A Report by

JUSTICE

The Administration of the Courts

Chairman of Committee

John Macdonald, QC

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JUSTICE

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THE COMMITTEE

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TERMS OF REFERENCE

"To investigate the range and nature of complaints about the administration of civil and criminal courts in England and Wales; to assess the adequacy of existing channels for complaints and remedies, and to make recommendations thereon."

CHAPTER ONE - INTRODUCTION

"Justice is like a train that's nearly always late"
Yevgeny Yevtushenko

"For forms of government let fools contest
Whate'er is best administered is best."
Alexander Pope

1.1 This report looks at the administration of the courts (but not the many administrative tribunals) in England and Wales from the point of view of the litigant. This is not a fashionable subject. Those who emphasise the need to reform the law and the rules of procedure tend to overlook the importance of the part played by administrators, and do not ask whether the system is as good as it should be or whether it pays sufficient attention to the interests of the citizen.

1.2 The courts have great power over our lives. When mistakes are made the costs can be very high: an individual can lose his freedom, money, home or reputation. That is why we have an appeal system. It is also the reason why there must be a full, fair and prompt investigation of any failings in the administration of the courts (as well as administrative tribunals). Our task has therefore been to see whether the existing system makes adequate provision for considering representations and complaints, and putting right things which go wrong. We have also considered what changes should be made in the present arrangements.

1.3 The administration of the courts raises particular problems. Administrative and judicial functions cannot be contained within watertight compartments - judges administer and administrators judge. Society is rightly concerned to maintain the independence of the judiciary and this very important principle has tended to inhibit critical appraisal of the administration of our court system.

1.4 One of the features of our inquiry has been that the administrators whom we have consulted have told us that there are very few complaints about the administration of the courts. This appeared to confirm their view that little change is needed. Practising lawyers, on the other hand, have been much quicker to criticise the system, although fewer than we should have expected seem to have made effective complaints about it. This is partly because of their uncertainty about how the administrative machinery works, and partly because of their reservations as to whether complaints would have any effect. We suspect that the number of genuine complaints which are never articulated is much greater than the administrators believe.

1.5 In Chapter 2 we describe the way in which the Lord Chancellor's Department

("the Department") administers the Supreme Court and the county courts, and the Home Office administers the magistrates' courts, as well as the means by which complaints may be made to the Parliamentary Commissioner for Administration ("the Ombudsman") and the European Commission of Human Rights. In Chapter 3 we suggest improvements to the system. In Chapter 4 we consider the more difficult problem of complaints about judicial behaviour.

1.6 In carrying out our work we were greatly assisted by those who gave evidence to us and those who participated in our surveys, and we acknowledge our gratitude to them. Our greatest thanks, however, are due to the officials of the Lord Chancellor's Department who have at all times co-operated with us fully and frankly.

1.7 Finally by way of introduction we should make it clear what this report is *not* about. First, it is not concerned with the way in which decisions on the merits of cases are reached. If a court makes a mistake about the merits of a case the aggrieved party can usually appeal to a higher court. We are concerned with administrative failings where there is no right of appeal. Secondly, we have not concerned ourselves with the organisation of the legal profession nor misconduct by barristers and solicitors. Thirdly, we have not sought to make proposals for reforming civil and criminal procedure and the way in which legal services are organised. This does not mean that we do not think that reform is urgently needed. We do. The high cost of litigation is a scandal, for it means that only the rich and those poor enough for legal aid can afford to litigate. In this report we confine ourselves to looking at the administration of the legal system as it exists, not as we would like it to be.

CHAPTER TWO - EXISTING ADMINISTRATIVE ARRANGEMENTS AND COMPLAINTS PROCEDURES

The Supreme Court (including the Crown Court) and the County Courts

2.1 The Lord Chancellor is responsible for administering all courts in England and Wales except magistrates' courts and coroners' courts. Section 27 of the Courts Act 1971 provided for the setting up of a unified administrative court service for carrying out the administrative work of the Supreme Court (that is, the Court of Appeal, the High Court and the Crown Court) and the county courts. The court system is divided for administrative purposes into six circuits - the Midland and Oxford with its headquarters at Birmingham, the Northern (Manchester), the North Eastern (Leeds), the South Eastern (including London), the Wales and Chester (Cardiff) and the Western (Bristol). The Circuit Office of the South Eastern Circuit in London is quite distinct from the headquarters of the Department. The addresses of the Circuit Offices are listed in Appendix B.

2.2 At the head of the administrative structure in each circuit is an official known as the Circuit Administrator, who is responsible to the Lord Chancellor through his Deputy Secretary and Permanent Secretary for the efficient discharge of the administrative work of the circuit. Under him are Courts Administrators responsible for individual courts or groups of courts: thus in London there is an administrator for the civil courts based at the Royal Courts of Justice in the Strand, and another for the criminal courts based at the Central Criminal Court. Except at the few courts where the Courts Administrator is physically present, the official immediately responsible for the smooth running of the administrative work and the handling of complaints is the chief clerk. Thus there is in effect a system of line management in each circuit and from it to the Department.

2.3 We should add that there are, in each circuit, two Presiding Judges (High Court Judges nominated for a period by the Lord Chief Justice with the concurrence of the Lord Chancellor) who are responsible for supervising the efficient discharge of the judicial business of the circuit. The Circuit Administrator works in close contact with his Presiding Judges with a view to ensuring effective co-ordination of the judicial and administrative business of the circuit.

2.4 The chief clerks of each court or court complex (or, at the Royal Courts of Justice, the chief clerk in the Court of Appeal and in each of the various Divisions of the High Court) are responsible in the first instance for dealing with all oral complaints. Written complaints are referred to the Court Administrator or direct to the Circuit Office, but a chief clerk may be required to deal with the more minor

complaints himself: if the complainant is still dissatisfied, his complaint will be dealt with at a higher level.

2.5 There are, however, three classes of complaints which are required to be dealt with directly by the headquarters of the Department and where the complainant may receive a reply from the Lord Chancellor personally. These are –

(a) complaints from members of either House of Parliament or from representative bodies such as The Law Society, the TUC, CBI, or the British Medical Association;

(b) complaints on matters of policy or making particularly serious or grave allegations;

(c) complaints about the behaviour of a member of the judiciary (including masters and registrars).

We were told that the Circuit Office is not always kept informed about the outcome of these complaints.

2.6 The presiding judge of the relevant circuit is normally consulted in the case of a complaint about a judge's behaviour, and he may be able to dispose of the matter by speaking to the judge concerned. If the complaint is a more serious one, it will be dealt with by the Lord Chancellor personally. Only in the most exceptional cases will there be any question of putting pressure on the judge to resign or of removing him from office. Judges of the Supreme Court and Lords of Appeal in Ordinary hold office during good behaviour and are removable only by the Queen on an address by both Houses of Parliament. This last happened in 1830. The Lord Chancellor has a statutory power of removal for incapacity or misbehaviour in the case of circuit judges, recorders, stipendiary magistrates and the masters and registrars. Justices of the peace have no statutory security of tenure, but by convention the Lord Chancellor exercises his power of removal in a judicial manner and will remove a justice only for good cause.

2.7 The Department does not keep detailed statistics on the range and number of complaints which it receives. We were told by the then S.E. Circuit Administrator that in his experience most complaints concern the county courts. These average about one a day, and the majority are about listing. About half the complaints received are found to have some justification. If the complainant alleges that as a direct consequence of maladministration by an officer of the court financial loss or damage has been suffered, the Department will consider offering an *ex-gratia* payment. In 1985 the average sum paid in such cases was £95. Any claim for more than £400 is investigated by headquarters. On a number of occasions proceedings have been issued against the Department which have, in the main, been settled or withdrawn before determination and only very rarely have they resulted in a judgment against the Department. The Department will not investigate or comment upon a complaint about a judicial decision; the remedy in such cases lies by way of appeal to a higher court. Senior officials in the Department told us that few complaints are made by barristers. About half are made by solicitors (including The Law Society) and the rest by litigants in person.

2.8 Whether the Department will regard itself, or be regarded by the Ombudsman (with whose jurisdiction we deal below), as responsible for an act or omission complained of depends, broadly speaking, on whether it was judicial or administrative in character. Although the Lord Chancellor has the overall responsibility for the administration of the courts, many of the actions of his officials in individual cases are taken on the instructions or under the authority of a judge or other person acting in a judicial capacity and are accordingly regarded as judicial rather than administrative. The distinction may well be difficult to draw in some instances: for example, was a decision about the listing of a particular case taken on the express or general instructions of a judge or in the course of the general listing responsibilities of the official concerned? If the former, the Department will not accept responsibility, for this would be regarded as an encroachment on the independence of the judiciary. In the result, we were informed by the Department that only about five per cent of the complaints received each year concern matters for which responsibility is accepted if the cause of complaint is established.

2.9 We should say a word here about the enforcement of judgments, as this is the subject of many complaints relating to the county courts. A county court registrar has a statutory responsibility, under the consolidating County Courts Act 1984, for the enforcement of the judgments of his county court and is liable in damages for any wrongful act or default on his part or that of the bailiffs appointed to assist him. The Lord Chancellor, who appoints the bailiffs as well as the registrars, is departmentally responsible for any liability of this kind which may be established against a registrar or a bailiff. The position is different, however, in the High Court, where the responsibility for the execution of judgments rests, under the Sheriffs Act 1887, with the sheriff of the county, who is an officer of the Crown and is not responsible to the Lord Chancellor. The sheriff acts in such matters through the under-sheriff and his officers, for whose wrongful acts and defaults the sheriff is personally liable. There do not appear to be any formal arrangements for indemnifying sheriffs.

Magistrates' Courts

2.10 Responsibility for magistrates' courts is divided between the Lord Chancellor's Department and the Home Office. The Lord Chancellor appoints the lay magistrates in England and Wales (except in Lancashire, Merseyside and Greater Manchester where they are appointed by the Chancellor of the Duchy of Lancaster). The Lord Chancellor determines the number of magistrates for each area and lays down minimum training standards. He is responsible for policy relating to legal aid in criminal as in civil cases, and for the payment of costs out of central funds. Any complaints about the conduct of magistrates or their administration of legal aid must be made to the Department. In 1984 (a typical year) 207 complaints were received where the conduct of magistrates was called

into question. Of these, three resulted in removal by the Lord Chancellor, twenty in resignations or transfers to the Supplemental List and seven were still under consideration in June 1986. In addition to these cases about conduct, ninety-one letters were received from MPs and members of the public. Many, although not all, related to decisions of the magistrates' courts. The Department investigates all cases and, while avoiding any comment on the decisions, any other relevant information is given to the complainant.

2.11 A complaint about a lay magistrate's behaviour is referred to the relevant Advisory Committee. This is an unpaid, non-statutory body whose members are appointed by the Lord Chancellor with a view to reflecting the balance of community interests in the area concerned. It puts up names of possible candidates for the bench to the Lord Chancellor and carries out investigations into complaints referred to it by him. It has no statutory powers to investigate complaints and no formal procedures for doing so, but is required by the Lord Chancellor to comply with the principles of natural justice. The Advisory Committee usually asks the chairman of the bench on which the magistrate sits to interview him or her about the complaint before it makes a recommendation to the Lord Chancellor. Where a complaint is upheld, the Lord Chancellor, in deciding what action to take, considers whether the conduct is such as to bring the bench into disrepute. The action taken depends on the nature of the conduct complained of. If it involves criminal proceedings against the magistrate, he or she will be allowed to resign at any time before the case comes to trial. If convicted of a serious offence, he or she will be dismissed from the bench. In cases involving moral turpitude, the magistrate is permitted to resign. In less serious cases he or she is reprimanded or suspended from sitting for a period. No statistics are kept of the number of complaints upheld, but about eight magistrates are removed each year for a variety of causes, and about thirty-six are reprimanded or suspended. About half of the complaints received are made out but do not involve serious misconduct.

2.12 All stipendiary magistrates in England and Wales (who must be barristers or solicitors) are appointed by the Lord Chancellor and complaints against them are investigated by the Department. Where there are a number of complaints, the Lord Chancellor may himself interview the stipendiary. If he denies the complaints and there is no clear evidence against him, no further action is taken. There is no more than one such unresolved complaint a year.

2.13 The Department has an overall responsibility for the administration of criminal, as well as civil, legal aid. Complaints about disparity in granting legal aid by magistrates are made from time to time, and the Department tries to resolve them informally.

2.14 All other responsibility for the magistrates' courts rests with the Home Office. In practice, the courts are supervised by the magistrates' courts committees ("MC Committees") which were established by the Justices of the Peace Act 1949, and are now governed by the Justices of the Peace Act 1979. The shire counties, metopolitan districts, the City of London and the Inner London Commission area

and each of the London Boroughs in the Outer London area have an MC Committee, of which there are about eighty-eight. The committees are composed of magistrates, elected by their colleagues in the same commission area, and the keeper of the rolls of a county or London commission area. High Court and Circuit Judges and recorders may be co-opted members. The committees are responsible for appointing clerks to the justices with the approval of the Home Secretary, but the clerk is not the employee of the MC Committee by which he was appointed. The clerk is responsible for the day to day administration of his court and its staff work under his direction.

2.15 It is rare for an MC Committee or its individual members to concern themselves with matters relating to the running of individual courts. According to a Home Office Working Party on Magistrates' Courts in 1982:

> "The majority of magistrates are not greatly interested in administrative matters unless a mistake has been drawn to their attention in court. On the other hand, the magistrates must elect from their number the members of the MC Committee who will be required to take an active interest in court administration. The bench as such tends to have little corporate influence on the administrative side of court life although the bench chairman and, perhaps, his deputies may play a slightly more important role. In most of the courts which we visited the chairman of the bench was also a member of the MC Committee, which naturally required of him a degree of administrative interest and involvement. We think it reasonable to assume, however, that bench chairmen are elected to the MC Committee by their colleagues because of their position as chairmen and not because they necessarily have particular administrate experience or ability." (para. 2.29)

In practice, therefore, it is the justices' clerk who runs the court. Clerks work under a code of service and can be dismissed if all the magistrates on the MC Committee agree; if they do not, the approval of the Home Secretary is required. There is no disciplinary code for justices' clerks.

2.16 The Home Office receives about 600 complaints a year concerning the administration of the magistrates' courts. There is no formal complaints procedure. When the Home Office receives a complaint about a court, it sends it on to the justices' clerk. If the reply appears to be unsatisfactory, the Home Office will usually ask its adviser on magistrates' courts (who is a justices' clerk working temporarily for the Home Office) to approach the clerk for further information. The Home Office, however, has no power to compel the clerk to take any action. Where the complaint is about the behaviour of the justices' clerk, or a member of his staff, the Home Office advises the complainant to ask the MC Committee to investigate the matter, but is not kept informed of the outcome of any investigations. Complaints about the behaviour of magistrates or their handling of applications for legal aid which are made to the Home Office are referred to the Lord Chancellor's Department.

2.17 We understand that when an MC Committee receives a complaint (not being one about the conduct of the clerk himself) it refers it to the clerk for investigation and appropriate action. The clerk does not report on complaints to the Home Office. We were told by a justices' clerk in a busy North London court

that he receives on average two complaints a week direct, but many more via the Home Office, the MC Committee and individual justices: most complaints concerned road traffic matters, e.g. written pleas or driving licences that had gone astray.

2.18 There is no statutory right to compensation for an administrative error, but the Home Secretary may, if he thinks fit, pay any money due to a person which he has not received because of the default of a justices' clerk or an employed assistant (section 62, Justices of the Peace Act 1979).

2.19 Although local authorities have financial and other responsibilities in regard to the provision of magistrates' courts, these do not fall within the jurisdiction of the Commissioners for Local Administration who are responsible for investigating complaints of maladministration by local authorities.

The Parliamentary Commissioner for Administration (The Ombudsman)

2.20 If a complainant is unable to obtain satisfaction from the Lord Chancellor's Department or the Home Office, as the case may be, he may be able to do so through the Ombudsman, who is responsible for investigating complaints of maladministration against government departments. Complaints to the Ombudsman have to be channelled through a Member of the House of Commons. Under section 5(1) of the Parliamentary Commissioner Act 1967, the Ombudsman may –

> "investigate any action taken by or on behalf of a government department or other authority to which this Act applies, being action taken in the exercise of administrative functions of that department or authority..."

2.21 Sir Cecil Clothier, QC, the then Ombudsman, told us that he was careful to distinguish administrative functions from judicial ones. He was expressly prohibited by the Act from investigating the commencement or conduct of civil or criminal proceedings before any court of law in the United Kingdom. Moreover, he could only investigate action taken *by or on behalf of* departments. Thus, his predecessors had taken the view that they had no jurisdiction over action taken in magistrates' courts, the Court of Protection, the Principal Probate Registry, or by Official Receivers. Sometimes this led to anomalies. Sheriffs, for example, acted on behalf of the Crown and so were outside his remit, but bailiffs acted on behalf of county court registrars and so fell within it. Decisions about legal aid taken by The Law Society or legal aid committees were outside his jurisdiction, but a decision taken on behalf of the DHSS as to whether a person qualified for legal aid on financial grounds fell within it.

2.22 As we have already said, the distinction between judicial and administrative acts is not always clear. This was recognised by Sir Cecil Clothier in his Annual Report for 1979, where he said –

> "Section 5(1) of the Act describes the actions of government departments which I may investigate as those 'taken in the exercise of administrative functions' of the relevant department. The Lord Chancellor combines in a constitutionally unique way a judicial and an executive function, and the organisation of his department reflects this duality. His department is concerned to preserve the traditional separation of the judiciary from the executive. The distinction here can on occasion be the cause of difficulty. The Lord Chancellor's department is rightly anxious that I do not step over the boundary of administrative action into the area of judicial function. I hope I never shall. But it is not every action taken by court officials in the course of court business which can sensibly be regarded as touching the judicial function, and still less as cognisable and remediable by the judge if badly done. Yet such actions may seem to be excluded from the broad ambit of the administration of all the courts which is a primary function of the Lord Chancellor's department. There is a danger that, unless common sense is allowed to temper legal nicety, many justifiable grievances could fall into a trap quite unintended by Parliament wherein the unlucky complainant is caught without hope of a hearing or redress or at best with a possibility of recourse (to the courts) which in my judgment it would be quite unreasonable for him to pursue." (para. 107)

2.23 We were much encouraged by the positive view Sir Cecil Clothier took of his jurisdiction. He told us that the major test he applied to this situation was whether the matter was one of which a judge could take cognisance, or which could go to a higher court. Thus, for example, a listing decision taken by a clerk without consulting a judge would be within his jurisdiction, but the same decision taken after consulting the judge would fall outside it. He recognised that some judicial decisions were administrative in character but these were not taken by or on behalf of a government department: thus, if a judge took an inordinate time to deliver a judgment, he could not intervene in any way. He regarded obstructiveness and rudeness on the part of the court staff as being within his jurisdiction: it was not part of their function to carry out their duties rudely or inefficiently. Examples of cases he had investigated were –

> the failure of a shorthand writer to provide a transcript in reasonable time;
>
> the failure of a court clerk to deliver papers in time so that someone had been wrongly registered as a debtor;
>
> failure to pay over the proceeds of a judgment which had been paid into court.

2.24 In the first ten years of the existence of his office, only some three dozen complaints involving the Department were made to the Ombudsman, of which less than a dozen were investigated. In March 1984 he had reached an agreement with the Department on the definition of those areas which were judicial and those which were administrative so as to limit the jurisdictional disagreements between them. This did not bring within his jurisdiction administrative acts performed under the authority of a judge (including masters and registrars), because these were not carried out by or on behalf of the Department. Since this agreement, the number of complaints involving the Department has risen. Few of the complaints concerned the higher courts.

The European Convention on Human Rights

2.25 Finally, we should mention, as a possible method of obtaining satisfaction for complaints, the machinery existing under the European Convention on Human Rights. The United Kingdom was the first country to ratify the Convention, and the Government has renewed the right of individual petition for a further period of five years from January 1986. Article 6 of the Convention provides in part that

> "In the determination of his civil rights and obligations, or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

In the case of *Bucholz v. the Federal Republic of Germany* (1977), the European Court of Human Rights held that the Convention imposes a duty on the States Parties to it so to organise their legal systems as to allow their courts to comply with the requirements of this Article. In *Eckle v. the Federal Republic of Germany* (1982), the Court held that it was the responsibility of the State to ensure that there were no unreasonable delays attributable to it in the conduct of proceedings. This expression covers such matters as the plaintiff's right to bring his action before a competent court, pre-trial proceedings (including the transfer of cases from one court to another) and the delivery of final judgment. These decisions suggest that a State must do its best to prevent delay caused by the administration and structure of its courts service.

2.26 The United Kingdom has not yet incorportated the Convention into domestic law, but an individual who claims to be a victim of a violation of his rights may apply to the European Commission of Human Rights.* He must first exhaust any available domestic remedies and must bring the application to the Commission within six months of the final decision. The Commission rejects most applications as falling outside the scope of the Convention. It attempts to reach a negotiated settlement of those cases it retains, but if it cannot do so it may bring the case before the European Court of Human Rights for a binding judgment. Alternatively it may refer the case to the Committee of Ministers of the Council of Europe. Modest legal aid may be obtained from the Commission if an application is communicated to the respondent government. The procedure under the Convention is not swift. It can take five years from lodging an application before the matter is finally determined by the Court.

* The Commission's address is The Council of Europe, 67006 Strasbourg Cedex, France (tel. 010-33-88-61-49-61).

Overseas Experience

2.27 In preparing this report we have found it helpful to consider the position in other jurisdictions. We include in Appendix C some notes on overseas systems we have studied.

CHAPTER THREE - PROPOSED REFORMS

3.1 The courts exist for the benefit of the public and provide, and should be seen to provide, a public service, as much as, say, the National Health Service. We would like to see a wider recognition of this fact. The customer in the law courts may not always be right but it is he or she, and not the judges or the lawyers, for whom the service is provided. In recommending changes we have tried, therefore, to look at the service from the point of view of the litigant.

Our Investigation

3.2 We took evidence from a wide range of organisations and individuals and were made aware of a number of specific and general complaints. We invited comments from members of JUSTICE who are practitioners, from local law societies and from the users of the Greater Manchester Magistrates' Courts, but the response was disappointing. Inevitably, therefore, we have only been able to gain an *impression* of how the system works, backed up by the wide experience of those members of the committee who are practitioners, from the case files of JUSTICE, and the reports of the Ombudsman, an example of which is provided in Appendix D. Where examples of complaints are quoted, they are as perceived by the people who made them, and may not necessarily tell the whole story.

People do not Complain

3.3 Few people seem to know that there are officials who are responsible for dealing with complaints or how to get in touch with them. There are various reasons for this ignorance. Apart from a few tenacious litigants in person, most laymen have very little knowledge of how the courts work and the different responsibilities of lawyers, court staff and judges. When things go wrong, they do not know who is responsible – their own lawyers, or those of the other side, the court staff or the judges. As they are unlikely to use the courts more than once or twice in their lives, they may see their bad experience as a "one off" event and not part of any pattern of poor service.

3.4 Practising lawyers, on the other hand, are familiar with the courts, yet they too make very few complaints. Most solicitors learn to live with the courts in which they practise. If they are unhappy with the way a case has been handled by the court staff or the judge, they may complain directly to the court, or the relevant Department in

London, or more frequently to The Law Society. Most local law societies do not consider it part of their responsibilities to take up complaints. Most barristers make even fewer complaints. Partly this is because they regard it as the solicitors' job and not theirs, partly it is because many think that they might earn black marks if they complained, so reducing their chances of winning future cases in that court or of becoming QCs or obtaining a judicial appointment. We were assured by the Department, and accept, that no barrister need fear that his or her prospects will be affected by making complaints; indeed, the Department wants to know if anything has gone wrong.

Lack of Confidence in the System

3.5 Most of the lawyers who responded to our questionnaires claimed that little was to be gained by complaining. The following examples were given to us:

(i) A solicitor complained that, while sitting as a deputy registrar, he was given a morning list of ninety appointments, all for 10 a.m. This resulted in a process "like a cattle market". He also said that the local registrar, a man in his seventies, appeared to fall asleep during most hearings; repeated complaints by the local law society had achieved nothing.

(ii) It was said that the standard of service varied considerably in different courts. In one county court it took a month to issue a default summons and three months to have a witness examined. In another, letters "were put in a cupboard until the clerk got round to opening them". Complaints had achieved no improvement.

(iii) One solicitor wrote that "when complaint is made to the Lord Chancellor's Department the result (if any) and the action taken (if any) are not communicated to the complainant".

It seemed to us that the people who should complain do not do so, and that where complaints are made they sometimes achieve nothing, so that there is some lack of confidence in the present system.

Divided Responsibility

3.6 One source of problems is the division of departmental responsibility for magistrates' courts between the Home Office and the Lord Chancellor's Department. In the light of the comments of the Home Office Working Party, quoted at para. 2.15 above, and the evidence given to us by the Home Office official then in charge of magistrates' courts administration, we formed the view that no effective line management exists in respect of these courts and that there is a reluctance on the part of the Home Office to provide it. We concluded that this was of itself a powerful argument in favour of bringing the administration of all courts

under the control of a single Department. We recognise that there may be many inter-departmental factors of which we are unaware, but the Lord Chancellor's Department has far greater experience of managing courts. Further, there has been a steady trend over the past two decades of transferring to the Lord Chancellor's Department the responsibility for administrative tribunals, thus strengthening its expertise and experience. The present arrangements for magistrates' courts are an exception to this, and we *recommend* that consideration be given to the transfer to the Lord Chancellor's Department of all responsibility for these courts.

The Department's Responsibility for Administrative Acts

3.7 As regards the higher courts, we were impressed by the genuine desire of the senior officials of the Lord Chancellor's Department to ensure that the courts function as efficiently as possible. We think that, insofar as there is any lack of confidence in the system, this stems from the fact that the Department takes the view that it may not investigate many of the complaints it receives. This is because, as we have seen in Chapter Two, the Department does not accept responsibility for administrative actions carried out on the instructions or under the authority of a judge, or other person acting in a judicial capacity, and these account for the vast majority of complaints. It is not surprising if there is some lack of confidence in a system in which the Department can accept responsibility for only some five per cent of cases.

3.8 We believe that the Department, which is rightly concerned not to interfere with the actions of judges, takes too narrow a view of its responsibilities. We recognise that the Ombudsman appears to share this view. The Department's practice depends on asking whether the acts or omissions of a court official in the course of discharging his duties in an individual case were or were not attributable to the authority of a judge: for instance, was the case listed on the express instructions of the judge or merely by the official as part of his general duties as a listing officer? If the first, as matters now stand, the Department (and the Ombudsman) consider that they have no jurisdiction to consider a complaint by a person adversely affected.

3.9 We do not think that this is the correct way of looking at the matter. In our view, what is required is an analysis by the Department of the nature of the function performed, irrespective of who gave instructions for its performance. If the matter does not involve the discharge of responsibilities of a judicial nature, then the Department should accept responsibility for things which go wrong and which can fairly be regarded as a failure to provide a satisfactory court service. The distinction between "judicial" and "administrative" acts is frequently not an obvious one, but the Department is staffed at the higher level by able lawyers who can be expected to identify the correct situation without too much difficulty. So, for example, we would regard any decision dealing with the merits of an issue before the court, or capable of being appealed, as a "judicial" act. But the closing of a court because the judge did not wish to sit in the afternoon, or the refusal of a magistrates' clerk to issue summonses because of over-work, we would regard as "administrative" acts. In this way, there would be no "grey-area" in which the complainant with a legitimate grievance would be left without a remedy.

Handling of Complaints

3.10 We think that the public needs more information about the system. We hope that this report will help, but we also *recommend* that in every court building there should be displayed a notice informing people that if they need any help or information about the court service (or how to complain about it) they can see the chief clerk or a named official in a convenient place at set hours.

3.11 We also think it would be helpful if the court staff at all levels knew more about the way complaints are dealt with. Every member of staff should be able to tell litigants where they can get information and help.

3.12 It is important that when the Department rejects a complaint because it relates to a judicial act it should say so and explain what remedy, if any, is available. If the complainant is able to appeal but has not done so, he or she should be told how to obtain help with an appeal.

3.13 Where the Department finds that a complaint is justified it should, in our view, not only take steps to ensure, so far as possible, that a similar situation does not arise again but also, in appropriate cases, offer compensation for loss suffered. It should, as a matter of course, inform the complainant what action is being taken on the complaint.

3.14 We welcome the readiness of the Department to offer an unqualified apology when a mistake has been made and we think it is important that this tradition should be maintained.

3.15 We have seen that the Department is quick to pay compensation when a mistake has been made which would give rise to an action for negligence or breach of duty. We think, however, that there are other circumstances in which the Department should be prepared to make an *ex gratia* payment.

3.16 We consider that the Department should pay compensation whenever loss has been caused by maladministration, including those cases where the act or omission ought properly to be regarded as "administrative" for the reasons mention in para 3.9 above. The level of compensation will necessarily take account of any contributory negligence by the complainant, but otherwise should be the full loss suffered. (This is supported by Principle V of the Council of Europe's Recommendations on Public Liability, which have the agreement of the U.K. Government: see Appendix E.)

3.17 We welcome the fact that section 53 of the Administration of Justice Act 1985

will enable the Department to compensate a litigant for any additional costs incurred by reason of a judge or other person acting in a judicial capacity dying or becoming incapacitated in the course of proceedings. This change was recommended by the Royal Commission on Legal Services in 1979 (the "Benson Commission") and was supported by JUSTICE when the Bill for the 1985 Act was being considered by Parliament.

3.18 It emerged from the evidence given to us that there is no regular monitoring of complaints either by the Lord Chancellor's Department or the Home Office. No statistics are kept. Often the Department (if a complaint is dealt with by the chief clerk), or the chief clerk (if the complaint is dealt with elsewhere in the Department), is not told what has resulted from the investigation of the complaint. Sometimes the complainant is not told the result either. We think that the more serious the complaint the more urgently it should be dealt with, whatever its source. We *recommend* that the Department and the Home Office should monitor the complaints they receive and keep statistics.

Regional Advisory Committees

3.19 We should like to see those who use the courts more closely involved in the task of keeping the administration of the courts in their area under review and suggesting improvements in the quality of the service provided where these appear to be called for. A similar suggestion was made by the Royal Commission on Assizes and Quarter Sessions ("the Beeching Commission") which reported in 1969 (Cmnd 4153 paras. 325–327). It recommended the setting up of advisory committees in each circuit, to be chaired by the Circuit Administrator or his Deputy (or, in the smaller centres, the Courts Administrator) which would include representatives of the legal profession, magistracy, police, prison and probation services and some body to express the views of the general public such as the Citizens Advice Bureaux. Section 30 of the Courts Act 1971 provided for the setting up of such committees but they never fulfilled the hopes expressed by the Beeching Commission and in practice achieved very little. More recently, informal circuit liaison committees have been set up under the aegis of local law societies and these include representatives of the Circuit Office and the Bar. They have met, however, only on an ad hoc basis to deal with specific administrative problems arising at Crown Courts and do not consider individual complaints made by members of the public. In London there is now a county courts liaison committee whose function is to deal with administrative difficulties at county courts and this is serviced by the Department. It is too soon to evaluate how this works, but if it proves its worth we hope the Department will consider the setting up of similar bodies elsewhere.

3.20 The Benson Commission considered the need for regional arrangements for legal services in paras. 6.32–6.39 of its Report (cmnd. 7648). It recommended the setting up, in each of the fourteen legal aid areas, of a committee which would be responsible for assessing the need for legal and para-legal services in its region and

for recommending how this need should be met, as well as for co-ordinating regional services and agencies. The Benson Commission was impressed by the work done by the Greater Manchester Legal Services Committee (now the North Western Legal Services Committee), which was set up by the Legal Aid Committee of The Law Society in 1977, and thought it was an example which should be followed. However, the Government, while acknowledging the value of the work done by the Committee, has declined to accept responsibility for setting up further committees of this kind.

3.21 The bodies envisaged by the Benson Commission were intended to concern themselves with the provision of legal services and the Commission thought they should be financed out of the legal aid fund. We are concerned, as we have said, with the need to establish effective advisory committees whose business it would be to keep a watch on the administration of the courts on their circuit or in their area and to act as a sounding board for the views of members of the public using the courts. What is needed, in our view, is a fresh attempt to achieve what the Beeching Commission had in mind. In paras. 325 and 326 of its Report that Commission said:-

> "We think it is a shortcoming of the present system that however good may be the informal relations between the staff of courts and members of the legal profession and others concerned with their work, there is no recognised machinery for discussing common problems... We think it important that there should be some means of drawing attention to grievances or problems which may fail to be dealt with simply because of an unawareness of their existence, or because of a misunderstanding of the factors restricting an ideal solution."

3.22 It may be that one of the reasons for the disappointing results of the advisory committees established under section 30 of the Courts Act 1971 was that they were not sufficiently representative of the views of ordinary members of the public and were too heavily weighted in favour of those whose work brings them into regular contact with the courts. We hope that this will be avoided in the setting up of the new committees which we recommend. Such committees ought, in our view, to include adequate representation of local authorities, consumer groups, citizens advice bureaux, social workers and law centres and we think they ought to have independent chairmen and not be chaired by the Circuit Administrator or other member of the administrative court service as the earlier committees were.

3.23 We consider that the representative of the court service on each committee should report regularly to his committee on the number and range of complaints, or representations received in the circuit office about the working of the courts in the area with which the committee is concerned and the action taken to remedy shortcomings. It may well be that lawyers and litigants would find it easier to make representations or complaints to the committee rather than to the Department, but we do not think that the committees should have any power to deal with individual complaints themselves and should simply pass them on to the Department. The committees would, however, thus be able to identify any pattern of shortcomings in the administration of the courts in their area and to assess the effectiveness with

which these were remedied. We think the committees should report annually to the Lord Chancellor.

The Role of the Ombudsman

3.24 We do not think there is any need for a special Judicial Ombudsman because the Parliamentary Comissioner already enjoys wide powers to investigate maladministration in the court service, although these may need to be given wider publicity. His powers will be somewhat extended if, as we recommend, in para. 3.9 above, the Department becomes responsible for all acts or omissions which can properly be regarded as administrative.

3.25 As we mention in para. 2.21, the Ombudsman has no jurisdiction over The Law Society's administration of the legal aid scheme, nor do the sheriffs (who through their under-sheriffs are responsible for the execution of judgments in the High Court) fall within his jurisdiction. As regards the latter, we think the position is anomalous and we consider that complaints about maladministration by sheriffs (whether or not they become responsible to the Lord Chancellor) ought to be capable of review by the Ombudsman. The position in regard to legal aid is more difficult and we have not sought the views of The Law Society. We therefore do no more than note that this is a matter which may merit further investigation.

Better Co-operation by Lawyers

3.26 We were told by the Department that many of the problems that arise in administering the courts are caused by the failure of lawyers, particularly solicitors, to co-operate with the administrators. The latter do not work in a vacuum and cannot provide an efficient service without co-operation. Cases may be settled, or postponements agreed between the parties, without the court staff being informed until the last minute, thereby causing great and unnecessary inconvenience to other court users. We agree with this criticism. In para. 3.16 above we have recommended that where a complaint of maladministration is established any compensation payable by the Department should be reduced by an amount which takes into account the degree of fault on the part of the complainant and in appropriate cases he should be able to recover this from his lawyer.

CHAPTER FOUR - COMPLAINTS AGAINST THE JUDICIARY

4.1 In the previous chapter we dealt with the changes which we think are desirable in the arrangements for the administration of the courts and for dealing with complaints against the administrators. We have left to this chapter the question of complaints against the behaviour of judges and magistrates, which raises different issues on which we have been unable to reach agreement.

Judicial Independence

4.2 The independence of the judiciary at all levels is a fundamental principle of our constitution. In Chapter Two we described the safeguards which are designed to protect judges and magistrates against arbitrary removal from office. At common law no action will lie against a judge for acts done or words spoken in his judicial capacity in a court of justice. The principle was expressed by Kelly C.B. in *Scott v. Stansfield* (1868) L.R. 3 Ex. 220 at page 223 as follows:

> "It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer under the protection of the law independently and freely, without favour and without fear. This provision of the law is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences."

This immunity from suit underlies section 2(5) of the Crown Proceedings Act 1947, which absolves the Crown from liability in tort for the conduct of any person "while discharging or purporting to discharge any responsibility of a judicial nature vested in him".

4.3 At one time it was doubtful to what extent such immunity extended to judges of the inferior courts, but it now seems that it applies to all courts from the highest to the lowest: see *Sirros v. Moore* [1975] Q.B. 118, in which Lord Denning M.R. and Ormrod L.J. held that every judge, including a justice of the peace, is entitled to protection in respect of what he does while acting judicially and in the honest belief that his actions were within his jurisdiction.

4.4 In dealing in Chapter Two with the extent of the powers of the Ombudsman, we explained that these are limited to actions taken by or on behalf of a government department or other authority to which the Parliamentary Commissioner Act 1967 applies, being action taken in the exercise of the administrative functions of that department or authority. In Chapter Three we recommend that the Ombudsman should have jurisdiction to examine administrative acts or omissions even if they follow from directions given by a judge. We do not believe that this represents any

encroachment on the independence of the judiciary, to which we attach the greatest importance.

Delay

4.5 A frequent source of complaint amongst litigants is the length of time that it takes for their case to come on for trial. This is particularly true of civil cases tried in London. Much has been done, and is being done, to reduce these delays and no one suggests that this a justifiable cause of complaint against the judiciary. But the same cannot be said of the small number of cases in which there is a long delay in giving judgment after the hearing has been concluded. We have heard of cases where delays of six months or more have occurred before judgment has been delivered, and even the Court of Appeal is not immune from this problem. We accept that only a minority of judges are habitually slow in giving judgment and also that there are sometimes exceptional circumstances which make lengthy delays unavoidable. But in general we do not think it is justifiable or acceptable for a litigant, who may have already waited far too long to approach the seat of judgment, to have to endure still further delays whilst awaiting the outcome of his case. We therefore *recommend* that, save in exceptional circumstances, every court from the Court of Appeal downwards should be expected to deliver judgment not more than, say, six working weeks after the conclusion of the hearing. Should this not be possible in any given case, the parties should be informed and given the reasons for the delay and a firm date on which judgment will be delivered. Special considerations apply to the House of Lords and we therefore exclude it from this recommendation, although we hope that there too avoidable delay will not be accepted.

Judicial Behaviour

4.6 A much more difficult problem arises when we turn to consider whether any changes are called for in the handling of complaints of misbehaviour in the discharge of judicial functions. In referring to misbehaviour in this context, we have in mind especially discourtesy and failure to observe the high standards of behaviour traditionally associated with the judiciary. Human fallibility must, from time to time, lead to a judge's behaviour on the bench falling short of what the public is entitled to expect. The Lord Chancellor has to dismiss an average of eight lay magistrates a year. What is to be done about misbehaviour (falling short of misconduct) at the higher levels? Is it enough to conclude that the public must put up with some judicial idiosyncrasies as the price of judicial independence?

The Lord Chancellor's Roles: Two Views

4.7 We are satisfied that if a complaint is made to the Department about a judge or magistrate it will be carefully investigated and, if the complaint is made out, the Lord Chancellor will take action. In an extreme case he may ask the judge to resign, although he has no power to remove a judge of the Supreme Court. We believe that the Lord Chancellor's interventions are effective, and none the less so because they are often informal.

4.8 It has nevertheless to be recognised that the position of the Lord Chancellor is anomalous in that he is both a Cabinet Minister and head of the judiciary.

4.9 Some of us think that, however anomalous in principle, the existing arrangements work well and that no change is called for. Those of us who take this view believe that experience shows that the Lord Chancellor, irrespective of party political allegiance, is fully capable of protecting the independence of the judiciary against those who would seek to undermine it, and that at the same time his position as a Minister responsible to Parliament ensures that criticisms can be openly ventilated and answered by someone who is fully conversant with the problems of the judiciary and the standards to be expected of them and is in a position to speak with authority on matters of this kind.

4.10 Others of us consider that the time has come to make some changes. We believe that the need for judges to be seen to be independent of the executive is greater today than ever before. Over the last thirty years the emphasis of the law has changed. In the 1980s the courts are as much concerned with the abuse of power by the executive as with interference with property rights or breaches of the criminal law. Increasingly, government departments and local authorities are involved in civil litigation. We fear that it will become increasingly difficult for the public to accept that judges are independent when the head of the judiciary, who is responsible for their behaviour, is also a leading member of the Government. One solution would be to restrict the role of the Lord Chancellor to being head of the judiciary with responsibility for judical behaviour, as well as being Speaker of the House of Lords. This would be a logical solution if, as some have suggested, a Ministry of Justice is set up, with its departmental Minister in the House of Commons.

An Independent Judicial Commission?

4.11 In 1972 a sub-commitee of JUSTICE published a report on "The Judiciary" although this did not purport to represent the views of the Council of JUSTICE. The sub-committee, report on "The Judiciary", recommended the setting-up of an independent authority or commission to investigate complaints about judges (as well as to advise the Lord Chancellor on appointments and to make recommendations to the Judicial Committee of the Privy Council for the removal of a

judge). The sub-committee thought that such a commission should be independent both of the legislature and of the executive. It would include not less than three persons holding, or who had held, high judicial office, as well as lay members but not any past or present Member of Parliament or anyone who had held a political appointment.

4.12 None of us would support a solution on these lines because we think that whoever is to be responsible for considering complaints against the judiciary ought, in the last resort, to be answerable to Parliament.

The Ombudsman and Judicial Behaviour

4.13 An alternative solution favoured by those of us who think that changes are needed, would be to extend the power of the Ombudsman to include investigation of judicial behaviour, though we recognise that this proposal did not commend itself to Sir Cecil Clothier when he was Ombudsman. But some of us think that if the Ombudsman could review complaints about judicial behaviour, this would be a valuable safety valve. It would have the further advantage that we believe that there are people who would find it easier to complain to the Ombudsman than to the Lord Chancellor.

4.14 We have given careful consideration to two objections to this proposal. The first is that, as the Ombudsman reports to the House of Commons, this would encourage MPs to pry into the affairs of the judiciary. Those of us who favour this solution do not think there is substance in this objection. The Ombudsman holds an independent office and is not in any way subject to the detailed control of the House of Commons, by whom his reports have always been received with respect. We are satisfied that the Ombudsman would only investigate a complaint if he were satisfied that it was serious. If a serious complaint is made, it would seem better that it should be investigated by an independent person of the standing of the Ombudsman than for it to become the subject of ill-informed speculation in Parliament.

4.15 Another objection which might be made to the proposal is that it would be impracticable to distinguish between a complaint about a judge's behaviour on the Bench and the manner in which he has dealt with the case before him. It is said that it is comparatively rare for a complaint to be limited to an issue of behaviour alone, such as that the judge was rude or unreasonably impatient, without its raising wider questions such as his conduct of the trial as a whole. Indeed, it may very well be that the way that the trial was conducted by the advocate or litigant in person - for example where there has been excessively lengthy or irrelevant cross-examination - has led to the lapse in judicial behaviour complained of. Thus, it is said, the Ombudsman might well find himself being require to investigate such matters as the judge's refusal to accept the complainant's evidence or to allow him to follow a particular line in the proceedings. It would be wholly wrong to give the Ombudsman this power, which would indeed be a serious encroachment on the independence of the judiciary.

4.16 Those of us who think that the Ombudsman's jurisdiction should be extended consider that this objection is not well founded. The Ombudsman, in considering any complaint about behaviour in the civil service, may encounter similar problems. Misbehaviour in the civil service is likely to be bound up with a policy decision or an exercise of discretion. We do not believe that the Ombudsman has any difficulty in investigating and forming a view about behaviour without usurping any ministerial function. We are confident that he would have no difficulty in confining his report to the judge's behaviour and that the problem is one which could be left to the good sense of the Ombudsman. We do not believe that he would find it necessary to investigate more than a handful of cases. We think that the existence of such a procedure would prove beneficial and believe that it would command widespread support, help to reassure litigants, and at the same time preserve the high standing of the judiciary.

4.17 While we are divided on the need for any change in the existing arrangements, we are agreed that the important constitutional issues raised in this chapter merit further public discussion.

CHAPTER FIVE - SUMMARY OF RECOMMENDATIONS

1. The responsibility for the administration of all courts in England and Wales should lie with one department of State and this should be the Lord Chancellor's Department. The Home Office should cease to have any responsibility for the administration of magistrates' courts. (para. 3.6)

2. The test applied by the Department for accepting responsibility for administrative acts or omissions should be a functional one. Any act which can properly be regarded as "administrative" should not cease to be so regarded because it is carried out by or on the instructions of a judge or other person acting in a judicial capacity. (paras. 3.7–3.9)

3. In every court building a notice should be displayed telling people where they can get help or information or make a complaint. (para. 3.10)

4. The Department should always give an explanation when it rejects a complaint. If the reason is that the matter is judicial and an avenue of appeal lies open, it should advise the complainant of this and how help to appeal can be obtained. (para. 3.12)

5. Every time it accepts that a complaint is justified, the Department should inform the complainant what action is being taken to prevent, so far as possible, the same mistake from recurring. (para. 3.13)

6. The Department should pay compensation for loss caused by maladministration. The basis of compensation should be the full loss suffered, less any reduction for contributory negligence. (paras. 3.13 and 16)

7. The Department and the Home Office should monitor the complaints they receive and keep statistics of them. (para 3.18)

8. Regional committees should be established under independent chairmen to keep the administration of the courts under review. The Circuit Administrator or other representative of the court service on the committee should report regularly to the committee on the number and range of complaints or representations received in the circuit office and the action taken to remedy shortcomings. The committees should report annually to the Lord Chancellor. (paras. 3.22–3.23)

9. The powers of the Ombudsman should be extended to cover complaints about maladministration by sheriffs. It may be that the Ombudsman's jurisdiction should also be extended to cover The Law Society's administration of the legal aid scheme, but this is a matter on which we have not consulted The Law Society. (para. 3.25)

10. All courts except the House of Lords should normally be expected to deliver judgment within six working weeks of the end of a trial. (para. 4.5)

11. We are divided on the need for any change in the existing arrangements for dealing with complaints against the judiciary, but we are all agreed in thinking that whoever is to be responsible for considering complaints ought, in the last resort, to be answerable to Parliament, and for that reason we do not favour the setting-up of an independent judicial commission. We think that the important issues to which we have drawn attention require further public discussion. (paras. 4.9–4.17)

APPENDIX A - LIST OF WITNESSES

Miss Kathleen Clark, Citizens Advice Bureau, Royal Courts of Justice, London

Sir Cecil Clothier, QC, then Parliamentary Commissioner for Administration

Consumers Association: David Tench, legal adviser

Home Office: Miss Bronwen Fair, (magistrates' courts administration)

Sir Jack Jacob, QC, then Senior Master of the Queens Bench Division

Law Centres: David Harper, barrister, North Lambeth
Meredith Thomson, solicitor, North Kensington

Law Society: Alan Davis and Trevor Sennett

Lord Chancellor's Department:
Michael Blair, then Assistant Solicitor
Sir Wilfred Bourne, KCB, QC, Permanent Secretary 1977-82
T.S. Legg, CB, then S.E. Circuit Administrator
Sir Derek Oulton, KCB, QC, Permanent Secretary since 1982
Sir Bryan Roberts, KCMG, QC, then Secretary of Commissions
John Watherston, Assistant Solicitor

Peter Lydiate, clerk to Willesden Justices

MIND: Elaine Rassaby and Oliver Thorold

Guy Pritchett, Registrar, Guildford County Court, past president of the Association of District and County Court Registrars

SHELTER: Mrs. Audrey Harvey

Lord Templeman, MBE

APPENDIX B - ADDRESSES OF CIRCUIT OFFICES

Midland and Oxford Circuit

Circuit Administrator, 2 Newton Street, Birmingham B4 7LU.
Tel: (021) 233 1234

This circuit covers courts at Birmingham, Coventry, Derby, Dudley, Grimsby, Hereford, Leicester, Lincoln, Northampton, Nottingham, Oxford, Peterborough, Shrewsbury, Stafford, Stoke-on-Trent, Walsall, Warwick, Wolverhampton and Worcester.

North Eastern Circuit

Circuit Administrator, National Westminster House, 4th Floor, 29 Bond Street, Leeds LS1 5BQ. Tel: (0532) 441 1841

This circuit covers courts at Beverley, Doncaster, Durham, Huddersfield, Kingston-upon-Hull, Leeds, Newcastle upon Tyne, Sheffield, Teesside, Wakefield and York.

Northern Circuit

Circuit Administrator, Aldine House, West Riverside, New Bailey Street, Salford, M3 5EU. Tel: (061) 832 9571

This circuit covers courts at Barrow-in-Furness, Bolton, Burnley, Carlisle, Kendal, Lancaster, Liverpool, Manchester and Preston.

South Eastern Circuit

Circuit Administrator, New Cavendish House, 18 Maltravers Street, London, WC2R 3EU. Tel: (01) 936 7232

This circuit covers courts in Greater London and at Aylesbury, Bedford, Bury St. Edmunds, Cambridge, Canterbury, Chelmsford, Chichester, Ipswich, Kings Lynn, Lewes, Maidstone, Norwich, Reading, St. Albans and Southend.

Wales and Chester Circuit

Circuit Administrator, Churchill House, Churchill Way, Cardiff, CF1 4HH.
Tel: (0222) 396925

This circuit covers courts at Caernarvon, Cardiff, Carmarthen, Chester, Dolgellau, Haverfordwest, Knutsford, Merthyr Tydfil, Mold, Newport, Swansea, Warrington and Welshpool.

Western Circuit

Circuit Administrator, Bridge House, Clifton Down, Bristol, BS8 4BN.
Tel: (0272) 732231

This circuit covers courts at Barnstaple, Bodmin, Bournemouth/Poole, Bristol, Devizes, Dorchester, Exeter, Gloucester, Newport (IOW), Plymouth, Portsmouth, Salisbury, Southampton, Swindon, Taunton and Winchester.

In addition to the sittings of the High Court and the Crown Court at the places mentioned above, each circuit is responsible for county courts sitting at a number of other places not specifically mentioned.

APPENDIX C - COMPLAINTS SYSTEMS OVERSEAS

1. Legal systems overseas follow two distinct patterns. In one, judges are appointed at an early age and progress up a career ladder. They do not usually have extensive experience as advocates, although in some jurisdictions they may have begun their careers as public prosecutors and then chosen to become judges. This structure is akin to a civil service career in this country, and is the most common one in continental European and other legal systems based on them, such as most of those in South America. In the other pattern, lower court judges (or magistrates) are appointed at a more mature age from the ranks of laymen or lawyers or (in some jurisdictions) are elected by popular vote. Higher court judges are appointed from among the ranks of practising lawyers and receive little formal training, being expected to have learned on the job as temporary judges or from their experience in practice. This is the pattern in the United Kingdom and most jurisdictions based on the common law.

2. The difference between the two patterns arises from historical accident, and has no necessary bearing on the qualities of the judges as lawyers or their capacity to be independent of the Executive which appoints them. We have not been able to conduct a thorough survey of the different types of complaints systems that exist in other jurisdictions. Of those we have looked at, both the judiciary and court staff fall within the jurisdiction of the Ombudsman in Sweden and Finland. Only the court staff fall within the jurisdiction of the Ombudsman or equivalent officer in Denmark, Norway, Australia, New Zealand and some States of the U.S.A. Many countries have a Judicial Commission whch examines complaints against judges and court personnel. In 1980, for example, forty-nine of the States of the U.S.A. had some mechanism for inquiring into judicial disability or misconduct.

3. We summarise below three of these systems to give some comparative idea of how they operate

A. Sweden

The Ombudsman's main concern is to ensure that cases are tried and judgment rendered within a reasonable time. He has power, rarely exercised, to prosecute court officials for neglect of duty. He only does so where the fault was intentional, or the negligence gross, and the act was committed in the exercise of public authority. It is far more usual to report such misconduct to an independent National Disciplinary Offences Board, which has power to admonish and fine. He will not intervene in a case while it is in progress unless the complaint is that the

case is being unduly delayed or judgment is not delivered within a reasonable time of the trial. If the Ombudsman should himself commit some criminal offence in his official capacity, he can be prosecuted before the Supreme Court on the order of the Swedish Parliament's Standing Committee on the Constitution. It appears from the English Summary of the Ombudsman's Annual Reports for the years 1978–1980 that he criticised some lower courts for failing to permit defendants to enter defences before judgment was given, and a criminal court for permitting further charges to be laid against an accused at the hearing without prior warning. About eight per cent of the case load of the Swedish (and Finnish) Ombudsmen involve complaints about the courts.

B. Denmark

Under Articles 48 and 49 of the Danish Code of Civil Procedure, anyone who considers himself injured by improper or unseemly conduct on the part of a judge in the exercise of his official duties can lodge a complaint with the President of the Court in which the judge sits (equivalent to a Division of the High Court in England and Wales). If the complaint is upheld, the presiding judge may give the offending judge an appropriate warning in private. His decision is notified to the complainant and the Minister of Justice. Alternatively, it is possible to file a complaint within fourteen days with the Chief Public Prosecutor for presentation to a special court of complaints. This court, created in 1939, consists of three judges from the three levels of the courts (equivalent to our magistrates' courts, county court and High Court), appointed by the Queen on the recommendation of the Minister of Justice for a non-renewable ten-year term.

The special court has power to admonish, fine, suspend or remove a judge. An appeal lies to the Supreme Court. Up to 1980, some seven judges had been removed from office for offences such as tax evasion. The number of cases average about eighteen per year. Most matters are dealt with *in camera* and by post, but the more serious cases are heard in open court and the judgment is made available to the public. Two examples where admonitions have been given were of a judge who lost his temper and threw the evidence at the defendant's feet; and of another who browbeat a policeman testifying as a prosecution witness in a road traffic case.

The court has jurisdiction over all judicial officers. Court officals fall within the jurisdiction of the Ombudsman, who has no jurisdiction over the judges.

C. California

A Commission on Judical Performance was set up in 1960 under Article VI, s.18 of the California Constitution. Its members comprise five judges appointed by the State Supreme Court, two attorneys appointed by the State Bar and two laymen

appointed by the Governor. They serve four-year renewable terms. On the recommendation of the Commission, the Supreme Court of California may:–

(1) retire a judge for disability that seriously interferes with the performance of his or her duties and is, or is likely to become, permanent, and

(2) censure or remove a judge for action that constitutes wilful misconduct in office, persistent failure or inability to perform his or her duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Up to 1980, the Supreme Court had censured judges on six occasions and removed (or retired involuntarily) five judges. The removals were for conduct that was "vulgar and profane... with intent of curtailing victim's cross-examination of witnesses"; "use of vulgar language in dealing with professional associates, employees and officers of the court". One 82-year old judge was removed on the grounds of senility. The Commission was given power in 1976 to issue private admonitions. Each case is based on a pattern of behaviour rather than a single instance. Judges have been censured for "unintentional failure to decide cases on time". Between 1961 and 1978, seventy-six judges left office under pressure from the Commission (California has approximately 1,200 serving judges). The Commission refers about fifty complaints a year to judges for their comment, and only a fraction of these are referred to the Supreme Court. Informal criticism is sometimes made during the course of an investigation. The Commission's jurisdiction does not cover subordinate judicial personnel, such as masters, commissioners and referees, nor does it deal with the actions of court staff. The Commission considers complaints *in camera*, but its recommendations are published and it must notify the complainant of its decision. The Supreme Court decides on the recommendations of the Commission at a trial in open court.

APPENDIX D - REPORT BY PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (P.C.A. Selected Cases 1985, Vol. III, H.C. 528)

Lord Chancellor's Department

Case No. C157/84 - Mishandling of actions under the 'small claims' procedure

1. A man complained that a county court (the Court) mishandled two actions which he initiated under the 'small claims' procedure; that court officials were unhelpful when he was trying to formulate his claims and that when he brought his dissatisfaction to the notice of the Lord Chancellor's Department their response was inadequate. He also complained that the Department's leaflet 'Small Claims in the County Court' was misleading and unhelpful.

Investigation

The first action

2. On 21 July 1982 the complainant requested the Court to serve a summons on a company seeking the payment of £345 in respect of professional services which he had rendered and of court fees of £26. The summons was entered by the Court on 27 July and served on the company by post on 30 July. On 12 August the company notified the Court that they would be defending the action. On 25 August the Court notified the parties that there would be a preliminary hearing on 6 October. The company wrote to the Court on 30 September requesting an adjournment of the hearing to enable them to assemble all the documents they required. On 6 October the Registrar ordered the parties to exchange lists of all their documents within fourteen days and allowed a further fourteen days so that each party could have an opportunity to inspect the documents disclosed. He ordered the hearing of the action to be fixed for the first open date after thirty-five days.

3. The complainant submitted his list of documents on 18 October. On 29 October he wrote to the Registrar pointing out that the company had not submitted a list of documents and saying that he felt this could prejudice his case. He asked the Registrar to advise him how he stood in these circumstances. On 10 November the Registrar directed that this letter should be treated as an application to debar the defendant from defending the claim further and that an appointment should be made for the hearing of this application. On 17 November the Court sent both parties notice that the application would be heard on 5 January 1983.

4. On 19 November the Court received from the complainant a letter dated 12 November asking the Registrar for the details requested in his letter of 29 October. I have seen that the Court endorsed the complainant's letter of 12 November 'letter answered 17 November 1982' - which I take to refer to the notice issued on 17 November (paragraph 3). The complainant wrote again on 2 December, this time marking his letter for the personal attention of the Chief Clerk at the Court. The complainant pointed out that he had not had the courtesy of a reply to his two earlier letters and asked the Chief Clerk to intervene in the matter. On 6 December the Chief Clerk wrote telling the complainant of the directions given by the Registrar in respect of the letter of 29 October (paragraph 3). The Chief Clerk also referred to the arrangements made for the application to be heard on 5 January 1983 and said that the Registrar would 'make such order as he thinks fit on that day'.

5. At the hearing on 5 January the Registrar extended by fourteen days the defendant's time for filing a list of documents. The company responded by filing a list of documents on 17 January and the complainant submitted his comments on this list on 21 January. The complainant has said that a male member of staff at the Court told him that the case would be re-listed for hearing within six weeks of the hearing being held on 5 January. But the Court have no record of any such advice being given.

6. In fact the next item on the Court's file (after the complainant's letter of 21 January commenting on the defendant's list of documents) is a letter which the complainant wrote on 9 September 1983 saying that he understood that the Company was now in liquidation and asking for some explanation of why the case had not been re-listed for hearing shortly after 19 January (that is, fourteen days after the previous hearing). The Department has told me that the Court treated this letter as a request to set down the case for hearing and accordingly placed it with the Court file in a box containing cases awaiting hearing dates. But no reply was sent to the complainant. Two further letters which he sent on 21 September and 5 October were dealt with similarly and went unanswered.

7. On 28 October the complainant wrote to the Department's headquarters complaining about the handling of this case (and in very general terms about the handling of the second action which features in his complaint to me). He said that he thought that some explanation was due in the instant case as to why, after he had been advised that the case would be re-listed for hearing within six weeks, a new date was not fixed. On 10 November the Department told the complainant that his letter had been passed to the Circuit Administrator's Office (CAO) for reply. On 17 November CAO told him that enquiries were being made and that a full reply would be sent as soon as possible and on the same day they wrote to the Chief Clerk at the Court asking for a report on the points raised by the complainant.

8. Having heard nothing further by 19 December the complainant wrote to CAO expressing his dissatisfaction with the delay. On receipt of this letter (on 21 December) CAO telephoned the Court to ask for their report as soon as possible and they followed this up with a written reminder on 28 December. On the same day they sent the complainant an interim reply apologising for the delay. On 4 January 1984 the Court submitted a report on the instant case outlining the course of events and saying, among other things, that it was their practice to set actions down for hearing only upon request of either party. In sending the complainant a substantive reply on 11 January CAO apologised for the fact that his letters of 9 and 21 September and 5 October 1983 had been placed on the Court file unanswered. They said that it appeared that the file had been placed in a box of arbitration cases awaiting listing and that subsequent correspondence was simply added to the file. The letter went on to say 'Although this is regretted, I should inform you that it is the practice of the Court not to list cases for hearing until a request has been received from one or other of the parties involved. The order made on 5 January 1983 merely ordered that 'time for defendant's discovery and inspection to be enlarged to fourteen days as from today and that in default the defendant be debarred from defending'. No mention was made of the case automatically being re-listed for hearing and I am sorry if you misconstrued this. You will realise that the conduct of a case is largely in the hands of the parties concerned and that if you are concerned by the slow progress being made the onus is on you to take such actions as is appropriate to speed matters up'. They enclosed a copy of the booklet 'Small Claims in the County Court' which they said he might find useful as regards procedure. (No specific mention was made in the letter of the complaint about the handling of the second action, to which I refer in paragraphs 10 and 11 below.)

The complainant replied to this letter on 30 January saying that he could not accept that he had been at fault in the case. He pointed out that page thirty of the booklet 'Small Claims in the County Court' said that the Registrar would fix a date for a trial or arbitration unless it was to be heard by an outside arbitrator. The complainant also said that throughout his dealings with the staff of the Court he had found them 'most unhelpful' and he added that he would be seeking an investigation by me. The CAO replied on 7 February saying 'The booklet 'Small Claims in the County Court' is intended merely as a guide to litigants who are unfamiliar with Court procedures. Although it is accepted that the hearing date will be fixed by the Court the onus is on you to provide the Court with any relevant information if you wish your case to be dealt with urgently. In the absence of any extra information hearing dates will be allocated on a 'first come, first served basis'. With regard to assistance on Court formalities they said that staff would do their best to be as helpful as possible but that they could not give anything which might be regarded as legal advice and for this reason they might often err on the side of caution. The complainant remained dissatisfied and on 14 February he asked the Member to refer his complaint to me.

The second action

10. On 20 December 1982 the complainant issued a summons seeking payment of £100 (plus £10 court fee) from an individual ('Mr. A.'). Mr A. filed an admission on 17 January 1983 offering to pay the sum in monthly instalments of £10. The complainant accepted this offer and judgment was entered on 3 March. Only £30 had been paid by 7 July and as no further payments appeared to be forthcoming the complainant wrote to the Registrar asking whether there was any action the Court could take to arrange for settlement of the £70 balance outstanding and the Court fee of £10. The Court responded on 12 July by sending the complainant a booklet which they said should be of assistance to him – with the result that on 8 August he requested the Court to issue a warrant of execution against Mr. A. The Court were not able to act immediately on this request as the complainant had not sent sufficient fee. However, he sent the balance due on Friday 18 August and this was received on 22 August. The Department have told me that the bailiff received the warrant of execution on 21 September. He made three visits to Mr. A's address on 27 October, 4 November and 11 November but was unable to get a reply. On 27 October and 11 November he left letters for Mr. A. who failed to respond. On 16 November the bailiff made a further visit and on this occasion Mr A. paid £40, this sum being paid into Court on 17 November. During the 16 November visit the bailiff realised that there were insufficent goods at Mr A's address to cover the cost of removal and sale and that for this reason the warrant could not be executed. The Court notified the complainant accordingly on 21 November.

11. When the complainant wrote to the Court on 21 September 1983 (paragraph 6) about the first action he also enquired about the latest position on this section action. And when he wrote to the Department on 28 October 1983 (paragraph 7) he made it clear that he was complaining about the handling of both actions. However the Department's reply (paragraph 8) dealt only with the first action. When the complainant wrote to the Member on 14 February 1984 he asked for an investigation into the handling of both actions.

Findings

12. In sending his comments on this complaint the Principal Officer of the Department accepted that there had been serious discourtesy and maladministration by the Court in failing to reply to the complainant's letters of 9 and 21 September and 5 October 1983 (paragraph 6). He said that the explanation given by the Chief Clerk of the Court that the letters had been placed with the Court file in a box containing cases awaiting hearing dates and, due to a backlog of work, had not been answered, was totally unsatisfactory. He also acknowledged that there had been considerable delays in dealing both with the letter of complaint dated 28 October 1983 (paragraph 7) and with the warrant of execution in the second action (paragraph 10). And he accepted that the passage in the booklet "Small Claims in

the County Court" to which the complainant had drawn attention (paragraph 9) was indeed misleading. He offered through me, his unreserved apologies to the complainant for all these shortcomings. He also undertook to have the misleading booklet amended as soon as possible.

13. The Principal Officer said that the unsatisfactory handling of the complainant's correspondence stemmed from, but was not excused by, staff shortages which had since been remedied. As well as being under-staffed at times between April and October 1983 the Court had, he said, suffered from a lack of experienced officers. The Principal Officer explained that staff shortages had also resulted in the general delay in dealing with the warrant of execution in the second action and the failure to follow the normal practice which required the Court to write to the complainant four weeks after the bailiff had received the warrant to report what, if anything, had so far happened. At the time of issue of the warrant there had been no typist at the Court and the warrant had had to be sent to another Court for preparation. Only one bailiff and one clerical officer had been in post at the time and priority was being given to accrued arrears. I accept that staffing difficulties seem largely to account for the Court's poor performance in the second half of 1983. But there was another occasion, in 1982, when, as I see it, the Court were not as helpful or as courteous as they might have been. When the complainant wrote to the Court on 29 October 1982 (paragraph 3) he specifically asked for advice. The Registrar directed that this letter should be treated as an application to debar the defendant from defending the claim further and the Court staff acted on that direction. But they failed to explain this properly to the complainant until after he had written twice more seeking a response to his enquiry. Overall, I find that the Court staff's administrative performance fell far short of the standard the complainant was entitled to expect and I criticise them accordingly.

14. The complainant also said that Court staff were unhelpful when he sought to formulate his claims. It is very difficult for me to arrive at a conclusion about a complaint of this sort. Different people have different conceptions of what constitutes helpful advice and the parties involved in any discussion inevitably have differing recollections of what took place. All I can say is that, given the staffing problems which existed, and judging by the treatment given to the complainant's written requests for advice, I cannot rule out the possibility that the Court staff's responses to requests which he made in person might also have been less helpful than they should have been. I am also bound to say that I regard the CAO's letter of 7 February 1984 (paragraph 9) as an inappropriate response to the points made in the complainant's letter of 30 January. The reply seems to suggest, quite wrongly as it transpired, that a hearing date would have been fixed by the court in due time but that the onus was on the parties to the dispute to speed up if they were dissatisfied with the rate of progress. The reply failed to acknowledge (as the Principal Officer has since done) that the passage on page thirty of the booklet 'Small Claims in the County Court' cited by the complainant was misleading. I am not surprised, therefore, that the complainant concluded that Court officials had been unhelpful and were not dealing properly with his representations.

15. It is clear that shortcomings by Court administrators in the handling of the complainant's affairs have caused him a good deal of unnecessary annoyance. I turn now to consider whether they have also caused him any material loss. The complainant has not been able to recover any of the money which he sought in the first action and has only been able to recover part of the sum sought in the second action. The difficulty in the first action was that by the time the case was set down for hearing the defendant company had gone into liquidation. The complainant has said that he was given to understand by a male member of the Court staff that the case would automatically be re-listed for hearing some six weeks after the hearing in January 1983 (which would have been five or six months before the company became bankrupt). The only male member of the permanent staff of the Court Office then was the Chief Clerk (now retired) who told me that a male temporary relief Clerical Officer might also have been there for a while early in 1983. The former Chief Clerk has said that he has no recollection of dealing with the complainant at this time. Furthermore, he was sure that neither he nor anyone else in the Court Office would have advised that there would automatically be a hearing within six weeks unless the Registrar had made a direction to that effect (and I am satisfied that no such direction was made in the present case). In view of the conflicting oral evidence, which my investigation has been unable to resolve, it is not possible for me to make a judgment on the quality of any advice the complainant might have received from the Court staff. However that might be, it seems only common prudence for a plaintiff interested in pursuing proceedings to keep himself informed and to make further enquiries if no date has been fixed for the hearing after a reasonable interval. On this basis I would have expected the complainant to contact the Court Office before the end of February 1983 to find out how matters stood. The fact that he did not raise the matter with the Court until September 1983 suggests that he was prepared to let it drift and was only spurred into action when he heard that the defendant company had gone into liquidation. On this analysis, and since the Court were following their normal practice in not setting down the case for hearing until asked to do so by one of the parties, I can see no grounds for holding the Department responsible for the fact that the complainant has not been able to recover the money sought in this action. As to the second action, the Court delayed by a month the passing of the warrant to the bailiff and a further month elapsed before the bailiff made the first of his four visits to Mr A's address. But no evidence has emerged to give grounds for thinking that this delay had a significant bearing on the eventual outcome. In these circumstances I also find no basis for holding the Department responsible for the fact that the complainant has not been able to recover all the money sought in this second action. Moreover, the Department have told me that it is still open to the complainant to attempt to enforce the judgment by some alternative method and that the Court have already sent him a booklet explaining the various procedures available in the County Court.

Conclusion

16. The investigation has shown that there were serious shortcomings by Court officials in the administrative handling of the complainant's separate actions and in the response to his representations about these matters. The case has also brought to light a misleading reference in the booklet 'Small Claims in the County Court'. All this clearly caused the complainant a great deal of justified annoyance. But I have not found that the shortcomings concerned caused him financial loss. I am pleased to report that the Lord Chancellor's Department made a suitable revision in the November 1984 reprint of the booklet 'Small Claims in the County Court', page thirty of which makes it clear that the Registrar may not proceed to fix a date for the trial or arbitration if he has given directions for the filing of more details of the claim or defence or if he has ordered the filing and exchange of lists of documents. In such a case it is for the plaintiff to ask the Court to fix a date when he is ready to proceed. I regard this action and the apologies offered to the complainant by the Principal Officer as an appropriate outcome of my investigation.

APPENDIX E - COUNCIL OF EUROPE

RECOMMENDATION No. R (84) 15 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES RELATING TO PUBLIC LIABILITY[1]

(Adopted by the Committee of Ministers on 18 September 1984 at the 375th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that public authorities intervene in an increasing number of fields, that their activities may affect the rights, liberties and interests of persons and may, sometimes, cause damage;

Considering that, since public authorities are serving the community, the latter should ensure reparation for such damage when it would be inappropriate for the persons concerned to bear it;

Recalling the general principles governing the protection of the individual in relation to the acts of administrative authorities as set out in Resolution (77) 31 and the principles concerning the exercise of discretionary powers by administrative authorities set out in Recommendation No. R (80) 2;

Considering that it is desirable to protect persons in the field of public liability,

Recommends the governments of member states:

a. to be guided in their law and practice by the principles annexed to this Recommendation;

b. to examine the advisability of setting up their internal order, where

1. When this Recommendation was adopted, and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Sweden reserved the right of his Government to comply with it or not and the Representatives of Denmark and Norway reserved the right of their Governments to comply or not with Principle II thereof.

necessary, appropriate machinery for preventing obligations of public authorities in the field of public liability from being unsatisfied through lack of funds.

Appendix

Scope and definitions

1. This Recommendation applies to public liability, that is to say the obligation of public authorities to make good the damage caused by their acts, either by compensation or by any other appropriate means (herinafter referred to as "reparation").

2. The term "public authority" means:

a. any entity of public law of any kind or at any level (including state; region; province; municipality; independant public entity); and

b. any private person, when exercising prerogatives of official authority.

3. The term "act" means any action or omission which is of such a nature as to affect directly the rights, liberties or interests of persons.

4. The acts covered by this Recommendation are the following:

a. normative acts in the exercise of regulatory authority;

b. administrative acts which are not regulatory;

c. physical acts.

5. Amongst the acts covered by paragraph 4 are included those acts carried out in the administration of justice which are not performed in the exercise of a judicial function.

6. The term "victim" means the injured person or any other person entitled to claim reparation.

Principles

I

Reparation should be ensured for damage caused by an act due to a failure of a public authority to conduct itself in a way which can reasonably be expected from it in law in relation to the injured person. Such a failure is presumed in case of transgression of an established legal rule.

II

1. Even if the conditions stated in Principle I are not met, reparation should be ensured if it would be manifestly unjust to allow the injured person alone to bear the damage, having regard to the following circumstances: the act is in the general interest, only one person or a limited number of persons have suffered the damage and the act was exceptional or the damage was an exceptional result of the act.

2. The application of this principle may be limited to certain categories of acts only.

III

If the victim has, by his own fault or by his failure to use legal remedies, contributed to the damage, the reparation of the damage may be reduced accordingly or disallowed.

The same should apply if a person, for whom the victim is responsible under national law, has contributed to the damage.

IV

The right to bring an action against a public authority should not be subject to the obligation to act first against its agent.

If there is an administrative conciliation system prior to judicial proceedings, recourse to such system should not jeopardise access to judicial proceedings.

V

Reparation under Principle I should be made in full, it being understood that the determination of the heads of damage, of the nature and of the form of reparation falls within the competence of national law.

Reparation under Principle II may be made only in part, on the basis of equitable principles.

VI

Decisions granting reparation should be implemented as quickly as possible. This should be ensured by appropriate budgetary or other measures.

If, under domestic law, a system for a special implementation procedure is provided for, it should be easily accessible and expeditious.

VII

Rules concerning time limits relating to public liability actions and their starting points should not jeopardise the effective exercise of the right of action.

VIII

The nationality of the victim should not give rise to any discrimination in the field of public liability.

Final provisions

This Recommendation should not be interpreted as:

a. limiting the possibility for a member state to apply the principles above to categories of acts other than those covered by the Recommendation or to adopt provisions granting a wider measure of protection to victims;

b. affecting any special system of liability laid down by international treaties;

c. affecting special national systems of liability in the fields of postal and telecommunications services and of transportation as well as special systems of liability which are internal to the armed forces, provided that adequate reparation is granted to victims having regard to all the circumstances;

d. affecting special national systems of liability which apply equally to public authorities and private persons.

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