JUSTICE 1 COMMITTEE

AGENDA

25th Meeting, 2004 (Session 2)

Wednesday 23 June 2004

The Committee will meet at 10.00 am in the Chamber, Assembly Hall, the Mound, Edinburgh.

1. **Item in private:** the Committee will consider whether to take item 7 in private.

2. **Former Justice 1 Committee inquiry into the regulation of the legal profession:** the Committee will consider what progress has been made in relation to implementing the recommendations made by the former Justice 1 Committee in its *11th Report 2002: Report on Regulation of the Legal Profession Inquiry*.

3. **Transparency of legal fees:** the Committee will consider further correspondence relating to this matter.

4. **Emergency vehicles and dangerous driving:** The Committee will consider correspondence arising from closed petition PE111 which called for the Parliament to order a public inquiry into road accidents involving police responding to 999 calls.

5. **Children (Scotland) Act 1995:** The Committee will consider a response from the Scottish Executive in relation to access to rights under the Act.

6. **Security of tenure and rights of access:** The Committee will consider further correspondence relating to security of tenure and rights of access for those who own property built on leased land.

7. **Security of tenure and rights of access:** The Committee will consider a specification and list of candidates for the post of adviser in relation to security of tenure and rights of access for those who own property built on leased land.

8. **Emergency Workers (Scotland) Bill (in private):** The Committee will consider a draft stage 1 report.

Alison Walker
Clerk to the Committee
Tel: 0131 348 5195
Papers for the meeting—

Agenda item 2
Note by the Clerk J1/S2/04/25/1

Agenda item 3
Note by the Clerk J1/S2/04/25/2

Agenda item 4
Note by the Clerk J1/S2/04/25/3

Agenda item 5
Note by the Clerk J1/S2/04/25/4

Agenda item 6
Note by the Clerk J1/S2/04/25/5

Agenda item 7
Note by the Clerk (PRIVATE PAPER) J1/S2/04/25/6

Agenda item 8
Note by the Clerk (PRIVATE PAPER) J1/S2/04/25/7
Note by the Clerk (TO FOLLOW) J1/S2/04/25/8
City of Edinburgh Council – Violence Towards Staff in the Social Work Department J1/S2/04/25/9
Correspondence from the Crown Office J1/S2/04/25/10
Correspondence from the Scottish Executive (TO FOLLOW) J1/S2/04/25/11
Correspondence from the Law Society of Scotland (TO FOLLOW) J1/S2/04/25/12

Papers for information—
Correspondence from North Lanarkshire Council enclosing the North Lanarkshire Justices of the Peace Committee’s response to the consultation on the report of the Summary Justice Review Committee J1/S2/04/25/13
Correspondence from the Scottish Executive—
From the Deputy Minister for Justice about the Criminal Procedure (Amendment) (Scotland) Act 2004 J1/S2/04/25/14
From the Community Justice Services Division about Youth Court Pilots: Airdrie Youth Court J1/S2/04/25/15
From the Minister for Justice and the Lord Advocate about Napier v Scottish Ministers J1/S2/04/25/16
Document not circulated—
A copy of the following has been provided to the Clerk:

- Scottish Legal Aid Board, Proposals for the Review of Summary Criminal Legal Assistance.

A copy of this document is available for consultation in room 3.11 CC. Additional copies may also be obtainable on request from the Document Supply Centre.

Forthcoming business—
Wednesday 30 June – Justice 1 Committee meeting, Committee Room 2.
I attach the following papers:

**Agenda Item 6: Security of Tenure**

| Further correspondence from Jim Wilson         | J1/S2/04/25/17 |
| Further e-mailed correspondence from Kathleen Downes | J1/S2/04/25/18 |

**Agenda Item 8: Emergency Workers (Scotland) Bill**

| Note by the Clerk                  | J1/S2/04/25/8 |

21 June 2004 Tony Reilly
Regulation of the legal profession

Note by the Clerk

Background

1. At its meeting on 25 February 2004, the Committee considered the recommendations made by the former Justice 1 Committee in its 11th Report 2002: Report on Regulation of the Legal Profession Inquiry and updates received from the Scottish Legal Services Ombudsman and the Law Society of Scotland. A summary of the recommendations and responses considered at that meeting is attached at annex A.

2. The Committee agreed not to re-open the former Committee’s inquiry but to monitor whether the recommendations have been implemented; to write to the Minister for Justice seeking an update on the Scottish Executive’s response to the recommendations and to write to the Faculty of Advocates for an update on progress.

Response from the Scottish Executive

3. In its response (attached at annex B), the Executive states that it has decided to develop an agenda of reform to improve complaints handling by the legal profession in Scotland, drawing on the recommendations made by the former Justice 1 Committee. It intends to hold a public consultation on policy proposals which will represent the Executive’s position on the recommendations of the former Justice 1 Committee. The Executive also intends to carry out research on regulation and competition in the legal services market in Scotland.

4. The Executive is also considering developments at Whitehall and Brussels. The Clementi Review was set up by the Lord Chancellor last year. Its remit is to consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector. A consultation paper on matters arising from that review is to be published shortly. The European Commission has been studying the impact of professional regulation and has published a report which requires member states to review professional rules and regulations and identify any that could be seen as hindering effective competition within the profession.

Response from the Faculty of Advocates

5. The response from the Faculty of Advocates (attached at annex C) states that substantial progress has been made on all of the areas in which the Faculty has power to make changes in the complaints process.
Redress
6. 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 recommended that the Faculty of Advocates should offer compensation of up to £5,000 for upheld complaints where it is established that loss has been suffered as a direct result of the advocate’s conduct.

7. The Faculty has indicated that the issue of financial redress was discussed and approved in principle at its meeting on 2 May and that it will keep the Committee informed as to its implementation.

Information on the complaints procedure
8. 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.

9. The Faculty has informed the Committee that it has prepared an information sheet which is sent to all complainers and that its disciplinary rules now feature on its website.

Complaints involving solicitors and advocates
10. 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.

11. The Faculty has reported to the Committee that it has drawn up a memorandum of understanding with the Law Society of Scotland for a procedure to deal with complaints involving both solicitors and advocates. The Faculty has agreed to its terms and is waiting for notification of the Law Society’s formal approval. The Ombudsman was consulted and is content with the terms of the memorandum.

Committees dealing with complaints
12. 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.

13. The Faculty has indicated that the issue of the increase to 50% of lay membership on Complaints Committees and the Disciplinary Tribunal was discussed and approved in principle at its meeting on 2 May and that it will keep the Committee informed as to its implementation.
Options

14. Given that the Executive has indicated that it intends to hold a public consultation on policy proposals which will represent the Executive’s position on the recommendations of the former Justice 1 Committee, the Committee could write to the Executive asking for a timescale for the consultation and any policy announcements following on from the consultation. Once published, the Committee could consider whether the consultation paper adequately reflects the recommendations of the former Justice 1 Committee.
Annex A: Former Justice 1 Committee’s inquiry on the regulation of the legal profession inquiry: recommendations and responses

Background

1. 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

2. 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

3. 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 paper summarises the former Committee’s recommendations and responses received.

Remit of the inquiry

4. 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

5. 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

6. 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
7. 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 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
8. 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
9. 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
10. 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
11. Both the Executive and the Law Society were in broad agreement with this recommendation.

Law Society of Scotland

Dual role of the Law Society
12. 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
13. 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
14. 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
15. 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
16. 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
17. 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
18. "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.

19. 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 scheme 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

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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.

20. 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 soliciters 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
21. 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
22. 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
23. 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
24. 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.

25. **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*

26. 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**

27. 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*

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

**Conciliation**

29. 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*

30. 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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*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

31. 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

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

Scottish Solicitors Discipline Tribunal

33. 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

34. 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

35. 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
36. 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
37. 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
38. 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
39. 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
40. 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.
41. 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
42. 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
43. 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
44. 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.
Justice 1 Committee

Transparency of Legal Fees

Note by the Clerk

Background

Previous consideration
1. The Committee last considered correspondence on transparency of legal fees at its meeting on 31 February 2004. The paper considered by the Committee at that meeting is attached at annex A.

2. At that meeting, the Committee agreed to write to the Minister for Justice, outlining problems identified in this area and seeking action in relation to this matter, and to the Law Society of Scotland, enclosing comments received from the Scottish Legal Services Ombudsman, pressing for a change in the rules in this area and seeking clarification in relation to the society’s policy on charges for itemisation of solicitors’ accounts.

The Scottish Executive
3. A response dated 3 June 2004 was received from the Minister for Justice and is attached at annex B. In it, the minister observes that there is no general practice rule requiring solicitors to send out letters of engagement setting out aspects of charging and acknowledges the repeated recommendations of the Scottish Legal Services Ombudsman that such a rule should be introduced. The minister also observes that such a rule already exists in relation to transactions involving domestic conveyancing, financial services or immigration advice.

4. The minister goes on to state that it is her view that it would be in the interests of the users of legal services in Scotland that there should be a practice rule to this effect. The minister also explains that the Scottish Executive has no locus in relation to practice rules under the Solicitors (Scotland) Act 1980.

5. The minister also advises that she met the Law Society of Scotland on 11 May and raised this matter at that meeting. She explains that the society argued that the system was already transparent in practice and that it was not always possible for solicitors to be able to predict costs with certainty in some cases but that she does not find their arguments persuasive.

6. The minister then refers to the meeting of the Law Society of Scotland’s Professional Practice Committee in June at which these issues will be considered and expresses an intention to follow up on the outcome of the meeting. She also reiterates that the Executive has no statutory locus and must therefore progress the matter on the basis of persuasion.
7. The minister also advises that the working group for research into the legal services markets has identified the role of auditors of court as an issue for consideration in terms of its impact on competition. She has also been advised by the Chief Executive of the Scottish Court Service that it is considering a consultation, initially with sheriffs principal, about arrangements for the taxation of solicitors accounts, other than court-ordered judicial taxations. The Minister for Justice undertakes to keep the Committee informed of how these areas of work will be taken forward.

Law Society of Scotland

8. In its response (attached at annex C), the Law Society states that its Professional Practice Committee has recommended to the Council of the Law Society that a Practice Rule should be created rendering letters of engagement obligatory in respect of all forms of business. This is due to be considered at the Council meeting on 23 June and the Law Society will report to the Committee thereafter.

9. In relation to transparency of fees, the Law Society states that it has considered the Committee’s representations. The Law Society is of the view that, because of the complexity of the issues involved, it would be appropriate for members of the Committee to meet with members of the Society’s Remuneration Committee to discuss these issues further.

Scottish Consumer Council

10. In its response (attached at annex D), the Scottish Consumer Council (SCC) states that those who purchase services of any kind are entitled to be informed by the service provider as to how much those services are likely to cost. According to the SCC, evidence suggests that a substantial proportion of solicitors have failed to give clients an estimate of likely costs.

11. The SCC explains that many clients are not informed by their solicitor about the possibility of outlays to be paid and supports the view that a letter of engagement should be sent to every client as a matter of course. The SCC believes that the client should be kept informed about costs, particularly if it becomes apparent that these are likely to exceed the initial estimate.

12. The SCC also supports the view that a solicitor’s account should be clearly set out and itemised. It explains that the option of challenging the level of fees charged by going to the Auditor of Court to have the account ‘taxed’ can result in additional costs for the client. Evidence shows that many clients are unaware of their right to have the account taxed. The SCC believes that it is important that solicitors advise clients that they have this right.
Action

13. The Committee is invited to consider what course of action it would like to take. This could include—

(a) considering at a future meeting the outcome of the Law Society Council's consideration of the recommendation that a Practice Rule should be created rendering letters of engagement obligatory in respect of all forms of business;

(b) considering whether to accept the offer of a meeting with members of the Remuneration Committee of the Law Society to discuss transparency of fees;

(c) considering whether to write to the Law Society again, enclosing the response received from the SCC, stating that it supports the view that solicitor's accounts should be clearly set out and itemised and seeking action from the Law Society to make the issuing of such accounts obligatory;

(d) considering whether to write to the Law Society asking it to consider creating a Practice Rule requiring solicitors to make clients aware of their right to have the account taxed.
Justice 1 Committee

Transparency of Legal Fees

Note by the Clerk

Background

Disputed solicitors’ fees
1. In August 2003, Margo MacDonald MSP wrote to the Clerk, enclosing correspondence from a Mr J Wilson concerning a complaint in relation to disputed solicitors’ fees and requesting that the substance of his complaint be placed before the Convener for an investigation by the Committee. Ms MacDonald’s and Mr Wilson’s correspondence to her are attached at Annex A.

The role of auditors of court
2. Mr Wilson’s case involved a dispute of legal fees, which he had pursued by means of the procedure for having the solicitor’s account independently scrutinised, called the “taxation” of the solicitor's account which is carried out by an auditor of court. Auditors of court are officials based in sheriff courts who, in cases referred to them, determine the proper fee that it is reasonable to pay. In Mr Wilson’s case, the auditor of court found that the fee charged of £1,200 should be reduced to £950. However, Mr Wilson was dissatisfied with this outcome as he felt that the final fee, although reduced, was nonetheless an amount well in excess of a fair charge for the nature of the work undertaken by the solicitor. Furthermore, he was not content with the taxation procedure, feeling that it lacked transparency as there was no minute taken of the meeting and no itemisation of specific costs and that the official undertaking the role of auditor of court was not appropriately qualified to do so.

Law Society of Scotland
3. Whilst the Convener and the Committee could take no action in relation to Mr Wilson’s individual case, the Convener felt that there was a wider issue relating to transparency of legal fees and wrote to the Law Society of Scotland seeking its views on the matter and any guidelines that it issues to solicitors on the process of calculating and setting legal fees and on how this process should be explained to the client. The society’s response refers to chapters 1 and 2 of its Table of Fees for General Business; the response and extracts are attached at Annex B.

4. The Convener felt that the parameters set out in the table of fees are very wide and quite complicated; that, for the lay person, it would be very difficult to understand how fees are calculated in relation to the table, and that, as the parameters are wide, it also makes it difficult for lay persons to pin their solicitors down to a cost per item. The Convener also felt that this raised questions about how such a person
would go about challenging their solicitors’ fees, should they believe them to be unduly high, and wrote to the Scottish Legal Services Ombudsman (“the Ombudsman”) to seek her views on these points.

Scottish Legal Services Ombudsman

5. The Ombudsman replied to the Convener’s letter in February 2004 and a copy of the response is at Annex C. The Ombudsman identifies three main issues—

(a) Despite recommendations by the Ombudsman and unlike the Law Society in England and Wales, the Law Society of Scotland does not have a practice rule that, at the beginning of the solicitor-client relationship, solicitors send a letter of engagement, setting matters out clearly, such as charges or charging rates, how much may be paid to other parties on the client’s behalf and when they expect to be paid;

(b) It is the Law Society of Scotland’s position that clients should have to pay extra charges for a detailed or itemised account, whereas the Ombudsman believes that, owing to advances in technology, detailed accounts are likely to be quite simple to draw up and, therefore, such charges are not justifiable;

(c) The role of the auditor of court in taxing solicitors’ accounts is to assess whether the amount charged for work undertaken is reasonable but not to assess whether the it was reasonable to undertake the work itself.

6. During this period, further items of correspondence were also received from Mr Wilson (Annex D). The Convener felt that the Ombudsman made some interesting points which, together with points made by Mr Wilson, should be considered by the Committee.

Action

7. The Committee is invited to consider what course of action it would like to take. This could include—

(a) writing to the Minister for Justice, outlining the problems identified in this area and seeking action in relation to this matter;

(b) writing to the Law Society of Scotland, enclosing the Ombudsman’s comments, to press for a change in the rules in this area.
TRANSPARENCY OF LEGAL FEES

Thank you for your letter of 22 April and the attached papers, seeking action on my part in relation to issues arising from recent correspondence.

As regards letters of engagement, there is as you know no general practice rule in Scotland which requires solicitors to send a letter of engagement, setting out for the client how much the solicitor will charge or what the charging rate will be, how much they will pay on the client’s behalf as outlays to others, and how and when they expect to be paid. This is despite repeated recommendations by the former Scottish Legal Services Ombudsman that such a rule should be introduced. Such a rule does already exist in relation to transactions which involve domestic conveyancing, financial services or immigration advice. As the Ombudsman notes, the Law Society of Scotland’s Code of Conduct advises solicitors to provide information in relation to the fees and outgoings to be charged, but the Code has the status of guidance and is not mandatory.

In my view it would be in the interests of the users of legal services in Scotland if there was a practice rule which required Scottish solicitors to issue letters of engagement in relation to general business, as there is in England and Wales. The Solicitors (Scotland) Act 1980 places responsibility on the Council of the Law Society of Scotland for such practice rules which fall to be approved by the Lord President of the Court of Session. Scottish Ministers have no locus in relation to such rules under the 1980 Act.

When I met the Law Society of Scotland on 11 May I raised this matter with them. The Society argued that the system was already very transparent in practice and that it was not always possible...
for solicitors to be able to predict costs with certainty in some cases. I do not find these arguments persuasive. The Society’s Professional Practice Committee is considering these issues at its June meeting and my officials will be in touch with the Society about developments. At present progress can only be made on the basis of persuasion as Scottish Ministers do not at present have a statutory locus in relation to such rules.

There are a number of parallel developments of which you should be aware. With regard to the role of Auditor of Court, the Working Group for research into the legal services markets has identified this as an issue for consideration in respect of the impact the role has on competition in legal services. Moreover, I have been advised by the Chief Executive of the Scottish Court Service that the Agency is considering a consultation, initially with Sheriffs Principal, about the current arrangements for the taxation of solicitor’s accounts, other than judicial taxations, which are ordered by the court. I will write to you again in due course and give you further details of how these areas of work will be taken forward.

I hope that this is helpful.

CATHY JAMIESON
Dear Pauline

Letters of Engagement and Solicitors Fees

Further to your letter of 22 April, I can report that the Society’s Professional Practice and Remuneration Committees have been considering your correspondence and the papers which you sent in great detail.

In relation to the issue of Letters of Engagement, the Professional Practice Committee has considered your letter on two occasions and is making a recommendation to the Council that a Practice Rule should be created rendering such letters obligatory in respect of all forms of business. This is due to be considered by the Society’s Council on 23 June and I hope to be able to report to you thereafter.

In respect of issues regarding transparency of fees, the Society’s Remuneration Committee has also considered this item. I enclose excerpts from the Society’s website which are available for the public to consult, which hopefully go some way to explaining how solicitors fees are formulated. I wonder if, because of the complexity of the issues involved, it would be appropriate for members of the Society’s Remuneration Committee to meet with members of the Justice 1 Committee to discuss these questions. That will enable the Society’s Remuneration Committee to more fully understand your Committee’s concerns and will help them to provide information which is focussed and appropriate to your Committee’s needs.

I look forward to hearing from you.

Yours sincerely

Michael P Clancy
Director

E-mail: moiragoll@lawscot.org.uk
Excerpts from the Society’s Website:

Solicitors Fees.

Please choose a section from the drop down list below.

General

The Law Society of Scotland does not set solicitors’ fees although it does recommend an hourly charge rate which is currently £113. This is reviewed annually. It is for the solicitor and the client to agree on an acceptable method of pricing the work done. This may be by charging an agreed hourly rate, or by charging a fixed fee for the whole work.

Factors involved in setting of fees

The fees charged by solicitors shall be fair and reasonable in all the circumstances. Factors to be considered in relation to the reasonableness of the fee include:-

a) the importance of the matter to the client;

b) the amount or value of any money, property or transaction involved;

c) the complexity of the matter of the difficulty or novelty of the question raised;

d) the skill, labour, specialised knowledge and responsibility involved on the part of the solicitor;

e) the time expended;

f) the length, number and important of any documents or other papers prepared or perused; and

g) the place where and the circumstances in which the services or any part thereof are rendered and the degree of urgency involved.

Estimates

The Law Society of Scotland encourages solicitors to provide estimates of their fees to their clients. If your solicitor gives you a verbal estimate for their fees for carrying out the proposed work, you should get confirmation of the estimate in writing. The estimate should make clear whether it includes VAT on the fee or not. The estimate should also include details of the “outlays” - or costs that the solicitor will have to pay out on your behalf in carrying out the work for you, such as stamp duty, recording dues or fees to the court for raising an action. The solicitor may ask for payment of some or all of the outlays before the end of the matter.

You should remember that an estimate is only an estimation of the final cost and may be exceeded.

Payment of fees

You may wish to receive interim fee-notes as the case progresses so that, for example, the cost of a long running case is spread over time. You should ask your solicitor about this at the outset. You should agree with your solicitor an acceptable level of fees and outlays to be incurred between interim billings. Many solicitors prefer to spread payment in this way.

If your solicitor receives funds for you at the end of the transaction or Court case they are entitled to take
payment of their fees and outlays for the matter plus any outstanding fee-note from that money. The invoice must be issued at the same time if it has not been issued beforehand.

You are entitled to know the basic breakdown of an account into fees, VAT and outlays without incurring any further cost. However if you request a fully itemised account, your solicitor is entitled to make a charge for this.

Querying the Fees

Unless you agreed in writing what the fees would be, if you are unhappy about the amount of the fee charged by your solicitor, even if payment has been taken as above, you can still insist on the fee being sent for reassessment by the Auditor of Court. This process is outlined in the Society’s information sheet "Querying Solicitors’ Fees”.

Court Cases

If you raise a successful court action and the opponent is ordered to pay your expenses you may still have to pay some fees to your solicitor. This is because the expenses that the Court can order the other side to pay (Judicial Expenses) are calculated on a different basis than is used to calculate the fees charged by solicitors to their clients. Your solicitor may ask you to pay the difference, although you may agree with your solicitor at the outset that he/she will accept the fees that can be recovered (see speculative cases below).

Legal Aid

If you are getting Legal Aid and you are awarded compensation by the Court or recover monies in a settlement of the action, your solicitor must send the settlement cheque to the Legal Aid Board. The Board will then deduct the amount of your solicitor’s Legal Aid fee and permitted outlays before sending the balance back to your solicitor for you.

Further details can be found in the Society’s leaflet “Getting the Best from your Solicitor” (click here to download a pdf of the leaflet), the Legal Aid topic in Dial-a-Law and in leaflets produced by the Scottish Legal Aid Board.

Speculative cases

Solicitors in Scotland may also act on a speculative basis – charging no fee unless the matter is successful. This is often referred to as acting on a "no win no fee" basis. This is mainly relevant to court actions rather than other types of work, although it is also done regularly in house sales (no sale no fee).

If you raise a speculative action in court and you are unsuccessful you will usually be liable for your opponent’s legal expenses, and your own solicitor’s outlays, but not their fees. To protect against this risk you may take out insurance before commencing a "no win no fee" case.

If you have any queries, take them up with your solicitor in the first place. If you are still unhappy, telephone the Society’s Client Relations Helpline: 0845 113 0018 for more information.

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E-mail: moiragoll@lawscot.org.uk
or by agreeing a fixed fee for example.

If you remain unhappy with the level of the fee charged, the procedure for having the solicitor's account independently scrutinised is called the "taxation" of the solicitor's account and is carried out by the Auditor of Court.

**Auditor of Court**

The Auditor of Court is an official, based in every Sheriff Court in Scotland. The process has nothing to do with raising a court action or payment of any kind of tax, the Auditor is simply located within the court premises.

If you wish to proceed, all you have to do is to ask your solicitor to make suitable arrangements. They will then send you a simple form of letter for your signature, which will be addressed to the Auditor asking him to "tax" the account. The solicitor will also sign the form which is referred to as the "joint remit" and by signing the form both the client and the solicitor are agreeing to accept the Auditor's judgement on the correct level of fee.

The solicitor will submit the joint remit to the Auditor together with their account, their correspondence file, their cash ledger and any other papers which will help the auditor to determine the extent of the work done and the proper fee which it is reasonable to pay.

**Attending the hearing**

If you wish to attend the hearing before the Auditor in order to put forward your views you are entitled to do so. You must let the solicitor know at the outset that you wish to do so and he will let the Auditor know when he sends in the papers. You will then be advised of the date and time of the hearing.

**Auditors' Fees**

The Auditor has the discretion to charge a fee for his involvement - usually 3% or 4% of the final "taxed amount" plus VAT. Unless the Auditor finds that the solicitors account was excessive, he is likely to order his fee to be paid by the client in addition to what he determines is a fair and reasonable fee for the solicitors to receive.

**Further Information**

The Auditors' offices in the Sheriff Courts are most willing to give further information about this service, for instance their particular policy in respect of their own fees and how long it might take to complete the taxation process.

All Sheriff Court telephone numbers can be found in the appropriate telephone book, from Directory Enquiries, or from the Law Society Client Relations Helpline: 0845 113 0010.

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E-mail: moiragoll@lawscot.org.uk
15 June 2004

Dear Dougie

Transparency of Legal Fees

I am pleased to enclose a submission to the Justice 1 committee from the Scottish Consumer Council on the above matter. I hope that this will assist the committee in its deliberations.

Please do not hesitate to contact me if I can be of any further assistance here.

Yours sincerely

Sarah O’Neill
Legal Officer
submission to justice 1
committee on
transparency of legal
fees
June 2004
About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Its purpose is to promote the interests of consumers in Scotland, with particular regard to those people who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC seeks to develop this partnership by:

• carrying out research into consumer issues and concerns;
• informing key policy and decision-makers about consumer concerns and issues;
• influencing key policy and decision-making processes;
• informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department of Trade and Industry. The SCC's Chairman and Council members are appointed by the Secretary of State for Trade and Industry in consultation with the Secretary of State for Scotland. Future appointments will be in consultation with the First Minister, Martin Evans, the SCC's Director, leads the staff team.

Please check our website at www.sccconsumer.org.uk for news about our publications.

Scottish Consumer Council
Royal Exchange House
153 Queen Street
Glasgow G1 3DN

Telephone 0141 226 5261
Facsimile 0141 221 7731
www.sccconsumer.org.uk

The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles.

These are:

ACCESS
Can consumers actually get the goods or services they need or want?

CHOICE
Can consumers affect the way the goods and services are provided through their own choice?

INFORMATION
Do consumers have the information they need, presented in the way they want, to make informed choices?

REDRESS
If something goes wrong, can it be put right?

SAFETY
Are standards as high as they can reasonably be?

FAIRNESS
Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

REPRESENTATION
If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

Published by the Scottish Consumer Council
June 2014

We can often make our publications available in braille or large print, on audio tape or computer disk. Please contact us for details.
SUBMISSION TO JUSTICE 1 COMMITTEE ON TRANSPARENCY OF LEGAL FEES

Introduction

The Scottish Consumer Council has a particular interest in the client care provided by solicitors in Scotland to members of the public, and we have carried out consumer research in this area in the past.\footnote{Client Care: a report of a survey on the client care provided by solicitors in Scotland; 1995; Complaints about solicitors: a study of consumers’ experiences of the Law Society of Scotland’s complaints procedure, 1999; Home Truths: a report on research into the experiences of recent house buyers in Scotland, 2000; all Scottish Consumer Council}

Those who purchase services of any kind are entitled to be informed by the service provider as to how much those services are likely to cost. As with any other purchaser of services, a solicitor’s client should know what to expect from their solicitor, including how much the fees and any outlays for agreed work are likely to come to. This is also to the solicitor’s advantage, as a client who is clear about how much they will be required to pay at the outset is much more likely to be satisfied than one who is not. The need for a clear and agreed understanding by both solicitor and client is central to their existing and continuing relationship.

However, while many solicitors do give clients an estimate of the likely costs, the evidence suggests that a substantial proportion have failed to do so in the past. In 1995, we found that almost four in ten solicitors’ clients said they were not informed at the beginning about the likely total cost of the work to be done.\footnote{Client Care: a report of a survey on the client care provided by solicitors in Scotland, 1995. Note: conveyancing clients were slightly more likely than others to say they had been given this information at the outset}

Further research in 2000 found that fewer than half of recent house buyers said their solicitor had provided an estimate of their conveyancing fees without them having to ask for it. One quarter said they received an estimate, but only after they asked for it, while a further quarter said they did not receive an estimate at all.\footnote{Home Truths: a report on research into the experiences of recent house buyers in Scotland; Scottish Consumer Council, 2000}

Outlays

Outlays are also an important part of a solicitor’s bill. Many clients will have to pay outlays. Those involved in court cases will have to pay court dues, for example, while those buying a house will have to pay stamp duty and registration fees. In 1995, we found that one in five respondents said they were not told about the possibility of outlays to be paid. In 2000, although not specifically asked, a number of recent house buyers commented that they had not been prepared for the substantial outlays included in their final bill.
Letters of engagement

In order to avoid misunderstandings and potential complaints, solicitors should send a letter of engagement to every client as a matter of course. A letter should be sent to the client after the first contact confirming the instructions given, setting out the next steps to be taken, and providing an estimate of the likely total cost of the services to be provided. We have argued that there is a clear need for such letters of engagement for many years, as has the Scottish Legal Services Ombudsman.

The use of letters of engagement should ensure that clients know what to expect, including how much the work will cost. It may be that in some cases those who say they have not been told about fees have actually been given this information orally, but have forgotten about this, or are unclear as to what was discussed. A letter of engagement ensures that the client is given this information clearly and set out in black and white. This is just as much in the interests of the profession as it is in those of the client. A well-informed client is more likely to be satisfied, to return in the future, and to recommend their solicitor to others.

In 2000, we recommended again that the Law Society of Scotland should issue a practice rule making it compulsory for solicitors to send letters of engagement to their clients. Since 1999, the Society's code of conduct has required solicitors to send to clients written information on fees and outlays at the earliest practical opportunity. Yet our evidence suggested that a substantial proportion of solicitors were failing to comply with the code.

We were therefore very pleased that the Law Society of Scotland brought into force in December 2003 a new practice rule requiring the use of letters of engagement in conveyancing transactions. This requires the solicitor to provide the client with certain information in writing, including either an estimate of the total fee including VAT and outlays, or information as to the basis upon which a fee will be charged for such work.

While we hope that solicitors are complying with this rule, it is too early at this stage to tell whether this is the case. This code still applies to other types of transaction, but we do not consider that this goes far enough, in the light of our evidence. We would like to see a similar practice rule extended to all types of legal transaction. We are disappointed that the Law Society of Scotland has not made such letters a requirement in all cases.

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4 Home Truths: a report on research into the experiences of recent house buyers in Scotland; Scottish Consumer Council, 2000

5 Article 5(e), Code of Conduct for Scottish Solicitors 2002; Law Society of Scotland

6 Solicitors (Scotland) (Client Communication) (Residential Conveyancing) Practice Rules 2003
Taxation of solicitors’ accounts

An estimate can of course only ever be an estimate, and sometimes additional work may require to be done which was not foreseen at the outset. For this reason, it is vital that the client is kept informed about costs, particularly if it becomes apparent that these are likely to exceed the initial estimate. The client should be given an explanation as to why the work is going to cost more than was initially thought. This will help to avoid any misunderstanding and dissatisfaction at a later stage.

It is important that a solicitor’s account is clearly set out and itemised, so that it can be easily understood. If the client is unhappy with the level of their solicitor’s bill, they do have the option of challenging the level of fees charged by going to the Auditor of Court to have the account ‘taxed’. However, there is a risk that the client will have to pay for this, therefore costing them more money. Unless the auditor finds that the account was excessive, it is likely that the client will have to pay this fee in addition to what the auditor determines is a fair and reasonable fee for the solicitor’s services. This possibility may well deter clients from using the taxation procedure, especially if the fees are not particularly high.

It is also possible that many people are unaware of their right to have the account taxed. In 1995, we found that over 70% of respondents said they were not told what they could do if they thought their bill was too high. While we are pleased that information on this issue is now available on the Law Society of Scotland website, it is important that solicitors advise clients that they have this right.

We also note Mr Wilson’s concern that the taxation procedure lacks transparency. We also have concerns that the potential costs involved may put people off using the procedure. We are unaware of any evidence as to the levels of use of and satisfaction with this procedure, or the overall levels of the auditors’ findings in favour of either solicitors or clients. We would suggest that this is a matter which might usefully be investigated further.

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7 Client Care: a report of a survey on the client care provided by solicitors in Scotland; Scottish Consumer Council, 1995
**Justice 1 Committee**

**Dangerous Driving and the Emergency Services**

**Note by the Clerk**

**Background**

**Petition PE111**

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 Justice 1 Committee at its meeting on 25 February 2004. At that meeting, the Committee agreed to write to the Minister for Justice recommending that there should be minimum standards and uniformity of training for drivers within the Scottish Fire Brigades and asking whether the maximum penalty under section 163 of the Road Traffic Act 1988 (requiring drivers to stop when requested to do so by a uniformed police constable) is considered to be a sufficient deterrent. The Committee also agreed to write to the Chief and Assistant Chief Fire Officers Association (CACFOA) requesting an update on the progress of the draft national standard for response driver training. The Committee further agreed that this action concluded its consideration of the petition.

2. A copy of the paper considered by the Committee at that meeting is attached at annex A.

**The Scottish Executive**

3. A response from the Minister for Justice’s office is attached at annex B. In it, the Scottish Executive notes the comments made by the Fire Brigades Union (FBU) about individual fire brigades’ different approaches to driver training and the Committee’s recommendation that there should be minimum standards and uniformity of training but explains that all brigades base their driver training on *Roadcraft: The Police Driver's Manual* or on the Royal Society for the Prevention of Accidents’ driver training programme, itself based on the aforementioned manual. The Executive also indicates that six of the eight brigades currently give senior staff driver training ranging from one to five days in length and that the two remaining brigades have intimated that they intend to introduce such training.

4. In relation to the draft national standard for response driver training, the Executive’s response refers to the Scotland Fire Brigades Driver Training Group, which is working on implementing the standard and reports to CACFOA, and explains that a sub-committee of the group has been appointed to align the standard with the competence-based development programme for all UK fire service staff.

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1 Justice 1 Committee, 8th Meeting, 2004 (Session 2), 25 February 2004
5. In relation to the FBU’s concern that skid-pan driving should be introduced, the Executive points out that, under the draft national standard, the student would be required to demonstrate “an understanding of the handling and limitations of the vehicle” and “an understanding of skid correction techniques” but explains that there is an emphasis on driving within the limitations of the vehicle and that it is not the aim of the programme to encourage drivers to explore the limits of the vehicle’s handling.

6. The response goes on to advise that, in addition to training provided at the Scottish Fire Services College, the Executive funds the attendance of Scottish brigade officers at the Fire Services College in Gloucestershire and proposes that the forthcoming national framework for the Scottish service will incorporate the national training strategy.

7. In relation to information issued to the driving public on how to respond when an emergency vehicle is approaching en route to an incident, the response refers to guidance given in the *Highway Code*.

8. On the question of whether the maximum penalty under section 163 of the Road Traffic Act 1988 is considered to be a sufficient deterrent, the Executive explains that road traffic law is reserved to Parliament, refers to a recent, UK-wide review conducted by Her Majesty’s Government of road traffic penalties and advises that the offence under section 163 and the current maximum penalty appeared to attract no specific comment.

**CACFOA Scotland**

9. A response from the Scottish Regional Chair of CACFOA Scotland is attached at annex C. The response advises that the current status of the draft national standard is that it is awaiting formal adoption by CACFOA Scotland. The response also advises, however, that the standard has already been informally adopted by all eight fire brigades and is furthermore being adopted by fire services in Northern Ireland, England and Wales.

10. In relation to skid control, the regional chair also refers to the specific element of the training on achieving an “understanding of skid correction techniques” and explains that the Grampian Fire Brigade’s instructor does not use a skid pan to teach these techniques but emphasises maintaining control over the vehicle in order to prevent a skid condition from developing. He believes that this approach is also used in other fire services.

11. The response goes on to confirm that within the Grampian Fire and Rescue Service, full-time and part-time response drivers are trained to the same standard and officers temporarily promoted into posts that require response driving skills received appropriate training.

12. The regional chair goes on to indicate that the issuing of advice to the driving public on how to respond when coming into contact with an
emergency service vehicle en route to an incident would be widely welcomed by fire brigades staff and reports that he has previously campaigned to have an inclusion in the *Highway Code* on this issue.

**Action**

13. The Committee is invited to note the responses from the Scottish Executive and from CACFOA Scotland and consider whether it would like to take any further action in respect of this matter.
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.
Public Petition PE111 by Mr Frank Harvey

Thank you for your letter of 22 March in which you requested some information from the Minister for Justice about emergency services driver training. The Minister has asked me to reply on her behalf.

We note the comments made by the Fire Brigades Union about the different approaches taken in respect of driver training by individual brigades, and the Committee’s recommendation that there should be minimum standards and uniformity of training. Whilst there are some variations in the amount and type of training offered, all brigades base their driver training on the Police “Roadcraft” Manual, or the RoSPA driver training programme which is itself based on the “Roadcraft” Manual. Training is provided to both wholetime and retained staff. The Roadcraft manual is currently in its 7th edition and is approved by the Association of Chief Police Officers which is satisfied that it reflects current best practice in police driving instruction.

In respect of training for senior staff, six of the eight Scottish brigades currently carry out officer driver training ranging from a one day to a five day course. Of the two brigades which currently carry out no training both have intimated that they intend to introduce such training in the near future.

In your letter you mentioned the development of a national standard for response driving. The Scottish Brigades and Northern Ireland Fire Brigade are represented on the Scotland Fire Brigades Driver Training Group. This group, which meets quarterly, is working towards implementation of a national standard for ‘response driving’. A sub-committee of the Group has been appointed to align the National Standard with the Integrated Personal Development System, the competence-based development programme for all UK fire service staff. The Group reports to the Personnel and Training Committee of the Chief and Assistant Chief Fire Officers Association (Scotland), which meets quarterly.
You also mentioned the FBU’s concern that skid-pan training should be introduced. The draft National Standard for Response Driving requires the student to demonstrate ‘an understanding of the handling and limitations of the vehicle’ and ‘an understanding of skid correction techniques’. An emphasis is placed on driving within the limitations of the vehicle and, given the size and weight of a fire appliance and the congested nature of some of Scotland’s roads, it is not the aim of the driver training programme to encourage drivers to explore the limits of the vehicle’s handling.

Whilst driver training is primarily a matter for brigades, the Executive is playing its part to ensure that Scotland’s fire and rescue service personnel receive high quality training in other activities. As well as the training provided at the Scottish Fire Services College, the Executive also funds the attendance of Scottish brigade officers at the Fire Services College in Gloucestershire. In addition, we propose that the forthcoming National Framework for the Scottish service will incorporate the national training strategy to provide the necessary direction and delivery expectations.

You also asked whether any information is issued to the public to enable them to manoeuvre their vehicles to safety when an emergency vehicle attending an incident is approaching. The Highway Code contains some basic information on this, as follows:

“You should look and listen for ambulances, fire engines, police or other emergency vehicles using flashing blue, red or green lights, headlights or sirens. When one approaches do not panic. Consider the route of the emergency vehicle and take appropriate action to let it pass. If necessary, pull to the side of the road and stop, but do not endanger other road users.”

Finally, you asked about the maximum penalty under section 163 of the Road Traffic Act 1988. The maximum penalty is currently a £1,000 fine. Road traffic law is reserved to the Westminster Parliament and following the launch of the Government’s Road Safety Strategy, “Tomorrows Roads –Safer for Everyone” in March 2000, the Home Office, Department for Transport and the Lord Chancellor’s Department undertook a UK-wide review of road traffic penalties. A consultation paper was issued in December 2000, and the Government’s report on its recommendations in respect of the proposals received was published in 2002. This particular offence and the current maximum penalty appeared to attract no specific comment.

I hope this is helpful.

PENNY CURTIS
Private Secretary
29 March 2004

JW/ck/Gen

Ms. Menzies-Smith
Senior Assistant Clerk
Justice 1 Committee
The Scottish Parliament
Room 3.12, Committee Chambers
George IV Bridge
Edinburgh EH9 1SP

Dear Ms. Menzies-Smith,

Public Petition PE111 on Road Traffic Accidents Involving the Emergency Services

Thank you for your letter of 22 March 2004 advising of the position reached by the Justice 1 Committee on the above petition. In your letter you seek an update on the current position with regard to the CACFOA (Scotland) Response Driver Training National Standards document.

I can advise that this document currently remains a draft policy awaiting formal adoption by CACFOA(S), but none the less I am advised that it has already been unofficially adopted by all eight Scottish fire services as their emergency response driver training standard. Indeed I am further advised that fire services in England and Wales as well as the fire service in Northern Ireland are also adopting the draft Scottish Fire Services standard. The standard itself is largely based upon the Police Service “Roadcraft” teaching handbook and video.

I note the concerns expressed in the committee regarding skid control and can advise you that the training includes a specific element (learning outcome no.7) on achieving “An understanding of Skid Correction Techniques”. I would advise however, that our own instructor does not utilise a “skid pan” to teach these techniques, rather placing the emphasis on maintaining such control over the vehicle as to prevent a skid condition from developing. I believe that several other fire services adopt this approach.
The standard conforms to the Integrated Personal Development System adopted by fire services throughout the UK. This system is based on achievement and maintenance of competency and applies equally to all of our employees regardless of whether they are employed on a full or part-time basis. I can confirm that my own service trains full-time response drivers and part-time response drivers to the same high standard. Within Grampian Fire and Rescue Service, officers selected to be temporarily promoted into posts that require response driving skills also receive appropriate training to equip them with the necessary skills.

I note from the minute of the committee, a suggestion that perhaps information should be given to the public on how to respond when coming into contact with an emergency service vehicle responding to an incident. The experiences shared by my own staff, and I would believe those of my Firemaster colleagues is that such that we would welcome such advice to the public being made widely available. I have previously campaigned to have an inclusion in the Highway Code on this issue.

Finally, I can advise that following the recent CACFOA AGM, Firemaster Brian Murray of Highland and Islands Fire Brigade has taken over the role of Secretary for CACFOA(S) and that Assistant Firemaster Forbes Catto of Fife Fire and Rescue Service has taken over specific responsibility for training issues. I am copying my response to both these colleagues. Should you have any questions regarding my response, please do not hesitate to contact me at the above number.

Yours sincerely

J Williams
Chair
CACFOA (Scotland)
Justice 1 Committee

Access to Rights under the Children (Scotland) Act 1995

Note by the Clerk

Background

Previous consideration by the Justice 1 Committee

1. The Committee last considered access to rights under the Children (Scotland) Act 1995 at its meeting on 31 March 2004; a copy of the paper considered by the Committee at that meeting is attached at annex A.

2. At that meeting, the Committee noted the sympathetic tone of the Scottish Executive’s recent response regarding the role of grandparents in relation to grandchildren and agreed to write back to the Executive, acknowledging its position, seeking a specific commitment to consider, in the context of its forthcoming consultation on family law, the position of fathers following the deterioration of the relationship with the mother, further seeking clarification on whether the Executive’s plans to modify access rights for birth parents will apply retrospectively and suggesting that mediation should be prescribed as a first course of action in disputes.

The Scottish Executive

3. A response from the Minister for Justice was received on 10 June 2004 and is attached at annex B.

4. In noting the Committee’s comments about mediation, the Minister for Justice refers to the Scottish Executive’s current consultation on family law seeking views on how it can support families and strengthen the voluntary sector contribution to securing good outcomes for families in transition. The wording in the consultation is—

A range of support is available for families in difficulties or transition such as mediation and counselling. We would be interested to know if consultees see ways in which the voluntary sector contribution to securing good outcomes for families can be strengthened; and in suggestions for further ways in which the complementary skills of counsellors and mediators can be mobilised locally to support families in transition.2

Other jurisdictions

5. At the meeting on 31 March 2004, the Committee also requested further information on the use of mediation in other jurisdictions. A note by the Scottish Parliament Information Centre (SPICe) is attached at annex C and includes information on the use of mediation in the United States, Australia and the Netherlands.

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1 Justice 1 Committee, 13th meeting 2004 (session 2), 31 March 2004
2 Family Matters, Improving Family Law in Scotland, p52
Action

6. The Committee is invited to note the Minister for Justice’s response and the note prepared by SPICe and consider whether it wishes to take any further action in relation to this matter. The Committee may wish to further consider these matters in the context of the forthcoming family law bill.
Justice 1 Committee

Access to Rights under the Children (Scotland) Act 1995

Note by the Clerk

Background

*Petition PE124 by the Grandparents Apart Self Help Group*

1. PE124 by Grandparents Apart Self Help Group called for the Parliament to consider amending the Children (Scotland) Act 1995 to name grandparents in the act as having an important part to play in the lives of their grandchildren.

2. The petition was last considered by the Committee at its meeting on 8 October 2004, when it agreed that the petition has been examined thoroughly and that all organisations and individuals involved with the issue of grandparents’ rights to children are content that current legislation in this area seems to be sufficient. However, the Committee also agreed to write to the Executive to request that it give serious consideration to this matter in the context of its forthcoming family law bill and to reviewing the Children (Scotland) Act 1995 with particular regard to strengthening access to existing rights under the Act.

*The Scottish Executive*

3. A response from the Minister for Justice was received on 10 February 2004 (attached at Annex A). The minister shares the Committee’s concerns in this area and has undertaken to ensure that they are considered in the context of the Executive’s forthcoming consultation into family law.

*Other cases*

4. Correspondence pertaining to two individual cases has been received, both relating to similar problems encountered by fathers in respect of access to their children following the breaking-up of the relationship between the parents. In one case, the problem was compounded by the relocation of the mother and children to England, where, after the children had been resident for a year and one day, Scottish court orders no longer had effect. This case was brought to the Convener’s attention by the father’s constituency MSP, Sarah Boyack, and the correspondence outlining the case is attached (Annex B).

*Action*

5. The Committee is invited to consider whether it wishes to take any further action in relation to this matter. This could include—

   (a) noting the Minister for Justice’s commitment to consider the issue in the context of its forthcoming consultation and waiting
for the consultation to be published before taking any further action; or

(b) writing to the Minister for Justice in the light of correspondence received relating particularly to access rights for fathers, seeking a specific commitment to consider the position of fathers following the deterioration of the relationship with the mother.
Children (Scotland) Act 1995

Thank you for your letter of 22 April 2004 about the Children (Scotland) Act 1995 and our consultation paper Family Matters: Improving Family Law in Scotland. We look forward to receiving and considering responses from the wide range of organisations and individuals that received a copy. We are supporting the consultation exercise with active engagement with stakeholders including members of the public. Young people will of course also be consulted.

I note with interest your comments about mediation. It is worth making clear that mediation is only a viable method for resolving disputes when the parties involved are prepared to engage in the mediation process. As you know, our consultation paper seeks views on how we can support families and how we can strengthen the voluntary sector contribution to securing good outcomes for families in transition. I will consider suggestions that we receive in this area with particular interest.

We will consider a wide range of issues in the context of our consultation. This will include the position of parents - including fathers - who are unable to resolve disputes without going to court. Mediation can assist divorcing and separating parents to reach an agreement privately. However, mediation is not always appropriate and in some cases parents may need to ask the court to decide what is in the child’s best interests.

My comments above about supporting families in transition are equally applicable here. As our consultation paper makes clear, I am keen to hear from people who have recent experience of using the law in relation to family matters. I hope that the Committee shares my view that legislation can only go so far in addressing the needs of Scotland’s families and that it will be necessary to examine the issues facing families in transition in a broad and wide-ranging context.
You ask for clarification on the issue of access rights for birth parents. I can confirm that it is not our intention to make this retrospective, for the reasons detailed on pages 14 & 15 of the consultation document.

I hope that this is helpful to you.

CATHY JAMIESON
Justice 1 Committee

Security of tenure and rights of access

Note by the Clerk

Background

Petition PE14 by the Carbeth Hutters Association
1. Closed petition PE14 by the Carbeth Hutters’ Association called for a statutory system of rent control and arbitration and increased security of tenure. The former Justice and Home Affairs Committee investigated the petition and published a report in May 2000 which recommended that the Scottish Executive consider ways of providing legislative protection for hutters. The Executive issued a consultation paper, to which overwhelming support was received for legislating in this area. As yet, there has been no movement towards legislation as the Executive considers that there are substantial drawbacks with legislation protecting hutters.

Consideration by the Justice 1 Committee
2. The Justice 1 Committee last considered correspondence relating to security of tenure and rights of access for those who own property built on leased land at its meeting on 31 March 2004; the paper circulated for that meeting is attached for information at annex A.

3. At that meeting, the Committee noted the Scottish Executive’s response outlining difficulties with legislating in this area; agreed to seek to appoint an adviser, and also agreed to write to the Law Society of Scotland and the Faculty of Advocates seeking views on the difficulties outlined by the Executive.

The Law Society of Scotland
4. The Law Society of Scotland responded on 17 June 2004. The response is attached at annex B. In summary, the response comments on the current legal situation as follows—

- A lease for more than a year must be in writing;
- In general, anything built on land eventually belongs to the landowner, no matter who built it;
- There is no equivalent of “squatters' rights” in Scots law, and
- There is no specific legislation that would deal with this issue in a general sense, there being no automatic rights of renewal of tenancies of this type nor any rights to have the rent kept at the same level.

5. The response comments in more detail on current legislation in respect of the length of leases, in particular a prohibition under the Land
Tenure Reform (Scotland) Act 1974 on leasing property for residential purposes for more than 20 years. The response also comments on statutory provision for assured tenancies, noting, however, that the property in question must be the only or principal home of the tenant and that holiday lets are excluded.

6. The society acknowledges the Scottish Executive’s position in respect of difficulties surrounding legislation to tackle a specific issue and goes on to comment that “inevitably if legislation is passed which is specific to one particular site there are bound to be arguments arising in the future that other sites or other situations should have been dealt with at the same time”.

7. The response also comments on the Executive’s position that introducing legislation would alter the legal rights of the parties retrospectively and highlights Article I of Protocol I of the European convention on human rights and the fact that it provides that “every natural or legal person is entitled to the peaceful enjoyment of his possessions” and may not “be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”.

8. The response explains that the balance to be struck between the interests of individuals and the public interest is known as the balance of proportionality and gives examples of cases in which the property rights of individuals have been curtailed by the public interest—

- **James v United Kingdom**: Leasehold tenants in Belgravia and Mayfair who had built houses that, under the terms of the lease, belonged to the landlord on expiry of the lease were able under the Leasehold Reform Act 1967 to buy out the landlord’s interest on payment of compensation which did not necessarily take into account the value of the house. The European Court of Human Rights held that the law was valid as it was in the public interest.

- **Mellacher and Others v Austria**: The European Court of Human Rights upheld that Austria was entitled to pass legislation to introduce rent control measures that effectively held down or reduced rents, even though the original rents were agreed upon in the open market and corresponded to the then prevailing market rents.

9. The Law Society of Scotland comments that the question would be whether there is a general public interest in passing legislation specific to this individual situation, that leasehold tenure is not as common in Scotland as it is in England and that it might be difficult for the state to show that legislation was in the general or public interest. The response also comments that “it could hardly be argued that such legislation did not affect the landlords’ property rights adversely”.
The Faculty of Advocates
10. The Committee is awaiting a response from the Faculty of Advocates on this issue.

Correspondence from hutters
11. Further correspondence from hutters and their representatives has been received as follows—

- From Christine and Norman Milligan: further emailed correspondence (annex C) giving an update on the situation in Rascarral Bay in Dumfries and Galloway and requesting a meeting with the Committee and with the Minister for Justice;

- From Kathleen Downes and from Amanda Bradbury on behalf of Thomas McDougall: an email dated 15 June 2004 (annex D) describing their own experience of the situation at Rascarral Bay in Dumfries and Galloway.

Action
12. The Committee is invited to consider whether it wishes to take any further action in relation to this matter at this time. The Committee is also considering whether to appoint an adviser in relation to this matter and may wish to take into account the views of such an adviser.
Justice 1 Committee

Security of tenure and rights of access

Note by the Clerk

Background

Petition PE14 by the Carbeth Hutters Association
1. Closed petition PE14 by the Carbeth Hutters' Association called for a statutory system of rent control and arbitration and increased security of tenure. The former Justice and Home Affairs Committee investigated the petition and published a report in May 2000 which recommended that the Scottish Executive consider ways of providing legislative protection for hutters. The Executive issued a consultation paper, to which overwhelming support was received for legislating in this area. As yet, there has been no movement towards legislation as the Executive considers that there are substantial drawbacks with legislation protecting hutters.

Consideration by the Justice 1 Committee
2. The Justice 1 Committee last considered correspondence arising from the petition at its meeting on 8 October 2004; the paper circulated for that meeting is attached for information at Annex A.

3. At that meeting, the Committee noted correspondence received from the former Minister for Justice outlining difficulties associated with legislating in this area. The Committee also noted developments on the Carbeth Estate, in respect of a solution negotiated between interested parties, and on the Drimsynie Estate, where the situation remains unresolved. The Committee agreed to write to the Scottish Executive in relation to exploring whether rent control schemes or compulsory arbitration could be useful in resolving such disputes.

The Scottish Executive
4. The Scottish Executive responded in February 2004. In its response (attached at Annex B), the Executive notes progress in respect of the situation at Carbeth and the ongoing difficulties experienced by chalet owners on the Drimsynie Estate. However, the Executive does not believe that rent control or compulsory arbitration proposals would facilitate resolution at this stage.

5. The Executive also makes a number of points against legislating in this area, namely—

- that legislation would need to be applied retrospectively in order to benefit existing hutters but to do so would carry a very strong risk of being incompatible with requirements under the European convention on human rights;
that legislation to reform the law of leases in order to ensure
greater fairness along the lines of the Unfair Contract Terms Act
1977 would be an unworkable solution as leases providing for a
25-year tenure with no renewal clause are not inherently unfair;

that, where an original agreement or contract was freely
negotiated and entered into, it is difficult to legislate in favour of
one party at the expense of the other;

that legislation in this area could indirectly have unfavourable
consequences for the interests of hutters, by, for example
encouraging estate owners to terminate leases owing to
concerns about the implications of hutters acquiring security of
tenure or rent control.

Correspondence from hutters

6. Correspondence from hutters and their representatives has been
received as follows—

- From the Carbeth Hutters Association: a letter dated 19
  February 2004 restating the difficulties faced by hutters, with
  particular regard to security of tenure and rent control, and
  affirming that the situation in Carbeth cannot be resolved until
  legislation to protect hut owners is passed (Annex C);

- From the Lochgoilhead Chalet Owners Association: copy
  correspondence to the First Minister, highlighting ongoing
  problems facing hutters on the Drimsynie Estate arising from the
  landowner’s rent policy and further problems arising from
  assessments made for council tax purposes (Annex D);

- From Christine and Norman Milligan: emailed correspondence
  drawing the Committee’s attention to rent policy problems at a
  third location in Dumfries and Galloway, not previously
  considered by the Committee in the context of matters arising
  from petition PE14 by the Carbeth Hutters’ Association
  (Annex E).

Action

7. The Committee is invited to consider whether it wishes to take any
further action in relation to this matter.
Dear Pauline

I refer to your letter of 29 April and Douglas Thornton’s letter of 4 May 2004.

In the view of Professor Robert Rennie a member of the Society’s Conveyancing Committee the legal situation relating to such matters is fairly clear and that is:-

(a) That a lease for over a year has to be in writing.

(b) Generally speaking anything that is built on land eventually belongs to the owner of the land no matter who erected the building.

(c) There is no such thing in Scots Law as "squatters' rights".

(d) That there is no specific legislation which would deal with this particular issue in a general sense. There are no automatic rights of renewal of tenancies of this type nor any rights to have the rent kept at the same level.

1. The current legal situation

There is legislation on the statute book at the moment which places finite limits on the length of leases which can be granted. A lease which is entered into on or after 9th June 2000 will have a maximum length of 175 years (Abolition of Feudal Tenure etc (Scotland) Act 2000 S67). Accordingly it would not be possible to pass legislation which gave some sort of perpetual rights of tenure. There is also a prohibition of the lease of property for residential purposes for a period in excess of twenty years (Land Tenure Reform (Scotland) Act 1974 S8). These provisions apply to every lease for more than twenty years which has been entered into after 1st September 1974. The prohibition does not apply to leases of caravan sites or leases where the residential use is ancillary to a nonresidential use such as a caretaker's flat but it may apply to other situations. There are of course special provisions for security of tenure under the Housing Acts. These provisions go back to the Rent Restriction Acts. There is provision for assured tenancies. That legislation has been held to apply to a room in a hotel occupied by a long term resident. However the property in question must be the only or principal home of the tenant (Housing (Scotland) Act 1988 S]2(l)). There is also a statutory exclusion of holiday lets. In McHale v Denham (1979 249 EG 969) certain premises were held to be on a holiday let even although the tenants were foreign visitors working in London who had been in possession for over six months.
2.

3. **The Scope for Specific or General Legislation**

The Society acknowledges the point which the Executive make about the difficulty surrounding legislation to tackle a specific issue. There are always almost bound to be difficulties in such a case. Inevitably if legislation is passed which is specific to one particular site there are bound to be arguments arising in the future that other sites or other situations should have been dealt with at the same time.

4. **Impact on Existing Contracts - Human Rights**

The Executive have pointed out that introducing legislation would, if it is to have any effect, alter the legal rights of the parties retrospectively. This brings into sharp focus the provisions of Article I of Protocol I of the European Convention on Human Rights which provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions. The Article goes on to state that no-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. However, the Article does not impair the right of the State to enforce such laws as are deemed necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. There is obviously a balance to be struck between the interest of individual parties and the general or public interest. This balance is known as the balance of proportionality. There certainly have been cases where a state has been held entitled to pass legislation which curtails the property rights of individuals in the general interest. The case which is closest is the case involving the Duke of Westminster (*James v United Kingdom ECHR 21st February 1986 Series No. 98*). That case related to the English Leasehold Reform Act. Leasehold tenure is widespread in England. The Duke of Westminster many years ago acquired large tracts of Belgravia and Mayfair and then granted ground leases of plots. The tenants built the houses but on the expiry of the leases the houses belonged to the landlords. The *Leasehold Reform Act* allowed the tenants to buy out the landlords’ interest on payment of compensation which did not in every case take into account the value of the house. The rationale was that the house had been built at the tenant’s or previous tenant’s expense. The Duke of Westminster took the United Kingdom to court alleging that he was being deprived of a very important property right. However the International Court of Human Rights held that the United Kingdom could pass this legislation in the general interest. Similarly in *Mellacher and Others v Austria (ECHR 19th December 1989 Series A No.169)* Austria passed rent control measures which deprived landlords of part of their income by effectively holding or reducing down rents. The court refused an application by landlords holding that Austria was entitled to pass the legislation despite the fact that the original rents were agreed upon in the open market and corresponded to the then prevailing market rents.
3.

The question would be is there a general public interest in Scotland in passing legislation specifically to address an individual situation such as that being considered. Leasehold tenure in Scotland is not as common as in England and it might be difficult for the State to show that legislation was in the general or public interest. Certainly it could hardly be argued that such legislation did not affect the landlords’ property rights adversely.

I hope you find the foregoing helpful but, should you wish to discuss it further, please do not hesitate to contact me.

Yours sincerely

Michael P Clancy
Director
Dear Sir

Many thanks for advising us of the forthcoming meeting of the Justice Committee, although I am unable to attend myself, my husband and one other person will be there from the Rascarrel hutters to listen to the proceedings. I would still be grateful however if you could advise me of the outcome of the meeting so I can pass this on to others who are unable to attend.

I thought it worth bringing to your attention one further development that has just this week occurred. As you will be aware from previous correspondence, we did in fact send a cheque to the Land Agents for a sum equivalent to last year's rent plus £25.00 as a gesture of good faith. This has been returned to us this week, with a letter informing us that if we do not pay the revised rent in full within 14 days, we will be served with a Notice to Quit the site as of 1st February 2005.

The letter also states that the land owner has sole control over what use is made of the access road from the public highway to the shoreline where the huts are located and that they are entitled to close-off this road to members of the public should they wish to do so, thereby preventing any vehicular traffic from entering this road (and hence our access to the huts). This access road has been open to the public at large (not just the hutters) since before the Second World War and is certainly a pedestrian right of way (the upkeep of which, in recent years has been undertaken by the local authority). It is well used by the all members of the public for walking, fishing and general enjoyment of the shoreline and would certainly create much ill-feeling across the county should the landowner attempt to close-off access.

We are, of course, consulting with our solicitors about the best way to proceed, but as you will be aware, hutters currently have no security of tenure under Scottish Law. We cannot stress enough how urgently we feel the Scottish Parliament needs to move on this matter to close what is clearly a loophole in the current legal system.

We would be grateful if this matter could be brought to the attention of the Justice Committee when considering security of tenure for hutters at their meeting on Wednesday next.

Yours Sincerely

Christine Milligan
Dear Mr Thornton

Many thanks for apprising us of developments in relation to the the issue of security of tenure for hutters. Things have begun to develop further here in Dumfries with the landowner now claiming that should this result in a court case, rents will be increased proportionally to cover any costs he accrues in the process.

We have been in contact with Bill McQueen from the Carbeth Hutters Association who informs us that contrary to what the letter from the Scottish Executive seems to imply, the situation for them has still not been satisfactorily resolved. We also understand that other hutters from the Dunoon area have been in touch with Mr McQueen as they too are experiencing problems with the landowner.

While we appreciate that the Social Justice Committee is looking into this issue, but things are now quite urgent for us and our view on this is that we feel that a joint meeting between the Justice Minister, the Social Justice Committee and ourselves, Mr McQueen and a representative from the Dunoon hutters would be beneficial in helping to clarify the issues and how (and more importantly when) things might proceed further.

We would appreciate it if this request could be put to the Minister and the Convenor and a possible date for a meeting suggested.

Yours Sincerely

Christine Milligan
-----Original Message-----
From: Katie Downes
Sent: Tuesday, June 15, 2004 10:41 PM
To: douglas.thornton@scottish.parliament.uk
Subject: Security of tenure for hutters

For the attention of Pauline McNeil, Convenor of the Justice One Committee, Scottish Parliament

I have just heard from Mr. Norman Milligan, a fellow hutter at Rascarrel Bay in Dumfries and Galloway, that there is to be a Committee meeting to investigate security of tenure for hutters.

I would like to register my interest and stress how important this is to myself as my family have had a place at Rascarrel since before the Second World War. Unfortunately, I cannot attend this meeting as I live in Basingstoke, Hampshire and am unable to get time off work. Amanda Bradbury from Glasgow is representing her grandfather Mr. Thomas McDougall who has also been at Rascarrel shore for many years. Ms. Bradbury would also like to express her interest and is also unable to have time off work. Ms Bradbury is representing her grandfather because he is very elderly and finds the whole situation both worrying and frightening. I too find the situation frightening: Back in 1998 I enlisted the help of the then MP for Galloway & Upper Nithsdale, Mr. Alasdair Morgan, to look into hutters and "rent". At that time the "rent" was increased from £65 to £100 and I was concerned at the lack of notice and the percentage increase. Mr. Morgan was very helpful but, ultimately, Mr. MacTaggart of Rascarrel Farm informed me, via his solicitors, that I must pay within thirty days or my hut would be removed. At that time I felt too threatened to object further. On 12th June 2004 Mr. MacTaggart phoned my house and was verbally abusive to my husband, including being rude, intimidating and aggressive. One of the most stressful things that I am personally experiencing is that, after a lifetime visiting the shore at all times of the year, both alone and with my family, I now find myself too nervous to visit alone, or in the company of my elderly mother, and only feel comfortable if my husband accompanies us.

I would be grateful if you would let me know the outcome of the meeting on 23rd June 2004.

Thank you,

Kathleen Downes,

Amanda Bradbury (for Mr. Thomas McDougall)
Justice 1 Committee

Emergency Workers (Scotland) Bill

Statistics supplied to the Committee in written evidence on incidents involving violence

Background

1. At its meeting on 16 June 2004, the Committee requested that a summary be prepared of statistics on incidents involving violence included in written submissions received in response to its call for evidence on the general principles of the Emergency Workers (Scotland) Bill.

2. Following a review of responses, statistics were noted in submissions from—West Lothian Healthcare Trust; CACFOA; the Scottish Ambulance Service; Transco; RCN Scotland; NHS Glasgow Primary Care Division; Royal College of General Practitioners Scotland and USDAW. The information is reproduced below for members’ information and has been grouped into statistics where it is (a) specified that the incident occurred when responding to an emergency situation as defined by the Bill or in an accident and emergency department and (b) not specified that the incident occurred in such circumstances.

Violent incidents occurring when responding to emergency circumstances

West Lothian Healthcare Trust

3. The response (EW1) states that in the nine months to the end of January 2004—

- 30 forms completed by A&E staff reported verbal abuse; of these,
- 3 involved threats of violence to staff;
- 2 involved actual damage to the fabric of the A&E department;
- 4 cases involved actual violence inflicted on staff.

Violent incidents occurring where emergency circumstances are not specified

CACFOA

4. It is not clear from the response (EW2) whether gives the following statistics on violent attacks on fire crews—

- 2001 – 02 72 reported incidents
• 2002 – 03 167 reported incidents
• 2003 – 04 161 reported incidents

The response also highlights that since 2001 this represents an overall increase of 45%.

5. CACFOA also gives the following table of figures for attacks on firefighters in Scottish brigades in the period 1 April 2002 – 31 March 2003—

**Attacks on Firefighters – Scottish Brigades: 01 April 2002 - 31 March 2003**

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It is not clear from the response what definition of “operational” and “non-operational” personnel is used.

**Scottish Ambulance Service**

6. The response (EW7) states that in the 12-month period 1 January – 31 December 2003, there were 183 reported assaults on ambulance service staff, of which 104 were physical assaults and 79 were verbal, an average of 15 assaults per month. The response also highlights that survey results suggest that staff routinely report only 50% of the occasions where they were assaulted.
7. In response to a request for comparative information in respect of prior years, the ambulance service states—

“It's difficult for us to supply retrospective data for a couple of reasons; we introduced a revised reporting procedure in January 2003, so data prior to that was gathered and analysed differently, the other reason being that we know that there was significant under reporting.

However, I have had a look at the current year to see if the figures are showing an increase. So far in 2004 (from Jan to May) we have had 45 physical and 36 verbal assaults reported, which if multiplied up for the year would give 194 incidents, an increase of 6% over last year.

Put simply, there is now an average of 16 assaults per month, compared to 15 per month last year, and we still believe that there remains some under reporting.”

Transco
8. Annexed to the response are tables showing details of 18 reported violent assaults and 42 verbal assaults in Scotland in the period 1 January 2000 to 30 April 2004.

NHS Glasgow Primary Care Division
9. The response states that 24% of staff in Greater Glasgow who responded to the 2003 NHS staff survey indicated that they had personally experienced a violent/aggressive incident.

Royal College of General Practitioners Scotland
10. The response states that almost two thirds of respondents to a recent BMA survey of doctors reported that they had witnessed violence from patients directed at others in their workplace, including nurses (36%) and receptionists/administrators (33%).

Union of Shop Distributive and Allied Workers
11. The response states that, according to the Scottish Retail Consortium's Second Scottish Retail Crime Survey, four per 1,000 shopworkers were victims of physical violence in 2002 and 24 per 1,000 were victims of either physical violence, threats of violence or verbal abuse. Of the latter category, 60% of incidents were either physical violence or threats of physical violence.
Violence Towards Staff in the Social Work Department

Executive of the Council
29 July 2003

1 Purpose of report
1.1 To advise the Executive of the Council on the incidence of violence to staff.
1.2 To report on the risk assessment procedures in operation within the Social Work Department to limit the threat of violence.
1.3 To report on the training programme in place to enable prevention and handling of violent incidents.
1.4 To report on the measures taken to monitor and evaluate such incidents and action required.

2 Background
2.1 Reports were presented to the Social Work Committee on 2 November 1999 and 14 March 2000 on this subject. At the latter, the Committee agreed to “note and approve the work undertaken to review and implement the Guidelines for Managing and Controlling Violence at Work” and “receive a further report on the outcomes associated with the implementation plan and associated costs”.

2.2 These reports indicated (according to 1998/99 statistics) that one in fifteen employees of the Social Work Department were likely to experience a violent incident at work in any one year.

2.3 It was also agreed that the Department’s aims and objectives were to reduce the level of violence and stress by adopting a risk management approach to the management of services in line with a National Campaign that was underway in late 1999.

2.4 Under the Health and Safety at Work etc. Act 1974 and associated legislation, employers have a duty to provide, so far as is reasonably practical, safe systems of work. The provision of safe systems of work is dependant on risk assessments being carried out. To enable managers to carry out risk assessments, training is provided, with further advice and support available from the Departmental Health and Safety Section. Guidance for managing and controlling the risk of violence to staff is also contained within the Departmental Health and Safety Management Manual. This guidance contains advice on
aspects of violence and includes for example, preventative measures, specific guidelines and working practices, which should be adopted to reduce the risk of violence to staff.

2.5 The Department has also issued procedures for accurate recording of violent incidents. All such events are reported via Incident Forms and are recorded on the Safety, Health and Environmental management system (SHE accident database). This data is analysed on a quarterly basis and reported to the Departmental Health and Safety Committee, to the Social Work Department Senior Management Team and to the Council Management Team. Violent incidents are further analysed in the Departmental Violence to Staff Monitoring and Policy Development Group, which meets at least quarterly. Individual trends or patterns in units would be discussed with relevant managers.

3 Current Position

3.1 It is readily accepted that physical force against an individual is a violent incident. However, incidents of verbal abuse, threatening behaviour, with or without a weapon, and persistent harassment (including sexual and racial harassment) are also forms of violence. Therefore, for the purposes of these Guidelines, violence at work is defined as:

- 'any incident in which an employee is verbally abused, threatened or assaulted by a client, a member of the public or a fellow employee in circumstances relating to their employment'.

This is based on the Health and Safety Executive's definition of work-related violence.

3.2 In seeking to apply this definition, some situations, such as physical assault and explicit threats are easily identified as violence, whilst others, such as verbal abuse, are more difficult to assess. It is also recognised that an individual's perception and tolerance level will be different: something which causes distress to one person may simply annoy another; and what is threatening to one may be disregarded by another. It is important, therefore, to retain a sense of perspective, whilst at the same time, ensuring incidents are not trivialised.

3.3 The trend over recent years has been that the figures for violent incidents have remained fairly stable but that more incidents of threatening behaviour have been reported with an almost eight fold increase in threatening behaviour between 1999-2000 and 2002-2003 (see Table I).

TABLE I Reported Incidents of Violence to Staff

<table>
<thead>
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<th>Year</th>
<th>Threatening Behaviour</th>
<th>Violent Incident</th>
<th>Total</th>
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<td>570</td>
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<td>1955</td>
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3.4 The frequency of incidents shows considerable variation across departmental resources. The highest figures are within Children and Young People’s Centres (residential) followed by Social Work Centres, Homes for Older People, Resource Centres for people with learning disabilities and Hostels for people with learning disabilities and Domiciliary Care. Variations can depend on a few difficult clients in any one reporting year.

3.5 Although the total figures have increased to on average at least 11% of staff each year directly experiencing a violent incident it would appear to be the case that the comprehensive training programme for certain groups of staff e.g. in residential child care has led to more accurate reporting of violent behaviour short of physical assault. Health and Safety Legislation further supports this.

3.6 With the creation of the Scottish Commission for the Regulation of Care there is now a requirement for our registered services to have clear guidance, procedures and appropriate training to ensure staff are equipped to prevent and/or deal with incidents of violence.

3.7 Risk Assessment routinely undertaken and reviewed is crucial to the safety of staff and service users. The Department's Health and Safety Policies (under the wider umbrella of wider Health and Safety legislation and Council Health and Safety Policy) requires managers/supervisors to undertake risk assessment of work activities. Training in risk assessment is included within the manager Health and Safety training programme. Risk Assessment is normally achieved by the use of the department's general Risk Assessment form or other identified documentation. It was recognised by the "Violence to Staff Policy Review Group" that in relation to violence to staff, there was a need to capture more specific information than that required by the general Risk Assessment form. A draft "Violence Risk Assessment" form has been developed and 'piloted' in the department. This form is shortly to be reviewed by the Violence to Staff - Monitoring and Policy Development Group with a view to final amendments before seeking departmental agreement for inclusion in approved departmental forms.

4 Violence at Work Policy - Training Programme

4.1 The training programme to support the Violence at Work Policy is modular in design and currently contains the following modules:

   a  'Safety and Violence Awareness' (including managing critical incidents) – theoretical teaching including e.g. underpinning knowledge about violence, predicting and assessing risk of violence, safe practice values, legislation and of verbal de-escalation.

   b  CALM* Basic - Physical Intervention

   c  CALM Skills Maintenance Sessions - to maintain competence in physical intervention techniques

   d  CALM Re-accreditation - annual verification of skills

'Crisis Aggression Limitation and Management' i.e. CALM, is the approved departmental verbal de-escalation model and physical intervention system. It is purchased from CALM Training Services Ltd who have
trained a small number of employees as CALM instructors, who deliver in house CALM physical intervention modules. The CALM physical intervention system is non-pain compliant in use and its techniques are bio-mechanically assessed for safety. CALM Training Services Ltd. monitor carefully all 'user' organisations' use of CALM techniques and require all users and instructors to have their skills verified annually.

4.2 Previous reports which were based upon departmental violent incident reports identified following three employee groups as priority for training:

- Residential Child Care
- Learning Disabilities Services
- Homes for Older Adults

**Residential Child Care**

4.3 From April 2002 to March 2003 a significant number of training modules were delivered. In summary these involved Safety and Violence Awareness (SVA) and CALM Basic Physical Interventions modules for residential child care staff. The roll-out of CALM Basic Training was dependent on CALM instructors being trained. Sixteen staff -13 residential child care and three learning disabilities - completed instructor training. Further training programmes for instructors are timetabled.

Skills Maintenance modules for staff who already have completed the CALM basic module were held and in 2003-4 fourteen further modules are planned so that existing staff can re-accredit.

**Learning Disabilities Services**

4.4 During January-December 2002 all residential and day care units for learning disabilities services were targeted for delivery of the SVA module as part of the service policy development and training strategy being developed for Challenging Behaviour. By December 2002 the majority of staff had attended the modules offered and one further module in March 2003 was delivered for those employees who had missed earlier opportunities (21 modules). During April 2003-March 2004 three SVA modules will be offered to these units for newly recruited employees.

4.5 In April 2003 a workshop was held for all Unit and Service Managers, chaired by the Operations Manager, Community Care, to explore the need for and possible introduction of CALM Physical Interventions training for employees in the units identified above. This workshop included a demonstration of CALM techniques. It is likely that training will focus upon 'Breakaway' - emergency escape techniques and Levels 1 and 2 of CALM Basic Physical interventions. This workshop will inform the training opportunities and strategy for 2003-2005.
Homes for Older People

4.6 Homes for older adults were originally identified as the third highest violent incident reporting employee group in the department. SVA modules will be offered to employees in homes for older adults following development and completion of a service policy in relation to violence in units.

Other Training Initiatives 2002 - 2003

4.7 During April 2002 - March 2003 two SVA modules and 1 x half-day session were offered to other departmental employee groups as part of ‘team development’ initiatives.

Departmental Training Developments April 2003 - March 2004

4.8 Lone Workers - It is anticipated that during this year that two ‘open’ SVA modules will be offered to ‘lone’ workers e.g. Social Workers, Occupational Therapists, Community Service Officers. Details of employees to be targeted are yet to be determined. One SVA module will be offered initially to Domiciliary Care Managers to explore the needs of domiciliary care employees with a view to developing a suitable module for these employees.

4.9 Under 5’s - Debate about the needs of services working with younger children (in the community) and under 5’s in Child and Families Centres is being discussed within the department and will be introduced on completion of service policy or as negotiated with the Operational Manager, Children and Families.

4.10 Throughout the next year a number of initiatives will target specific units and will also link with colleagues in both Education and other partner agencies to develop joint training and common practice across boundaries.

5 Financial Implications

5.1 The department’s planned Violence to Staff training budget for 2003 - 2004 is £21,986.

5.2 The indirect costs and resources to support the above programme rely upon staff time and substantial investment from departmental employees, currently; 1 Employee Development officer; 15 CALM Instructors drawn from across Residential Childcare and Learning Disabilities and the departmental Health and Safety Adviser. This equates to approximately 90 -100 staff days per year.

6 Recommendations

It is recommended that the Executive of the Council:

6.1 notes the level of violence towards social work staff;

6.2 acknowledges the major training and briefing programme undertaken for staff within the Social Work Department;
6.3 notes the financial implications of this programme;

6.4 notes the need to further develop the programme to ensure all staff requiring such targeted training inputs and modules can undertake these within a set timescale.

Leslie J McEwan
Director of Social Work

8/7/03

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<td>All</td>
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Agenda item:

Report title: Violence Towards Staff in the Social Work Department

In accordance with the Council's constitutional arrangements, the contents of this report have been noted by the appropriate Executive Member.

Without prejudice to the integrity of the report, and the recommendations contained within it, the Executive Member expresses his/her own views as follows:

This report is on the incidence of violence to staff in the Department as well as the risk assessment measures and training in place to help staff handle or prevent violent incidents.

Although reported incidents of physical violence to staff have not markedly increased since 1998, reported occurrences of threatening behaviour have risen dramatically. The increase in these figures means that on average, at least 11% of staff each year directly experience a violent incident.

Residential Children & Young People’s Centres attract the highest number of reported incidents, and Safety and Violence Awareness and CALM training modules have been delivered, with further training planned. SVA modules have also been offered to staff in Learning Disabilities Services, and will be offered to staff in Homes for Older People and other employee groups such as lone workers like social workers, OTs or home care staff.

Staff need to be encouraged and supported to record these incidents in order to help the department recognise, measure and monitor the nature and volume of violent incidents with which our staff deal, as well as decide how best to enable staff to respond.

Signed: [Signature]
Date: 21 July 2003

For information – Paragraph 8.2 of the Council’s Constitutional Arrangements states:

* Officers will continue to prepare reports, with professional advice and recommendations, on matters requiring decisions by the Executive:

  > a report seeking decisions on matters of corporate strategy, corporate policy and corporate projects will be submitted direct to the Executive
  > a report seeking decisions on matters relating to the special responsibilities allocated to an individual member of the Executive will be submitted, in the first instance, to that member. The member will add his or her own recommendation to it before submission to the Executive. Where the Executive member disagrees with the advice and the recommendation of the officers, the Executive member will also state his or her reasons.*

25 July 2003

John Sturt
Council Secretary
City Chambers
High St
EDINBURGH

Dear Mr Sturt,

Could you please have the following comments tabled at the Executive meeting on 29 July 2003:-

**VIOLENCE TO STAFF IN THE SOCIAL WORK DEPARTMENT**

UNISON welcomes the recommendations contained within this report which relate to current staff training and the need to further develop training.

Our members in Social Work do, however, frequently encounter situations in which they are unable to protect themselves no matter how well trained they are.

Many of the most dangerous encounters which our members experience take place whilst they are working alone.

Glasgow City Council now has a policy which precludes lone working and this branch would welcome the opportunity to negotiate a similar policy for the City of Edinburgh.

We also support the view of our members that in the interim mobile phones should be issued to all staff who work alone and that systems such as the Guardian Angel System can help to reduce the risk to all staff.

We look forward to hearing the views of elected members on these matters.

Yours sincerely

ELLEN THOMSON

LYN WILLIAMS
Service Conditions Officer – UNISON
Convener – Social Work Shop Stewards Committee

C.C. John Stevenson & all Service Conditions Officers

ET/LW/03
Dear Ms McNeill

EMERGENCY WORKERS (SCOTLAND) BILL

Thank you for your letter of 16 June 2004 in which you seek clarification on some aspects of the Emergency Workers (Scotland) Bill.

You ask how charges of assaulting, obstructing or hindering an emergency worker responding to emergency circumstances are currently prosecuted. At present there is no law that provides targeted protection to emergency workers generally, to those assisting them, or to all persons responding to emergency circumstances. However, the criminal law of Scotland provides protection to everyone regardless of employment status or the task in which he or she at the relevant time is engaged. A number of existing offences both at common law and under statute might apply in the circumstances you describe, depending on the particular facts of the case. For example, any instance of assault would be capable of prosecution at common law. The offence of obstructing or hindering might amount to, for example, a breach of the peace, culpable and reckless conduct or malicious mischief. If the victim was a police officer Section 41 of the Police (Scotland) Act would apply, or if the obstruction was of a fire-fighter then Section 30 (2) of the Fire Services Act 1947 is relevant.

The fact that the victim was an emergency worker responding to emergency circumstances, or someone assisting the worker, would be an aggravating factor of any assault, obstruction or hindrance. This would be taken into account by the Procurator Fiscal in deciding the appropriate forum for prosecution. As you know, the Lord Advocate issued guidance to Procurators Fiscal in February 2003, which highlighted that it is an aggravating of an attack if the victim was a worker providing a public service.

You/
You request information on any difficulties experienced in prosecuting such crimes under existing provisions. I am not aware of any specific case where difficulties were experienced. The flexibility of the common law makes it difficult to conceive of circumstances in which the assault, hindrance or obstruction of an emergency worker responding to emergency circumstances might not be capable of prosecution. However, I could not rule out the possibility that the absence of an offence specifically tailored to provide protection in such circumstances might result in difficulties in future. Prosecution under a statutory provision designed to criminalise clearly defined behaviour in specified circumstances, such as in this Bill, does have the advantage of signalling plainly exactly the conduct alleged to have taken place. This can be of particular use following conviction when it would be immediately apparent from the accused’s schedule of convictions the precise nature of his previous offending. A specifically tailored offence would also make monitoring of this particular type of crime much easier.

You ask for examples of cases dealt with under common law or existing statutory provisions but that would come under the offences created by the Bill. Certain of the examples cited in the consultation paper “Protection of Emergency Workers” at Section 1.5 (page 2) are relevant:

- A prosecution in Forfar Sheriff Court related to an assault on an ambulance officer attending an incident in a pub. In fining the accused £1000, the Sheriff said "...to assault a member of the ambulance service has got to be regarded as a serious matter and those employed in this service and others must know that they have the support of the courts when they get into difficult and fraught situations".
- An accused was prosecuted on indictment in Arbroath Sheriff Court for an incident which included the hurling of roof slates at emergency services workers. He was sentenced to three years imprisonment. In responding to an appeal against this sentence by the accused, the Sheriff stated: "This particular court is concerned to make plain that conduct of this sort will not be tolerated. In particular, it is concerned to demonstrate that criminal conduct placing the lives of public servants at risk while in the course of their duties will attract severe sentences. As the appellant's agent recognised, no sentence other than that of detention was appropriate. A deterrent sentence was, in my view, justified."
- In the Borders, another accused prosecuted on indictment was sentenced to two years' imprisonment for threatening an ambulance officer with a knife, while he was tending to a victim of an assault.

From the information we hold about these cases, it is clear that the workers concerned would fall within the definition of emergency worker in the Bill. However, further detailed information about the evidence would be required to assess whether it could be proved that the workers were responding to emergency circumstances as defined in the Bill at the time of these attacks. I should also make clear that given the gravity of the second and third of these examples, even were the provisions of the Bill in force, prosecution would still be undertaken at common law as proceedings on indictment were necessary.

Finally, the full text of the Lord Advocate’s guidance on attacks on public service workers is as follows:

“Incidents involving attacks on public service workers e.g. doctors, nurses and other staff at hospitals, ambulance drivers and paramedics, train and bus drivers, fire-fighters and others providing a service to the public should be taken seriously. The locus and the fact that the worker is providing a service to the public are both aggravating factors which should be borne in mind by prosecutors in deciding the appropriate forum for the case”
I hope this is helpful.

Yours sincerely

MORAG McLAUGHLIN
Head of Policy Group
A UNIFIED SUMMARY COURT SYSTEM (CHAPTER 5)

The North Lanarkshire Justices of the Peace considered the various recommendations proposed by the Review Committee in a full meeting open to all of the justices from our commission area.

The justices have examined carefully the various strands of statistical data produced during the review and find it very difficult to see how a conclusion can be reached that, in relation to the administrative operation of the sheriff court, the stewardship of the Scottish Court Service has produced any more efficient or effective management of court business and caseload than that delivered by the local authorities in relation to district courts. For their own part, the North Lanarkshire justices wish to state unequivocally that they consider that the administrative, organisational and legal support provided by North Lanarkshire Council, and its predecessor district councils, has been and continues to be first class and they see no efficiency benefit to the administration of summary justice in the “bigger must be better” approach put forward by the Review Committee. The justices wish it to be made absolutely clear that their submission is not one of “the devil we know”.

If, alternatively, there is a perception that the rationalisation of administration of summary courts will create some kind of economy of scale, it is submitted that this will be obviated by the costs of replacing unpaid voluntarily justices with salaried professional judges. Ministers should be concerned that at no point in a substantial document produced by the Review Committee are the costs of the proposals genuinely explored.

The justices are extremely concerned that should the unification proposal proceed this would be at the cost of loss of courts and loss of staff. The continuing desirability of maintaining local district court access was reinforced in the last Local Government Act where it was expressly provided that expense and inconvenience to parties and witnesses should be minimised. Equally, the proposals of the Review Committee should not be at the cost of rationalisation of experienced local authority legal and administrative staff.

Should Ministers agree to reject the unification proposal, the North Lanarkshire justices would propose that the formation of an independent national inspectorate for district courts will allay concerns about different standards within the estate of the district courts across Scotland.
Finally, one justice posed an interesting question - should the unification of court administration proceed, would Ministers intend to unify Scottish Police forces into one national body to reflect the uniformity of approach being taken in relation to prosecution and the judiciary?

ALIGNMENT OF BOUNDARIES (CHAPTER 6)

The justices have no comments on this Chapter.

JUDGES IN THE SUMMARY COURT (CHAPTER 7)

As Ministers will probably appreciate there was a lengthy debate amongst the justices in relation to the proposal to move to a wholly professional justice system:

The justices examined the various factors set out as the majority opinion in paragraph 7.72 of the report and would comment on these individually.

Factor 1 - the justices will comment later on the conclusion that there will be fewer prosecutions in future for more minor offences which form the bulk of the current business of district courts. Whether or not the future caseload in the district court is to be composed of more serious, more complex and longer cases or not, the justices unanimously assert that they are ready, willing and able to take on such a caseload on the basis that appropriate training will be provided (preferably on a national basis).

Factor 2 - the justices do not accept the proposition that lay justices would not be able or prepared to use the increased sentencing powers envisaged by the review committee. A significant proportion of current training of justices of the peace both locally and nationally takes the form of sentencing case studies and court scenarios where, in workshop discussion format, justices are able to explore issues of concern and discuss approaches to be taken to different categories of business. There is no reason why this substantial base of knowledge and experience cannot be built upon through a national training programme and by ensuring that the deliberations of the sentencing commission are fully networked.

Factor 3 - the justices do not disagree that a substantial time commitment is required to undertake both bench duties and training. However, the point the review committee make in relation to a requirement to recruit justices who mirror the profile of the Scottish population in terms of occupation, age and place of residence, is not considered to be especially helpful to the debate.
Is the review committee seriously suggesting that sheriffs or high court judges are any more representative of the Scottish population at large? And Ministers might ask how the approach of the majority of the review committee is to be reconciled with the long tradition of trial by jury of peers for more serious cases.

Factor 4 - there is no disagreement that the lower courts, such as the district court, should take on more serious cases. The justices have discussed whether they would be willing to take on more serious road traffic offences including those which could lead to disqualification and they would indicate to Ministers that they are willing to do so. Justices are willing also to take on more serious cases of an anti-social behaviour nature, with the potential for imprisonment or community service as a penalty, which it is understood currently form a fair proportion of the business undertaken in sheriff summary courts.

Factor 5 - justices have no difficulty with the proposition that they might require to be more proactive in managing court proceedings. However, it is the view of the justices that the review committee has not paid adequate heed to some of the factors which are at play in causing delays within the summary justice system. The justices consider that, even with the recent publicised investment in the prosecution service, at the lower end of the summary justice system the depute procurators fiscal are inexperienced and regularly ill-prepared for court sittings. All of the justices report frustrations in relation to the non-attendance of defence agents who cite their requirement to attend business in the superior sheriff court as the reason for late and non-attendance at district court sittings. There are a number of proposals in the review report in relation to identifying the state of preparedness of the parties at intermediate diet stage and working towards a presumption that if a case continues to trial diet then that trial will go ahead. In the mind of the justices the cumulative effect of these proposals is rather that more and more accused will be unrepresented for trial, particularly against a background of the apparently decreasing availability of legal aid for summary cases. The justices are concerned that the current failings in the system are being laid at their door as a justification for the abolition of lay justice. Ministers are invited to ask the question is the system any better in the sheriff court?

Factor 6 - the proposition that justices do not represent a full cross-section of the community is, frankly, seen by the justices as somewhat insulting. The point requires to be made again - does the review committee really consider that sheriffs or high court judges are any more representative of the world at large? The review committee appears to be substantially underplaying the community role of lay justices of the peace. Justices of the peace are not “hand picked”. They are volunteers who go through a selection process. There are a number of established selection criteria and it is suggested that, perhaps with some fine tuning, these are sufficient to ensure that a broad range of candidates is attracted and selected. Justices of the
peace are almost invariably already well involved in their local communities and it is for this reason that many of them volunteer to serve in district courts or on children’s panels. Justices of the peace bring to the bench substantial local knowledge and experience of exactly the kind of social, domestic and neighbourhood offences which are prosecuted in the summary courts and they remain well able in the words of the judicial oaths “to do right to all manner of people after the laws and usages of the realm without fear or favour, affection, or ill will”. Ministers should consider carefully whether, at a time when active consideration is being given to the expansion of community based sentence disposals, it is inconsistent thinking to seek to remove positive community involvement in the judicial process.

Factor 7 - the justices would submit that no evidence has been presented by the review committee from which any conclusion can be drawn in relation to the relative expense of the current system against the proposed new system.

In the course of their discussion, a number of specific comments were made by the justices which are worthy of bringing to the attention of Ministers.

In paragraph 7.49 of the report it is stated “Other justices, however, took the view that it was not the role of the lay justice to impose custodial sentences”. It is of course not advised where this particular view was gleaned by the review committee but the North Lanarkshire justices wish to make it absolutely clear that they have used and will continue to use custodial sentences where appropriate. The review committee appear to be attaching a significant weight to an unattributed source or sources and this form of near innuendo is inappropriate to the seriousness of the debate.

The justices are frankly suspicious of the over-use in the report of statistics from different forms of research. When such matters are presented in this manner as undisputed fact there is always a tendency to think “you get the answer to the question you ask”. In particular there is a use of research data to suggest that lay justices of the peace are perceived as not being consistent in their use of sentencing powers. The justices would submit that on an almost daily basis similar observations are made in the national press about sentences handed down by judges in superior courts. The justices would invite Ministers to consider whether the real test on this issue is how many cases from the district court are currently taken to appeal.

Justices are similarly concerned about a comment made in paragraph 25.11 of the report - “In a summary criminal court, particularly one presided over by a professional judge, the court will be well able to ensure that the Crown case is sufficiently proved before it considers whether the accused should be convicted”. The justices again feel rather insulted at a suggestion that it takes
a professional (or legal) mind to establish whether a complaint is proved. A number of the justices feel that such remarks on the part of the review committee are indicative of a pre-disposition in the minds of at least some of the committee members and does not reflect well on the independence of the review as a whole.

In conclusion, the North Lanarkshire justices would refer to paragraph 2.2 of the review report which notes a number of key aims common to all justice systems:

- **fair** to victims and the accused;
- **effective** in deterring, punishing and helping to rehabilitate offenders; and
- **efficient** in the use of time and resources.

In the view of the North Lanarkshire justices it has not been established in the review that the lay district courts, administered by local authorities, do not meet these aims, any more than it has been established that superior courts, administered by the Scottish Court Service, any better meet the same aims. The conclusion of the review committee to abolish lay justice is rejected.

**OPTIONS FOR THE POLICE IN RELATION TO MINOR CASES WHICH DO NOT REQUIRE TO BE REPORTED FOR PROSECUTION (CHAPTER 8)**

The justices have no comments on these recommendations.

**FIXED PENALTY NOTICES (CHAPTER 9)**

The justices acknowledge that there has been a recent extension of the traffic offences falling within the fixed penalty scheme. The justices reject further extension whether in relation to road traffic or non-road traffic offences. There should be a clear distinction in the roles and responsibilities of police, prosecution and judiciary. These proposals will further blur the distinction particularly in the minds of ordinary members of the public. Justice should be seen to be done. Where an accused is dealt with on an individual basis in open court there is some prospect that this may act as a deterrent to subsequent offending. Certainly in the view of the justices the prosecution of a case in court should provide reassurance to victims and witnesses that the complaint is being dealt with openly and fairly.
The North Lanarkshire justices reject the "opt in/opt out" proposal. Unless an alleged offender returns the appropriate notice within the prescribed time period accepting guilt, the matter must proceed as though the alleged offender intends to plead not guilty. There is no place in our legal system for deeming a plea of guilty by silence. Many offenders lead what can only be described as chaotic lifestyles and to expect them to have sufficient state of mind to interpret legal documentation in such a way that they understand that they require to take positive action is frankly rather optimistic and Ministers are asked to consider carefully whether indeed such a suggestion is contrary to present policies on social inclusion.

The justices do, however, accept recommendation 15 in relation to referring to previous fixed penalty notices that have been imposed in relation to similar offences committed within a certain period in the past. The justices also accept recommendation 16 in relation to keeping the victim and others with a legitimate interest informed as to the nature of the proceedings being taken.

The justices also accept the terms of recommendation 19 in relation to the provision of information to the court in the event that an offer of fixed penalty has been made and declined.

**REPORTING TO THE PROCURATOR FISCAL (CHAPTER 10)**

The justices have no comment on recommendation 21.

The justices do not disagree in principle with the terms of recommendation 22 in relation to dealing with custody cases. However care shall require to be taken in relation to setting down specific times for custody cases in sheriff courts and district courts within the same jurisdiction otherwise there is a real danger that the current problem of defence agents requiring to prioritise appearances between the respective courts will be exacerbated.

The justices have no comment on recommendation 23.

**ALTERNATIVES TO PROSECUTION (CHAPTER 11)**

The North Lanarkshire justices reject the proposed extension of the fiscal fine scheme.

Firstly, the fiscal fine scheme vests too much power in the procurator fiscal. At best when considering a police report on the circumstances of an incident the fiscal only possesses half of the information on what happened. There is at this stage no guard against coloration of the
evidence on the part of reporting police officers. With the increasing use of computer technology

to mark complaints there is also an increased risk that the procurator fiscal will not cast any kind

of critical eye over the witness statements. Put simply, the procurator fiscal should not be the

deputy and jury in the same cause.

Secondly, it is the view of the justices that fiscal fines are not transparent. There is no information

available as to what constitutes a £25 offence and what constitutes a £100 offence in the

administration of the current scheme. Equally there is no information as to how many offences an

offender commits and receives a fiscal fine prior to coming to court as a “first offender”. There is

no information as to whether such an offender effectively graduates from the lower point on the

fiscal fine scale to the highest point. How much more so will this be the case if the maximum

fiscal fine is extended to £200 or even £500?

Thirdly, it is the view of the justices that the price of the administrative convenience of the fiscal

fine scheme is that justice is not seen to be done. As commented earlier, confidence in the justice

system flows from the deterrent and reassurance factors provided by an individual case being fully

and properly determined in open court. The comment equally applies to the proposal to give the

teachal power to make (limitless) compensation orders. It is worrying that an offender of means to

pay a compensation order may escape prosecution in circumstances where the public interest

would be served by a complaint being heard in open court.

The justices reject the “opt in/opt out” recommendation for the same reasons as outlined in

response to the recommendation at Chapter 9.

The justices do accept the terms of recommendations 26 and 27.

SAFEGUARD AGAINST OPT-OUT PROCEDURES (CHAPTER 11)

Should the earlier recommendations nevertheless be adopted the justices would agree with this

recommendation as a very necessary safeguard.

OTHER DIVERSION FROM PROSECUTION SCHEMES (CHAPTER 11)

The justices are very much in agreement with the proposal to roll out successful schemes and are

fully supportive of any measures which lead to consistency across Scotland.
BETTER COMMUNICATION BETWEEN PROCURATORS FISCAL AND POLICE AT AN EARLY STAGE (CHAPTER 12)

The justices have no comments on these recommendations.

UNDERTAKINGS TO APPEAR IN COURT (CHAPTER 13)

The justices have no comments on these proposals.

ENCOURAGING EARLY PLEAS (CHAPTER 14)

The North Lanarkshire justices are concerned with some aspects of these proposals. Would sentence discounting apply in a plea bargain scenario where an accused pleads guilty to part of the charge or charges and not guilty to other parts and this is accepted by the Crown? In the view of the justices the current widespread adoption of plea bargaining already reduces the value of crimes. In many such cases the crimes convicted of bear little resemblance to the crimes complained of in the eyes of victims.

It is acknowledged that there may be some administrative convenience in allowing a sentence discount where there is an early straight plea of guilty to all charges, provided this is a genuine plea and not one of convenience to "get it over with", particularly where an accused cannot obtain legal aid for a defence. Any other approach would be contrary to the interests of justice.

The justices are also concerned as to the effect of this proposal in relation to custodial sentences. There is already an arrangement whereby the time imposed is half served. Will discounting lead to one third or one quarter time served? Again this is viewed as not being in the interests of justice.

The justices do not disagree with recommendations 50 to 52 and with recommendations 57 and 58.

ELECTRONIC COMPLAINTS (CHAPTER 15)

The justices have no comments on these proposals.
DEALING WITH MULTIPLE CASES AGAINST AN ACCUSED (CHAPTER 16)

The North Lanarkshire justices accept these recommendations. A reservation was expressed that the rolling up of a number of cases onto one trial diet might have the effect of producing a plea bargain playing off separate complaints one against the other. If this were to happen it might be at the expense of the interests of justice being served for a particular victim where a plea bargain is entered and accepted.

DISCLOSURE OF PREVIOUS CONVICTIONS PRIOR TO CONVICTION (CHAPTER 17)

The justices accept this recommendation.

PRIORITISATION OF CASES (CHAPTER 18)

The justices have no comments on these recommendations.

CITING WITNESSES (CHAPTER 19)

The justices have no comments on these recommendations.

INTERMEDIATE DIETS (CHAPTER 20)

The North Lanarkshire justices do not disagree with the proposals in relation to intermediate diets and are happy to undertake to exercise the new powers if they are made available.

There is one minor reservation, however. In relation to recommendation 85 the justices are concerned that the effect of the proposal might be to place an onerous burden on an unrepresented accused who is preparing his/her own defence.
WITNESS STATEMENTS (CHAPTER 21)

The justices accept the recommendations.

PRODUCTIONS FOR SUMMARY CRIMINAL CASES (CHAPTER 22)

The justices have no comment on the recommendations.

EVIDENCE OBTAINED USING VIDEO TECHNOLOGY (CHAPTER 23)

The justices have no comments on these recommendations.

TRIAL COURTS (CHAPTER 24)

The justices do not disagree with the spirit of recommendation 100. The justices are, however, against any suggestion which would lead to the allocation of specific times for specific trials. What happens if the first allocated case(s) is unexpectedly unable to go ahead? There will be a delay in proceedings. If all parties are present except the defence agent, who perhaps has been delayed in the sheriff court, is the trial to proceed with an unrepresented accused? A majority of the justices would not support that position. The other scenario is that, as a result of lines of evidence which come out in cross examination, a trial takes longer than projected and delays will remain. The timetabling of business cannot in reality be turned into an exact science. For similar reasons, the justices are not in favour of allocating some trials for mornings and others for afternoons. Whilst it might be desirable to allocate particular times to alleviate delays for witnesses, it should be borne in mind that the setting of a definite start time in the morning may assist in producing some kind of discipline on the part of accused and witnesses. Moreover once the court commences the culture should be that business is continuous.

Before leaving the issue of throughput of court business, justices would wish Ministers to be aware that there has been for a number of years a substantial under-use of court capacity within the three North Lanarkshire district courts. Whether this emanates from crown marking policy, deployment of fiscal resources or whatever the justices wish to record that in their view, even without reference to the proposals in relation to citing more serious business to the lower courts, the district courts have the capacity to sit on a daily basis.
TRIAL IN ABSENCE (CHAPTER 25)

While the justices acknowledge the spirit behind the various recommendations, it is their view that trial in absence should very much be a last resort. The court has to know beyond reasonable doubt that an accused knows about the diet before allowing it to proceed in absence.

There is a reservation in relation to recommendation 108. It would appear that the long established rules of collaboration are to be weakened in respect of the identity of the accused and it is the view of the justices that this is not in the interests of justice.

The justices would also wish to record a concern about the increasing trend towards accused being unrepresented due to the lack of availability of legal aid in summary cases within the district court. The justices have no information as to how prevalent this trend is in the sheriff court but they suspect that the incidence of unrepresented accused will be substantially less in proceedings before the sheriff. Ministers should be aware that the court faces difficulties in ensuring that the interests of an unrepresented accused are properly protected given that it is essential that the bench is seen to be independent and impartial under ECHR criteria. The justices can offer no solution but would urge Ministers to review the current legal aid criteria against the matters raised in this review.

THE ROLE OF THE BENCH IN MANAGING COURT BUSINESS (CHAPTER 26)

The justices accept the recommendations on the basis that they will be applied equally to justices of the peace should Ministers agree to retain their involvement in the summary justice system.

ALTERATION OF DIETS (CHAPTER 27)

The justices have no comments on this recommendation.

SENTENCING INFORMATION SYSTEM (CHAPTER 28)

The justices would support increased availability of sentencing information and would reiterate their agreement that improved consistency is essential to the credibility of the summary justice system.
SOCIAL ENQUIRY REPORTS (CHAPTER 29)

The justices are in agreement with the recommendations.

COURT SITTING HOURS (CHAPTER 30)

The justices note the terms of recommendation 121. The justices would not support any proposal to hold evening courts. This would create an undesirable burden on the various professionals who may well have been attending to other similar duties during the day and equally may produce a counter-productive lessening in concentration amongst professionals and members of the public alike.

SUMMARY APPEAL COURT (CHAPTER 31)

The justices are aware that the present appeal system appears to be fairly slow. The justices therefore accept the recommendations contained within this chapter and would hope that the outcomes of improvement measures would be monitored for effectiveness.

FINE ENFORCEMENT (CHAPTER 32)

The justices are opposed to any proposals which take the enforcement of fines out of the local domain. If a case has been heard locally and the sentence has been determined locally the consideration of further sanctions upon default should also rest locally.

A majority of the justices are in agreement with recommendations 132 and 133 although views were expressed that the cost of arrestment might be expensive and counter-productive. A number of justices expressed the view that regular payment of financial penalties on the part of offenders establishes a discipline which might bring some order to the lives of offenders as part of the rehabilitation process.
HOW WILL WE KNOW WHETHER THE CHANGES WE RECOMMEND ARE WORKING?
(CHAPTER 33)

The justices do not disagree with the principle that more information should be collected but this should also be disseminated to and considered by the various partners in the summary justice system. While there may well be a role for a national criminal justice board the justices would again emphasise that sight should not be lost of the principle of keeping summary justice open and accountable at a local level.

OTHER ISSUES

The review report does not address the question of what is to happen to the role of lay justices of the peace should their involvement in court proceedings be abolished. Whilst it might be assumed that justices will continue to witness the signing of various documents within their local communities this is not explicitly recognised in the report.

Justices of the peace (rather than sheriffs) continue to sign substantial numbers of search warrants presented by police officers, often at inhospitable hours. Ministers are asked to consider carefully whether, in the event of abolition of the role of lay justices in court, this signing role will be expected to continue.

[Signature]

CHAIRMAN
NORTH LANARKSHIRE JUSTICES COMMITTEE
Justice 1 Committee

Criminal Procedure (Amendment) (Scotland) 2004

Letter from Hugh Henry, Deputy Minister for Justice

I am pleased to be able to tell you that the above Bill received Royal Assent on 4 June 2004.

I wish to thank you and the other members of the Justice 1 Committee for the care and attention devoted to the Bill as it passed through the Committee stages. The changes introduced by the Bill are among some of the most significant changes in criminal procedure and once implemented will introduce a system which will bring greater certainty into the proceedings into the High Court for the benefit of victims, their families and witnesses, as well as making the Court more effective and efficient.

We are in touch with the various stakeholders who are affected by the changes – the Judiciary, the faculty of Advocates, the Crown, the Law Society and Scottish Court Service – to discuss with them the changes in the procedures to ensure that all are prepared for the introduction of the preliminary hearings which is planned for spring 2005.

As indicated in Cathy Jamieson’s earlier letter, we would be happy to arrange a more detailed oral briefing on our plans for implementation and training for you and other Committee members.

Hugh Henry
Deputy Minister for Justice
Scottish Executive
June 2004
Dear Ms McNeill

**YOUTH COURT PILOTS: AIRDRIE YOUTH COURT**

I am writing to advise you that the second Youth Court pilot has now been established in Airdrie. The Airdrie pilot has adopted the same model as the Hamilton pilot, except that the Airdrie court only sits on one day per week.

As with the Hamilton Pilot the Airdrie Youth Court will run for two years and will be subject to evaluation throughout. This will allow us to contrast and compare the outcomes in the 2 pilot courts whilst building on the experience of the partner agencies in North and South Lanarkshire, already being developed at Hamilton. An interim six-month evaluation report on the Hamilton Youth Court will be published shortly.

If you require any further information, I shall be happy to provide it.

Yours sincerely

*MRS ELIZABETH CARMICHAEL*

*Head of Division*
NAPIER v SCOTTISH MINISTERS

As Patricia Ferguson indicated last week, we are writing to explain what has happened in this case, what we are doing to prevent a recurrence, and why we think it important to appeal Lord Bonomy’s decision to the Inner House.

Lord Bonomy’s Opinion was issued on Monday, 26 April and Ministers thereafter considered whether to appeal. The consideration of the decision concentrated on Lord Bonomy’s finding that the Scottish Ministers had breached Article 3 of ECHR and his consideration of Article 8 of ECHR. That process continued into the week beginning 10th May, but we instructed the preparation of reclaiming prints to be ready by 11th May, against the possibility of an appeal being instructed. Those prints were received on 11th May. On 12th May the Cabinet took the decision to appeal, and instructions were issued to enrol the appropriate motion. We intimated to the petitioner’s solicitors on 13th May that the motion would be enrolled on 18th May, 17th May being a local and court holiday.

As we indicated to the Court last Wednesday, an attempt was made to enrol the necessary motion on 18th May. The attempt failed because the official did not have all the appropriate documents with him. For reasons which we have not yet established, no report of that failure was made to the Court Department in the Solicitor’s Office. That whole matter is still under investigation.

The Court Department checks the enrolling of motions by looking at the Court Rolls on the next court day to establish whether a note of a motion having been enrolled appears. In this case, the Rolls of Court for Wednesday 19th May showed that a motion had been duly enrolled in the
process. That was taken as being the Executive’s motion. In fact it was a motion enrolled on behalf of the petitioner. The non-appearance of the Executive’s motion was missed.

The non-appearance, on Friday 21st May, of an interlocutor relating to the Executive’s motion did not cause any immediate concern, since it occasionally happens that interlocutors are not available at once. Requests for the interlocutor to be collected from the court were made during the week beginning 24th May. Friday 28th and Monday 31st May were public holidays. In the week beginning 1st June the Court department again requested collection of the interlocutor relating to the motion. It was only when an interlocutor was obtained on Wednesday 2nd June that it was realised that the motion which had appeared in the Rolls of Court was not the Executive’s motion but the petitioner’s motion.

On Thursday 3rd June the instructing solicitor, on being advised of the position, instructed that the Petition Department be phoned, and was advised that the motion had not in fact been enrolled. Accordingly we lodged a further motion, on Friday 4th June, to enable our appeal to be received late.

Pending the hearing of the motion, we instructed our solicitors to discuss the matter with Mr Napier’s solicitors. They were naturally anxious to preserve their client’s position with regard to the award of damages which had been made in respect of the finding of a breach of the common law duty of care to Mr Napier. We for our part were concerned, as we have indicated, to secure a hearing on the human rights issues by the Inner House, but we of course recognised Mr Napier’s interest in preserving what he had been granted by Lord Bonomy. We agreed with Mr Napier’s solicitors that we would pay him the award of damages. This is consistent with the decision which we had taken that Lord Bonomy’s findings on the common law fault issues should not be appealed. We also agreed that we would not seek to overturn Lord Bonomy’s award of expenses to Mr Napier and reached agreement as to how those expenses could be calculated. They will, however, be subject to the scrutiny and audit of the Auditor of the Court.

So far as preventing a recurrence of this mistake is concerned, it seems clear that it happened because of human error. We have already put in place new procedures including strengthening the supervision of routine processes.

The end result is that we will be able to proceed with our appeal within the time scale originally envisaged. Our grounds of appeal will be lodged by 17 June, which was the date by which they would have been required to be lodged had the proper motion been enrolled at the right time.

There are three issues which we are appealing. The first relates to whether the conditions in which Mr Napier was held could, properly considered, amount to a breach of his rights under Article 3 of the Convention. The second relates to whether those conditions amounted to a breach of his rights under Article 8 of the Convention. The third relates to whether Scottish Ministers were in breach of section 57(2) of the Scotland Act. We are not appealing the question of common law fault as regards which Lord Bonomy found in favour of Mr Napier. As the matter is still sub judice it would not be proper for us to go into further detail on the framing of the grounds of appeal or the merits of the appeal.
Dear Mr. Thornton,

Thank you for informing me that the Justice Committee would meet to consider again the transparency of legal fees. I would appreciate it if they would consider the following:

I do not feel it is sufficient for solicitors and clients to agree the method of pricing. My solicitor told me, "You will be treated fairly, the fee will be assessed by an independent auditor." I accepted. The other local solicitor had told me "the charge would be £800–£500 and it also, not matter where you go, it will be assessed by an independent auditor." I was charged £1200.
I had agreed the method of pricing, but I was still miffed off. Auditors are not independent. 

(a) Solicitor pay their fees
(b) The auditor fee is a percentage of the solicitor fee

Obviously, it is in the auditor interest to keep the fee as high as possible

(c) Auditors are self-employed

Their business depends on custom from solicitors. 

The law loosely argue that solicitors cannot overcharge because of the taxation system. At my taxation, the auditor argued who was appointed to act as auditor argued against my part. I made why? Primarily to cover up for the poor standard of work by his auditor colleague. Public interest will only be safeguarded if the taxation system is operated impartially, I understand there.
are guidelines for the operation of the taxation system, but one can check to see whether they are being followed or not. Because the Auditor of the Court of Session is independent. The Auditor of the Court of Session is, of course, himself a trained solicitor.

It would be in the public interest if:

(a) Minutes of the taxation meeting were kept.
(b) An itemised bill was produced.
(c) A full report is given.

I suggested this to my H.E. He says it would be too expensive. When asked how much it would cost, he admitted he did not know. He is of course a trained solicitor!!

I have been fighting this for a number of years. I am very disappointed that the Legal Establishment will not act.
many politicians are more interested in keeping ranks on the public than ensuring they are treated fairly.

I appreciate that the Scottish Executive and the legal establishment are not best friends at the moment, but I do hope you will continue to fight for a better deal for the public.

Less able tradesmen than solicitors give their customers estimates and stick to them—so should solicitors.

Yours sincerely,

Jim Wilson
Justice 1 Committee

Security of tenure and rights of access

Further emailed correspondence from Kathleen Downes

-----Original Message-----
From: Katie Downes
Sent: Saturday, June 19, 2004 8:40 PM
To: Thornton DM (Douglas)
Subject: RE: Security of tenure for hutters

Dear Mr Thornton,
Further to my previous email, I feel that a brief overview of my family's history on Rascarrel shore may be useful. My grandparents first had a place on Rascarrel shore in the late thirties/early forties. The farmer at that time helped them to place a static, old fashioned caravan on the same site that the current hut is situated. At that time there was no charge. Over the years, the old caravan deteriorated and was replaced with a hut. This hut is a single room wooden dwelling without water or electricity. It is smaller than many household garages.

Sometime in the late fifties/early sixties I believe that the then farmer started to charge a "rent". But I am not sure of the exact dates. I do not have records of my grandmother's payments, but in the eighties I paid £25 per annum. This in turn was increased to £40, then £65 in 1998. 1999 was £100, 2000 was £125, 2001 was £125, 2002 was £125 and 2003 was £150.

You will know from Mr. & Mrs. Milligan that, without warning, the "rent" is now increased to £500 for 2004 and £1000 the year after (2005).

This is an enormous increase, without any security of tenure whatsoever.

I have now received an unsigned letter from the land agents, employed by the farmer, which states that, on receipt of £500 the farmer will be prepared to grant a formal lease. Previously, the farmer has refused to have any discussions about the shore huts whatsoever. The proposed terms appear (to my mind) to be a thinly disguised notice of eviction. There is no security of tenure and no security that "rent" in future years will not rise even more exorbitantly.

I feel that it is a tragedy that four generations of one family have enjoyed this simple hut for over half a century and now this family heritage is in danger of being lost forever. I would like to add that my grandparents were Dumfries born and bred as were both my mother and myself, and I value this connection with my birthplace enormously. Both myself and the other hutters desperately need recognition and security of tenure.
As mentioned in my previous email, Ms. Amanda Bradbury, who is representing her grandfather, Mr. McDougall, has a similar history on the shore to myself.

Thanking you for your attention,

Regards, Kathleen Downes