are encountered, details must be passed as a priority to the mobilising control, but appliances and Officers must proceed to the incident to which they were mobilised and not stop at incidents encountered en route."

"Without exception the ONLY occasion any Fire Service vehicle will enter or travel "contra-flow" on a motorway or dual carriageway system will be under the strict approval, guidance and control of the Police."

Service Policy on Pedestrian Crossing:

Full compliance with regulations.

Service Policy of Pelican Crossing:

"Pelican Crossings Emergency vehicles must give precedence to people on the crossing. Must not cause or make any other driver change course or speed to avoid an accident."

"Note: There is no exemption from the requirement to give precedence to pedestrians who have entered the designated crossing area."
Service Guidance on Audible Warning Devices:

"Emergency vehicles are not prevented from using audible devices when it is necessary or desirable to do so, either to indicate to other road users the urgency of the purpose for which the vehicle is being used, or to warn other road users of the presence of the vehicle on the road. However, due consideration must be given to factors such as, time of day and the likelihood of causing undue alarm or disturbance to members of the public and other road users."

"Discretion should be applied in the use of audible warning devices, in areas of close proximity to hospitals, cinemas and other places of public gathering. Defensive driving requires discriminate use of audible warning devices and Officers in Charge and drivers should ensure these devices are operated appropriately at all time".

"On receipt of radio messages indicating supporting appliances are no longer required, all mobiles to the same incident should cancel any audible or visual warning devices and reduce speed accordingly. Following cancellation calls, any appliance designated to proceed for investigation purposes should cancel all warning devices and proceed at normal road speed".

If you require any further information, please do not hesitate to contact Mr John Sangster on the above number.

Yours sincerely

J Williams
FIREMASTER
Claire Menzies Smith
Senior Assistant Clerk
Room 3.12 Committee Chambers
George IV Bridge
Edinburgh
EH99 1SP.

Dear Ms Smith.

Public Petition PE11: Road Traffic Accidents Involving the Emergency Services.

In response to your letter dated the 27th November 2003 that has been passed to me by Mr Robertson, please find enclosed information on the aforementioned subject that, as far as the FBU are advised, operates within the Brigades in Scotland. No doubt you will observe that there seems to be several different systems of driver training throughout the Scottish Brigades in relation to “emergency driving” a matter that you may feel needs to be addressed.

Wholetime.
Information known to us varies in that one Brigade operates the Royal Society for the Prevention of Accidents (ROSPA) system where by a driver attends an initial 2 week driving course for Large Goods Vehicles (LGV). On successful completion they then acquire some 200 hours non-emergency driving there after are taken and submitted to the ROSPA 2 week certificated training, on completion they are awarded either the gold, silver or bronze level certificate. Drivers are then free to carryout “blue-light” incident driving. Thereafter drivers are re-assessed every three years.
Within other Brigades the training for wholetime drivers differ in that some have the Emergency Fire Appliance Driver (EFAD) system and some have what they term as Response driver training.

This training varies from 1 (one) week LGV training (inc test) to 2 weeks LGV training. EFAD or Response training varies from 2 days to 1 week (2 weeks in ROSPA system). The “non-emergency” driving varies from nil days (EFAD being immediately after LGV exam) to 6 months, some brigades operate an “hours” or “miles” accrued system varying from 7 hours to 20 hours, 200 to 300 miles.

Retained.

Again training varies for these personnel. The Brigade that carries out the ROSPA training does so only for wholetime drivers, retained and others such as volunteer fire personnel do not get this “award” training. Some Brigades have a 2-3 day some have a 4 day training system for retained.

Senior Officers.

For Fire Officers of Assistant Divisional Officer (ADO) and above again training varies. Training varies from some Brigades having no training for Senior Officers to Brigades having 1 week training on how to handle their vehicles at speed and under blue-light conditions.

It is worth mentioning that where Brigades have training for Officers it’s seems that only permanently promoted Officers get trained, if an Officer is only temporary promoted say from a Station Officer (who would not normally drive under blue-lights to an incident) to the rank of ADO then it appears that these personnel are not given such training.

As I stated at the beginning of this letter Ms Smith there seems to be, as the FBU sees it, inexplicable and widely varying differences in Emergency Fire Driver training throughout the Scottish Brigades, something that has been of great concern to the FBU for some considerable time. The matter has been raised at local level on several occasions but to no apparent avail. The issue of “skid-pan” training for Fire Service drivers has also been raised, but again to the knowledge of the FBU no Scottish Brigade carries out this type of training. We will off course continue to raise this matter until appropriate training is given to Fire Service personnel whilst driving under “emergency blue-light” conditions.

I look forward to hearing from you in due course.

Yours faithfully,

A. Macleod

Regional Safety Co-Ordinator
Scottish Region.
11 December 2003

Ms Claire Menzies Smith
Justice 1 Committee
3.11 CC
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Ms Menzies Smith

Thank you for your opportunity to comment on Public Petition PE111.

The Scottish Ambulance Service operates to clear guidelines in respect of emergency driving under blue lights/sirens. Like all emergency services, the Scottish Ambulance Service claims exemptions under the Road Traffic Act to enable paramedics/technicians and ambulance officers to respond to emergencies. In 2002 the Scottish Ambulance Service introduced a sophisticated medical system to prioritise 999 emergency calls into three categories (a) Serious life threatening, (b) Serious but not life threatening and (c) not serious/not life threatening.

Once an ambulance is dispatched it does not use blue lights/sirens if the call is categorised as (c). Prior to 2002 ambulances responded to all 999 calls under blue light conditions. The prioritisation system, which is used throughout the world, enables the Scottish Ambulance Service to ensure that those with the greatest medical need get the fastest response and we can divert ambulances on route to Category C calls to Category B and A calls.

Paramedics/technicians in the Scottish Ambulance Service need to pass a specialist emergency driving course which is accredited by the Institute of Health Care Development. This includes driving theory, (e.g. road surface, temperature effects on tyres) driving conditions, effects on patient comfort, safety, etc. Ambulance crews use the attached manual in conjunction with the Police Roadcraft Book, the Highway Code and Road Traffic Law. We also record all near misses and adverse incidents involving vehicle accidents. In Scotland we also train our drivers in skid avoidance owing to adverse weather conditions. Thankfully the number of serious incidents/accidents in which the Scottish Ambulance Service is involved is few. In fact, there were none last year which caused serious injury to patients/members of the public.
The Scottish Ambulance Service has a good track record for emergency driving, indeed our ambulance college also trains some English ambulance services.

Given the medical priority system in use worldwide, our UK accredited driving course and low number of incidents I can see little value in a public enquiry into road traffic accidents involving the ambulance service. Both Police and Fire Services are well trained in emergency driving for the conditions which affect them. I also understand that the Police also have safeguards in control rooms to monitor the safety of pursuits etc.

If you require further information please don’t hesitate to contact me.

Yours sincerely

Phil Spence
DIRECTOR OF OPERATIONS
PUBLIC PETITION PE111 ON ROAD TRAFFIC ACCIDENTS INVOLVING THE EMERGENCY SERVICES

Thank you for your letter of 07 November regarding Public Petition PE111 on Road Traffic Accidents involving the Emergency Services. You request information on how accident statistics, involving the emergency services, are recorded and the number of such accidents in the last 5 years.

This information is not held centrally. The statistical information on road traffic accidents, which the Executive obtains through the so-called "Stats 19" returns, covers only "injury" road accidents (i.e. those in which one or more people are injured), and only identifies the broad type of vehicle involved (such as "Car" or "Pedal Cycle"), but not whether it was an emergency services vehicle (for example, a police car is not differentiated from a privately owned car). Therefore, the "Stats 19" data cannot provide the numbers of accidents involving emergency services vehicles. You may therefore wish to contact the regional police, ambulance and fire services directly to obtain information on road traffic accidents involving their vehicles.

I should add that the "Stats 19" specification was recently reviewed by the Standing Committee on Road Accident Statistics. After extensive consultation, SCARAS has decided what information will be collected with effect from 2005. From 2005, the "Stats 19" returns will identify cases where, in the opinion of the reporting officer, an emergency vehicle on call contributed to the occurrence of an ("injury") accident. However, they will not identify ("injury") accidents involving emergency vehicles which were not on call, nor cases where it is not thought that being on call contributed to the
occurrence of the accident. Also, the returns will continue to relate only to "injury" road accidents and will therefore not cover accidents involving emergency vehicles where no injury occurred.

I am sorry I cannot provide a more helpful response.

Best wishes,

CATHY JAMIESON
Justice 1 Committee

Prisons inquiry

Note by the clerk and the adviser

Background

1. At its meeting on 19 November 2004, the Committee agreed to conduct an inquiry into the effectiveness of rehabilitation programmes in Scotland’s prisons. This paper sets out a possible approach to the inquiry.

The inquiry

2. It is suggested that the Committee could carry out its inquiry in two phases.

Phase One

3. The first phase would allow the Committee to gather initial information. This phase could include gathering written and oral evidence. As part of this initial phase, the Committee may also wish to consider the report of Audit Scotland on its ongoing study on “The Role of the Scottish Prison Service in providing opportunities for prisoners and helping to reduce re-offending”. That report is due to be published in the autumn. Phase one could be completed with an interim report which could identify areas or issues which merit further investigation if necessary.

Phase Two

4. After publishing the interim report the Committee may wish to take forward those issues identified in the report for further investigation. At this stage, the Committee could proceed with its intended consultation with prisoners (the Committee has already secured funding for this project) and seek any further oral or written evidence as required. On completion of this work, the Committee could issue a final report.

Suggested remit

5. The Committee is invited to consider the following suggested remit which has been drawn up in conjunction with the Committee’s adviser. A paper by the adviser explaining the background to the remit is attached for information. The remit could be refined at the end of phase one of the inquiry if necessary. It is suggested that the remit should be organised along three central themes:

   i) Policy  
       penal policy as it relates to rehabilitation;

   ii) Opportunity  
       as it relates to how the principle of rehabilitation is acted out during and post-custody and whether opportunities “mirror” those outside;
iii) Conditions    how the prison lifestyle (environment, culture, and surroundings) impacts the effectiveness and the effects of rehabilitation during and post-custody.

i) Policy

6. The dynamic of imprisonment in Scotland, as advocated by SPS, is to integrate a comprehensive value system into the day-to-day running of prisons. Rehabilitation is a key part of this dynamic. Research shows that the feasibility of achieving the goal of rehabilitation is greater where staff are able to meaningfully articulate the importance of rehabilitation (Simon, 1999). Key questions which the Committee could explore are as follows:

- Are the aims of rehabilitation clearly articulated to staff? Are the aims of rehabilitation clearly articulated to prisoners?
- For the large number of prisoners facing short-term periods of custody, is rehabilitation a realistic objective?
- Are staff able to meet qualitative assurance targets within current time-scales?
- What are the mechanisms in the rehabilitation programmes? For example, how are prisoners referred? What is the induction process? How are prisoners assessed? How are programmes planned? What is the style of working under the remit of rehabilitation? What are the respective roles of prison officers, agency workers and volunteers? Any problems?
- In cases of best practice, is it possible to replicate? The Committee might consider whether it wishes to include in the remit specific programmes, such as the STOP programme aimed at sex offenders or the Throughcare Centre at Saughton.
- Possible changes to SPS structure as a Correctional Agency\(^1\) – will this impact on the allocation and administration of rehabilitation programmes?

ii) Opportunity

- What is the range of rehabilitative programmes being offered in Scotland’s prisons?

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\(^1\) A Partnership for a Better Scotland: Partnership Agreement contained the commitment to “publish proposals for consultation for a single agency to deliver custodial and non-custodial sentences in Scotland with the aim of reducing reoffending rates”.

• How do prison officers and inter-agency workers “act” to implement care and rehabilitation?

• Are the programmes having an effect in *addressing offending during custody*? If not, what should be done differently?

• Are the programmes having an effect in *reducing re-offending following custody*? If not, what should be done differently?

**iii) Conditions**

• Linked to last point, are vulnerable and difficult groups of prisoners receiving adequate rehabilitation? How are equalities issues addressed in the provision of rehabilitation services? In considering this question, the Committee might consider the following categories of prisoner: remands, short-term prisoners, young offenders, prisoners with mental health problems, women, ethnic minorities and disabled prisoners.

• Given concerns about overcrowding, are an adequate number of programmes being provided to rehabilitate prisoners?

• Do other factors related to conditions such as security measures inhibit rehabilitation?

• Is physical space an issue in provision of rehabilitation?

• Prisoners’ diet: Nutritional health and physical fitness are often cited as factors leading to improvements in physical and mental well-being (improve self-esteem and self worth). How might these factors of prison “lifestyle” play a role in rehabilitation?

**Evidence**

7. It is proposed that a call for written evidence will be issued with a deadline of 23 April for written submissions.

8. **The Committee is invited to consider the following initial list of suggested witnesses for oral evidence for phase one of the inquiry.** The Committee will have a further opportunity to consider witnesses for oral evidence at a later date. An early decision on initial witnesses will allow the clerks to organise their attendance at an early stage:

• Scottish Prison Service
• Scottish Prison Service – Trade Union Side
• Other specialist staff who are employed within prisons
• HM Chief Inspector of Prisons for Scotland
• Association of Directors of Social Work
• Local Authority Criminal Justice and Social Work Services
• SACRO (Safeguarding Communities – Reducing Offending)
Fact finding visits and external meetings

9. The Committee has already secured funding for consultation of prisoners in a number of prisons. The Committee may wish to consider fact finding visits suggested by the adviser in her paper, including:

- Edinburgh Throughcare Centre;

- Possil Drugs Project; and

- 218 The Alternative (Time Out Centre).

10. The Committee may also wish to consider visiting a number of prisons in Scotland to discuss the inquiry with prison officers and agency workers. The Parliament’s participation services unit has also identified a number of community groups which work with ex-offenders which members may wish to meet informally.

11. Finally, the Committee could consider holding a meeting in relation to the inquiry outside of Edinburgh. Glasgow could be a suitable location. The Committee could use such a meeting as an opportunity to take evidence from local agencies which deliver rehabilitation services.
1. I am of the view that the scope of this inquiry is extremely broad. While the fundamental thinking about the function of imprisonment in Scotland is custody, care and the pursuit of “Correctional Excellence”, these priorities are difficult to measure because they are predicated on a range of factors other than crude measures of re-conviction rates. For example, the increasing movement towards managerialism in prisons across Europe is cited as a factor in the current ‘prisons crisis’ wherein the philosophical basis to imprisonment as well as penal resources are submerged under managerialist business plans. This development merits more detail.

2. The recasting of objectives in what prisons should intend or hope to achieve in Scotland, as reflected in documents such as “Opportunity and Responsibility” (Scottish Prison Service, 1990) and the more recent move towards “Correctional Excellence” clearly illustrate the tension between managerialist approaches and explicit commitments to rehabilitation. The rehabilitation model has evolved from one wherein the prisoner is viewed as an individual not in need of reform but as a person who is responsible for his/her actions (opportunity and responsibility), to one that fuses a management action agenda with a civilising agenda where the focus is on creating a culture where prisoners view the activities on offer as assisting them on release.

3. How this is played out on the ground is as follows. On the one hand, the corporate plans that SPS now produces on a regular basis review progress and set out key targets to be achieved in a planning cycle. Targets include: developing a range of statistical information on which to assess establishments’ performance from Security Audits; facilitating the introduction of Local Security Manuals in all establishments; designing, testing and implementing fully functional, integrated and networked intelligence management software and implementing the Drug Strategy to reduce the amount of drugs misuse trafficking within prisons.

4. On the other hand, SPS aims to promote a penal culture that values the personal and social rehabilitation of prisoners. Social and personal rehabilitation might include: addressing the drug problem in Scotland’s prisons; monitoring and improving progress on a wide range of quality of life factors such as cleanliness, food, the physical environment, access, standards of care, clothing and inter-personal relationships (through periodic surveys of prisoners and staff). SPS also aims to establish sentence management which aims to improve prisoners’ perceptions of the value of the sentence management process and robust educational programmes for short-term and long-term prisoners that are designed to assist prisoners to address their offending behaviour.

5. Criminologists argue that while there is evidence of performance related indicators that reflect a shift away from rehabilitative ideals and a global trend towards managerialism, the provision of rehabilitation that is
enshrined in the SPS documents mentioned above have preserved Scotland’s welfare-oriented penal culture (McAra, 1999). Key examples include cognitive behavioural programmes such as the flagship “STOP” programme at Peterhead and the “Families Outside” initiative.

6. I am of the view, therefore, that an inquiry into the programmes for rehabilitation and their impact on offending in Scotland’s prisons should not be approached from the position, that the underlying tension between managerialism and rehabilitation is rendering improbable the prospect of prisoner rehabilitation (which has been the position adopted by prison sociologists in England and Wales, see Sparks et. al, 1996)².

7. Of keynote in this inquiry is how Scottish prisons can facilitate an integrated and comprehensive rehabilitation programme within the following constraints:

- Pressures on staff to meet targets for completing paperwork on risks/needs assessments;
- Imperative security and flow control of prisoners moving around the prisons;
- Overcrowding and linked to it, physical space;
- Staffing;
- The time-scale of rehabilitation within short-term prison sentences;
- Lack of time to undertake assessments;
- Continuous development of programmes (resolving the ‘one-stop rehabilitation approach’ (see http://www.sps.gov.uk/keydocs/Throughcare/EdinburghTCReport.pdf; Simon, 1999)
- Pressures for more inclusive assessments of risks/needs set against maintaining quality assurance;
- Working relationships with outside agencies in developing rehabilitation programmes;
- Setting realistic aims. A common aim of imprisonment within SPS is to provide and integrate comprehensive programmes that can assist prisoners in their resettlement in the community. However, there appears to be no agreed statement about the intended effects and effectiveness of rehabilitation between the various agencies and the individual prison establishments that work together to promote the aim of rehabilitation.³
- Linked to the above, research recently conducted at Saughton prison in Edinburgh found that the aspiration of rehabilitation requires revision both as a physical manifestation in the initiatives and interventions in place and also as philosophical approach.

² Although I would add the caveat that developments in prison management in Scotland should not be excluded from the inquiry.
8. Within this broad remit, and taking into account the general constraints faced in implementing rehabilitation programmes, I have suggested a remit which is included in the main paper.

**Fact finding visits and external meetings**

9. In order to determine the effectiveness of rehabilitation at reducing offending it is vitally important that prisoners, prison officers and agency workers involved in rehabilitative programmes be interviewed. My experience as a prison sociologist time and again reveals to me that by letting the voices of prisoners and persons involved in rehabilitation emerge from ethnographic research, then invaluable insight can be drawn into the problems, pitfalls and successes of rehabilitation and how the issues are confronted and attempts made to address problems.

10. Fact-finding visits to other prisons, for example, Edinburgh Throughcare Centre are useful for ensuring that sweeping assertions of either difference or sameness are minimised. For example, researchers often encounter in the first instance practices and policies that appear strikingly similar, but on closer inspection, they turn out to be distinct in interesting and meaningful ways. For example work on the concepts of “community” vary across societies.

11. Fact-finding trips outside of Scotland to determine best and worst practice is also worth examining. There is some good practice examples in Finland, for example, prison work, training and other programmes developed around rehabilitation are more likely to enable prisoner reform due to restricted use of surveillance and flow control measures. However, I would be very cautious about engaging in cross-cultural fact-finding visits as it will be essential to ensure that cultural and conceptual meanings about rehabilitation do not escape their point of origin and become lost in the translation to a Scottish setting.

12. There is also merit in travelling outside Edinburgh. For example, the Possil Drugs Project does work on rehabilitation of offenders as does the the “218 The Alternative”, Centre for women offenders in Glasgow

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**Dr Laura Piacentini,**  
*Adviser to the Committee on the prisons inquiry,*  
*Sociology, Social Policy and Criminology,*  
*University of Stirling*

**References**

Justice 1 Committee

Former Justice 1 Committee’s inquiry into the regulation of the legal profession

Note by the clerk

Background

1. The former Justice 1 Committee carried out an inquiry into the regulation of the legal profession. It published a report on the inquiry on 27 November 2002. The report can be found on the former Justice 1 Committee’s website at the following address: www.scottish.parliament.uk/S1/official_report/cttee/archive/just1-02.htm

2. At its meeting on 17 September 2003, the Committee agreed to follow up on the inquiry. A summary of the former Justice 1 Committee’s recommendations and responses received since the publication of the report is attached at Annex A. Recent correspondence from the Scottish Legal Services Ombudsman and the Law Society of Scotland are attached at annexes B and C.

Follow up

3. The Committee is invited to consider how to follow up on the former Justice 1 Committee’s inquiry. Options are as follows:

a) The Committee could decide not to re-open the inquiry but to monitor whether the former Committee’s recommendations have been implemented. If the Committee wishes to adopt this approach, it could write to the Minister for Justice seeking an update on the Executive’s response to the former Committee’s recommendations. The Committee has already received updates from the Law Society of Scotland and the Ombudsman, and may wish to consider requesting a similar update from the Faculty of Advocates; or

b) The Committee could decide to re-open the inquiry and take further evidence on the former Committee’s recommendations and consider whether there are further aspects of this subject which should be examined.

4. In considering these options, the Committee should note that it currently has a full forward work programme. It has agreed to conduct an inquiry into the rehabilitation of prisoners and then to commence an inquiry into the police service. The Committee is also expected to be named as the lead Committee in relation to the Fire Services Bill, which is likely to be introduced before the summer recess.
Evidence to the former Justice 1 Committee on the inquiry

5. In excess of 120 responses were received by the former Justice 1 Committee in relation to this inquiry, of these approximately half were from individuals. The former Committee agreed that it would not pursue individual cases or complaints, but that it would examine the main issues arising from the individual cases to explore how the system works in practice and the difficulties experienced.

6. Over 40 of the submissions received raised issues concerning the rules about data protection, defamation or sub judice. Legal advice was that these submissions could not be published unless the relevant names and any other information by which people could be identified were edited out. Although the Parliament is not required to publish written evidence, in the interests of openness, it was decided where possible, to publish these submissions on the former Committee's website.

7. In order to make these submissions publicly accessible, they were edited to remove the references in question before being put onto the former Justice 1 Committee's website. The clerks have since been made aware that there were errors in the editing of one of the submissions. The clerks are currently in the process of correcting these errors.

8. The clerks have received representations from other individuals requesting that their edited submissions be reviewed with a view to reinstating information which has been edited out. The Committee should note that this would be a time consuming task and could take some time to complete in addition to current commitments.

9. In considering its approach to following up on the former Justice 1 Committee's inquiry, the Committee is invited to decide whether it wishes to consider any of the evidence received by the former Justice 1 Committee in relation to the inquiry, and whether it considers that edited submissions should be reviewed by the clerks on the request of individuals.
Annex A: Former Justice 1 Committee’s inquiry on the regulation of the legal profession inquiry: recommendations and responses

Background

10. The former Justice 1 Committee published a report on its inquiry into the regulation of the legal profession on 27 November 2002. The report can be found on the former Committee’s website at the following address: www.scottish.parliament.uk/S1/official_report/cttee/archive/just1-02.htm

11. In the last session of the Parliament, the former Committee received a response to the report from the Executive and from the Law Society of Scotland. These responses are available on the Committee’s website at the following address (under papers for 7th meeting, 2003): www.scottish.parliament.uk/S1/official_report/cttee/archive/just1-03.htm

12. The Clerk has recently written to the Law Society of Scotland and the Scottish Legal Services Ombudsman for an update on the current situation in relation to the former Committee’s recommendations. This correspondence is attached at annexes B and C for information. This paper summarises the former Committee’s recommendations and responses received to date.

Remit of the inquiry

13. The remit of the inquiry was to investigate the existing systems and procedures for dealing with complaints (including the definition of complaints, whether there are complaints/grievances that are excluded and the reasons for this); the nature of complaints currently dealt with; the effectiveness of the complaints systems and perceptions of their effectiveness; comparative models and their effectiveness, and; how complaints systems can be improved.

Regulatory framework

14. The legal profession in Scotland is regulated by the professional bodies acting within a statutory framework. Complaints against solicitors and advocates are dealt with by these professional bodies. The Scottish Legal Services Ombudsman is an additional regulatory mechanism and is a statutory body established to oversee the complaint handling mechanisms of the legal profession. This system is sometimes referred to as “joint regulation” which provides independent supervision of the self-regulatory complaints processes operated by professional bodies.¹

15. A number of options for reform of the current regulatory framework emerged in the course of the inquiry, which fall broadly into two camps: a completely independent system and joint regulation with increased

independence from the professional bodies. The former Committee was not persuaded by the option of a completely independent system for the regulation of the legal profession and believed that it would be more effective to maintain the present system of joint regulation, namely self-regulation with the additional independent regulatory mechanism of the Ombudsman, but with increased independence. The former Committee believed that the present system should be reformed, in order to make it more acceptable to consumers, and more representative of the public interest.

Former Justice 1 Committee’s specific recommendations

Single gateway
16. The former Committee believed that it is vital that the public perception of the complaints systems is that it is both fair and transparent. The former Committee was in favour of the creation of a single gateway\(^2\) for all complaints against the legal profession which it believed would improve the public perception of the complaints system and play a valuable oversight role.

Response
17. The Executive indicated in its response that it was not persuaded that the case had been made for a single gateway, but Ministers would be willing to revisit the proposal if there was persistent evidence that complaints which should be investigated by the professional bodies were not being addressed. Similarly, the Law Society has indicated that it does not agree with the concept of a single gateway as a portal for all complaints against the legal profession. The Ombudsman reported that the Law Society has established a sift panel to review a draft decision to refuse to investigate a complaint. This was set up in September 2003.

Powers of the Ombudsman
3. The former Committee believed that the role of the Ombudsman is crucial in ensuring that the complaints process is open and transparent. The former Committee recommended that the powers of the Ombudsman should be augmented. The former Committee recommended specifically that the Ombudsman be given the following statutory powers:

- Power to investigate the substance of the original decision made by the professional body (the Ombudsman currently only has the power to investigate the way in which a complaint has been handled);
- Power to enforce recommendations;
- Power to conduct general audits;
- Power to prescribe general timescales (for dealing with complaints);
- Power to direct professional bodies to investigate a complaint;

\(^2\) i.e. an independent body which would receive all complaints about the legal profession.
• Power to make recommendations on the operation of the complaints procedures of professional bodies.

Response
18. The Executive agreed in principle with the recommendation that the powers of the Ombudsman should be augmented but stated that substantive changes to these powers would require legislation which might be some way off. The Law Society indicated that it is of the view that the powers of the Ombudsman should only be enhanced if it were demonstrated that such enhancement would be in the interests of the public.

Funding
19. The former Committee acknowledged that increasing the powers of the Ombudsman will require additional funding. The former Committee believed that it is important that the independent element of the system is not funded by the legal profession and recommended that the Government should fund the increased costs incurred by the Ombudsman's office as a result of the Committee's proposals.

Response
20. Both the Executive and the Law Society were in broad agreement with this recommendation.

Law Society of Scotland

Dual role of the Law Society
21. The Law Society is responsible for the promotion of the interests of the solicitors' profession and of the interests of the public in relation to that profession. The former Committee recommended that the Law Society should consider the creation of firewalls, namely establishing procedures where there is a clear separation of interests and demarcation between the interests of the complainer and the solicitor subject to the complaint.

Response
22. In its recent letter to the Committee, the Society explained that it has implemented the Council of the Law Society of Scotland Act 2003 and created a scheme of delegation which creates a “clearer separation of roles” between the Council, Client Relations Committees and Professional Conduct Committee.

Setting standards
23. The former Committee recommended that there should be lay involvement in the setting of standards for professional bodies to ensure that the consumer's voice is represented from the very outset.
Response
24. The Executive agreed that lay involvement in standard setting would be beneficial. In its letter, the Law Society indicated that it has appointed additional lay persons to its Client Relations Committees and to the Professional Conduct Committee so that each Committee has 50% lay and 50% qualified membership. In addition, the Client Care Committee has a revised remit which specifically identifies setting standards as an issue.

Definition of a complaint
25. There are two definitions of a complaint against a solicitor: inadequate professional services (IPS) and professional misconduct. The former Committee found that this could cause confusion to consumers. The former Committee recommended that the distinction between conduct and IPS complaints should be removed and that a "complaint against a solicitor" should be redefined in statute, and the new definition should be simple and widely drawn. They believed that this should be supported by an education campaign aimed at both the profession and the wider public.

Response
26. The Executive supported in principle the case for producing a simple and widely-drawn definition of a complaint. The Law Society indicated that such a change could result in a lack of flexibility, but that the advantages are clear.

Negligence
27. “Poor quality of advice” matters cannot be treated as complaints by the professional bodies as these have to be pursued in the courts as negligence. The former Committee found that professional bodies were often too ready to reject a complaint on the basis that it involves negligence, where it may be that inadequate professional service is also involved.

28. The former Committee recommended that the Law Society should examine its procedure for dealing with complaints involving negligence and consider setting up an arbitration scheme for dealing with such complaints. The former Committee also recommended that the Law Society should examine the merits of the Troubleshooter scheme³ and report back to the former Committee on other ways of addressing problems experienced by complainants in pursuing negligence cases in court. Finally, the former Committee recommended that the Scottish Executive should examine the merits of allowing professional bodies to investigate

³ There was evidence that it is difficult to find a solicitor willing to act against another solicitor in a negligence case. The Law Society told the Committee that it operates the Troubleshooter scheme which involves referring a complainer to a senior solicitor with relevant experience who will assess whether or not the complainer has a good claim (Report, p20, para 91).
small negligence cases up to a certain financial limit, and report back to the Committee on its findings.

29. The Executive agreed to give further consideration to the case for allowing the legal professional bodies to investigate small negligence claims. In its original response, the Law Society indicated that it does not agree that the professional bodies should be empowered to investigate small negligence claims. In its recent letter, the Society said that it has established a Pursuers’ Panel for Professional Negligence Claims against solicitors in October 2002. It reported that the panel seeks to assist members of the public and solicitors in potential negligence claims against other solicitors. The Ombudsman confirmed that the Society no longer automatically puts an investigation on hold if there is a related negligence action but treats each case on its merits.

Redress
30. There is no facility to award compensation if a complaint is about an individual solicitor's conduct whereas a complaint classified as inadequate professional services would, if upheld, enable the Law Society to order a number of sanctions. The former Committee believed that redress should be available to the complainant regardless of the classification of the complaint. The former Committee therefore recommended that compensation should be offered for a complaint about an individual solicitor's conduct where it is established that loss has been suffered as a direct result of the solicitor's conduct.

Response
31. The Executive agreed that such circumstances would present a reasonable case for compensation. The Law Society indicated that compensation for conduct matters could only be awarded if it could be established that loss were suffered by a dissatisfied client as a direct result of the solicitor's conduct.

Compensation levels
32. The Solicitors (Scotland) Act 1980 (the 1980 Act) sets at £1,000 the maximum level of compensation which the Law Society or the Scottish Solicitors Discipline Tribunal may order a solicitor to pay a client in relation to inadequate professional services. The maximum award of £1,000 has not been increased since 1990. The former Committee recommended that the maximum compensation level should be increased to £5,000 with a mechanism for annual uprating in line with inflation.

Response
33. The Executive agreed to review the current maximum level of compensation. The Executive also agreed to consider where there is a case for increasing the level of compensation for inconvenience which the Scottish Legal Services Ombudsman can recommend the professional bodies pay to a complainer which currently stands at £1,200. The Law Society accepted that the maximum level of
compensation which a solicitor can be ordered to pay a client in relation to inadequate professional services should be increased.

34. The former Committee believed that there should be consistency in the awarding of compensation and supported the suggestion that the professional bodies should issue guidance, placed in the public domain, on this matter in order that the consumer knows how the award has been determined.

Response
35. The Executive supported this recommendation in principle and hoped that the professional bodies would explore this recommendation. The Ombudsman told the Committee that the Society has issued “useful guidance” to its reporters on compensation levels but does not think that the guidance is in the public domain.

Delegated powers
36. Previously under the 1980 Act, the Council of the Law Society had to look at each complaint made to the Law Society and to determine the outcome. There is no lay involvement in the Council. The former Committee recommended that the power to determine the outcome of all complaints should be delegated to committees of the Law Society.

Response
37. The Executive agreed with this recommendation. The Society has reported that all complaints are now delegated to Committees of the Society.

Conciliation
38. When it receives a complaint, the Law Society will seek to have the matter resolved in the first instance between the firm and the dissatisfied client. This process is referred to as conciliation. The former Committee recommended that the conciliation process should be strengthened and that a practice rule should be introduced to require firms to have a complaints procedure, with a delegated person within a firm to deal with complaints. The former Committee also recommended that conciliation services should be provided to small firms and sole practitioners and that the conciliation process should have strict time limits to ensure that it is not used as a method to stall genuine complaints.

Response
39. The Executive would support a practice rule which would require all firms to have a complaints procedure, with a delegated person within each firm to deal with complaints. In its original response the Law Society agreed to consider strengthening the conciliation process. The Society has told

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4 Reporters conduct investigations into complaints and prepare reports to be considered by Client Relations Committees of the Law Society.
the Committee that a working party was established to examine conciliation issues last year. The working party produced a recommendation to create a pilot scheme conciliation service specifically tailored to sole practitioners which will involve the Society’s case managers meeting with a solicitor and dissatisfied client to conciliate complaints. The Ombudsman is not aware of the Law Society having taken any steps to make it a requirement that firms of solicitors have a complaint handling policy or a Client Relations Partner.

*Lay involvement*

40. The former Committee believed that lay involvement in the complaints process is crucial for promoting consumer confidence. The former Committee recommended that lay representation on committees of the Law Society dealing with all complaints should be at least 50%.

*Response*

41. The Executive agreed with this recommendation. The Law Society confirmed that its Client Relations Committees now comprise 50% lay people.

*Scottish Solicitors Discipline Tribunal*

42. The former Committee believed that the independence of the Scottish Solicitors Discipline Tribunal would be enhanced if its solicitor members were appointed by an open selection process rather than recommended by the Law Society and appointed by the Lord President and if lay membership were increased. The former Committee recommended that members of the Scottish Solicitors Discipline Tribunal should be appointed by an open selection process. The former Committee also recommended that the membership of the Scottish Solicitors Discipline Tribunal should be made up of 50% lay people and that it should be possible for the Scottish Solicitors Discipline Tribunal to be chaired by a lay person, with the assistance of a legally qualified clerk.

*Response*

43. The Executive supports an open selection process for appointments to the Scottish Solicitors Discipline Tribunal and an increase in lay membership and pointed out that it is already possible to appoint a lay member as Chairman.

*Finance*

*Professional Indemnity Insurance*

44. The Law Society has the power to provide and to require solicitors to have professional indemnity insurance and does so through the Solicitors (Scotland) Professional Indemnity Insurance Rules 1995 and a master policy scheme. The former Committee was made aware that lengthy delays in receiving settlements from the master policy have caused distress to a number of individuals. The former Committee
recommended that the Scottish Executive should examine ways in which the operation of the guarantee fund and the master policy could be made subject to external regulation and report back to the former Committee on its findings.

Response
45. The Executive was concerned by the delays experienced by complainers in receiving settlements from the master policy or guarantee fund and proposed to give the matter further consideration. The Law Society indicated that consideration would be required as to the form which the examination of the master policy and guarantee fund would take and the effect of “external regulation” in the light of the current regulation of the financial services sector. The Law Society has indicated that the Office of Fair Trading has recently begun an independent assessment of the master policy under the Competition Act 1998. The Ombudsman reported that the Scottish Consumer Council wanted to investigate the operation of the master policy but that the Law Society was not able to respond when first approached.

Faculty of Advocates

Redress
46. The Ombudsman told the former Committee that the Faculty's handling of complaints allows no consumer redress and is based entirely on an internal disciplinary code. The former Committee believed that there should be redress where complaints have been upheld. The former Committee recommended that the Faculty of Advocates should offer compensation of up to £5,000 for upheld complaints which relate to IPS, and for complaints about an individual advocate's conduct where it is established that loss has been suffered as a direct result of the advocate's conduct.

Response
47. The Executive agreed in principle with this recommendation. The Ombudsman told the Committee that the Faculty is considering whether it should amend its powers to include being able to order redress if a complaint is upheld.

Committees dealing with complaints
48. The former Committee recommended that lay representation on committees dealing with complaints against advocates should be at least 50% and that there should be 50% lay membership on the disciplinary tribunal.

Response
49. The Executive agreed with these proposals in principle. The Ombudsman told the Committee that the Faculty’s complaint handling rules have been changed and a Complaints Committee with non-advocate membership now makes decisions on all complaints, including those the Faculty will refuse to investigate further.
50. The former Committee recommended that the Faculty should prepare an information sheet to be sent to all complainers providing a brief outline of the way the Faculty deals with complaints.

Response

51. The Executive pointed out that the Faculty published an information sheet for complainers in July 2002, as recommended by the Ombudsman in her Annual Report for 2000-01.

Complaints involving solicitors and advocates

52. The former Committee recommended that the Law Society and the Faculty of Advocates should produce a procedure for dealing with complaints which involve both solicitors and advocates, in consultation with the Ombudsman.

Response

53. The Executive considered that such a procedure would be in the interests of complainers and supported the Committee's recommendation. The Law Society indicated in its original response that, along with the Faculty, it has commenced an examination of how improvements can be achieved in dealing with complaints against both solicitors and advocates. In its recent letter, the Society told the Committee that it is working with the Faculty on a Memorandum of Understanding in relation to complaints involving solicitors and advocates.
Annex B: Letter from Scottish Legal Services Ombudsman

*Increasing the Ombudsman’s powers.*

1. The Scottish Executive responded to say that the majority of Committee’s recommendations directed to Scottish Executive would require primary legislation. Noting that the then Ministers accepted in principle that the present system is in need of reform to increase public confidence in its fairness, efficiency and effectiveness and to make it more representative of the public interest, the Executive said that the post election Administration would wish to consider these matters for itself. I have no further information. The current review of legal services regulation in England and Wales (the Clementi inquiry) will, I suspect, have an impact in Scotland and not only because competition policy is a reserved matter.

*Powers to order redress*

2. The Committee recommended that the Faculty of Advocates should offer compensation of up to £5,000 for upheld complaints which relate to IPS, and for complaints about an individual advocate’s conduct where it is established that loss has been suffered as a direct result of the advocate’s conduct.

3. I understand that the Faculty of Advocates is considering whether it should amend its powers to include being able to order redress, such as compensation for loss or inconvenience, if a complaint is upheld.

*Allegations of professional negligence*

4. The Committee recommended that the Scottish Executive should examine ways in which the operation of the guarantee fund and the master policy could be made subject to external regulation and report back to the Committee.

5. I understand from the Law Society that the Office of Fair Trading is investigating a complaint about the Master Policy. I note that the Scottish Consumer Council wanted to investigate the operation of the Master Policy but I understand that the Law Society was not able to respond to the Consumer Council when first approached.

*Alternative forms of dispute resolution: strengthening the conciliation process*

6. The Law Society of Scotland has not, to my knowledge, taken any steps to make it a requirement that firms of solicitors have a complaint handling policy or a Client Relations Partner. I do know that the Law Society continues to think about how it might help smaller firms handle ADR.

*The need for a complaints gateway that is independent of the legal professions*

7. An important test of the need for such a gateway is the proportion of complaints to the professional body that are, unreasonably, turned down for investigation. In 2003, the Law Society received 952 letters that it
classed as Miscellaneous; that means it refuses to investigate. Complainants are told that they can ask the Scottish Legal Services Ombudsman to review whether that decision was reasonable. Around 17% of people whose complaint is turned down for investigation complain to the Ombudsman and in the past 12 months, 153 people have asked me to review a decision not to investigate. I assess those complaints against the Law Society’s own policies, which in my view are unfairly restrictive in some respects. I have found that the Law Society has failed to investigate a complaint that it is required to investigate under the law and its own policies in 22% of the cases I have examined.

8. On 1 September 2003, the Law Society added an extra step into complaints that it intends to refuse to investigate. The Case Manager’s draft decision is reviewed by a Sift Panel, consisting of a solicitor and a non-solicitor. Given the 6 month period in which someone can complain to the Ombudsman, I do not have sufficient information to comment reliably on whether the sift panel is spotting complaints that should be investigated. I can say that the number of complaints to my Office from 1 October to 31 January 2004 has not changed very much (equivalent to 144 in a full year).

**Timescales**

9. One of the major causes of complaint about the legal profession, and about the way the professional bodies respond to complaints, is delay, and the time taken. In complaints that I have examined in the past 12 months, the Law Society has taken an average of 78 weeks, start to finish, to complete an investigation. Whilst that is a long time, it is a significant improvement compared with the 94 week average I recorded three years ago.

10. Given the publicity to the number of “over two years” investigations by the Office for the Supervision of solicitors in England and Wales, (281 of 8545 live cases = 3%) I asked the Law Society to let me know how many over two year cases it had. The Law Society does not keep easily retrievable figures, though it is taking steps to improve its data collection. From my own records I note that 21% of Law Society investigations that I have examined in the past 12 months took more than two years.

11. The Law Society accepted the recommendation in my 2002-03 Annual Report to calculate its target timescale from the date on which it receives a complaint. Despite having the power to delegate decision making, and thus remove one step in an overlong process, the Law Society did not accept my recommendation to reduce the target time by one month to 8 months.

12. The Faculty of Advocates has, this week, responded formally to my recommendation that it sets a target time. It aims to complete 90% of investigations into new complaints within 9 months of receiving a letter of complaint. I am content with that as a starting point, but note that my
concerns about administrative delay and inefficiency have surfaced again and I will be reporting on that in my 2003-04 Annual Report.

Complaints involving both solicitors and advocates
13. The Faculty of Advocates took up the Committee’s suggestion that it should consult me in order to set up a Memorandum of Understanding with the Law Society to address some of the cross boundary problems that Ombudsmen past and present have identified. The Faculty of Advocates has recently asked me to comment on the draft MOU and I am hopeful that it will be agreed between the two professional bodies soon.

Comment on The Law Society’s powers
14. I continue to be concerned about how limited the Law Society is by out of date and unhelpful legislation, in this case the Solicitors (Scotland) Act 1980. In an attempt to fill the very large gap between dismissing a complaint of professional misconduct or mounting a prosecution to the Scottish Solicitors Discipline Tribunal, the Law Society has developed a series of “not quite misconduct” possibilities. Each has been challenged, and each has been changed, so the Law Society no longer makes a finding, but expresses a view; it no longer refers to unprofessional conduct, but to unsatisfactory conduct. The Law Society’s current policy is that if a complaint of professional misconduct cannot be proved beyond reasonable doubt, the Law Society can, on the balance of probabilities, express a view that the solicitor’s conduct was unsatisfactory. The Law Society does insist that the complaint must from the very beginning look as though it would be capable of passing the full test for professional misconduct. This is where the Law Society and I part company because I think the Client Relations Office should take on for investigation a complaint that is about professional misconduct and leave it to Reporter and Committee to decide if the complaint is supported by the evidence, beyond doubt or on balance, and to decide if the test of misconduct is met or if the gap filler is more appropriate. By setting the high hurdle at the outset, I think that the Law Society fails to investigate serious issues of professional conduct that should be the responsibility of a regulator. The Law Society has obtained Counsel’s Opinion, and has accepted Counsel’s advice that given the terms of current legislation the Law Society can indeed set a high hurdle at the outset.

Independent oversight: Power to conduct audits
15. Ministers thought that progress could be made administratively, without the need for further explicit statutory authorisation, if the professional bodies and the Ombudsman were able to conclude an agreement for the Ombudsman to have access to the professional bodies’ files. I have been asked to update the Executive on progress. I first discussed the issue with the Law Society last Autumn, the first point at which my staffing levels meant that I could do something about any agreement. I asked the Law Society how it would handle the matter of client confidentiality, suggesting that the mechanism it uses in complaints about immigration advice, where the OISC is co-regulator, would work. The Law Society’s current position
16. The Faculty of Advocates is considering audit proposals that I raised at a recent meeting with the Dean.

17. As an example of the need for audit, I have found that around 3% of people who complain to the Ombudsman about the Law Society were not given information about their right to do that at the point when the Law Society made a decision on their complaint, usually when it is refusing to investigate. As those people complained to the Ombudsman despite not being given the information, I would suspect that the information is being omitted in more than 3% of cases.

Non lawyer involvement

18. The Law Society’s Client Relations and Professional Conduct Committees now have 50:50 solicitor and non-solicitor membership.

19. The Faculty of Advocates’ complaint handling rules have been changed and a Complaints Committee with non-advocate membership now makes decisions on all complaints, including those the Faculty will refuse to investigate further.

Professional Practice Rules: non profession involvement

20. So far as I am aware, neither the Faculty of Advocates nor the Law Society has appointed non members to be part of the Rule making body.

The Law Society examining its procedure for dealing with complaints involving negligence and considering setting up an arbitration scheme for dealing with such complaints

21. I have no information on whether the Law Society is taking the arbitration proposal forward. I am pleased to confirm that the Law Society no longer automatically puts an investigation on hold if there is a related negligence action but treats each case on its merits. There can be good reasons why the two cannot operate at the same time in some, but not all, cases.

Increasing the maximum compensation level to £5,000 with a mechanism for annual uprating in line with inflation

22. I note that the Executive agreed to review the current maximum level of compensation (£1,000) which the Law Society of Scotland or the Scottish Solicitors’ Discipline Tribunal can order a solicitor to pay for inadequate professional service. In its response to the Committee the Executive said that a mechanism to adjust these figures by means of secondary legislation existed in section 56A(3) of the Solicitors (Scotland) Act 1980, inserted by Schedule 8, paragraph 29(13) of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990. An order would be considered once conclusions have been reached on the Committee’s recommendation. The Executive noted that it is required by section 56A(4) of the 1980 Act to consult the Council of the Law Society of
Scotland before making any such order. I have no information on whether the Executive has embarked on this consultation process.

Professional bodies issuing guidance, placed in the public domain, on compensation levels in order that the consumer knows how the award has been determined

23. The Law Society has issued useful guidance to its Reporters on compensation levels. I do not think that the guidance is in the public domain. The Committee will be aware that I published my own guidance notes in my 2002-3 Annual Report, which can be read on the www.slso.org.uk website.

The power to determine the outcome of all complaints should be delegated to committees of the Law Society

24. The Council of the Law Society of Scotland Act allowed the Law Society to do that and I can confirm that from August 2003, decisions are made by Committees.

The Faculty should prepare an information sheet to be sent to all complainants.

25. The Faculty published an information sheet in July 2002. In response to recommendations in my Annual Report, the Faculty very quickly set up a clear “Complaints” signpost on its website, including access to its complaint handling policies and Disciplinary Rules. It also set up a complaints email address.

26. Although the Committee’s recommendation on providing information was addressed to the Faculty, I am pleased to note that some considerable time after agreeing to provide more easily accessed information, the Law Society amended its website at the end of last month so that there is a “Complaints” signpost on the home page. The information now provided is easy to get at and very good.

Complaint trends

27. In 2003, the Law Society’s Client Relations Office received 2959 letters. It classed 2036 as complaints that would be put through the investigation process, and 923 as miscellaneous. Whilst I cannot be certain, I suspect that the majority of the writers of those “miscellaneous” letters intended them to be complaints.

28. In my 2002-03 Annual Report, I drew attention to my concern that a very high proportion of complaints that start off on the investigation trail drop out along the way. The Law Society’s improved complaint handling process may do something about that.

29. The Faculty of Advocates’ 2003 figures are not yet available, but I understand that complaints received number in the mid twenties.

30. I have received 359 complaints about the Law Society of Scotland and the Faculty of Advocates in the past 12 months, a rise of 50% compared with
2002-03, which was itself a rise of 42% over the year before that. Complaints to the Ombudsman have quadrupled since 2000.
Annex C: Letter from Michael Clancy, Director, the Law Society of Scotland

I have the following comments to make on action taken by the Law Society of Scotland following upon Justice 1 Committee’s recommendations in respect of its Inquiry into the Regulation of the Legal Profession which was published on 27th November 2002.

The recommendations where action was required by the Society are as follows:-

1. **Dual Role of the Society**

   The Society has implemented the Council of the Law Society of Scotland Act 2003 by the creation of a scheme of delegation which creates a clearer separation of roles between the Council, Client Relations Committees and Professional Conduct Committee through the scheme. I attach a copy of the scheme for your information.

2. **Recommendation 13 - Setting Standards**

   The Society has appointed additional lay persons to its Client Relations Committees and to the Professional Conduct Committee so that each Committee has 50% lay and 50% qualified membership. In addition, the Client Care Committee has a revised remit which specifically identifies standards as an issue. This committee and its relevant sub-groups also has 50% lay and qualified membership. the Committee is working on the issue of standards and as a first step, Council has agreed that standards should be introduced in relation to file record keeping.

3. **Recommendation 16 - Negligence**

   The Committee may be interested to know that the Office of Fair Trading has recently begun an independent assessment of the Master Policy under the Competition Act 1998.

   The Society still maintains the troubleshooter scheme as a safety net for clients.

   The Society established a Pursuers’ Panel for Professional Negligence Claims against solicitors in October 2002. Four solicitors were appointed to this Panel by the Society each for a 3 year term from 1st October 2002. The Panel seeks to assist members of the public and solicitors in potential negligence claims against other solicitors.
4. **Recommendation 20 - Delegated Powers**

The Society has accepted this recommendation and all complaints are delegated to Committees of the Society.

5. **Recommendation 22 - Conciliation**

The Society’s Client Care Committee established a working party to examine conciliation issues last year. That working party has produced a recommendation to create a pilot scheme conciliation service specifically tailored to sole practitioners, which will involve the Society’s case managers meeting with a solicitor and dis-satisfied client to conciliate complaints. The pilot will commence in the summer. It is anticipated that the pilot will be of 6 months duration. A report will then be made to the Council.

6. **Recommendation 23 - Lay Involvement**

The Society confirms that its Client Relations Committees comprise 50% lay persons.

7. **Recommendation 28 - Complaints involving solicitors and advocates**

The Society and the Faculty are adjusting a Memorandum of Understanding in relation to complaints involving solicitors and advocates. A copy of the draft Memorandum is attached.

The Committee’s recommendations were discussed at a recent meeting between the Society’s Office Bearers and the Justice Minister and I understand that the Executive’s intentions are to be announced soon.

On the broader plane, the Society is participating with the Scottish Executive on Competition and Regulation of the Legal Services Market. A meeting of the Research Group is expected in March.

The Society is also expecting shortly the consultation from Sir David Clementi on Competition and Regulation in the Legal Services Market in England and Wales which may have an impact on many of the issues raised in the Justice 1 Report.

I hope the foregoing is helpful. If there are any further issues, please let me know.
23rd February 2004

Pauline McNellis, MSP
Convenor
The Justice 1 Committee
The Scottish Parliament
Edinburgh

Fax of 2 pages

Dear Convenor,

Inquiry into Self Regulation of the Law Society —
Committee Meeting 24th February 04

I write to record with all Committee members at this meeting —

1. The Chief Executive of the Parliament, has now confirmed in writing to John Swinney, MSP, that considerable areas of my submission which were struck out by Parliament staff, were done, “in error”.
   My MSP is pressing the Parliament’s Chief Executive for further explanations and the precise role and involvement of Parliament lawyers, in the editing of my submission.
   Parliamentary clerks were not qualified, or were able to decide on defamation etc., simply by receiving “general advice” from Parliamentary lawyers.

2. The Office of Fair Trading are investigating the Law Society Master Policy, in relation to the Competition Act.
   The OFT had a meeting with the Scottish Executive last week, and where the OFT expressed concerns about the provision of legal services in Scotland, and they also expressed and recorded their concerns regarding the Law Society Master Policy, to the Executive.

3. The Scottish Legal Services Ombudsman has, in a newspaper article, termed the Law Society Master Policy as “anti-competition”.

4. The Scottish Consumer Council are also to conduct an investigation and report into the Law Society Master Policy, however, they have asked the Law Society for their co-operation, but the Law Society could not assist during the first SCC request, and the SCC have now, last week, made a second request.
This Inquiry has been a whitewash from the beginning, further evidenced by the editing of my submission. It has also been a significant failure of this Inquiry, not to have taken oral evidence from individuals, where even the Chief Executive of the Law Society has said, that I, "would come over very well at the Justice Committee Inquiry".

Finally, had previous Committee members seen particular evidence in my submission, the results of this Inquiry produced so far, would not have been able to have been reached. Furthermore, if my evidence had been seen by the Committee, evidence provided by others to the Inquiry, would have been called into question, and in this regard, there is no other conclusion other than, either the Committee members did not see my evidence, or, that they acted incompetently, by not questioning the contradictory evidence before them.

Yours sincerely,

[Signature]

STEWART V. MACKENZIE