JUSTICE 2 COMMITTEE

AGENDA

18th Meeting, 2006 (Session 2)

Tuesday 20 June 2006

The Committee will meet at 2.00 pm in Committee Room 6.

1. **Subordinate legislation:** Hugh Henry MSP (Deputy Minister for Justice) to move the following motion—

   S2M-4510 That the Justice 2 Committee recommends that the draft Management of Offenders etc. (Scotland) Act 2005 (Supplementary Provisions) Order 2006 be approved.

2. **Subordinate legislation:** The Committee will consider the following negative instrument—


3. **Petition PE862:** The Committee will consider a petition by Margaret Ann Cummings calling for the Scottish Parliament to urge the Scottish Executive to conduct a full review of the current system for dealing with and monitoring convicted child sex offenders.

4. **Legal Profession and Legal Aid (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

Tracey Hawe/Alison Walker
Clerks to the Committee
Papers for the meeting—

**Agenda Item 1**

Cover note by Clerk (including SSI and Executive Note) J2/S2/06/18/1

**Agenda Item 2**

Cover note by Clerk (including SSI and Executive Note) J2/S2/06/18/2

**Agenda Item 3**

Cover note by Clerk J2/S2/06/18/3

**Agenda Item 4**


Draft report (PRIVATE PAPER) J2/S2/06/18/4

Supplementary submission from Scottish Consumer Council J2/S2/06/18/5

Correspondence from the Law Society to the Deputy Minister for Justice on the Legal Profession and Legal Aid (Scotland) Bill J2/S2/06/18/6

**Forthcoming meetings—**

- Tuesday 27 June 2006, Committee Room 3
JUSTICE 2 COMMITTEE

18th Meeting 2006 (Session 2)

Tuesday 20 June 2006

SSI title and number: The draft Management of Offenders etc. (Scotland) Act 2005 (Supplementary Provisions) Order 2006

Type of Instrument: Affirmative

Meeting: 20 June 2006

Date circulated to members: 15 June 2006

Justice 2 Committee deadline to consider SSI: 26 June 2006

Deputy Minister for Justice to attend Justice 2 Committee meeting? Yes

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes

1. The instrument seeks to ensure that the new Community Justice Authorities and their chief officers are included in relevant existing legislation and to provide structures to ensure the accountability and impartiality of the posts of chief officer; and to ensure that CJAs, like other public sector bodies, are subject to the Re-use of Public Sector Information Regulations 2005.

2. In its 28th Report, 2006, the Subordinate Legislation Committee draws the attention of the Justice 2 Committee to concerns it has in relation to the Order.

3. Firstly, the Committee draws the attention of the Justice 2 Committee to the provisions in the Order relating to restrictions on political activity and the appointment of CJA chief officers on the grounds that “it represents at best an unusual or unexpected use of the power, and at worst there are doubts about whether it is intra vires.”

4. Secondly, the Committee draws the attention of the Justice 2 Committee to article 6 of the Order, which relates to the Re-use of Public Sector Information Regulations 2005, on the grounds that the article “raises a devolution issue as it appears to legislate in an area of law reserved to UK Ministers under the Scotland Act.”
5. Given the detail of the concerns of the Subordinate Legislation Committee, members should refer to the attached Annex, which contains the relevant extracts from the Committee’s 28th Report.

6. The Deputy Minister for Justice will attend this Committee meeting. The discussion will begin with an opportunity for members to ask any factual questions or ask for clarification whilst officials are seated at the table with the Minister. The Deputy Minister will then be asked to move the motion to open the debate. The Committee will then formally debate the motion. Officials cannot take part in that debate. The debate is limited to a maximum of 90 minutes (Rule 10.6.3), but may be much shorter. At the end of the debate, the Committee must decide whether or not to agree the motion and report to the Parliament accordingly.

7. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible.

Clerk to the Committee
15 June 2006
Annex A

Extract from Subordinate Legislation Committee 28th Report 2006 (Session 2)

The Management of Offenders etc. (Scotland) Act 2005 (Supplementary Provisions) Order 2006, (SSI 2006/draft)

1. The Executive withdrew and relaid an amended version of this Order on the basis of comments made by the Committee in its letter of 23 May 2006. A copy of the correspondence with the Executive is printed at Appendix 1.

2. The amended Order addresses one point raised by the Committee but the Committee remained concerned about whether the Order was intra vires the enabling power; and also that one of the provisions still raised a devolution issue in that it appeared to legislate in a reserved area. The Committee wrote to the Executive about these concerns on 30 May (copy is printed at Appendix 2), and given its strength of feeling on these issues, invited the Executive to give oral evidence to the Committee at its meeting on 13 June 2006. At the time of the publication of this report, the Official Report of the discussion was not available.

Vires issue

3. The Committee noted that the drafter of the Order relies for vires on section 22 (1) and (2) of the Management of Offenders etc.(Scotland) Act 2005. This power is a “sweeper” power in the usual terms that allows Ministers by order to make “any supplementary, incidental or consequential provision ...which they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Act”.

4. The Executive, in its response, to questions raised by the Committee on the original draft of the Order, argues that the provisions contained in the Order are necessary or expedient for the purpose of giving full effect to the 2005 Act. Section 22(1) in the view of the Executive makes it clear that it is for Ministers to determine what is “necessary or expedient”.

5. It also considers that all of the provisions in this Order are “supplementary” to provisions in the 2005 Act. It notes that articles 2, 3 and 4 are concerned with appointment of staff and more specifically impose certain limitations on who may be appointed.

6. Section 4(2) of the Act contains the general power, or with regard to chief officers the duty, imposed on community justice authorities to appoint staff. The Executive considers that the Order in this regard does no more than make supplementary provision regarding the extent of the community justice authority’s powers or duties under this section. Therefore, the Executive considers that the provisions of articles 2, 3 and 4 of the Order are properly “supplementary” provisions. They are therefore within the vires of section 22(1).
7. With regard to articles 5 and 7 (now 6) of the Order, the Executive considers that these are supplementary provisions consequential on the establishment of community justice authorities. Ministers consider that it is necessary or expedient for the purpose of giving full effect to the Act that chief officers of community justice authorities should be ineligible for jury service (article 5); that community justice authorities should be exempt from the requirement to obtain employers’ liability insurance (article 6) (article 6 was removed from the revised draft of the Order now before the Parliament); and that community justice authorities should be subject to the provisions of the re-use of Public Sector Information Regulations 2005 (article 7) (now article 6 of the revised Order). Therefore the Executive considers that these provisions are within the *vires* of section 22(1).

8. The Committee disagreed with the Executive. Firstly, despite the apparent width of section 22(1) this does not, contrary to the Executive’s assertion, in the Committee’s view give the Executive carte blanche to make whatever provision it likes provided it can show a connection to the provisions of the Bill. It noted that it is clear from case law that what can be done under a “sweeper” power like section 22(1) is in fact very limited in scope and cannot be used to create additional new provisions. It can be used only to fill in details or machinery for which the Act does not provide – “supplementary in the sense that it is required to implement what is in the Act” (see Bennion *Statutory Interpretation* Fourth Edition p.209).

9. The Committee has given consideration to the principle of sweepers clauses in the past and has been particularly concerned at the use of the term “supplemental” in such provisions. It most recently considered this issue in relation to the Bankruptcy and Diligence (Scotland) Bill and was reassured that the Executive considered the provision here to be very limited in scope (see Appendix 3 for an extract of a letter to the Committee from the Executive on this point). The Committee agreed that the powers were acceptable on that basis.

10. In the Committee’s view, the provisions of this Order exceed what might reasonably be considered consequential on the provisions in the Act for the purposes of section 22(1) and introduce new substantive material which seems to us to go far beyond a defensible use of the powers. It considered that such matters as ineligibility for jury service and restrictions on political activity would normally require to be incorporated in primary legislation or a specific power provided in the parent Act. It noted for example that additions to Schedule 1 to the Law Reform (Miscellaneous Provisions)(Scotland) Act 1980 (which relates to eligibility for jury service) have invariably been made by primary legislation.

11. The Committee also noted in relation to articles 2, 3, 4 and 5 which appear to impose controls on the appointment of, and terms and conditions of service, of the chief officer and staff of a community justice authority, that the Order appears to be inconsistent with the express terms of the Act - section 4 (2) provides that the terms and conditions of the chief officer and any staff or
other persons appointed by it are to be “such as the community justice authority may determine”.

12. As regards the appointment of the chief officer (article 3), again under section 4 (2) this is a function of the authority. Under subsection (14)(a) of section 3 Ministers can issue guidance to an authority in the exercise of its functions and can issue directions if this guidance is not followed but there is no power to impose any requirements by subordinate legislation.

13. The Committee acknowledged that it is settled law that an order under a “sweeper” power cannot make provision inconsistent with the provisions of the enabling statute in the way proposed by this Order. It therefore appeared to the Committee that the fact that the Act made its own provisions, suggested that the sweeper power could not cover these issues.

14. The Committee heard oral evidence from the Executive at its meeting on 16 June. The Executive reiterated its view, expressed in its letter of 24 May 2006 (see Appendix 1), that all of the provisions in the Order are supplementary to provisions in the 2005 Act and are therefore within the vires of section 22(1) of that Act. It does not consider that such provisions are unusual but that each such provision must be considered on its own merits in each Bill.

15. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that it represents at best an unusual or unexpected use of the power, and at worst there are doubts about whether it is intra vires.

Devolution issue

16. The Committee had doubts as to whether article 6 of this Order (article 7 of the original Order) is within the devolved competence of Ministers.

17. The Executive, in its response at Appendix 1, did not agree. Section B2 of Schedule 5 to the Scotland Act 1998 provides that the subject matter of the Data Protection Act 1998 and Council Directive 95/46/EC are reserved. The Executive did not consider that this reservation extends to the provisions of the Re-use of Public Sector Information Regulations 2005. In any event, it does not consider that the provisions of article 7 (which is now article 6 in the revised Order) impact on the subject matter of the 2005 Regulations. They apply the terms of these Regulations to community justice authorities established under the 2005 Act. Consequently the Executive considers that this provision is within the legislative competence of the Scottish Parliament.

18. The Committee’s view is that article 6 is outwith the devolved competence of Ministers. Although the 2005 Regulations appear to relate to data protection, the Committee considers that they properly fall within the Intellectual Property reservation at Section C4 of Head C of Part II of Schedule 5 to the Scotland Act. The Regulations in question implement in the UK Directive 2003/98/EC of the European Parliament and Council which
makes provision for the re-use of material prepared by public sector bodies. In effect it makes provision for the use of material in which public sector bodies have copyright. The Intellectual Property Reservation is very widely drawn, and admits of only one very limited exception in respect of Plant Varieties. The effect of the amendment will be to apply the provisions of the 2005 Regulations in relation to the use of material that is copyright of the new authorities. The Committee doubts whether this meets the purpose test put forward by the Executive. In its view, the subject matter of article 6 is reserved and the Order therefore raises a devolution issue on this ground.

19. The Committee considered that the policy purpose of article 6 could be achieved by an order under section 104 of the Scotland Act which would remove any doubts about competence. A similar observation is made regarding article 2.

20. The Committee also took oral evidence from the Executive on this point. The Executive indicated that they doubted whether there was a need for this provision at all as it appeared to be already covered by a general provision in the Regulations. It considers however that the Regulations deal with the use and sharing of information and it therefore does not fall within the Intellectual Property reservation at Section C4 of Head C of Part II of Schedule 5 to the Scotland Act.

21. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that article 6 raises a devolution issue as it appears to legislate in an area of law reserved to UK Ministers under the Scotland Act.

APPENDIX 1

Correspondence between the Subordinate Legislation Committee and the Scottish Executive on 23/24 May 2006

The Management of Offenders etc. (Scotland) Act 2005
(Supplementary Provisions) Order 2006, (SSI 2006/draft)

On 23 May 2006 the Committee asked for an explanation of the following matters--

(a) in general, why the Executive considers that the provision made in the draft Order is within the vires of section 22(1) of the parent Act given that that power only allows “incidental” or “supplementary” provision to be made and that the Order appears to make substantive and substantially new provision; and

(b) in particular, the vires of articles 6 and 7 given the reservations, respectively, in Sections H1(a) and B2 of Schedule 5 to the Scotland Act.
The Scottish Executive responds as follows –

(a) The Committee has noted that section 22(1) of the Management of Offenders etc. (Scotland) Act 2005 enables Scottish Ministers to make “supplementary, incidental or consequential provision”. The Executive also notes that in terms of that subsection Ministers have the power to make provision “... which they consider necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of ...” the 2005 Act. The Scottish Ministers consider that the provisions contained in this Order are necessary or expedient for the purpose of giving full effect to the 2005 Act. Section 22(1) makes it clear that it is for Ministers to determine what is “necessary or expedient”.

The Executive considers that all of the provisions in this Order are “supplementary” to provisions in the 2005 Act. It notes that articles 2, 3 and 4 are concerned with appointment of staff and more specifically impose certain limitations on who may be appointed. Section 4(2) of the Act contains the general power, or with regard to chief officers the duty, imposed on community justice authorities to appoint staff and the Executive considers that the Order in this regard does no more than make supplementary provision regarding the extent of the community justice authority’s powers or duties under this section. Therefore, the Executive considers that the provisions of articles 2, 3 and 4 of the Order are properly “supplementary” provisions. They are therefore within the vires of section 22(1).

With regard to articles 5, 6 and 7 of the Order the Executive considers that these are supplementary provisions consequential on the establishment of community justice authorities. Ministers consider that it is necessary or expedient for the purpose of giving full effect to the Act that chief officers of community justice authorities should be ineligible for jury service (article 5), that community justice authorities should be exempt from the requirement to obtain employers’ liability insurance (article 6) and that community justice authorities should be subject to the provisions of the re-use of Public Sector Information Regulations 2005 (article 7). Therefore the Executive considers that these provisions are within the vires of section 22(1).

(b) The Executive acknowledges that the subject matter of the Employers’ Liability (Compulsory Insurance) Act 1969 is reserved by virtue of section H1(a) of Schedule 5 to the Scotland Act 1998. The Executive does not consider that the provisions of article 6 of the Order alter or affect the subject matter of the 1969 Act and consequently the Executive considers that the provisions of article 6 are within legislative competence. However, the Executive has carefully considered the Committee’s comments in relation to this particular provision and has concluded that an alternative means of achieving the same policy objective should be achieved without the need for provision in this Order. Consequently a revised draft of the Order will be prepared,
removing the provisions of article 6, and will be laid before the Committee next meets, on Tuesday 30 May.

With regard to the provisions of article 7 of the Order, the Executive would not agree that provisions of this article are outwith the legislative competence of the Scottish Parliament. Section B2 of Schedule 5 to the Scotland Act 1998 provides that the subject matter of the Data Protection Act 1998 and Council Directive 95/46/EC are reserved. The Executive does not consider that this reservation extends to the provisions of the Re-use of Public Sector Information Regulations 2005. In any event, the Executive does not consider that the provisions of article 7 impact on the subject matter of the 2005 Regulations. They apply the terms of these Regulations to community justice authorities established under the 2005 Act. Consequently the Executive considers that this provision is within legislative competence of the Scottish Parliament.

Scottish Executive Justice Department

APPENDIX 2

Letter from the Subordinate Legislation Committee to the Scottish Executive of 30 May 2006

The Management of Offenders etc. (Scotland) Act 2005 (Supplementary Provisions) Order 2006, (SSI 2006/draft)

1. The Subordinate Legislation Committee today considered the above instrument, which replaces a previous Order on which the Committee commented in its letter of 23 May.

2. The Committee notes that the amended Order addresses a point it made in its letter (in relation to article 6 of the original Order); however it still has substantial doubts about the vires and competence of the Order. Given the strength of its concern, the Committee agreed to invite the appropriate Executive officials to attend its meeting on 13 June to discuss these matters, which are set out below.

Vires

3. The Committee’s fundamental issue with this Order (and its predecessor) is that it appears very doubtful whether it is intra vires the enabling power.

4. The Order relies for vires on section 22 (1) and (2) of the Management of Offenders etc. (Scotland) Act 2005. This is a “sweeper” power which allows Ministers by order to make “any supplementary, incidental or consequential provision…which they consider necessary or expedient for the purposes of, in
consequence of, or for giving full effect to any provision of this Act”. In the Executive’s view, section 22(1) makes it clear that it is for Ministers to determine what is “necessary or expedient”; and that all of the provisions in this Order are “supplementary” to provisions in the 2005 Act.

5. It is the Committee’s view that it is clear from case law that what can be done under a sweeper power, like section 22(1), is in fact very limited in scope and cannot be used to crate additional new provisions. It can only be used to fill in details or machinery for which the Act does not provide – “supplementary in the sense that it is required to implement what is in the Act” (see Bennion Statutory Interpretation Fourth Edition, p.209).

6. The Committee has in the past considered the principle of sweeper clauses and was particularly concerned about the use of the term “supplemental” in such provisions. It had been assured by the Executive however, that the Executive considered such provisions to be very limited in scope and agreed that the powers were acceptable on that basis.

7. The Committee made this point during its consideration of the Bankruptcy and Diligence (Scotland) Bill where it appeared that the Executive might seek to use the powers in a way that the Committee thought would not be warranted. In this instance, the Executive again indicated that it was not its intention to use the power in the way originally suggested in the Delegated Powers Memorandum, and reiterated that it considered that the powers were limited.

8. In the Committee’s view, the provisions of this Order exceed what might reasonably be considered consequential on the provisions in the Act within the meaning of section 22(1) and introduce new substantive material which seems to go far beyond a defensible use of the powers. It considers that such matters as ineligibility for jury service and restrictions on political activity would normally require to be incorporated in primary legislation, or a new specific power provided in the parent Act – the Committee notes for example, that additions to Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (in relation to jury service), have invariably been made by primary legislation.

9. The Committee also notes that with regard to articles 2, 3, 4 and 5 which appear to impose controls on the appointment of, and terms and conditions of, service of the chief officer and staff of a community justice authority; that the order appears to contradict the express terms of the Act which in section 4(2) provides that the terms and conditions of the chief officer and any staff or other persons appointed by it are to be “such as the community justice authority may determine”.

10. As regards the appointment of the chief officer (article 3), again under section 4 (2) this is a function of the authority. Under subsection (14)(a) of section 3 Ministers can issue guidance to an authority in the exercise of its functions and can issue directions if this guidance is not followed but there is no power to impose any requirements by subordinate legislation.
11. The Committee notes that it is settled law that an Order under a “sweeper” power cannot alter the provisions of the enabling statute in the way proposed by this Order. And therefore it appears to the Committee that there are doubts as to whether the Order is intra vires for this reason also.

Devolution Issues

12. The Committee noted that in the original Order, articles 6 and 7 raised issues concerning devolved competence, and that article 6 has now been removed.

13. The Committee adheres to its original view that there are doubts as to whether article 6 of the new Order (article 7 of the original Order) is within the devolved competence of Ministers. Although on a first reading the 2005 Regulations appear to relate to data protection, the Committee thinks that they properly fall within the Intellectual Property reservation at Section C4 of Head C of Part II of Schedule 5 to the Scotland Act. The Regulations in question implement in the UK Directive 2003/98/EC of the European Parliament and Council which makes provision for the reuse of material prepared by public sector bodies. In effect it makes provision for the use of material in which public sector bodies have copyright. The Intellectual Property Reservation is very widely drawn, and admits of only one very limited exception in respect of Plant Varieties. The effect of the amendment will be to apply the provisions of the 2005 Regulations in relation to the use of material that is copyright of the authorities. The Committee doubts very much whether this meets the purpose test put forward by the Executive. In its view the subject matter of article 6 appears to be reserved and the Order therefore raises a devolution issue on this ground.

14. The Committee does not consider that the policy purpose of article 6 at least could be achieved by an order under section 104 of the Scotland Act which would remove any doubts about competence.

Finally, the Committee emphasises that it does not question the policy behind the Order which in any case is not within its remit. Its concern is with the legal competence of its provisions.
JUSTICE 2 COMMITTEE

18th Meeting 2006 (Session 2)

Tuesday 20 June 2006

SI title and number: The Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2006 (SSI 2006/315)

Type of Instrument: Negative

Meeting: 20 June 2006

Date circulated to members: 15 June 2006

Justice 2 Committee deadline to consider SSI: 11 September 2006

Motion for annulment lodged: No

SSI drawn to Parliament’s attention by Sub Leg Committee: No

1. If members have any queries or points of clarification on the instrument which they wish to raise with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk of the Committee as soon as possible, to allow for sufficient time for a response to be received in advance of the Committee meeting.

Clerk to the Committee
15 June 2006
Introduction

1. This petition was lodged on 7 June 2005 by Mrs Margaret Ann Cummings. The petitioner is calling for the Scottish Parliament to urge the Scottish Executive to conduct a full review of the current system for dealing with and monitoring convicted child sex offenders. A copy of the petition is attached as Annex A, along with relevant correspondence.

2. Before being formally lodged, this petition was hosted on the e-petition site where, in the period 14 January 2005 to 28 February 2005 it gained 32 signatures. In addition, the Public Petitions Committee was presented with 6000 signatures in support of the petition.

Parliamentary Consideration

3. At its meeting on 19 April 2006 the Public Petitions Committee formally referred the petition to the Justice 2 Committee for consideration.

4. The Justice 2 Committee considered the petition at its meeting on Tuesday 30 May 2006. The Committee agreed to write to the Minister for Justice to seek an update on progress made in relation to the issues raised by the petitioner. The Committee further agreed that the Convener should hold discussions with the Minister for Parliamentary Business and the Public Petitions Committee on how best to progress the issues raised in the petition, given the workload of the Committee. The Convener agreed to report back to the Committee on these discussions at its next meeting.

5. At its meeting on Tuesday 13 June the Committee received an oral update from the Convener along with a written update from the Minister for Justice. The Committee agreed to explore whether an ad hoc committee could be established in order to examine the issues raised by the petition. The Committee agreed to consider the issue again at a future meeting once the relevant information is available. Discussions on this issue are ongoing and it is hoped that the Convener can provide an update to the Committee at the meeting on 20 June.

Clerk to the Committee
June 2006
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

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<thead>
<tr>
<th>Details of principal petitioner:</th>
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<tbody>
<tr>
<td>Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available</td>
</tr>
</tbody>
</table>

Margaret Ann Cummings  
149 Royston Road  
Flat 3/2  
Glasgow  
G21 2QL

<table>
<thead>
<tr>
<th>Text of petition:</th>
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| The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.  
The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS |

The petitioner requests that the Scottish Parliament urges the Scottish Executive to conduct a full review of the current system for dealing with and monitoring convicted child sex offenders.

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<th>Additional information:</th>
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<td>Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.</td>
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</table>
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

We held a large successful march on 30 October 2004 at George Square. We have held residents' meetings, open meetings and have had meetings with Paul Martin MSP for Springburn, and with Divisional Commander Kevin Smith of Strathclyde Police 'E' division and his officers. They think we are doing a good job and wish us well.

Request to speak:

Petitioners may request to appear before the Public Petitions Committee in support of their petition, although it should be noted that requests to speak will only be granted if the Convener considers that a brief statement from the petitioner would be useful in facilitating the Committee's consideration of the petition. Due to the large volume of petitions being considered the Committee will usually only hear presentations on up to 4 new petitions at each meeting.

Please indicate below whether you wish to request to make a brief statement before the Committee when it comes to consider your petition.

Yes / No*

*Delete as appropriate

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature

Date 27.5.2005

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
Scottish Parliament Public Petitions Committee – Consideration PE862

Thank you for your letter of 21 September seeking the Scottish Executive’s view on matters relating to PE862. I am pleased to respond to the petition by Mrs Margaret Ann Cummings, which calls for a review of the current system for dealing with and monitoring convicted child sex offenders. The Committee also asked for particular details about how the Executive intends to address the issues of disclosure, housing, sentencing tariffs, and bail, again, as they relate to sex offenders.

As you know, following the murder of 8-year-old Mark Cummings by registered sex offender Stuart Leggate, I announced on 6 December 2004 that Professor George Irving would carry out an independent review of the operation of Scotland’s sex offender registration system. Professor Irving started his work in January 2005. I am now enclosing a copy of his report, which was published on 24 October 2005.

As you will see, Professor Irving makes 36 recommendations addressed to various parts of the criminal justice system. There has been growing concern about the risk that sex offenders pose in the community and their effective management is without doubt of considerable importance. This is therefore a critical and timely review and I have already placed on record my thanks to Professor Irving for the work that he has undertaken on my behalf. I fully support Professor Irving’s conclusion that more efficient risk assessment and more effective risk management would make a significant improvement in the overall arrangements for this group of offenders. Indeed, and as Professor Irving himself acknowledges, many of his recommendations anticipate the fact that interagency working and information exchange will be greatly improved when the provisions in the Management of Offenders etc (Scotland) Bill, which was passed by the Parliament on 3 November and will come into force in early 2006.

We have considered Professor Irving’s report very carefully and I attach a grid outlining how we intend to take each of these forward. Some of the recommendations will be implemented through legislation, as soon as practicable. A significant number of the recommendations are made in relation to police operational activity. All of these recommendations are very important in terms of
increasing the profile of sex offending monitoring within the police service and will be taking these forward with the Association of Chief Police Officers (Scotland) (ACPOS) through the sex offenders working group made up of representatives from each force in Scotland. ACPOS also welcome this report and the recommendations contained therein.

As far as introducing further legislation, we plan to extend the range of information that convicted sex offenders are required to provide (beyond the current requirements of name(s), date of birth, address(es), and national insurance number), to require sex offenders to provide the police with details of their passports, bank accounts and credit card details, and samples of DNA, if not already taken at time of charge or conviction. We are also planning to legislate to allow the police to apply to the courts for powers of entry and search to accommodation to enable them to assess and manage the risk posed by that offender.

In terms of disclosure, it is important to note all Professor Irving has to say about disclosing information about sex offenders to communities. He is clear that there is evidence that when such information has become available in communities, some sex offenders have been driven into hiding. As a result, child protection and criminal justice agencies have lost contact with them and supervision has ceased. That view is widely accepted by the many independent studies and reviews conducted, including the Expert Panel on Sex Offending, chaired by Lady Cosgrove. It is a double-edged sword that can rapidly result in a media witch-hunt, public disorder and the hounding of people from their homes. For his part, Professor Irving calls for a formal warning system in relation to the disclosure of information on sex offenders living or working in the community. Accordingly, if sex offenders wilfully ignore the instructions of the police in their choice of accommodation, employment or other activities then the police will give warning that information regarding the sex offender will be shared with third parties. If this warning and a final warning are rejected then disclosure could take place to carefully selected third parties. We and ACPOS have accepted this recommendation, and are confident that the necessary arrangements can be put in place to achieve the outcome Professor Irving clearly envisages.

As you would expect we are now progressing several strands of work in relation to Professor Irving’s report and sex offenders generally. In recognition of the public’s genuine concerns about sex offenders, we brought forward amendments at Stages 2 and 3 of the Management of Offenders Bill to end the unconditional release of sex offenders sentenced to between six months and four years in prison. When these arrangements come into force, these offenders will be released on licence and be subject to supervision. The licence conditions will reflect the circumstances of the offence and the offender such as a requirement to undertake counselling or take part in rehabilitation programmes. Breach of licence conditions can result in swift recall to custody for the remainder of the sentence. This means that those being released on or after that time will be subject to the new arrangements.

However, this is essentially an interim measure to address a pressing issue. Scottish Ministers have already committed to reform the current early release arrangements for all offenders. We have said that building on the report from the Sentencing Commission expected at the end of the year, we will move quickly to bring forward comprehensive proposals for Parliament's consideration. Any new regime that will have the dual goals of public safety and reducing re-offending at its heart.

On the issue of bail, courts can already impose on an accused any reasonable special bail condition relevant to the circumstances of the case. The issue is therefore not so much about giving courts wider powers, as of determining what further additional conditions would genuinely reduce risk. Accordingly, we are reviewing the options for conditions and supervision on bail. We want to ensure that police and courts are clear how best to deal with difficult situations where someone has not yet been convicted – or even, in some cases, charged– but the risk to children in particular is nonetheless assessed as being high. The recently introduced Risk of Sexual Harm Orders (RSHOs)
now give Chief Constables a new option in this context. To explain, under the Protection of Children and Prevention of Sexual Offences (Scotland) Act, which came into force on 7 October 2005, the courts are now able to impose RSHOs - on individuals who have displayed inappropriate behaviour towards children and are thought to pose a risk of sexual harm, even if they have not been convicted of an offence.

As well as the Management of Offenders etc. (Scotland) Bill, the findings from the recently completed review of the arrangements for managing registered sex offenders that I ordered following the North Lanarkshire inquiry will also have a bearing on future policy in this challenging area.

Finally, I know that the housing of sex offenders is an extremely sensitive and contentious issue, not least because we have to balance the need to protect our communities and meet the housing needs of sex offenders. With that in mind you will wish to know that the Executive has provided funding to the Chartered Institute of Housing (CIH) to take forward work to inform the development of a national accommodation strategy. As part of this work, CIH commissioned research from Glasgow University – “Towards a national accommodation strategy”. This report, together with a statement detailing wider action by the Executive, is available on the CIH website.

Building on this research, a short life Group is finalising work on a national accommodation strategy. This Group involves housing, justice, police and social work interests and includes representation from the Convention of Scottish Local Authorities (COSLA), Scottish Federation of Housing Associations (SFHA), Communities Scotland and the Chartered Institute of Housing to ensure a comprehensive multi-agency approach. The accommodation strategy will be implemented next year.

The Executive has also commissioned the CIH to work with COSLA and the SFHA in updating the 1999 CIH Practice Note on the Housing of Sex Offenders in Scotland. The updated practice guidance is being finalised in parallel with the accommodation strategy to support implementation of the strategy.

I believe that the measures I have set out, and the recommendations from Professor Irving’s review, once implemented, will further strengthen the existing framework in which we assess and manage the risk from sex offenders and that they demonstrate my commitment to safeguarding the public as far as is achievable from these difficult and challenging offenders.

I recognise that improvements to the way we manage sex offenders in the community will be of little comfort to those who have lost a child or seen their family torn apart through such crimes. We must also, as a society, accept and understand that there will always be an element of risk attached to an offender when he is released – no matter how good the supervision and monitoring is.

What we can do is to continue to work to reassure the public that this small group of offenders are in our sights, that local agencies are alive to those risks, and that they are working effectively across professional and organisational boundaries to minimise those risks.

CATHY JAMIESON
Scottish Parliament Public Petitions Committee – Consideration PE862

Thank you for your letter outlining the Executive’s response to my petition calling for a review of the current system for dealing with and monitoring convicted child sex offenders. I have detailed my response to the issues raised below.

Firstly, I would like to consider the references to Professor Irving’s report by way of a response to my petition. I welcome many of the recommendations but feel there are still issues that must be addressed. While the movements of paedophiles are to be more closely monitored via passport details and DNA samples, there is still a need to create legislation preventing registered child sex offenders from assuming an alias. In the case of Stuart Leggate, the adoption of an alias enabled him to evade police and social workers trying to monitor his movements.

I feel there is still a need for proposals to tighten the legislation in this respect.

Regarding disclosure, I welcome Professor Irving’s recommendation of a system of Targeted Disclosure as a step in the right direction, which goes further than measures requested in my petition. My petition simply asks that parents and carers are afforded the right to know how many registered child sex offenders are living in their area. We have never asked for the disclosure of names and addresses despite repeated misunderstandings. Targeted Disclosure however could make families aware of a paedophile’s name and exact address details when the offender is viewed as a threat.

The accusation levelled at the notion of giving parents, who wish to know, numbers of child sex offenders in their area is that this information could lead to witch-hunts. However, if parents have no details of offenders’ names and addresses this is a very unlikely outcome. I would also like to point out that our Mark’s Law campaign, which as you are no doubt aware has been highly emotive, has seen no vigilante attacks or violent incidents.

I feel there needs to be further work in this respect to address the specific point on disclosure within my petition. Additionally, I feel there is an obvious need to examine and thoroughly research international examples such as Megan’s Law in America before coming to a conclusion on this issue.
Margaret Ann Cummings  
Flat 3/2  
5 Broompark Drive  
Dennistoun  
Glasgow  
10-Mar-06

Michael McMahon MSP  
Convenor of the Public Petitions Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

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In respect of work carried out by the Sentencing Commission there are also outstanding issues that require further consideration.

Firstly, the length of sentences have yet to be tackled. At present, sentences given to child sex offenders are grossly inadequate and in need of a full-scale review.

Stuart Leggate committed a string of sex offences against children but only served two years for further lewd and licentious acts against yet another child.

Clearly if he had served an appropriate sentence he would not have been free to murder my son.

Following on from this, the question of Automatic Early Release needs to be further examined. I understand the Executive have put an end to Unconditional Automatic Early Release so that offenders are not released into the community without proper checks, monitoring and risk assessment.

However, it seems more relevant to end the system of Automatic Early Release in its entirety for child sex attackers so that the full sentence handed down for the crime is actually served.

Having looked at the work done re the housing of sex offenders, I feel clarification is required as to exactly what new measures are to be implemented to end the practice of placing paedophiles in cheap, available housing next to vulnerable families.

Training of staff on the issue and a better level of information sharing between authorities is clearly useful but the practicalities of housing offenders must be tackled.

After my son’s murder it became apparent that several registered sex offenders were living in our area, an amount that seemed disproportionate with other areas of the city.

Clearly the housing of offenders is a difficult issue but one that needs urgent attention so that the same mistakes surrounding my son’s death are not repeated.

I would also like to add two further points for your consideration.

Firstly, that there is a re-classification of child sex offenders to make the clear distinction between paedophiles and sex offenders.

Often there is confusion between how we should handle those committing offences against adults and those who have harmed a child.

Secondly, that specific courts for handling such paedophiles be established with separate sentencing powers, which could translate to tougher sentences.

This could also mean the time in which cases are dealt with could be much speedier, resulting in a reduction in cases waiting months to be heard.

I would like to add that I fully appreciate all efforts made so far to respond to my petition.

As you can thankfully only imagine, losing my son in these circumstances has been a horrendous experience I struggle to cope with on a daily basis.

I have tried to follow the correct and peaceful procedures to try and effect the change needed and get justice for Mark. My hope is that my response detailed here is given due consideration.
The outstanding issues I have raised are some of the most important in my petition and although difficult, must be tackled head on to try and make our communities a safer place for our children.

Yours sincerely

Margaret Ann Cummings
Petition PE862 by Margaret Ann Cummings

Thank you for your letter of 1 June seeking an update on matters relating to Petition PE862. I am pleased to provide such an update and also to respond to the points in Mrs Cummings’s letter of 10 March to the Petitions Committee.

Irving Report

Firstly, I note and welcome all that Mrs Cummings has to say about our efforts to take forward the recommendations in Professor Irving’s review of the sex offenders’ notification regime. The Police, Public Order and Criminal Justice (Scotland) Bill - which was approved by the Scottish Parliament on 25 May 2006 - contains a range of provisions to help the police in monitoring sex offenders in the community.

Assuming an Alias

Understandably Mrs Cummings asks that we do more. She asks us to consider introducing legislation preventing child sex offenders from assuming an alias. You will want to note that Section 83 of the Sexual Offences Act 2003 already provides that an offender must notify the police upon initial notification, their name, and any other names used on the date of their conviction and those used on the date of notification. Should offenders assume an alias, they must notify the police within 3 days of such a change taking place. Failure to do so could result in the offender being liable to a term of imprisonment of up to five years. It should be remembered that the requirement to provide information to the police is not a punitive measure. The notification requirements relate only to basic information relating to the offender and are simple to achieve. An offender subject to the notification requirements is not prohibited from doing anything. I hope you will understand that when we weigh the obligations we place upon offenders against the importance of the aims of the notification regime these obligations must be proportionate.
Community notification

With regard to disclosure of the number of sex offenders on the register, you should be aware that since 31 January 2006, the Scottish Criminal Record Office (SCRO) has published registered sex offenders statistics – to Force level only as part of SCRO’s Publication Scheme. Details can be found at http://www.scro.police.uk/foi/?id=28.

Providing details of the number of sex offenders in a particular area is more problematic. Determining the geographic scope of such an area would present difficulties. Where would the boundaries of such areas begin and end? Also, as I said earlier, the notification requirements are not punitive and as such they do not prohibit the free movement of offenders. Offenders can and do move address. On any given day the number of registered sex offenders in a particular area could change, almost on a daily basis. Moreover, while a number of sex offenders are subject to the notification requirements indefinitely i.e. for life, many sex offenders are only on the register for a specific period. This is set out in the legislation and relates to the sentence or order imposed by a Court and can vary from the duration of a probation order, to 5 years, 7 years, 10 years, or, as I said earlier, for life.

While both sex offender registration and community notification are designed to promote community safety, there is a real concern that they could create a false sense of security in communities. For example, members of communities may feel that they are safe and do not have to worry about their children’s safety as long as they keep their children away from one particular area. We know that the danger to children comes not just from known sex offenders but often occurs within family situations. I know that this is an uncomfortable fact but it is what we know from people’s own experiences.

In the USA, where community notification schemes have been running for some time, it is believed that the broad based availability of sex offender registration information may be discouraging some victims from reporting their abuse and/or encouraging some victims to recant out of fear for the offender’s wellbeing or the disclosure of their own identity. This reflects the unfortunate reality of intra-familial sexual abuse.

The overwhelming view of Home Office funded research endeavour and the independent reviews commissioned by the Executive, was that community notification was almost invariably undesirable, while disclosure to specific individuals or agencies (such as immediate neighbours or local schools) should generally be treated as a ‘last resort’ and should not be undertaken without very careful consideration of the likely consequences. It is also accepted that the decision to disclose, and the process of disclosure itself, should ultimately be a police responsibility, albeit after multi-agency consultation.

For our part we have made clear on a number of occasions our belief that disclosure of information about sex offenders is best undertaken on a case-by-case basis by the police and social work services. The police already notify relevant individuals in the community of the presence of sexual offenders against children where they consider that circumstances warrant it.

Professor Irving endorsed the earlier conclusion of the Expert Panel on Sex Offending that the duty to protect communities and the public lies with criminal justice agencies and his report endeavours to identify further methods by which this can be achieved. In this connection, Recommendations 22 and 23 (warning system and disclosure) of Professor Irving’s report whilst falling short of calling for legislation, considers that the existing disclosure powers of the police should be enhanced with the formal introduction of a warning system. We and the Association of Chief Police Officers in Scotland (ACPOS) are currently working together to develop an appropriate ‘warning system’ that
will sit alongside the operational guidance currently being worked up to inform the working arrangements in relation to the Management of Offenders etc. (Scotland) Act 2005.

Ending Automatic Early Release

As you know, Scottish Ministers committed last year to ending unconditional release for sex offenders sentenced to terms of imprisonment of 6 months or more. The necessary changes to the law were made through the Management of Offenders etc (Scotland) Act 2005 and the changes came into force in February this year. We have also said that we will go further and end unconditional automatic early release. Plans for this are being drawn up at the moment and legislation will be presented to Parliament in the autumn.

It is also worth noting that it is planned that the Order for Lifelong Restriction directed at serious sexual and violent offenders will come into force shortly. Offenders who are sentenced to an Order for Lifelong Restriction will be treated as life sentence offenders and will be on licence for life.

Reclassifyng sex offenders

Ms Cummings' letter also requests a reclassification of sex offenders to make clear the distinction between those who commit offences against adults and those who commit offences against children. Some sexual offences are, by definition, offences that can only be committed against children but others are offences whatever the age of the victim. The Scottish Law Commission is undertaking a review of rape and other sexual offences, and I expect them to report next year. The notification requirements in the Sexual Offences Act 2003 in some cases also depend on the age of the victim.

I can see some issues for public protection in creating a two-tier sex offenders register. All those on the register pose some degree of risk to the public, and are therefore subject to monitoring requirements. We are aware that some offenders may pose a risk to children even though their previous convictions have been for offences against adults. A differentiated register could work to obscure the threat from these individuals and could also generate the impression that offending against adults was in some way more acceptable than offending against children.

I remain in favour of an approach where the court sentences according to the type and gravity of offence, taking into account factors such as the age and vulnerability of the victim. The measures we introduced in the Criminal Justice (Scotland) Act 2003 help to ensure that those who work with offenders have more information about the nature of the offences that have been committed and this information is taken into account in managing those considered to pose a risk.

Housing of sex offenders

In my correspondence of 9 November last year, I acknowledged that the housing of sex offenders is an extremely sensitive and contentious issue, not least because we have to balance the need to protect our communities and meet the housing needs of sex offenders. I advised then that, following research commissioned for the Executive through the Chartered Institute of Housing (CIH) a multi-agency Working Group was finalising a draft national strategy for the accommodation of sex offenders. This work is well-advanced and the strategy will be published later this year, again to tie in with the commencement of the new provisions in the Management of Offenders etc (Scotland) Act 2005.

The strategy will provide a clear national framework for the accommodation of sex offenders, including child sex offenders, in the community. It is designed to ensure housing services and providers, who will be placed under a new statutory “duty to cooperate”, are integrated into the wider programme of Executive reforms for the management of sex offenders in Scotland.
The strategy specifies very clearly the responsibilities of all of the key agencies involved in respect of their role in the accommodation of sex offenders. It sets out the contribution of housing agencies to the management of the risks posed by sex offenders in the community. It will also introduce a standard approach at local authority level for coordination of the housing role and contribution, to ensure consistent practice across the country.

Its practical effect will be to tighten the joint working between the statutory “Responsible Authorities” and housing services and providers. This means that the risk assessment of a sex offender undertaken by the Responsible Authorities will directly inform the decisions and management arrangements put in place for the accommodation and supervision of that offender in the community. Updated Practice Guidance on the Housing of Sex Offenders will be published with the strategy, to support its delivery. This will give clear practical direction to local authority housing services and Registered Social Landlords in how they should engage with the housing of sex offenders in the community, with a view to ensuring that inappropriate allocations of housing to sex offenders do not occur in future.

Separate Courts

Finally, we set up the Expert Panel on Sex Offending to undertake a major review of the arrangements for reducing the risk to our children and to communities. This was chaired by the Hon Lady Cosgrove, the eminent High Court judge. The Panel’s recommendations are being taken forward and creating a more cohesive framework for managing the risk which sex offenders pose. Whilst the Panel did not recommend the setting up of separate courts, it did recommend improvements to the procedures in our courts for dealing with these cases; better information, guidance and training for prosecutors and the judiciary to increase understanding of the nature and special features of sex offending and its prosecution; and the provision of joint training to facilitate the development of shared understanding and effective communication. In addition, we have implemented its recommendation to set up joint arrangements between Chief Constables and Chief Social Work officers to assess and manage sex offenders in the Management of Offenders etc (Scotland) Act 2005. This will result in new multi agency public protection arrangements (MAPPAs) which will provide a more robust infrastructure for joint agency working to assess and manage the risk from sex offenders.

I hope that this information demonstrates that the Executive continues to give a very high priority to the protection of our children. But we must assess carefully how best this can be achieved. The risks posed by sex offenders are serious but they must not be allowed to create a climate of fear. Children need a safe environment in which to grow and develop. Our task, with the expert law enforcement agencies, is to create that environment.

I hope this is helpful.

Best wishes,

CATHY JAMIESON
Scottish Consumer Council
Making all consumers matter

Mr David Davidson
Convener
Justice 2 Committee
St Andrews House
Regent Road
Edinburgh
EH1 3DG

1 June 2008

Dear Mr. Davidson,

LEGAL PROFESSION AND LEGAL AID (SCOTLAND) BILL

23 MAY MEETING OF JUSTICE 2 COMMITTEE

At the 23 May meeting of the Committee I undertook to write to you on two matters.

The first was whether the Scottish Consumer Council has any additional categories of "practitioner" or "relevant professional organisation" (under s.34) who should be subject to the provisions of Parts 1–3 of the Bill. We have considered this and do not have any additional categories to suggest.

The other matter was whether our research, 'Complaints about solicitors—Study of consumers' experiences of the Law Society of Scotland's complaints procedure' 1999, contained any data as to whether the complainant was funded by legal aid. 19.3% (80) of respondents to our survey were on legal aid. We undertook no cross-tabulation of 'satisfaction with the complaints' process against 'those funded by legal aid'.

Yours sincerely,

Martyn Evans
DIRECTOR
Ms Tracey Hawe  
Clerk to Justice 2 Committee  
Tower 1, Room T3.60  
The Scottish Parliament  
Edinburgh  
EH99 1SP

15 June 2006

Dear Ms Hawe  

Legal Profession and Legal Aid (Scotland) Bill

Further to our written evidence to the committee, we would like to provide clarification on two issues, which we hope will assist the committee in its deliberations over the draft Stage 1 report. Firstly, we note the following comments made by the committee convener at its meeting on 30 May:

‘On the structure of the new complaint-handling system, we have received quite a bit of evidence from individuals and from the Scottish Consumer Council that to restore consumer confidence the new commission should handle all complaints.’ (Col 2502)

This appears to suggest that we believe that all complaints should be dealt with by the Commission. We would just like to make it clear that this is not in fact our position. As we stated in our written evidence, we believe that local resolution by the solicitor or firm involved, so far as possible, is central to the proposed new system. It is in the interests of both client and solicitor that complaints are dealt with as early as possible. We welcome the policy intention behind the bill that complaints should be dealt with at an early stage, by the practitioner who provided the service complained about. We believe that such local resolution is the best way to resolve complaints before they escalate: only where local resolution fails, should the complaint then go to the Commission to be dealt with.

What we did, however, argue in our evidence was that, on balance, we consider that the Commission should deal with both conduct and service complaints. Many complaints have elements of both service and conduct, and these are very difficult to separate. The distinction between the various types of complaint is not always clear, even to solicitors, and members of the public cannot be expected to distinguish between them. We therefore believe that if conduct complaints are referred to the professional bodies, there will continue to be a lack of public
confidence in the system, with the result that the bill will fail to meet its primary objective, ‘to put the users of legal services at the heart of regulatory arrangements.’

Secondly, we note that the letter to yourself from the Society, dated 25 May and published on the committee’s website, states that we should provide details of the number of complaints which we have received about the master policy. I attach for information an email from Michael Clancy at the Society in August 2005, together with the reply sent by Sarah O’Neill, our legal officer. As this correspondence makes clear, the Law Society has previously asked us to provide numbers of complainers who have raised this issue with us. We advised the Society that, as a policy and research organization, we have no formal casework recording system, and are therefore unable to provide this information.

In 2003, we proposed to carry out research into the operation of the master policy, to find out whether the anecdotal concerns of those complainers who had contacted us were justified. This work would have required the assistance of the Law Society, but we were unable to carry out the research, as the Society said it was unable to assist us.

I hope that this information is helpful to the committee in its deliberations. Should you wish to discuss this further, please do not hesitate to contact Sarah O’Neill, our legal officer.

Yours sincerely

[Signature]

Martyn Evans
Director

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1 Policy Memorandum relating to the Legal Profession and Legal Aid (Scotland) Bill, at paragraph 26
August 2005 The Scottish Consumer Council has told the Scottish Executive that a new independent system to investigate complaints against solicitors needs to be introduced in Scotland if public confidence is to be restored. Our full response to the consultation Reforming Complaints Handling, Building Consumer Confidence: Regulation of the Legal Profession in Scotland is available on our website.

Check our website for the latest policy and public affairs work, news, publications and campaigns. www.scotconsumer.org.uk

Please be aware that any email message sent or received by the Scottish Consumer Council may require to be disclosed under the provisions of the Freedom of Information Act 2000.

---- Original Message----
From: Moira Goll [mailto:MoiraGoll@lawscot.org.uk]
Sent: Friday, August 19, 2005 14:31
To: Sarah O'Neill
Subject: REFORMING OF COMPLAINTS HANDLING

MESSAGE FROM MICHAEL CLANCY

Dear Sarah,

Thank you for sending me a copy of the Consumer Council's response to the Executive consultation paper on complaints handling. It makes very interesting reading.

I wonder if you could answer one question which comes to mind in coursing over the response? On the point of the preferred option being an amalgamation of options C and D, you state that "We have been contacted by a considerable number of complainants who have had difficulties in pursuing a claim under the Master Policy and we consider that the current procedure appears to lack transparency." Could you let me know if you have raised these issues with anyone in the Society and could you also let me know how many complainants have contacted you regarding this point?"

I look forward to hearing from you.

Yours sincerely,

Michael

This email transmission is privileged, confidential and intended solely for the person or
Sarah O'Neill

From: Sarah O'Neill
Sent: Friday, September 02, 2005 2:19 PM
To: 'Moira Golli'
Cc: Martyn Evans
Subject: RE: REFORMING OF COMPLAINTS HANDLING

Dear Michael

Thank you for your email. Firstly, you ask whether see has raised the issues surrounding the transparency of the Society's master policy with anyone within the Society. As you are aware, see had an exchange of correspondence with the Society in 2003-4, when we advised the Society of our intention to carry out research into the operation of the policy, and this proposal was contained in our workplan for 2003-4. As we advised the Society at that time, we were concerned, as a result of what we were told by some complainers who had used the Society's complaints procedure, that the current procedure appears to lack transparency, and gives some complainers the impression that the insurers are in league with solicitors and the Society. We were therefore of the view that the operation of the master policy would merit further investigation. In order to carry out this work, we required the assistance of the Society. A number of letters were exchanged between us on the issue, and as you know, the Office of Fair Trading then announced its investigation into the master policy. You wrote to Martyn Evans on 17 May 2004, stating that you felt it inappropriate to begin the research at that time in the light of the OFT investigation.

As regards the numbers of complainers who have contacted us with regard to the master policy, we are unable to provide figures on this. It was clear from the responses that we received to our 1999 research into the experiences of complainers that a number of those who responded had concerns about the way in which the master policy was operating. There were no specific questions in the survey about the master policy, and the questionnaires have now been destroyed in the interests of data protection, so the numbers who raised the issue in that context are not available. Since we carried out the research, we have received many letters and phone calls from people regarding difficulties and delays they had experienced in relation to their complaints about solicitors, some of which relate to concerns about the operation of the master policy. We have received more correspondence and phone calls from the public about complaints about solicitors than any other issue in recent years. Again, however, it is not possible to provide figures here. We have, however; certainly been contacted by sufficient people over the past few years about their difficulties in this area that we felt there was a need to investigate further the operation of the policy, in conjunction with the Society. However, for the reasons stated above, the Society declined to work with us on this issue at that time.

As a policy and research organisation, see is prohibited from giving advice directly to the public by virtue of its memorandum and articles of association. We do not therefore have a casework recording system; we do not log every call or enquiry we receive. Moreover, we may not have kept every letter which we have received about this issue over the years. It is for this reason that we used the term 'a considerable number' in our response. While we are unable to provide a figure, we would estimate that the numbers of individuals involved is somewhere in the region of 30-50.

I hope that this information is helpful.

Best wishes

Sarah

Sarah O'Neill
Legal Officer
Scottish Consumer Council
Royal Exchange House

02/09/2005
LEGAL PROFESSION AND LEGAL AID (SCOTLAND) BILL
DRAFT LEGAL SERVICES BILL

The Society has been studying with interest the draft Legal Services Bill which, as you know, was published last week and applies in England and Wales only.

One issue which has arisen out of the examination of the Bill is the mis-match between the powers of the Scottish Legal Complaints Commission in terms of Section 8 of the Legal Profession and Legal Aid (Scotland) Bill and the powers of the Ombudsman’s scheme in terms of Causes 109 and 110 of the draft Legal Services Bill.

The Society is particularly concerned at the disparity which arises due to the limitation on the value of directions under the Ombudsman’s scheme in terms of the draft Legal Services Bill in Clause 110(1) and how this is in stark contrast to the position under Section 8 of the Legal Profession and Legal Aid (Scotland) Bill.

The disparity between the powers of the SLCC and the powers of the Ombudsman, particularly with the limitation on total compensation which applies in England and Wales, means that Scottish solicitors will be severely disadvantaged.

Could you let me have your reaction to this disparity? Would the Executive consider amending the Scottish Bill to reflect the provisions in the draft Legal Services Bill?

I hope you can give these questions close consideration.

E-mail:margaretmcgregor@lawscot.org.uk
The Society’s view is that Scottish solicitors should not be disadvantaged viz-a-viz their English counterparts and that the disproportionate impact of the penalty provisions in terms of Section 8 should be amended to bring them into line with the more reasonable provisions in Clause 110(1).

I look forward to hearing from you.

Yours sincerely

Michael P Clancy
Director, Law Reform