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JUSTICE 2000 Campaign Launch

insiders' guide to the South African Constitutional Court

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interview with Paul Boateng MP
Haldane response
new labour and access to justice

plus

judicial review, the public interest & the judges • Westminster vote rigging scandal • human rights ombudsman as icon • seeking justice in Guatemala & El Salvador • housing law - special feature • 'til the law do us part - lesbian & gay immigration • the meaning of life!

Haldane Society of Socialist Lawyers

HALDANE SOCIETY of Socialist Lawyers

The **Haldane Society** was founded in 1930. It is an organisation which provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It is independent of any political party. Its membership consists of individuals who are lawyers, academics or students and legal workers, and it also has trade union and labour movement affiliates.

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Manchester - Neil Usher, Kenworthy Chambers, Kenworthy Buildings, 83 Bridge Street, Manchester, M3.

As a member of the Society, you will receive 3 free copies of *Socialist Lawyer* each year. You will be informed of the Society's public meetings which are free to all members. You will also have access to one or more of the sub-committes which meet regularly. Through those sub-committees you will have the chance to participate in and organise international delegations.
Join the Haldane Society now! — Please fill out the slip on the back cover.

Haldane Society Sub-Committees

At the heart of the work of the Haldane Society lie the various sub-committees, which cover a broad range of issues and whose work includes campaigning as well as disseminating information and stimulating discussion on the particular area. All members of the Society are encouraged to join one or more of the committees or to form new ones. We would in particular like to revive the Housing Sub-Committee and would welcome suggestions. Below are listed details of the different committees, including the relevant contact person.

Crime - Members are welcome to join the committee's mailing list for details of future work & events. *Convenor: Mike Baker, tel: 0171 797 7766.*

International - Meetings, with an invited speaker, are on the second Tuesday of each month at 2 Field Court, Gray's Inn, London WC1 at 7pm.
Convenor: Bill Bowring, tel: 0171 405 6114.

Lesbian and Gay - *Convenor: Tracey Payne, tel: 0171 583 8233.*

Mental Health - *Convenor: Fenella Morris, tel: 0171 797 7766.*

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Student & Trainee - *Mark McDonald, tel: 0171 289 1146.*

Immigration - *Convenor: Lisa Connerty, tel: 0171 582 9862.*

Employment - *Convenor: Michael Ford, tel: 0171 404 1313.*

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contents

SOCIALIST LAWYER:

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insight

features

CONTRIBUTIONS are very welcome. If you are interested in writing articles or reviews and would like to discuss your contribution further, please contact:
Mark Henderson on (tel/fax) 0171-388 2550 (H), 0171-404 1313 (W) or Steve Illingworth on 0171-583 8233.

reviews

ISSUE

Insight

Ending The Detention of Asylum Seekers

We cannot begin to tackle issues of racism, unless we first understand its causes.

The slave trade in human beings and the consequent large scale removal of people from Africa to Europe, America and the West Indies, was engaged in by Europe for profit. Colonial rule and the "Scramble for Africa," was a division by Europe of African nations for economic gain. The money for the Industrial Revolution in the West came from the exploitation of Africa, Asia and South America. To justify oppression against a group of people, it is necessary to dehumanise them. Europe justified its actions by claiming that 'whites' were a superior race and other races were inferior.

The defenders of systems of oppression, Europe produced interpretations of history that were distorted. The writings, attitudes, teachings, popular culture and media of Europe have perpetuated this distortion of the truth and portrayed it as reality.

Europe has exploited what it can and continues in its economic oppression through unfair trade terms. Then it builds "Fortress Europe" to keep the rest of the world out.

The European Association of Lawyers for Democracy and World Human Rights met in Berlin last October to discuss this issue. The General Assembly of the EAL is taking place in Bulgaria on 20th - 21st May 1995. On the agenda is a campaign to end the detention of asylum seekers throughout Europe. (This practise is a violation of the Geneva Convention). Contact Jane Wisbey 0171 242 2897 for more info.

Also, 'Campaign to Close Down Campsfield' (detention centre) is holding a National Day of Action against Detention on June 24th. Details and leaflets are available from Bill MacKeith 01865 724452.

Women Deportees: New Campaign

Southall Black Sisters have launched a new national campaign against the deportation of women who have left their partners as a result of domestic violence and find themselves destitute and facing deportation as a consequence.

These women have leave to remain on the basis of marriage given for one year initially. At the conclusion of this year they can apply for indefinite leave to remain which will only be granted if the marriage is subsisting. Any recourse to public funds during this probationary year is a breach of their conditions of entry and public funds for this purpose includes Income Support, Family Credit, Housing Benefit , Council Tax Benefit and public housing. Once the marriage has broken down these women are legally without a basis of stay and again are without access to public funds.

Women in violent relationships, often with their children, are thus faced with the stark choice of staying in the relationship and enduring the violence or returning to countries where they will often face ostracisation and abuse as a result of the circumstances of their return.

The Home Office claim to be aware of "only" 150 such cases at present and say they do not have the resources for a full scale monitoring exercise.

The campaign will concentrate on maximising publicity in such cases, concentrating on the domestic violence aspect in an attempt to capitalise on the recent Government statement of intent to tackle domestic violence and the "Zero Tolerance" policies of some local authorities.

Anyone able to assist the campaign or interested in obtaining more information should contact Hanana Sidiqui at Southall Black Sisters

Habitual Residence Test Parliamentary Lobby

The habitual residence test for Income Support, in place since October 1994, has already caused poverty and human suffering of a depth unknown in the UK since before the introduction of the Welfare State.

In at least two cases known to advisors babies have been born prematurely as a result of poverty induced malnutrition and in one such case the baby did not survive labour.

The test makes it a condition of entitlement to benefit that the claimant be habitually resident in the UK and applies to Housing Benefit and Council Tax Benefit as well as Income Support. In many cases this effectively bars access to public housing, including hostel accommodation, as no rent can be paid.

The test was purportedly introduced to prevent much hyped " benefit tourism " and applies to all claimants including British Nationals. In fact the effect of the test is to illustrate the callous racism of the present Government as the vast majority of those affected are from ethnic minorities, for example British Citizens by birth returning to the UK after moving with their parents as children. European Union nationals are of course also badly hit by the test in blatant Govermental disregard of the spirit of the Treaty of Rome. Speaking in Parliament in a recent attempt to justify the test, Peter Lilley said that he was sure that the British public did not want those who had never worked or paid taxes to be paid benefits, an attack on the basis welfare state principle of "safety net" non contributory benefits.

On the 7th of March a parliamentary lobby protesting again the test took place at the House of Commons, jointly organised by the Joint Council for the Welfare of Immigrants and the Child Poverty Action Group and chaired by Glenda Jackson MP. Speakers from the National Association of Citizens Advice Bureaux and Newham Social Services spoke of the strain placed on resuorces already stretched to their limits by families made literally destitute and homeless. One speaker told of being forced to reprint a list of soup kitchens filed away with relief in the early nineteen seventies.

The lobby was well attended and several members of both Houses were present. Many of those advising claimants spoke from the floor of their distress at being helpless to assist families refused benefit and facing a wait of up to seven months for an appeal hearing with no means of interim support. In her closing speech Ms Jackson summed up the test as a"nasty little piece of legislation" and spoke of the need for sustained resistance.

JCWI and CPAG now plan to follow up with questions raised by sympathetic Members in both Houses.

Anyone able to assist should contact Don Flynn at JCWI on or Beth Lakhani at CPAG.

EDITORIAL:

There is a new mood amongst the Left. After years of defeat or retrenchment, there is a sense of growing determination. Ironically perhaps, encouragement comes from both the increasingly obvious failures of the Right, and the crumbling of the facade of the Labour leadership which is beginning to force the Left to confront some hard political questions.

Internationally, there has been a change from the almost total collapse of Communism a few years ago to a situation in which Communist and other Left parties are beginning to incorporate lessons from the past in an effort to rebuild and adapt to a new political environment.

The victory of the people of South Africa over apartheid is a beacon to socialists everywhere. It is fitting therefore that the first major Congress of the International Association of Democratic Lawyers since 1990 (of which the Haldane Society forms the British Section), should take place next year in Johannesburg. In 1990 there were many delegates to the IADL who thought they may be attending their last Congress. The Communist regimes of Eastern Europe were tumbling, the Soviet government was teetering between capitalism and collapse, socialist parties and trade unions in capitalist countries were struggling to keep their heads above water, and global capitalism seemed set to replace any remnants of notions of democratic government. We are not yet in calm waters and the last of these predictions remains particularly real. Yet the very fact that the IADL Congress can take place at all is proof that the fight for socialism, democracy and justice is far from over. Its location is a symbol of the South African liberation struggle and the importance to socialists world-wide of defending and protecting the essence of the gains which have been won.

Some old debates within socialist movements, such as those over the rights and wrongs of soviet- style communism, have been brought to an end abruptly. The weakening of socialist organisation in many countries and the collapse of communist regimes have rendered them obsolete. The rise of the right and the power of the market have generated new strategies for the Left and for Left unity.

Rethinking within the Left about human rights strategies has a direct relationship with questions of the law and legal system. Trade unions are now tackling difficult questions as to the nature of a law that can recognise and protect fundamental rights. An understandable cynicism about the law leads some to attempt to declare trade union and labour rights as law free zones ; the same view can be applied to other aspects of substantive rights.

We do not believe that it is possible to abdicate from the law. Those responsible for dispensing justice or injustice will step in to fill any gaps left by such an abdication. Unless socialists achieve laws that reflect fundamental rights as far as possible, the law will continue to reflect the self interest of those with political and economic power.

The experience of the new government and of socialists in South Africa shows that it is possible to begin to change the course of the development of the law. The reasoning that is applied by parliamentarians, lawyers, jurists and the courts, mainly based on a view of the law and legal process that supports the existing systems of inequality, must be challenged and replaced. Fundamental notions, such as that of the Rule of Law, have to be examined for what they really are. Where what are paraded as constitutional ideals are allowed to disguise illegality and injustice, they must be thoroughly overhauled. That will take time. So that we don't lose our way in the course of this, we need to identify the common principles that inform our aspirations for a socialist society.

With these imperatives in mind, the Executive Committee of the Society decided to launch the new campaign which will carry the Haldane Society's activities over the coming period. We feel that it is time that socialist lawyers lifted their heads above the parapets. While there is still a huge amount of vital work in defending fundamental rights from attack and resisting the oppressive actions of governments and corporations, we want to develop a vision of the future which can inform and mould our contributions to the development of socialism internationally and the struggle of the Left here.

Justice 2000 will help us, through meetings, discussion, debate, writing and activities, to develop an understanding of the nature of a system of law and rights which will be required to underpin the sort of society that we aim to achieve. As active socialist lawyers we need to understand the nature of law and how to use it and resist it strategically; to understand what the role of law should be in a new society and what institutions are required to achieve that.

Executive Committee

JUSTICE 2,000 - Campaign News

South Africa - A Legal System for a Democratic Future

Justice 2000, the new campaign of the Haldane Society, was launched on April 27th at the first of a series of spring and summer public meetings. One year after South Africa had gone to the polls in its first ever democratic election, Fayeeza Kathree, a researcher with the new Constitutional Court, led us through some of the complexities facing those that are charged with ensuring that the true purpose of the constitution is upheld.
Report by Richard Bielby

Fayeeza began the meeting by reminding us that in the 12 months that have passed, the new South African government has an interim constitution that enshrines the principles of a liberal democracy. There is now a strong central government working alongside 9 regional governments, an independent judiciary and a Bill of Rights. Along with establishing universal suffrage, these reforms, mark a break with the apartheid of the past.

The commitment to the introduction of a Bill of Rights had led to healthy debate within the ranks of the National Liberation Movement. Some felt that such a Bill would entrench minority rights and leave the apartheid regime with its hands still on the levers of power. However, the prevailing view was that in a democratic society a majority government should not oppress the minority but should tolerate it and take account of their needs. A Bill of Rights and a constitution that enshrines principles of fairness was seen as the best way of achieving this.

Fayeeza moved onto the role of the new Constitutional Court. The Court is the ultimate protector of the Constitution. Comprised of 11 judges drawn from all areas of South African society, with an ability to produce judgements in all 11 official South African languages, it can overrule acts of parliament and of the executive.

The system for appointment of judges in South Africa is key to the protection and enforcement of fundamental rights. There is now a Judicial Services Commission which consists of members of Senate, the Chief Justice of the Supreme Court, the President, and representatives of the legal profession. The Commission is responsible for the appointment of all judges, including those of the Constitutional Court. Of the 11 members of the Court, only 4 were judges in the old system. Most of the others were either litigators or academics. There is still some way to go in achieving other balances; there are only 3 African members of the Court and two women.

The first session of the Court in February this year was to rule on the validity of the legislation on capital punishment. In South African law the death penalty is mandatory for murder, yet the Constitution upholds the right to life, which is absolute and unqualified. The death penalty is also being tested against the Constitutional principles of the right to respect and dignity, and the prohibition on degrading or inhuman punishment. The judgement will be delivered towards the end of May.

The right to life principle is likely to spark other controversial questions for the Court, in particular over the right to abortion, This is a debate that rages across class and colour divides, dictated largely by religious and cultural persuasions.

Other issues recently brought before the Court have been the bedrocks of the apartheid system, namely the presumption of innocence, the right to be represented in court proceedings and the right to silence.

The common law and the traditional jurisprudence of the South African courts reflected and sustained a law of oppression and injustice. Now there is a need to develop a new way of legal thinking which is appropriate for the new society. This is difficult for jurists who have their roots in generations of the old approach. As Fayeeza said, We will have to make it up! The writing of the Constitutional Court's judgement on the presumption of innocence illustrated this problem- although there was support for its reasoning in the constitution , the judgment relied instead on the common law. In creating the fundamental rights in the new South Africa, the Court has still to find a new legal language.

While it is important to uphold the constitution, there is room for criticism of it. The Constitution is a document of compromise, as was inevitable at the time of the negotiations leading to last year's elections. But the constitution enshrines a number of fundamental principles which are unchangeable and would form the basis for any constitutional review.

A new Constitution and a new Bill of Rights is to be finalised in the next two years, through a Constitutional Assembly. Unlike the interim constitution, the Assembly will take place after a major consultation exercise throughout South Africa. Themes Committees have been formed. These are currently travelling around the country, taking submissions from people about what they want from the constitution, and their own needs and aspirations. Fayeeza described the South African constitution as home grown , and so it will remain as it develops. Of course it takes some aspects from other constitutions, and it enshrines the fundamental principles of human rights recognised in international law. But the constitution is intended to deal specifically with the past oppression of South Africans and their future aspirations.

Many believe that the area of gender discrimination has so far been inadequately tackled, both constitutionally or in the practice of reform in South African institutions. Now there is a Gender or Equity Commission, though some are anxious that this could lead to further marginalisation of women's issues in relation to other political questions. The Commission is currently drafting a bill to deal with women's rights and is also examining the equality clause in the existing constitution, which is seen as providing for formal but not substantive equality.

These complaints about the inadequacies of the constitution and the lack of provision for women's rights stem from the nature of the negotiation rounds for the interim constitution. During the first round, no women were involved at all. Even in the ANC women felt they were marginalised. Women's protest over this led to the formation of the Women's National Coalition, bringing together over 70 national and regional Women's groups, and the ANC Women's Charter. The Coalition was soon seeing the fruits of united action and forced the ANC and the National Party to agree to have at least one woman for every three delegates to the second round of negotiations.

Through these organisations and activities, South African women are developing an indigenous feminism. Now the Coalition is turning its attention to the repressive nature of South African Customary Law. The traditional leaders of South Africa wanted to see the interim constitution enshrine the principles of customary law, which would have included inherent inequality propounded by much of those laws. The Coalition is campaigning for a constitutional statement that the equality clause will trump customary law.

The debates over gender equality and the role of the constitution are raising other fundamental issues. In general, there is a view that the constitution is defective in providing only for civil and political rights and not for social and economic rights as well. This may well change in the next two years.

It is recognised that human rights transgressions may not even come to the attention of the Constitutional Court unless the mass of ordinary people are aware of their rights and have some means of asserting them. To this end the Constitution provides for the right to counsel. In practice, however, a means has not been found of making this a practical reality. Part of the solution may lie in ensuring that there are greater protections of fundamental rights built into the South African system at every level. There is now a Human Rights Commission, to which ordinary people can bring complaints. It also advises the government on the status of laws and ensures they are in tune with international standards. Individuals are able to petition the Commission about human rights abuses, including by the government or public authorities, and the Commission can refer cases to the Constitutional Court.

The Public Protector is the equivalent of the Local and Central Government Ombudsman in Britain. The South Africans decided that the word ombudsman carried connotations which they would rather avoid! The Public Protector supervises the actions of a wide range of public bodies and ensures that they comply with the law.

The lessons for British Socialists from the South African experiences are many. Perhaps the most critical is the importance of understanding the roots of revolution or reform, the legacy of a system in which injustice has become so common place that it is often not even questioned and the aspirations of the people who are building a new democratic society.

Richard Bielby is a pupil at 2 Garden Court

Secretary's Report

Fayeeza Kathree, a researcher at South Africa's new Constitutional Court, helped launch our Justice 2,000 campaign (see facing page for a full report) on April 27th.

Campaign Diary:

June 21st :
Can Women use the law?
Diane Abbot MP and Anne Pettifor (Labour Party).

July 12th:
The criminal Justice System in the 21st Century
Mike Mansfield QC.

July 19th:
Can the law overcome discrimination?
Angela Mason (Director Stonewall), Hanana Siddiqui (Southall Black Sisters) and Geoffrey Bindman.

All meetings will take place in the Tooks Court Annex, Sun Alliance House, 40 Chancery Lane, London WC2 and will commence at 7.30pm.

Labour Party and 'Access to Justice'.

Copies of the submission that we made to the Labour Party on their consultation paper on the provision of legal service, 'Access to Justice', can be obtained by forwarding a SAE for 38p to the Secretary.

Solicitors Courses.

The Haldane Educational Trust has places remaining on its Continuing Professional Development courses for Solicitors. Contact Jane Wisbey on 0171 242 2897 for further details.

Standing Orders.

Are you paying the correct amount? We do not have the resources to keep records of peoples employment and do not know when members move from studying to employment. So if you pay your membership subscription by standing order could you please check that you are paying the correct amount.

THE WESTMINSTER VOTE RIGGING SCANDAL

The eight year campaign to expose corruption of the democratic process at Westminster City Council has reached a critical stage. Steve Hilditch, Secretary of the group of residents who have brought the case, sets the scene.

"Disgraceful" .. "improper" .. "unlawful" .. "gerrymandering". These were the words of the Westminster Appointed Auditor, Touche Ross accountant John Magill, in his provisional report into objections made by a group of residents about Westminster's 'designated sales' housing policy. Magill's 750 page report, published in January 1994 after a four year Audit enquiry with 12,000 pages of evidence, was without doubt the most damning report ever written about a local authority.

The Auditor's provisional finding was that 10 members and officers, including Dame Shirley Porter and Barry Legg MP, were guilty of wilful misconduct and should be surcharged for a total of over £21 million. One of the 10, former Housing Chair Michael Dutt, has since committed suicide.

Leading local government barrister Andrew Arden QC (who has read all of the documents in his capacity as counsel to the objectors), says:

"This is the greatest act of corruption in the history of local government, not financial corruption in the conventional sense, but corruption of the machinery of the authority itself, given over to party political gain, in a way — and to an extent — that is absolutely without precedent. Nothing prepared me for such a naked abuse of power, people and resources; I would have said it was unthinkable".

The 'Homes for Votes' Scandal

The road to gerrymandering starts in 1986, when Labour came within 100 votes of winning control of the Tory flagship, Mrs Thatcher's favourite Council. While Labour locally was devastated at having come so close to such a big prize after a four year doorstep campaign, the Tories hit the panic button. A comprehensive and highly co- ordinated strategy was adopted, the sole objective of which was to make sure that Labour could not win in 1990. Put crudely, likely Labour voters would be removed from marginal wards and be replaced by likely Tory voters. Specific targets were set for each marginal ward.

For obvious reasons, the initial focus was on housing. The Tories introduced a twin- headed housing policy as a result of which:

- hundreds of flats on 'designated' estates in the City's marginal wards were held empty for sale at large discounts
- homeless people were subjected to what leading Tories themselves called a "mean and nasty" regime which would seek to "ship them out of the City".

The introduction of this inhumane policy provoked an intense campaign by the Labour Party and other groups in the City, including several church leaders. A local GP in the hotel district of Bayswater (a marginal ward which Labour won in 1986), Dr Richard Stone, who had hundreds of homeless families on his list, was incensed that so many Westminster flats were lying empty.

After being fobbed off by the Council, Stone decided to complain to the Council's Auditor about the waste, backed by detailed calculations made by the then Labour Housing Spokesperson Neale Coleman which demonstrated the electoral bias in the policy. However little action was taken until an explosive Panorama documentary was shown in 1989 in which the former Tory Housing Chairman (sic) Patricia Kirwan admitted that the policy was driven by 'gerrymandering'. As the Auditor's investigation got under way in 1990, the Tories increased their majority in the City elections from four to thirty against the national trend.

Four years later, Westminster was forced to suspend the designated sales policy following the Auditor's report. However a scaled down policy was subsequently re- instated, and the key homelessness policy remains fully in place. Despite Porter's passing, very little has changed at Westminster.

The tip of the iceberg

As the objectors dug deeper into the issue, and leaks became more numerous, it became clear that the abuse of power did not just affect housing — it stretched across all Council policies under the smokescreen of a policy known as 'Building Stable Communities'. This was demonstrated in a second Panorama programme — famously delayed by the BBC so it wouldn't interfere with the democratic process in the local elections! — in May 1994.

BSC was the parent to the 'designated sales' child. It was a highly centralised policy, driven and rigorously monitored by a leading group of Tories and Council officers, which had tentacles into every part of the Council machine. Its sole objective was the electoral advantage of the Conservative Party. BSC covered every key decision which might affect demography and voting patterns, including the sale of hostels, planning policy, and the compilation of the electoral register.

The entire planning policy of the Council was subjugated to the aim of securing electoral advantage for the Tories. For example, they refused to negotiate affordable housing as a planning gain in development approvals, and encouraged planning applications for luxury housing. The objectors' legal advice is that the Westminster District Plan is unlawful in exactly the same way as designated sales is unlawful — because it was driven by an improper and unlawful purpose.

Across most areas of policy, like environmental improvements, high need areas of the City did not get their fair share of services as resources were diverted to marginal areas. Hostels in marginal wards, including Bruce House in Covent Garden, which once housed 600 single people, and Ambrosden Hostel in Victoria, were targeted for closure so the site could be gentrified.

The Tory 'Dirty Tricks' Campaign

The documents released to the objectors by the Auditor confirmed that the Tories, in addition to gerrymandering the Council,

organised an elaborate 'dirty tricks' campaign against their opponents, using Council resources and involving Council Officers.

In an astonishing attack on civil liberties, leading opponents in community groups and the Labour Party, including some of the Objectors, were targeted and their activities monitored to find 'skeletons in the cupboard', including for example obtaining the rent account of one activist who was also a Council tenant.

In light of the Auditor's report, the Westminster Chief Executive Bill Roots was forced to set up an independent enquiry, the report of which confirms that dirty tricks were indeed employed. This scandal will now be subject to a formal investigation by the Auditor — just one item on the ever-growing menu of issues he will have to deal with in 1995.

The public hearings

The Auditor's provisional findings were subject to public hearings which lasted from October 1994 to February 1995. This was the respondents' great chance to explain themselves. The general public will find it difficult to understand why only two respondents gave evidence in person — Porter did not — and why the main tactic appeared to be to pour scorn on the Auditor himself and to complain about unfair treatment.

The extraordinary aspect of the public hearings was that the Auditor was sitting in a quasi-judicial capacity. The burden of proof lay on the objectors — Doctor Stone and the eleven others who signed the formal objection back in 1989. It was a classic case of David versus Goliath (in the form of Porter's millions). The Objectors had to be legally represented if justice was to be done. Graham French of solicitors Alan Edwards & Co, Andrew Arden QC and barristers Alyson Kilpatrick and Gavin Millar acted for the objectors, working well below commercial rates. The legal team had to spend months on preparation for a very complex case in addition to the time in the hearing itself.

To pay the price of getting justice, the the objectors launched the Westminster Fund for Justice in the summer of 1994. Over £110,000 has been raised towards the target of £200,000. The largest donation has come from Unison, but most of the money has come from ordinary outraged citizens from all over the country.

What happens next?

The Auditor is expected to produce his final report in the summer of 1995. If he confirms his provisional findings, the matter will then transfer to the High Court and possibly on to Appeal. Porter has threatened to take the case to the European Court. The process could take several more years to resolve.

Fourteen other objections have been submitted on the remainder of the 'Building Stable Communities' policies, but the Auditor will not investigate these until the first case is finished. In the meanwhile, he has put thousands of documents under lock and key at City Hall to prevent a repeat of previous large-scale shredding exercises.

Labour Shadow Environment Secretary Frank Dobson and the objectors have called on John Gummer — who is uncharacteristically quiet on the Westminster issue — and the Audit Commission to appoint a special Task Force to speed up the process and to undertake a special audit of the Council following further revelations that millions of pounds have been lost because the Council deliberately failed to collect charges from Council lessees, allegedly to keep them sweet before the 1990 local elections.

The objectors face a long haul to see that justice is done. The costs of the case — not just the legal costs, but also the personal costs incurred by the objectors in maintaining such an intense campaign over such a long period — are ever-mounting. We are determined never to give up the chase, but in practice we are dependant on the generosity of supporters all over the country.

Donations and contributions can be sent to Westminster Objectors Trust, 29 Croxley road, London W9 3HH, or Steve Hilditch and Neale Coleman can be contacted on 0181 968 0900 (day).

Access to Justice

The justice system should be a "tool of liberation", according to Paul Boateng MP, the Shadow Legal Services Spokesperson, and the next Labour Government will give it the emphasis it deserves. The party has just completed consultation on Boateng's green paper, Access to Justice, and the resulting policy proposals are currently going through the Joint Policy Committee (an amalgam of the NEC and Shadow Cabinet), before being put before Conference in the Autumn. If passed, they will form the framework for an incoming Labour Government's legal policy, and leaked proposals, including direct access to the Bar and a community legal service, have already hit the headlines.

Paul Boateng talked to Mark Henderson

M.H. The Labour Party used to be committed to transferring the executive functions of the Lord Chancellor to a cabinet minister for justice. Is it now backing away from that position.
P.B. We're committed to a new focus for the Lord Chancellor's Department and enhanced accountability to the House of Commons. The Lord Chancellor's Department has traditionally been a department of lawyers for lawyers, the Lord Chancellor being, as it were, the 'super lawyer', if you follow me. We're changing that focus and making it much more consumer orientated and consumer led. That's an important shift in emphasis.
When I talk about enhancing accountability, I mean enhancing the status and responsibility of the minister responsible to the Commons. We have also consulted specifically on beefing up accountability to the Commons by having a Select Committee on Justice and Legal Services.
Now the wider issue of the long term future of the Lord Chancellor, the possible division of responsibilities, a role in the cabinet — that's very much a long term issue. This is a practical package of reform from day one and we leave open the wider issues of long term reform. It's a new focus for Labour's policy in this area.

M.H. So Labour is no longer committed to creating a cabinet minister for justice with responsibility for the Lord Chancellor's executive functions.
P.B. Well, we certainly do not have that commitment. Ours is a commitment to a practical package of proposals and it is not about a major restructuring of the Lord Chancellor's Department or major constitutional reform in terms of the role of the Lord Chancellor.

I would like personally to see very much fewer lawyers in industrial tribunals.

M.H. Why has Labour changed its policy.
P.B. We have a very wide remit in terms of constitutional reform. We have commitments to reform of the House of Lords, we have new and important constitutional changes in Scotland and Wales. There's a danger, you know, of constitutional overload.
An enhanced service to the consumers of legal services from day one will be our number one priority — not the restructuring of the Lord Chancellor's Department in the sense in which you describe it.

M.H. Are Labour still committed to the extension of legal aid to industrial tribunals.
P.B. We never, if I may say so, have had that commitment. What we have always recognised is the need to address the question of advice and representation in industrial tribunals, how they ought best to fit into our view of alternative dispute resolution and how best they can be geared towards meeting the needs of ordinary working people.
I must make it absolutely crystal clear at the outset that we are going to have to work within the existing legal aid budget. So any question of extending legal aid as we currently know it to industrial tribunals just isn't on the cards. It ain't going to happen. All our proposals in the Access to Justice document are based on the understanding that there will be no new spending beyond that already in the budget.
I very much hope that we will be able to find the money in the existing budget for an enhanced role for law centres and citizens' advice bureaux. They already do some very good work in the field of employment law and one would want that work to continue and where resources allow to be expanded but it's all subject to working within the existing budget.

M.H. And you don't see any role for lawyers in private practice providing publicly funded representation in industrial tribunals.
P.B. I would like personally to see very much fewer lawyers in industrial tribunals. Industrial tribunals were designed for working people and employers, representing themselves or with lay representatives — not for lawyers and I want to see the role of lawyers in the industrial tribunal system reduced. I don't think the operation of lawyers in the industrial tribunal system has necessarily benefited it. I think one should recognise the very important work done by lay representatives from the trade union movement.
I think it is very dangerous for socialist lawyers to get hung up on being lawyers. I think socialist lawyers have to recognise that they have a major role to play in demystifying our profession and extending and expanding legal skills and I want to see very many more para-legals and non-legal people working in areas like this — properly qualified, properly trained, of course, but we mustn't get hung up on lawyers.

M.H. Why is it alright to have a lay person representing someone in the industrial tribunal but not in the county court.
P.B. Because with the utmost respect to those lawyers who practise in the industrial tribunals, my experience, as a lawyer who has practised in the industrial tribunal as a law centre worker, is that very often lay trade union representatives know a damn sight more about the industrial scene than do lawyers wet behind the ears and using industrial tribunals as a way of breaking their teeth in advocacy, as is sometimes the case in FRU. That's my experience but that is not to say that there is not also cases where qualified and experienced lawyers don't have a vital role to play.

M.H. You want to see union legal departments playing a major role in the provision of legal services.
P.B. I'm saying they do already and I am very interested in the role they play and I think they may well have some important lessons to teach the rest of us in terms of the use of para-legals generally.

M.H. You suggested in your speech to the Law Centres Federation that trade union legal departments might be used to provide publicly funded representation in industrial tribunals.
P.B. I suppose one could envisage a situation in which trade union legal departments would apply for franchises — that is not beyond the realms of possibility. That is very much a matter for them and I look forward to reading what the TUC and what individual trade unions have to say to us about their role and how they can make their expertise more widely available.
But the important thing about franchising is I think that it holds within it the possibility for a wide cross section of groups and organisations who are delivering a service of a high quality to come forward and to apply for a franchise — why not?

M.H. The consultation document mentioned the possibility of CCT for franchised publicly funded legal services.
P.B. Yes. We are consulting on the role that compulsory competitive tendering may or may not have to play in this. The concern that one always has is to make sure that high quality services are delivered in a cost effective and affordable way. Compulsory competitive tendering may or may not have a role to play in that — I look forward to hearing what people say.

M.H. There is nothing in the consultation document about mandatory grants for legal training.
P.B. There never has been mandatory grants for legal training. I am quite happy to answer these questions but there is no new money. Our nurseries are some of the most inadequate in Europe. Our primary schools and secondary school buildings are falling to pieces. I really don't think that the taxpayers are going to view mandatory grants for lawyers as the number one priority or indeed a priority at all for an incoming Labour government.

M.H. Doesn't access to legal education and training determine whether we can have a representative judiciary and legal system in the future. If we cannot provide publicly funded legal education, the only candidates for judges will be those who could afford to pay for their education.
P.B. I am all for ensuring as broad an entry as possible into the profession. I think that it is incumbent on the professional bodies themselves and on the universities to seek to make sure in terms of their own selection procedures that that happens. I am very interested in the example of the training of accountants and architects and I think there is a good case for arguing that it ought to be possible to embark upon a course that leads you to a degree and a vocational professional qualification. I look forward in due course to examining the implications of that

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it is grossly premature to talk about national legal services.

together with colleagues in government from the Department of Education and from the universities and colleges of law. I think that is an interesting way forward but it is way way forward.
What I have to say in the short term is that there is not going to be any new money for the training of lawyers. All the more reason for barristers chambers and solicitors firms to make sure that it is not the same old privileged, Oxbridge dominated appointments and selection procedures that have all too often applied in the past. There are left wing sets that need to address that issue as well as ordinary ones if I may say so and I am not satisfied that all of them are.

M.H. How have left wing sets failed to address this issue.
P.B. I think you know very well what I mean. I am very interested in those groups within the profession who purport and, I am very glad to say, do espouse equal opportunities, but when one looks at their own selection procedures and the content of their own chambers it's surprising how the most privileged of educations still seem to come out on top. I think that's an interesting question.

M.H. Is there anything a Labour Government could do to ensure that chambers and firms discriminate less.
P.B. It is one of the issues we raised in the consultation paper. The evidence of one's own eyes doesn't lead one to any great degree of equanimity about equal opportunities either at the Bar or amongst solicitors firms — black people, particularly black people who have not been educated at Oxford or Cambridge or some of our older universities, find it very, very difficult indeed to get access to very many firms and chambers even for pupillages and particularly for articles, and I think those of us who are socialists have a particular commitment in that regard, don't we.

M.H. The consultation document says there should be a much wider role for para-legals.
P.B. Yes

M.H. You think there should be less distinction between para-legal and lawyer.
P.B. I haven't said anything of the sort. I am saying that I believe that para-legals have a great deal to contribute to the delivery of legal services.

M.H. Would you like to see them doing more of the work that is currently the exclusive preserve of lawyers.
P.B. I certainly think that there is a need and demand for an enhanced role for para-legals — that's how I would put it.

M.H. Is it necessary to have a law degree — or a degree — to do the kind of work that many lawyers do.
P.B. No, I don't believe that. I have never believed it is necessary to have a degree. Some of the best lawyers I have met have never had a degree. But that is not to say — before there is any rejoicing amongst those who don't perhaps wish this project all that well — that I am for the deskilling of lawyers. I'm not. It's just that I believe that there is no proof whatsoever

that people with degrees necessarily make better lawyers than people without degrees.
I come from a generation — just — that can remember people with A-levels being called to the Bar and being admitted as solicitors. Many have made and do make a very distinguished contribution. I think it was a great pity in the '70s when everybody became hung up on degrees as if they were somehow a badge of particular distinction. I don't happen to believe they are.

M.H. Might the financing of legal education be included in your proposals for a levy on lawyers.
P.B. I don't have any proposals for a levy. I raise the issue for the profession whether or not as part of their enhanced contribution of legal services to the public, as part of their professional duty they ought not to consider it.

M.H. You have said (LCF speech) that its "non-negotiable" that the private sector will be forced to make some sort of contribution.
P.B. I have never said anything of the sort. I have said that it is a legitimate expectation of government that the private sector will make an enhanced contribution to the delivery of legal services to a wider public. I think that should be part of our professional duty.
I do think it's a bit hard on the ordinary legal aid practitioner to be expected to in effect subsidise public legal services. There are those people who do no legal aid work at all. Should they not have, as lawyers, some professional duty or obligation to make some sort of contribution. I mentioned in Access to Justice the issues of pro-bono work and the levy systems that operate in some jurisdictions.
I think it's legitimate to ask the profession how they propose to contribute and how they think government can help them do it. I look forward to seeing how the profession responds. Government will then see whether or not its response is acceptable. I don't know whether it will be. I don't know how they'll respond. Maybe they'll come and say that nothing more needs to be done. I suspect I will disagree with them in that and that many other people will. Nothing is ruled out and nothing is ruled in.

M.H. Why would you impose a levy on Clifford Chance but not say on Price Waterhouse.
P.B. It would be utterly invidious of me to respond to a question like that and I don't intend to. I look forward to hearing from Clifford Chance and from other big city law firms. I'd like them to share with us how they believe they ought best to manifest their commitment to the rule of law and access to justice.

M.H. Was it hypocritical to attack the Tory cuts in legal aid eligibility, as an attack on justice, and then turn round and say you have no intention of reversing them. Is Labour not in effect endorsing them.
P.B. We're doing no such thing. We are not endorsing the cuts in eligibility. We are saying that there is no new money for legal services. I hope to allow many more people access to legal advice and assistance. But that will only be done through the existing budget. That's the reality and I have to live with that reality as do all.

M.H. That means lawyers are going to have to justify every single restrictive practice and procedure to which they are a party. They are going to have to show that it's in the public interest and that it doesn't add unduly to cost. It's a discipline which is going to be imposed on lawyers.
P.B. I want to see what the public interest is in restricting direct access to barristers and I think the taxpayer is entitled to know how it serves the public interest. I want to see how the public interest is served by the role and privileges that are afforded to Queen's Counsel — these things must be justified, must they not?

M.H. Do you want to see direct access to the Bar.
P.B. I personally take the view that the Bar's got some justifying to do in relation to direct access. I don't think it has been adequately justified to date, nor, I think, do that very many young members of the Bar and barristers who would benefit quite clearly from direct access.

M.H. Would a fused profession result from direct access.
P.B. I am not going to go down that road. This is a consultation paper.

M.H. Must we really accept that access to justice will be low down in the priorities of an incoming Labour Government.
P.B. Oh come on. You must know that it's a high priority on Labour's agenda, but subject to the disciplines of the very real pressure on resources that we are faced with.

M.H. You say in your speech (to LCF) that access to justice is a "tool of liberation".
P.B. I do indeed. I am faced and have to deal with the political realities, and the political realities are that our health service and our education service and our transport structure are crumbling round our ears. Old people are dying, as we speak, of cold. Rickets are a reality for many children in the inner city . Quite frankly, besides those priorities, we have to be very clear where legal services stand. And I am very clear about it. So it just isn't practical politics or indeed principled politics to expect legal services to take a higher priority than those matters I have mentioned. We will have to argue and justify every penny we spend. And lawyers are going to have to justify every penny they receive.

M.H. Will the legal aid budget be effectively capped.
P.B. I repeat, lawyers are going to have to justify every penny they receive and I'm going to have to justify every penny that is spent on legal services. That's not an unreasonable discipline.

M.H. The consultation document envisaged the majority of publicly funded cases in areas like social security, housing, and employment being run by law centres and CABs.
P.B. I don't accept that interpretation of the consultation document. But I certainly do see a much greater role for law centres and advice centres in those areas of the law than I do for the private solicitor.

M.H. Why.
P.B. Because it seems to me that law centres and CABs and advice agencies are infinitely better equipped than most solicitors' practices for dealing with welfare law to take one example and I really don't see a growing role there for the private practitioner.
Where they can provide it efficiently and where they can provide it cost effectively in any of those areas, good, let them provide it. But private firms will be up in competition with law centres and advice centres and I suspect that very often the advice centres and the law centres will win out in that competition because they are better equipped with their skills, with their resources, with their involvement of para-legals, and with their knowledge of their local communities.
Most private law firms have no role in terms of community legal education. Why shouldn't it be a requirement of franchising that they do have some role there. If a firm is seeking a franchise in welfare law why shouldn't they be required to have disabled access. I'm very interested in using franchising in that creative way.
I don't approach these issues with any degree of dogma at all. Let a thousand flowers bloom. What I believe is that we should be prepared to ask the question "What delivers the best service?" and go with it.

M.H. Do you think people should have a choice of lawyer? Would you be happy to see areas where the only publicly funded option was the local law centre.
P.B. I don't believe that you should rule out a situation in a given area where the best available service — provided it was the best -was provided exclusively by a law centre. Similarly, it's quite possible that a private housing law firm with particular expertise could be the exclusive means of delivering a publicly funded services. It's a question of who can best do the job and the money follows accordingly.

M.H. You said in your speech (to LCF) people needed a choice of lawyer for crime but not for civil claims.
P.B. I wouldn't put it in quite that crude way. What I would say however is that there are constitutional implications about a public defender service which have to be taken on board. The State brings the action. Is it desirable to have a public defender service operating against a Crown Prosecution Service in that context competing for the same resources?

M.H. Doesn't the same situation exist in immigration.
P.B. It has particular implications for the liberty of the subject and the citizen and the individual. So I personally have some reservations about a public defender service. But there is a debate going on out there and I certainly have not made my mind up.

M.H. You have talked of building a network of law centres and citizen's advice bureaux. Do you see a "National Legal Service" as an ideal.
P.B. I don't approach these issues with any ideal in mind. I think that's a long long way ahead. I don't see it on the immediate agenda at all. Who knows how the service might develop over the years. I think that whatever system does develop should be flexible and community based. I certainly would not want to see a monolithic, civil service type situation developing. But it is grossly premature to talk about national legal services.

M.H. The consultation paper talked about legal insurance. Why might it be acceptable for Labour to provide tax incentives for legal insurance when regarding it as an abhorrent way of paying for health care.
P.B. Oh come off it. To move from the issue of legal insurance to tax breaks in order to encourage legal insurance is a move for which you find no justification whatsoever in the paper. We are consulting on the issue of legal insurance, but there was no question in the consultation paper of tax breaks and it would be mischievous for anyone to suggest that there was.

M.H. Would you rule it out.
P.B. It's really not my position to rule in or rule out tax incentives for private legal insurance. These are entirely matters for the Chancellor of the Exchequer. There are no plans whatsoever, nor do I foresee or envisage any tax breaks for legal insurance.
But the party has a right and duty to consult on legal insurance. I'm not going to be told by anybody that the Labour Party should not dare to raise the issue of legal insurance, and I don't intend by the dreaded spectre of tax breaks to be deterred from consulting on that issue.

I think it is very dangerous for socialist lawyers to get hung up on being lawyers.

M.H. You also said in your speech (to LCF) that you want to look at whether the current balance between the civil and criminal legal aid budgets is right.
P.B. I certainly do. At the moment we have a situation where 30% of civil legal aid goes on matrimonial and family law and yet in my own constituency someone who lost their voice box as a result of an accident had to pay £44 per month out of their state pension towards their legal aid contribution. That can't be right. We have to look at how much we're spending on civil legal aid, and on criminal legal aid and we have got to make sure that we do get the balance right. It's not an easy task, but it's got to be done.

M.H. Do you think there's too much going on civil as opposed to criminal.....
P.B. I wouldn't put it in that way. I think there's too much going at the moment on family and matrimonial law undoubtedly at the expense of other things. That must be so — obviously so — and I don't think it's fair.
Labour is committed to incorporation of the European Convention on Human Rights. Are you happy with the judges and jurisprudence of the European Court of Human Rights.
I would much rather be developing our jurisprudence of rights in this country, though of course ultimately, people cannot be denied their right to go to Strasbourg, nor should they be. Incorporation will enable us to develop our own locally based home grown jurisprudence in this area.

M.H. You have suggested before that human rights claims after incorporation should be heard by a new "constitutional court".
P.B. We are now beginning to move into areas outside the Access to Justice paper. They are interesting areas but it is early days yet on the constitutional court and in due course I have no doubt the Labour Party will be issuing a further consultation paper on the issue of developing a bill of rights. Consultation on the form that a constitutional court should take, if there should be one, is for another occasion and I look forward to a similar interview with this August journal on that occasion.

M.H. How would you pay for the increased volume of claims that incorporation of the Convention would bring — people would have a whole new set of rights.
P.B. Let's be very clear. It will be subject to exactly the same rules in relation to legal aid eligibility as pertain at the moment. I do think, however, that there is good reason for the law centres movement to take up with vigour and enthusiasm the challenge that incorporation will present.

M.H. Are you expecting to put a policy document before this year's Conference.
P.B. Certainly there will be a policy document. That's what it's all about and I and looking forward very much to the debate at Conference. It's very exciting. Access to Justice has received a very positive response and I have no doubt that very many of your readers will have made their own contributions.

Mark Henderson is a pupil at Doughty Street Chambers

A RESPONSE BY THE HALDANE SOCIETY OF SOCIALIST LAWYERS TO THE LABOUR PARTY'S CONSULTATION ON ACCESS TO JUSTICE

THIS PAPER HAS BEEN SUBMITTED TO THE LABOUR PARTY ON BEHALF OF THE EXECUTIVE

After 16 years of Conservative government, individuals whether they be employees, tenants, owner occupiers, parents, asylum seekers, patients, protesters or those unjustly accused of crimes, all know that the rights they once thought sacrosanct have all too often become illusory.

Since 1979, numerous acts of parliament have ensured that the rights of individuals and of the local community have been sacrificed in order to promote and support the interests of big business and the government of the day.

At the same time, legislation aimed at reducing the powers of trade unions and local government, coupled with cut backs in grant aid to community and voluntary groups, has meant that individuals had no alternative but to look to the law to resolve their difficulties. It is arguable that if trade unions and local government were permitted to exert their traditional powers legal aid resources devoted to ensuring that families are adequately housed and employees retain their jobs would be available to be reallocated to other areas of need.

In addition, a future Labour Government will undoubtedly face the problem, that after so many years of repressive and unsympathetic government, expectations of change will be very high. People will not only demand an improvement in their economic prospects, they will also expect reforms that will restore their rights, whether these be to protest, to act collectively or to obtain individual redress.

The problem of resources

An in-coming government cannot be expected to meet such a multitude of needs overnight. There will simply not be the money available. However, it is our belief that these expectations must be acknowledged and a programme of future action proposed, so that the enormous energy and potential unleashed by such a change of government is not dissipated.

We believe that one of the key functions of the law is to act as a framework for providing and enforcing democratic rights (political, social and economic) which form the basis of a just society. These rights exist for the protection of individuals and though they do not in any sense adequately compensate for the economic disparities within society, they do provide the essential basis for achieving some limited redress of the imbalances which exist. This role of law is subject to one crucial caveat — that there are enforcement mechanisms available to all, without discrimination on grounds of financial resources. The rights to which we refer include those relating to security, adequate housing, employment and reasonable working conditions, nationality, sex and race equality, and other internationally recognised rights, such as asylum.

It is in this context that we believe that any discussion about access to legal justice and legal aid must be located. To merely state that "most people in Britain now feel that the legal system does not work for them" and to refer solely to issues of cost and procedure is to look for solutions before the problem has been sufficiently identified.

The need for representation

There is a large amount of research available about the need for legal representation in employment and benefit related legal disputes. Furthermore despite the complexity of immigration law and the extremely serious consequences facing appellants whose appeals fail, no legal aid is available for representation before adjudicators or the Immigration Appeal Tribunal. In addition proposals to extend the jurisdiction of arbitration in the county court and the introduction of contingency fees are likely to lead to more individuals being unrepresented in the civil courts.

Alternative dispute resolution

As practitioners, we are only too aware of the difficulties encountered by our clients when they have tried to assert their own rights, whether it be to a police officer on the street or to an official in the local housing department. That is often why they have become involved with the law in the first place.

Inter-active computer terminals and most forms of alternative dispute resolution are not going to be of much use to the great majority of those presently in receipt of legal aid. They simply do not have the skills and confidence to use them to their best advantage. A woman who has suffered domestic violence, a refugee who speaks no English and comes from a radically different culture, a pensioner denied benefit is not in the best position to represent herself or himself. And this is what tribunals, arbitration and mediation essentially require. There may be legally qualified tribunal chairs, but few, if any, have the necessary inter-personal training to ensure that both parties have an equal chance to put their case. There may be trained facilitators for mediation sessions, but how many will also have detailed knowledge of, for example, the law relating to the division of property on divorce or sexual and child abuse.

It is also dangerous to talk of tribunal hearings and mediation as if they were of a similar character. The complexity of law, the formality and the setting of an immigration or industrial tribunal are more reminiscent of courts than arbitration. It is also important to remember that the effect of losing in the tribunal can be that an individual's future job prospects are minimal or that he or she is returned to a country in which he or she faces torture and possible death.

It is also arguable that the provision of legal aid for representation in tribunals would save money in that it would reduce the need for judicial review and vastly increase the number of cases reaching a settlement.

Mediation in family cases

Particular mention needs to be made of mediation in the context of divorce and, in particular, the effects of domestic violence upon a woman's ability to articulate her own needs. The fact that women are still economically disadvantaged in our society and the highly emotionally charged interaction between those who are separating, especially when children are involved, means that individuals are unlikely to be able to make the kind of rational decisions they may be capable of at other times. They need assistance, in particular, to articulate their own needs and demands. To deprive women of this will lead inevitably to many agreements which will place them and their children in danger of physical abuse and increased poverty.

Legal representation

Whilst we welcome increased support for law centres, any discussion about improving access to justice must, in our view, be premised on the need to ensure that all parties to a legal dispute are legally represented. Otherwise there is a real danger of creating a two tier system — lawyers for the rich and para legals and volunteers for the poor. Law centres have developed special expertise in bringing test cases and campaigning for legal change, but they are generally small organisations who do not function as walk in advice services. It is unrealistic to believe that whole legal areas could be diverted to them.

Para legals

There is however a vital role for para legals and volunteers. They play an essential role in law centres and community organisations. The role they play is additional and complimentary. To treat them as cheap alternatives is to undervalue the work that they already do.

The need for choice

A future Labour Government should also make clear that representation would not always be best provided in the same way. On some occasions a law centre would be best placed because of its local knowledge and expertise to represent a client. On other occasions those in private practice who had built up an expertise in a particular field as opposed to a geographical area would be more appropriate.

Equally, on some occasions the court room would be the most appropriate venue and only a court would have the necessary powers of enforcement. On other occasions a tribunal, because of its particular expertise in a specialist area would be best placed to provide the justice sought ;or a conciliation room might be the most conducive venue in which to encourage early settlement of, for example, disputes over property and unpaid bills. The common thread running throughout would be the provision of representation and equality of arms, to use a concept borrowed from European Convention on Human Rights jurisprudence.

Law centres

The Society believes that law centres are the best means of tackling local legal issues strategically. By taking up test cases they are able to provide tangible benefits to the individual in question and also assist the wider community by tackling the root cause of problems facing large numbers in that community.

Law Centres are, however, not a cheap alternative to private practice. The service they offer is essentially different. They identify legal needs and ensure that legal resources can be targetted effectively by tackling the issue collectively. Their cost effectiveness stems from their ability to deal with issues of common concern and avoid unnecessary duplication. They have also become skilled at prioritising the use of limited legal resources and delivering the service demanded of them by the local community.

The fact that they are accessible and accountable to the local community also means that they are able to identify and deal with legal needs at a very early stage, thereby often saving unnecessary duplication of legal action. It is vital that this role of law centres is not dissipated by attempts to divert their energies into providing cheap individual casework.

The legal profession

The present Government has characterised lawyers as corrupt and self-seeking. It has also adopted the all too familiar tactic of attempting to deflect criticism about its own failure to provide adequate legal services on to the immediate service providers, the legal profession.

No doubt, as in any profession, there are lawyers who are corrupt and self-seeking, but to lay all the blame for the shortcomings of the legal system at the door of those merely employed to work within it will solve few, if any, of its essential problems. A number of wider questions have to be raised and tackled. Is it a lack of appropriate education and training for both providers and consumers? Is it a lack of resources ? Is it a need to legislate to provide remedies that meet the needs of clients in the 1990s ? Is it the result of the plethora of complex and restrictive legislation in the last 16 years? Has there been simply a lack of political will to make the system work for the consumer and not to balance the Treasury's books?

In terms of providing access to legal services to those who need legal aid, it is arguable that restrictive practices are not a major problem. In many cases covered by legal aid, solicitors and barristers are appearing in the same courts and tribunals and their work is already to an extent interchangeable. What does cause problems and delays is the excessive bureaucratisation of legal aid applications and the ever more complex regulations applied to those seeking public housing, leave to enter the United Kingdom or social security benefits.

The task facing a future Labour Government committed to improving access to justice will be enormous and could, in our view, be greatly assisted by legal aid practitioners who identified with its aims and who felt that they had a valued role to play in the changes being made. That the majority of Legal Aid practitioners have a commitment to their clients and a taste for hard work is in our view proven by their choice of legal work. This commitment and capacity for hard work needs to be harnessed by a future Labour Government. Concerns about their performance are best met, in our view, by ensuring better means of accountability, whilst still recognising that for the law to be independent, lawyers themselves must be free to give impartial advice without fear of offending any employer or funder.

Law reform

We would welcome moves to simplify and codify the law, which we believe would not only reduce costs but demystify it to the great benefit of our clients.

The role of the Lord Chancellor

The Society believes that in future the Lord Chancellor's role should be restricted to that of Head of the Judiciary and Speaker of the House of Lords, (whilst that House continues in its present form.) The present role of the Lord Chancellor represents an unjustifiable and unaccountable concentration of power in the hands of one individual.

A ministry of justice

The Society believes that the executive functions of the Lord Chancellor should be transferred to a newly created Minister of Justice. The Ministry itself should be charged with improving the administration of justice, reviewing and codifying our present laws and ensuring that those in need have adequate access to legal advice and representation.

Franchising

The Society believes that any attempt to introduce compulsory competitive tendering through the mechanism of franchising or otherwise would mean that time and money better spent on providing legal services to clients would be tied up in preparing specifications and assessing bids. In addition, a formalised tendering regime would not be able to respond sufficiently flexibly to fluctuations in demand, both in terms of volume and in terms of diversity of legal problem. We are also concerned that competitive tendering would lead to services being selected primarily on the basis of their cost rather than their quality or

ability to meet needs effectively. Neither would it ensure that legal services were sufficiently accountable to the consumer. The problems created by compulsory competitive tendering are all too well documented in the area of local government.

Funding for legal training

The removal of state funded grant aid for professional training for the legal profession has meant that many able and skilled individuals, who have no private source of finance, have been forced to abandon ambitions to serve the community as lawyers. This has the effect of reinforcing the class, gender and race imbalance of the profession. Given the intensity of professional courses, the lack of available part-time work and the financial difficulties already facing legal aid practices, it is not realistic to rely upon the profession alone to resource legal training.

Class actions & Public Interest Actions

The Society believes that providing funding and procedures for bringing class and/or public interest actions would both provide justice for a wide number of people who are presently unable to bring individual cases for financial and evidential reasonse and also be a very good means of maximising the use of public funds.

Nadine Finch is a barrister at
1 Pump Court, Chambers of Robert Latham

new labour

NEW LABOUR AND ACCESS TO CIVIL JUSTICE: SOME THOUGHTS BY A PRIVATE PRACTITIONER by David Marshall

Legal Aid practitioners have been awaiting the Labour Party's proposals on "Access to Justice" with a mixture of anticipation and apprehension.

The vast majority of legal aid solicitors are not "greedy lawyers wishing to maximise their fees" but carry on with legal aid work, despite the low remuneration rates (in contrast to privately funded work), because of their genuine commitment to the needs of the underprivileged to be expertly represented in Court against a rich opponent (be it an individual, an insurance company or a local authority). After 15 years of an unsympathetic approach to the aims of the 1949 Legal Aid Act, we were expecting proposals which would redress the emphasis in favour of the victim of injustice, but were concerned at the frequent hints that this would have to be within existing cash constraints.

The long-awaited consultation document is largely a disappointment. It is a mish-mash of market philosophy, platitudes, trendy gimmicks (interactive computers) and quick fixes which are un-costed and ill-considered. It also contains a number of inaccuracies and odd statements ("Law firms with franchises are paid fees directly from the Legal Aid Board". Of course they are — so are all law firms, franchised or not, who operate the legal aid scheme). Hopefully the consultation process will clear up the misconceptions.

Perhaps more disturbing is the uninspired acceptance of the current thinking of the Government on legal aid funding. There will be no more money. There is no attempt at an analysis of why costs per case have increased (could it be greater quality of work leading to better outcomes for victims?) or where the net expense to the Fund has increased (as opposed to greater gross expenditure which is later recouped).

Turning to specifics, I am concerned about two possible solutions floated:

1. Pro Bono: Pro bono work by the City lawyer has a place, but there seems to be an acceptance of the idea that "legal aid work" is easy and anyone can do it. It is not. Areas of law such as housing, employment, personal injury, immigration and family are highly technical and a non-specialist should attempt no more than a preliminary diagnosis. If Labour were to propose to replace the NHS by a system of GPs carrying out pro-bono brain surgery on patients, there would be an outcry. What is the difference?

2. ADR : This is flavour of the month and it is perhaps unsurprising that it takes pride of place in the consultation paper. ADR may have a place in expediting cases, but it should not be viewed solely as a cost-cutting measure. Without legal representation the poor will not be properly compensated. The rich husband, the local authority, the employer or the insurance company will always pay for representation (by an external or internal expert) because they know that it is worth their while. Consider the scandal of the current Industrial Tribunal system where employees are denied access to legal representation. There is no satisfactory suggestion of how to deal with existing inadequacies in the ADR system, let alone the new injustices caused by ill-considered and under-funded extensions.

If Labour were to propose to replace the NHS by a system of GPs carrying out pro-bono brain surgery on patients, there would be an outcry. What is the difference?

The best news in the paper is a commitment to simplifying the law and to implementing Law Commission recommendations. If statutes are written in plain English and give certainty, then fewer people will litigate and lawyers and the Courts can spend their time (and the public's money) on the real issues, not sterile technicalities.

Similarly, there is a commitment to the principle of procedural simplification and the Woolf review. This is to be integrated with funding in a policy for justice and it is the best prospect for cost of cases to be cut without adversely affecting the client. Plaintiffs' lawyers do not enjoy the delays inherent in the current system. Policy makers must remember the strong vested interest of Defendants in delaying so as to hold onto money as long as possible. There must be early settlement incentives and real cost penalties on unreasonable defendants.

I must also consider the points raised in respect of possible removal of the private sector role in legal aid provision. As a solicitor in private practice, I accept that I have a vested interest in the continued provision of legally aided services by private practice. Quality control is important — only specialists should do specialist work. But some of the benefits of private practice should not be forgotten — size, specialisation, geographical spread, greater resources and a more defined career path.

Private practice is more expensive, but so are its overheads. Give a law centre more secretaries and more cases will be processed, but at a greater expense. If more cases are processed, then less of the crucial work of law centres in the area of campaigning and public and professional education can be continued. Directly funded legal services are free to the recipient, they are not free to the State — there is still an expense.

However, it seems to me that it is absurd for the State to pay solicitor's rates for work that does not need to be done by a solicitor. My firm does not consider itself to be competing with local advice agencies or law centres. In certain areas of work, better value (and probably quality of advice) can be obtained from a specialist advice worker than a generalist solicitor, or even a specialist solicitor if that degree of legal specialisation is unnecessary. We want to cooperate with the State and other agencies to deliver quality advice and assistance (legal and other) at an affordable price. The non-solicitor agency franchising pilot should be carefully reviewed for ways in which this can be achieved.

But all of those concerned to ensure access to justice for the poor must beware of the danger inherent in a purely salaried legal aid scheme — in the wrong political hands, it is the simplest way to ensure cash limiting of the legal aid budget, at the expense of a system of justice independent of the Government of the day.

The Labour proposals are a welcome contribution to the debate. However, the consultation process must be used to educate those responsible for policy to ensure that this is not another missed opportunity to achieve a coherent strategy for justice. On the present evidence, I fear that the prognosis is not good.

David Marshall is a Partner with
Anthony Gold, Lerman & Muirhead

gay rights

'TIL THE LAW DO US PART

Mark Watson, a gay ex-immigration officer, has been jailed for forging his partner's passport in an attempt to evade the Tories anti-gay immigration laws. Now freed, he describes the continuing battle, through parliament and through the appeal system.

All loving relationships should be "treasured and respected" according to Cardinal Basil Hume, who has blessed platonic same-sex relationships. However under current immigration laws a British lesbian or gay man in a relationship with a foreign partner has no right to live in the United Kingdom with the person they love.

However under the same rules a heterosexual foreigner may be allowed to stay in the United Kingdom if married to a British national or permanent resident. In practice this has also been extended to permit so called "common-law spouse" and indeed, even "mistresses" to stay in the United Kingdom, if their partner is British.

In 1993, 400 unmarried heterosexuals' couples were permitted to stay together through this policy. No such provision exists allowing partners of lesbians and gay men to remain, even where they meet the same criteria set out for heterosexuals.

The government claims that they will always consider allowing a person to stay in the UK if there are compelling circumstances. However a loving, caring and emotionally dependant relationship is not, as far as this government is concerned, such a compelling circumstance. Calls to allow people in such relationships to stay have been rejected by this government. Charles Wardle said in May 1994 "We have no plans to amend immigration policy on homosexual or lesbian partners seeking to enter or remain here."

When planning the future with your partner whether it be the choice of this summer's holiday destination or more permanent long term plans, a new home or job, consider for a moment how you would feel if you were unable to make such plans together because your partner has no rights to stay here. Hundreds of lesbian and gay couples cannot make such plans because one partner is foreign and has no right to remain in the UK as part of an ongoing relationship.

The Stonewall Immigration Group has grown from less than 10 couples to 250 couples in one year. The aim of the group is to provide support and advice to couples, to assist in the submission of applications to the Home Office and to lobby for a change in the immigration rules.

In its first year of campaigning the group has had wide spread coverage in the press, had the issue raised in the House of Commons, met with senior civil servants and organised a protest outside the Home Office with the Joint Council for the Welfare of Immigrants.

The group exists to lobby for change, whilst offering practical and emotional support to couples who wish to solve their situation by challenging the practice of the Home Office.

For years couples facing this problem have entered into false marriages at substantial cost, living ongoing lies to resolve their position — what other legislation forces normally law abiding people to deceive the authorities simply because they happen to love someone from another country and they are gay? The group encourages couples to make honest applications to the Home Office: as a result the Home Office has had to allocate staff specifically to deal with these applications.

I am an ex-Immigration Officer myself and made the news 12 months ago when I was jailed for falsely stamping my Brazilian lovers' passport. Since my release I have been working as a full time volunteer at Stonewall. Ander (my boyfriend) was forced to leave the UK in January 1994 but returned to the UK after my release and now awaits the decision of the Home Office on his application.

As the debate on lesbian and gay equality moves on it is likely that the current discriminatory Immigration policy will come under greater scrutiny. A change in the law is not required to bring about change. The regulations that the Immigration service adhere to do not require debate in Parliament, simply the political will to bring about change.

Whilst the focus of our upcoming campaign will be to persuade the Immigration Minister, Nicholas Baker, that lesbian and gay relationships are in themselves a sufficiently compelling

compassionate circumstance to allow someone to stay, we believe that eventual success will arrive from one of the other areas of our campaign, rather than lobbying ministers.

We have been lobbying the Labour Party for over two years on this issue and on 21st March this year met Kim Howells, the Labour spokesperson for immigration, who confirmed that the Labour Party is committed to equality in immigration law and would end the current discrimination when in power. We will continue to keep up the pressure on the Labour Party to ensure that this commitment is carried through.

Although lobbying, campaigns, protests and general press coverage are all important features of a campaign, we know that this government is unlikely to show any relaxation in immigration policy. Therefore the best hope for us is in challenging the immigration policy on a case by case basis through the appeals system.

When we are forced to separate our pain is just as great . Our families and friends are hurt just as much. The Minister justifies his position by stating that our relationships are not comparable to heterosexuals. What he is saying is that our love and our lives are second rate!

In May 1994 the Immigration Appeal Tribunal decided that the Home Office had been wrong in refusing applications by same-sex couples under the close relative Rule and should consider them as applications for limited leave to remain on the basis of a relationship analogous to marriage.

In another appeal hearing the adjudicator made particular note of the discrepancy between the criteria applied to heterosexual relationships and those applied to same-sex relationships. He recommended leave to remain be granted outside the Rules in light of the distress that separating the couple would cause. The Home Office, however, remain intransigent. The Minister took issue with the notion that a same-sex relationship could conform with the immigration criteria applied to heterosexual relationships. In the case of Bryan and David, who have been together for 4 years, the Minister, Charles Wardle, wrote to their MP in December 1993, Dr Lynne Jones saying "I am not persuaded that Mr Ruppert's circumstances are such as to be comparable to that of a heterosexual couple..."

The Home Office recognise the importance of the appeals and are no doubt concerned that adjudicators have been giving same-sex couples favourable recommendations.

When domestic appeals have run their course, European law may present further opportunities under Articles 8 and 14 of the European Convention on Human Rights. Article 8 states that "Everyone has the right to respect for his family and private life..."

The European Commission has so far held that same-sex relationships do not constitute family life, even in the case of a lesbian couple with a baby! However the Commission did find that lesbian and gay people in relationships had a right to respect for their private life, but ruled that the deportation of one member of a homosexual couple did not constitute an interference unless the couple could not live together elsewhere. Therefore if one of a couple were from Kenya for example, then there would be an interference in their private life.

The dismantling of immigration controls within Europe will mean that couples resident in one European country will have no problem moving to another. This must mean that residents (as opposed to citizens) of Holland should have equal residency rights in all the Schengen countries. Although the UK government maintains that border controls are necessary there will be growing pressure for the UK to fall into line with the rest of Europe.

The Stonewall Immigration Group's commitment to bringing about a change in attitude is total. The Group launched their document "Compelling Circumstances: Arguments for equality in UK immigration law" at Westminster on 26 April, the anniversary of my imprisonment. We hope to show that love between couples of the same sex is just as strong and just as durable as that between heterosexuals.

We are not asking for special treatment; we do not require a change in law; we do not require a vote in Parliament; we only ask that the immigration Minister show some compassion and recognise that our relationships are just as valid as those of heterosexuals. When we are forced to separate our pain is just as great . Our families and friends are hurt just as much. The Minister justifies his position by stating that our relationships are not comparable to heterosexuals. What he is saying is that our love and our lives are second rate!

Inequality should be everyone's concern, whether gay or straight and for those affected, the results of this inequality are devastating.

During last years Age of Consent debate the Home Secretary, Michael Howard, said "These (gay) people should be free to pursue their lives in private without discrimination of any kind."

It will be interesting to see whether he remembers his sentiments.

For further information on the Group contact Stonewall 0171 222 9007.

Mark Watson is co-ordinator of the Stonewell Immigration Group.

penal reform

THE MEANING OF LIFE

Phillippa Kaufmann explores discretionary life sentences

In October 1992 the provisions of the Criminal Justice Act 1991 concerning post-tariff discretionary life sentence prisoners came into force. These were enacted to ensure compliance by the United Kingdom with Article 5(4) of the European Convention which guarantees a person deprived of his/her liberty the right to take proceedings by which the lawfulness of his detention shall be decided speedily by a court. Until the Act came into force the release of discretionary lifers, like that of mandatory lifers, was entirely a matter for decision by the Home Secretary.

The European Court of Human Rights clarified that in the case of a discretionary life sentence prisoner the lawfulness of detention is not determined once and for all by passing the discretionary life sentence. Where the sentence is one of punishment for life as in the case of a mandatory life sentence, then the sentencing court has, by passing that sentence, empowered the executive to detain the prisoner for the rest of his/her natural life in order that s/he may be punished. No future event will render unlawful detention of a mandatory lifer.

But with a discretionary lifer the court is typically imposing the sentence for two reasons, the first to punish and once the period necessary to satisfy the requirements of retribution and deterrence has been served, continued detention is justified on preventative grounds. As with mandatory lifers the initial pronouncement of sentence by the court will be sufficient to determine the lawfulness of detention so long as punishment continues to justify detention. However, once the prisoner reaches the post-tariff stage where dangerousness alone governs continued detention the lawfulness falls to be determined once again. Dangerousness is susceptible to change over time and it may well be that by the date of completion of the tariff period there has been a significant reduction in risk so that the lifer no longer presents the degree of risk which justifies continued detention. Furthermore, the susceptibility to change of this ground of detention requires that consideration be given to the lawfulness of detention at regular intervals and the European Convention rightly requires that the enquiry is conducted by a body which is independent and incorporates guarantees of procedural fairness sufficient to constitute it as a "court".

The 1991 Act has met these requirements by empowering the Parole Board to determine the lawfulness of detention and to direct a discretionary lifer's release where it is no longer satisfied that continued detention is required to protect the public. For this purpose Discretionary Lifer Panels(DLP) of the Parole Board have been established consisting of a judicial chair, together with a psychiatrist and a lay member. Prior to the hearing the lifer is provided with a Home Office dossier. This comprises summaries of the lifer's history, the offence, his/her prison history previous risk assessments together with a collection of reports by prison officers, probation, psychiatrists or psychologists which are all aimed at addressing the question of current dangerousness.

There is no doubt that a discretionary lifer's situation has been vastly improved by these changes. The lifer is entitled to legal representation. Save where public interest immunity or the lifer's own protection justifies non-disclosure s/he sees all the documentation relevant to the DLP's deliberations and can challenge inaccuracies which appear. S/he can give evidence, call witnesses, and make written and oral representations to the panel. However, there are many shortcomings which this new system has either rendered more visible to the public eye or which are themselves an integral part of it. One major weakness in the new system is the limits placed upon the Parole Board's powers. The only binding decision the Board is empowered to make is an order for the release of the lifer. Any decision it takes short of release enjoys no greater status than a simple recommendation to the Home Secretary. He can ignore such a recommendation, in which case the only avenue of challenge is by way of judicial review with all its attendant limitations.

Take for instance, the timing of DLP hearings. The legislation creates a statutory entitlement to a review every two years. In many cases a lifer will come up for a statutory DLP hearing at a time when the Panel is not quite able to satisfy itself that the risk s/he presents is sufficiently low to require a direction for release. This may be because the prisoner has not spent enough time in open conditions, working out on day release and benefiting from home leaves. These are conditions which panels notoriously rely upon to assess how the lifer (who will probably have spent at least 10 to 15 years in prison) might cope on release. The panel may feel that a few more months testing, which also provides a few more months for the lifer to readjust to the outside world, will be sufficient to enable it to make a proper assessment about risk, but more importantly may be all that is required to reduce the level of risk to one requiring release. However, the legislation does not empower them to direct that a fresh panel be constituted to hear the case once that period has passed. It may recommend that the Home Secretary convenes an early DLP. If the Home Secretary refuses there does not appear to be anything that can be done in domestic law as the Statute clearly sets out the exhaustive entitlement. The current situation is obviously unacceptable: if international law requires a court to determine the lawfulness of detention, it should also be empowered to determine the appropriate moment for that determination to take place. Theoretically discretionary lifers should be released the moment the justification of continued dangerousness ceases. Where the court decides that the justification for detention might well cease in say six months time, the absence of a power to order a determination to take place at that date is tantamount to placing the decision whether to release in the hands of the executive until the next statutory hearing (which is precisely what article 5(4) prohibits). Fortunately a challenge to this failing in the 1991 Act is currently proceeding through the European Commission (Taylor v The United Kingdom).

The 1991 Act empowers the Parole Board to determine the lawfulness of detention and to direct a discretionary lifer's release when it is no longer satisfied that continued detention is required to protect the public.

The fact that these prisoners are being detained solely to protect the public from possible harm must not be forgotten.

What is possibly of greater concern is the underlying inertia of the Home Office in relation to discretionary lifers. This situation has become more visible since the system under the 1991 Act was established. Again and again I have represented discretionary lifers who have spent years floating aimlessly in the prison system. Many, and in particular those convicted of sexual offences, have served over 20 years, often more than twice their tariffs, and are not yet ready to be released. Most have received no therapeutic treatment during their sentence. They are simply left to gain insight into their offending behaviour, learn strategies to avoid repetition, or find the resources through which to completely subvert the drives and dispositions which lead to offending, without any expert input. It is true that in recent years the Home Office has constructed the Sex Offender Therapy Programme to deal specifically with risk assessment and reduction in sex offenders. However, sex offenders do not embark upon this programme until they have served many years of their sentence, the highest security prison running the programme being Category C. Not only does this delay greatly affect the value of the therapy provided but the course itself is far from rigorous and is not staffed by experts.

The fact that these prisoners are being detained solely to protect the public from possible harm must not be forgotten. They are deprived of one of the most fundamental human rights, not on grounds of desert but in order to benefit the public by ensuring that it is not subject to the possibility of harm by the lifer. The tremendous price paid by the lifer in order that such benefit is conferred cannot be assumed to be justifiable on the basis that the lifer freely chose the dispositions that render him/her dangerous. These factors together give rise to a very strong case for the existence of a duty on the state to take all reasonable steps to bring about the conditions in which the lifer can regain his/her liberty.

The failure to provide expert help with risk reduction not only contravenes the moral argument but, at a more practical level it makes the task of risk assessment extremely precarious. It is difficult enough in the best of circumstances, but without expert input the panel is forced to rely upon self-report, with all the attendant risk of manipulation, or upon untrained and

largely inexperienced prison officers. It is inevitable in those circumstances that the DLP will take a cautious approach.

They are likely to be even more circumspect in the light of Michael Howard's policy change on temporary release which came into effect on 24th April. This knee-jerk reaction to media coverage of a number of recent prison escapes, has resulted in all lifers in closed conditions losing any right to be considered for temporary release. I have spoken to a number of prison governors dealing with lifers in category C conditions who despair at the loss of one of the most valuable mechanisms by which to assess the lifer's suitability for open conditions. Lifers in open conditions are now ineligible for temporary release for the first six months after which point they will only be entitled to leave the prison to work or for education. Only after a further 3 months can they be released for the purpose of trying to construct a release plan, which will provide them with a suitable structure when they first emerge from a very long period of incarceration. Given the timescales involved, whereby a move to Category D following a DLP recommendation is rarely put into effect for about 4 to 6 months, it is quite likely that the subsequent DLP will consider that the lifer has not been sufficiently tested in open conditions. Further there will now be no point in a DLP making a recommendation for a 12 month review, in order that the lifer can be sufficiently tested in open conditions.

There can be no doubt that because of these failings many discretionary lifers continue to be detained for long periods after they have ceased to be a significant danger to the public.

Phillippa Kaufmann is a barrister at Dought Street Chambers.

international

SERGEI KOVALYOV — HUMAN RIGHTS OMBUDSMAN AS ICON?

Sergei Kovalyov the Russion Human Rights Ombudsman has beeen called an 'enemy of the people' by the military for his outspoked criticism of the war in Chechnya. Haldane Chair Bill Bowring considers the man and his work.

The January 1995 issue of the leading Russian weekly news magazine 'Novoye Vremya' (New Times) had on its front cover the harassed, tired face of a 64 year old former dissident, who has become one of the most respected figures in today's Russia. The headline was 'Sergei Kovalyov. The Honour of Russia. One Person for All of Us' — that is, Kovalyov personified such honour as Russia, drenched with the blood of Chechens and its own teenage conscripts, still possessed. The story inside was entitled 'Kovalyov and Yeltsin' — President Yeltsin had committed political suicide, but that did not mean the end of democracy in Russia, it said.

The irony is that Sergei Kovalyov, Russias first Human Rights Commissioner, was appointed and is paid by none other than — President Yeltsin. He is a fine example of the political appointee who has decided to take his job seriously — and to bite the hand that feeds him. What he had done was to tell the truth about the war in Chechnya. As he told *The Observer*, 'I reported on everything I saw — and what I see, I see.' He saw an old woman begging for money to bury the two corpses beside her; a hospital burnt to ash; 43 orphans hiding in a cellar; and a Second World War veteran abandon his paralysed wife in their burning home[1].

Who is Kovalyov?[2]

Kovalyov was born in March 1930, graduated in biology, and taught at Moscow State University until he was sacked for political reasons. He joined the Soviet human rights movement in 1967, and in 1969, with 14 others, set up the 'Action Group for the Defence of Human Rights in the USSR' which produced the first *samizdat* (self-published) human rights bulletin. In September 1974 he joined the Moscow Group of Amnesty International. Within months he was arrested, charged with 'Anti-Soviet Agitation and Propaganda' under the notorious Article 70 of the Criminal Code, and put on trial in Vilnius, in Lithuania, far from the foreign correspondents. His close friend, the late Andrei Sakharov, on the day of the presentation of his Nobel Peace Prize in Stockholm, picketed the court. Kovalyov was sentenced to 7 years in a forced labour camp, followed by 3 years internal exile — in Magadan, in the Soviet Far East.

Kovalyov was only permitted to return home to Moscow in 1987, after Gorbachev had come to power. In 1990, Sakharov persuaded him to stand for election in the Russian parliament, at that time still called the Russian Supreme Soviet. He became a deputy, as a member of the 'Democratic Russia' bloc, and initiated legislation, including the laws 'On Rehabilitation of Victims of Repression', 'On States of Emergency', and 'On Refugees'.

Most importantly, he was elected Chairman of the parliamentary Committee for Human Rights, and became an outspoken critic of Aleksandr Rutskoi and Ruslan Khasbulatov as they were drawn into confrontation with Yeltsin. He was politically closer to Yeltsin than most other parliamentarians, and in February 1993 was appointed a member of the Presidential Council. In the bloody events of October 1993, he was one of the few deputies to back the President. His failure to speak out against Yeltsins brutal use of force to break parliaments resistance has brought him much criticism, particularly from the Communists, although he has since, in my view, made good his omission.

Kovalyov joins Yeltsin's administration

After these events he was appointed, by presidential decree, as Chairman of the Presidents own Human Rights Commission. This is a job he still holds. In October 1993 he also became Chairman of the 'Russias Choice' political party, which was at that time a loyal supporter of the President, but has now joined the coalition against the Chechen war.

For two months after October 1993 Russia was effectively without a Constitution. The draft Constitution finally adopted (although — there are doubts as to the legitimacy of the vote[3]) in the referendum of 12 December 1993 awards most power to the president. Perhaps in order to provide a check, it was decided that in addition to an enlarged, 19-judge Constitutional Court, Russia should also benefit, like other advanced countries, from the creation of an Ombudsman. The new Ombudsman has the official title of 'Plenipotentiary for Human Rights', with a much wider remit than is usual in Western Europe, investigating human rights abuses as well as administrative maladministration.

It is more than a little extraordinary, therefore, that the only reference to the Ombudsman in the Constitution is to be found is in Article 103. Article 103(e) provides that one of the powers of the State Duma (the lower house) is 'the appointment and dismissal of the Plenipotentiary for Human Rights, who shall act in accordance with Federal Law.' The Constitution contains no provision defining the competence or powers of the Ombudsman. If the Ombudsman is to act in accordance with federal law, then there must be such a law. Kovalyov himself prepared a draft, which has been approved by the State Duma but not yet by the upper house, leaving the Ombudsman without state funding. In August 1994, Yeltsin himself provided finance for Kovalyov as Ombudsman, by Decree No.1587.

Yeltsin's critic

Despite this link with Yeltsin, Kovalyov has never shrunk from criticising Yeltsins administration. On 14 June 1994 Yeltsin issued Decree No. 1226 'On Urgent Measures to Protect the Population from Banditry and Other Manifestations of Organised Crime'. This measure provided that suspects could be held without charge or bail for up to 30 days; that company records and bank statements could be reviewed without warrant; and that phone-tapping would be admissible. Kovalyov wrote an open letter to Yeltsin on 24 June, pointing out that the Decree violated articles of the new Constitution guaranteeing inviolability of private life (Art.23.1); privacy of correspondence and telephone (Art.23.2); and detention beyond 48 hours only by judicial decision (Art.22.2), as well as numerous international instruments governing Russian law (Arts.15.4, 17.1). Kovalyov asked Yeltsin, on behalf of the Human Rights Commission, to suspend the Decree. He feared it would lead to arbitrary actions, including unjustified arrests and a growth in corruption among state officials. Yeltsin ignored him.

Undeterred, Kovalyov published, on 5 July 1994, his first 'Annual Report on Observance of Human Rights in Russia', highlighting grave human rights abuses. These included the serious denial of rights to refugees; violation of the freedom of movement and racist abuse of the system of residence permits (*propiski*); appalling prison conditions throughout Russia; denial of rights to soldiers; discrimination in labour rights (70% of all unemployed in 1993 were women); police misconduct on a huge scale, including inhuman and degrading treatment, in the aftermath of the shelling of the White House in October 1993; and very infrequent use by citizens of 1993 law on judicial review of administrative actions. He was not alone in his criticisms: on 7 October the Council of Europe was advised by its Committee of Experts that Russia was unfit to join, for the reasons Kovalyov had pointed out. His next Report is under preparation.

Kovalyov and the war in Chechnya

But up until late 1994 the general public had not really heard of Kovalyov or his activities. The war in Chechnya changed all that. After several abortive attempts, Kovalyov, accompanied by an all-party team of MPs and human rights experts[4], arrived in Grozny, Chechnyas capital, on 15 December, and spent several days in the bunker beneath the Presidential Palace, shelled by Russian troops. On 20 December Kovalyov went public. The previous day had seen 43 civilian deaths as a result of Russian bombing. In the press and on the radio, he appealed to Yeltsin to stop the bloodshed, renounce official misinformation, and start political dialogue with President Dudayev. Unfortunately for Yeltsin, the mass media in Russia are probably, at the moment, the most free in the world, and Kovalyov received more air-time for the truth than all the President's men with their lies.

At Christmas, a number of Russian newspapers named Kovalyov 'Man of the Year'. On 6 January 1995, he met Yeltsin, who hardly replied to Kovalyovs impassioned verbal report, save to confirm that he trusted Kovalyov, and to say that he would sack Oleg Poptsov, the head of Russian TV, for 'distorting the position of both sides'. Kovalyov later told a news conference that Yeltsin had denied having poor knowledge of the real situation in Chechnya, but then contradicted himself trying to persuade Kovalyov that there were no bombings in Grozny.

'Despite this link with Yeltsin, Kovalyov has never shrunk from criticising Yeltsins administration'

'Kovalyov received more air-time for the truth than all the Presidents men with their lies'

The Russian military could contain themselves no longer. On 20 January 1995, Defence Minister Pavel Grachev addressed a televised news conference at the Russian campaign headquarters of Mozdok. His uniform unbuttoned, and stumbling over his words, Grachev told the newsmen: 'This — what's his name — Kovalyov, he is an enemy of Russia, he has betrayed Russia!' However, a recent opinion poll shows that only 7% of Russians agreed with him, while over 40% support Kovalyov. Nevertheless, on 29 January the military prevented Kovalyov from accompanying the mission from the Organisation for Security and Co-operation in Europe (OSCE) touring Grozny; but on 30 January he was able to address the Parliamentary Assembly of the Council of Europe in Strasbourg, where Vladimir Zhirinovsky attacked him, calling him 'a scum', and saying he belonged 'in a concentration camp'. At the same time, Deputy Prime Minister Sergei Shakhrai called Kovalyov a 'religious fanatic', because he had said that 'as long as blood is being spilt in Chechnya, it is absurd, immoral and blasphemous to discuss Russian membership'.

Kovalyov is also Russian representative on the United Nations Human Rights Commission, and in mid February travelled to Geneva to try to get the Commission to condemn the war. As he told them, he estimates that some 24,000 people in Grozny and the surrounding area died between 25 November 1994 and 25 January 1995. Most of those were unarmed civilians, including 3,700 children under the age of 15. An estimated 400,000 people had been displaced by the war in Chechnya. He was not successful. Kovalev has attacked the Commission for adopting an attitude of 'indifferent cynicism' towards the war; he is preparing for another trip to the republic.

It would appear that of all the ombudsmen and human rights commissioners in the world, Sergei Kovalyov, at least, is doing his job.

Notes

1. Victoria Clarke *One mans mission to tell Chechen truth* The Observer, 19 February 1995
2. See also: Alessandra Stanley *Soviet dissident reborn as his countrys conscience* The Guardian, 16 January 1995; *Sergei Kovalev: Still Fighting for Human Rights* (1995) Transition: 1994 in Review, Part 1, 44-51; *Sergei Kovalyov — first Plenipotentiary for Human Rights of the Russian Federation* (1994) 3 Rossiskaya Byulleten po Pravam Cheloveka (Russian Bulletin for Human Rights) pp.132-133
3. Wendy Slater, a researcher for the RFE-RL Research Bulletin, believes that only 31% of the total electorate approved the new Constitution.
4. Mikhail Molostvov of 'Russias Choice', Valerii Borshchov of 'Yabloko' (Grigory Yavlinskys party), Leonid Petrovsky of the Communist Party, and Oleg Orlov of the 'Memorial' human rights group

Seeking justice in Guatemala and El Salvador

Haldane Society members Barbara Cohen and Steve Gibbons recently travelled to Guatemala and El Salvador as part of a delegation from the Central American Human Rights Committees. They report on the work of lawyers in the shadow of the death squads.

The concept of access to justice and the role of the courts and legal profession in protecting human rights takes on a completely different meaning in Guatemala or El Salvador. Firstly, the issues are different: the formal structures of the judicial systems do not function or function inconsistently in response to political or financial incentives; access to lawyers and to the courts is obstructed by reason of lack of money or political connections as well as language and distance. Lawyers and judges who are prepared to accept the real personal risks which are likely to accompany taking on any case against the establishment are few. The additional structures outside of the judicial system established to protect human rights operate with uneven and limited effectiveness. It is not surprising that ordinary citizens, and all the more so disadvantaged and oppressed groups, have little confidence in the law and look to popular movement organisations and ultimately political action to combat injustice.

Guatemala - the fruitless search for justice

The phrase 'human rights' features prominently most days in the national press in Guatemala. Such publicity, unfortunately, is not sufficient to make up for the continuing failure by the state to establish and support effective structures and procedures to protect the fundamental human rights of its citizens. The state has proved unwilling or unable, through its legislative, executive or judicial arm to counter the well-entrenched immunity from accountability and punishment for human rights abuses which the military and security forces enjoy. The dominant position of the military overrides any attempts to secure the rule of law.

'With bodies in the streets, threats are not taken lightly.'

The Human Rights Ombudsman's Office reports that, in the first three months of 1995, 31 people have been abducted and 'disappeared.' 78 have been extrajudicially executed, 64 threatened with death, and 44 forced into the military.

The President of the Supreme Court, who obtained this position in October last year after a purge of the nation's highest court, described the system he inherited as 'highly politicised, with legal interests left to one side, open to corruption and irregularities'. In four months he has overseen the dismissal of 10 judges and a general tidying up of the court buildings and their processes. Nevertheless his struggle against corruption and impunity has still a long way to go. This is especially so when he appears to be as concerned with the fact workers should arrive for work wearing smart clothes as with the deep-rooted corruption that is all pervading.

Lawyers dealing with human rights cases all separately complained that such cases are almost never resolved within the judicial system. The Archbishop's Human Rights Legal Office cited 25 cases involving abuses of fundamental human rights in which the court had issued arrest orders but no arrests had been carried out. Although under the new penal code the supervising judge could intervene when the police fail to carry out an order there was no evidence that this ever occurred.

Lawyers at Case Alianza, working on the protection of street children, referred to a total of 188 legal proceedings killings or intimidation since 1990 which by 1995 had resulted in only seven people in 4 separate cases being convicted. Even when they had supplied sufficient evidence to convict members of the security forces the Public Ministry failed to prosecute.

The new Penal Code is in many ways admirable, but very few people seem to understand it and it is effectively useless as a result. Seeing a situation where justice has effectively ground to a halt because people are prepared to admit that prosecutors, judges and those responsible for the administration of justice do not understand the new law and legal procedures is certainly a sight to behold. Next to no cases are being processed and the major beneficiaries seem to be the Military, those who have their patronage and those with money, all of whom go free as a result. Those categorised as common criminals sit in dreadful prisons waiting for their case to come up.

Although the Constitution and the labour code give workers the right to organise and to be paid a minimum wage, when trade unions and popular movement organisations try to enforce these rights in the special labour tribunals their cases are blocked at every stage. When employers are able to show a minor, irrelevant, defect in the documentation, the case cannot proceed. Cases have remained unresolved for years, as workers are forced into giving up through hunger and despair. The recently established Conciliation and Arbitration Tribunal, which is a mandatory first stage in most labour cases, has after 10 months processed only 1% of cases referred to it.

The administration of justice in Guatemala is also effected by the grave violence which afflict the country in the form of continuing intimidation of those judges, lawyers and witnesses who are prepared to take a stand against impunity. As one lawyer commented, 'with bodies in the streets, threats are not taken lightly'.

The Association of Guatemalan Jurists, a progressive group of lawyers working on human rights cases and those involving land and labour disputes, had their office bombed in 1993. CEDAPEL, a law centre developed by former students of the University of San Carlos to work on human rights cases, receives telephone calls threatening them with death if they do not drop particular cases. When out in the countryside investigating a case concerning killings by the security forces, their lawyers were confronted by armed members of the local 'civilian patrol', who made their view clear on the lawyers' investigations. One witness to the brutal killing of a student by a member of a police instant response unit was kidnapped, other witnesses have been followed, beaten or threatened.

The President of the Supreme Court acknowledged that some judges are subjected to intimidation, but simply stated that 'we have to be brave' and that the only real protection lay 'in God'. While knowing clear instances of a few courageous judges who are in serious risk as a result of their decision to break rank and try to implement justice, he has failed to provide any real protection.

Guatemala was, perhaps surprisingly, the first Latin American country to establish a Human Rights Ombudsman, in 1986. The Ombudsman is answerable to and appointed by the President of the Republic — interestingly the current President, Ramiro De Leon Carpio, was previously the Ombudsman until as a result of a bungled 'self-coup' by the previous President, he was propelled to power. While useful intervention by the Ombudsman in a conciliation role in land and labour cases and positive work on women's rights was acknowledged by many groups, there was some concern about the Ombudsman's commitment to investigate fully cases where the alleged abuse of human rights was by the army or the police or where the victim was active in defending human rights. The Association of Guatemalan Jurists made a denunciation concerning the bomb in their offices to the Ombudsman's office. The investigators from the office interrogated one of the lawyers about his alleged criminal background whilst standing in the midst of the bomb debris and in February 1995 the Association was notified by the Ombudsman that he was unable to proceed with their complaint.

In 1994 the indigenous group Defensoria Maya submitted 50 denunciations to the Ombudsman about forced recruitment into the state-run civilian patrols, harassment by the army and acts of violence. The Ombudsman returned them all saying that none constituted a violation of human rights, so no investigation could be carried out.

'Recovering from the US's proxy wars of the 1980s will be something which will take the whole of Central America decades'

El Salvador - more peace, less progress

El Salvador is in many ways in a better situation than Guatemala. Its internal conflict is now over. The political climate is noticeably more open than in Guatemala and it has undergone a serious period of transition under the eye of the United Nations. El Salvador's peace accords covered the reform of the military, police and the judiciary and the so-called 'Truth Commission' to consider the human rights abuses of the war years called for a thorough purge of the judicial system.

There have been advances under the accords. A new National Civilian Police force, while not perfect by any means, is a clear step forward on the militarised structures which preceded it. After months of political wrangling, a new Supreme Court was appointed and there are a number of reforms underway in the area of criminal and penal law. While human rights violations have by no means disappeared, they have been substantially reduced.

The transition to democracy has, however, brought with it frustrations for those struggling for change. The right-wing ARENA party retained the presidency and control of the National Assembly in elections in 1994 and the former guerillas of the FMLN has subsequently undergone a damaging split, with a new social democratic party being formed by two of the FMLN's five factions. The politics of introducing reforms has led to severe delays in a number of matters, for example there was a period of nearly one month when the country technically had no Supreme Court due to a political failure to agree on personnel.

The potentially most socially damaging and dangerous delays in implementing the peace accords have occurred in the area of land reform. A programme was established whereby former combatants from both sides were promised land on demobilisation. Severe failures in this programme have led to violent demonstrations by demobilised members of the military and frustration and social hardship on the part of former FMLN combatants. We travelled to the area of Chaletenango, which was controlled by the FPL forces of the FMLN during the war, with a team of land inspectors to see the difficulties in the process at first hand. A basic lack of land registration lies at the heart of the problem, with much of the former conflict zones being undocumented with no-one knowing who actually owns vast tracts of land.

With regard to the legal system itself, even though there have been improvements, there are vast problems. We met with representatives of a community of 1500 people who are struggling, with the aid of the legal research and assistance centre CESPAD, to sort out the problem of the title to the land on which their community is built and avoid eviction. Astonishingly this dispute has been running since 1969. Visits to court have led to disenchantment as corrupt links between land owners and judges come to light. After 26 years this community with no electricity and only limited water supplies, who have to burn all their rubbish, appear no closer to having their dispute resolved.

While we were in El Salvador there was much publicity over the problem of working conditions in so-called Maquila factories. These are factories which basically import raw materials — many in the field of clothing and textiles — make up goods in El Salvador and then export those goods back to, normally, the United States. There have been a number of complaints about the way in which the primarily female workforce has been treated in Maquilas, particularly those owned by capital from South Korea or Taiwan.

We met with a group of women maquila workers who were running a campaign of protest about mistreatment. They told us of women being beaten, being given only two minutes to go to the toilet, being subjected to constant sexual harassment and being refused the right to take leave from work to obtain urgent medical treatment. The trade union lawyer representing them told us that he was running 20 maquila cases, either on mistreatment or attempts to form unions, but expected that there would be no effective result in the majority of them. Corruption in the courts and Labour Ministry give business one of many advantages in fighting legal proceedings.

The role of international solidarity

The problems which face El Salvador and Guatemala are huge. Recovering from the US's proxy wars of the 1980s will be something which will take the whole of Central America decades. While there may be improvements in the legal systems and protections which prevail over the coming years, the extreme poverty and abuses of political and economic power will always threaten peace and social justice. However, one cannot but be impressed by many of those who fight for justice in Guatemala and El Salvador. Lawyers and human rights activists who have had friends, colleagues and comrades slaughtered for simply doing their job still get up and go to the office every morning to literally put their life on the line. The ingenuity of these workers is at times astonishing, as they seek to make up for the deficiencies of the legal systems by other means, such as public campaigns, land occupations and novel uses of international law. Activists and lawyers recently scored a notable success by convincing a US court to order the former Minister of Defence in Guatemala to pay $47 million to victims of detention, torture and murder during his time in charge of the Guatemalan military machine.

Time and time again the issue of international support and solidarity was raised while we were in Central America. As the UN leaves El Salvador and Guatemala moves toward peace, many people in the region are afraid that the eyes of the world will turn away from them. With the problems which exist in El Salvador, such as the apparent re-emergence of the death squads and massive social tensions, and the rapidly deteriorating human rights situation in Guatemala, this would be a tragedy. Central America had both the fortune and misfortune of being 'fashionable' in the 1980s due to the wars which raged through the region and the bold experiment of Sandinista government in Nicaragua. The difficulty in being once fashionable is that people tend to think that everything is alright now, as news reports no longer cover the region and solidarity campaigns dwindle in membership. The need for legal rights and progressive lawyers is possibly greater now in Guatemala and El Salvador than it has ever been before and the need to provide international support and solidarity for those working for the provision of legal services and rights to the poor and disenfranchised goes without saying.

judges & public law

Judicial review, the public interest and the judges

by Steve Cragg

In the last two years organisations, groups and unions have brought a range of judicial review cases against central government with frequent success in achieving the changes sought by their members and supporters, and in establishing their right to bring cases in the public interest. At the same time the judges in these public law cases have closely examined their own constitutional role in defending the interests of the vulnerable and disadvantaged against an overpowerful and sometimes unaccountable executive. As Stephen Sedley has recently said 'modern public law has carried forward a culture of judicial assertiveness to compensate for, and in places repair, dysfunctions in the democratic process'("Rights, Wrongs and Outcomes", London Review of Books, 11 May 1995).

Access to the public law court is essential for any organisation or pressure group that wants to challenge government decisions. In judicial review cases the test for access is that the applicant must have a "sufficient interest" in the subject matter of the application. Clearly, it would be possible for the courts to put a restrictive interpretation on this imprecise phrase and in some cases this has happened (R v SoS for the Environment ex p Rose Theatre Trust Co 1990 1 QB 504). But in R v IRC ex p. National Federation of Self- Employed and Small Businesses (1982 AC 617), Lord Diplock considered the position:

" It would, in my view, be a grave lacuna in our system of public law if a pressure group..... were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped".

In the spirit of this statement R v Inspectorate of Pollution ex p. Greenpeace (No 2) (1994 4 All ER 329) is a landmark case in the development of the rules on standing. Greenpeace were held to have standing to apply for judicial review to try to stop British Nuclear Fuels proceeding with tests at the THORP reactor. Greenpeace's attributes as an organisation with a large membership (including many near the THORP site), consultative status on many international bodies, a genuine concern for the environment, and with the expertise to bring a well-informed challenge were important in the decision to grant standing.

Greenpeace went on to establish that the domestic legislation controlling radioactive substances had to construed so as to comply with European directive requiring justification for radioactive emissions, despite strong submissions from the government to the contrary (R v SoS Environment ex p Greenpeace 1994 4 All ER 352).

Shortly after the Greenpeace cases the Equal Opportunities Commission in R v Secretary of State for Employment ex parte Equal Opportunities Commission (1995 1 AC 1) sought a declaration that the Employment Protection (Consolidation) Act 1978 was incompatible with European anti-discrimination law, as it gave lesser rights on dismissal to part-time workers (who are mostly women) than it did to full time workers. The House of Lords held that the duty of the Commission under the Sex Discrimination Act 1975 to work towards the elimination of discrimination gave it sufficient interest to bring the proceedings.

The government vigorously argued that it was inappropriate for the Commission to 'use the machinery of judicial review as a means of enforcing the alleged obligations of the United Kingdom under the EEC Treaty'. However, the House of Lords held that it had the power, which it exercised, to declare that UK

Modern public law has carried forward a culture of judicial assertiveness to compensate for, and in places repair, dysfunctions in the democratic process.

law was "incompatible" with European law. New regulations complying with the ruling have now been issued by the Department of Employment.

In R v Secretary of State for Foreign and Commonwealth Affairs ex p World Development Movement (1995 1 WLR 386) the World Development Movement ("WDM") audaciously challenged the decision of the foreign secretary to use the overseas aid budget to finance a hydro-electric power station on the Pergau river in Malaysia. Standing was granted to WDM given their track record in aid issues, the lack of other potential challengers and the lack of other potential challengers and the importance of vindicating the rule of law. The court held that the power to furnish assistance under the Overseas Development and Co-operation Act 1980 related only to economically sound development and it was unlawful to fund projects for which there were no economic arguments in favour at all.

It was argued on behalf of the Secretary of State that it was his thinking alone that was determinative of whether the purpose for which the grant was given was within the statute. However, the court was not prepared to have its jurisdiction excluded in this way and Rose LJ asserted that:

"Whatever the Secretary of State's intention or purpose may have been, it is... a matter for the courts and not the Secretary of State to determine whether, on the evidence before the court, the particular conduct was, or was not, within the statutory purpose".

As far as the funding of the Pergau dam went, the court decided that it was not, and the Foreign Secretary's decision to fund the project was declared unlawful. Sedley describes the case as a sharp recent illustration of the process of the judiciary moving to fill a lacuna of legitimacy in the functioning of democratic politics.

The most recent example arose in R v Secretary of State for the Home Department ex p Fire Brigades Union and others where ten trade unions challenged the right of the Home Secretary to introduce a tariff scheme for criminal injuries compensation, using the royal prerogative, which was less favourable than a statutory scheme approved by parliament in the Criminal Justice Act 1988 but not yet brought into force.

The House of Lords held, by a majority, that the decision to ignore the statutory scheme was unlawful and an abuse of the prerogative power. Although the court could not order the home secretary to bring into force the statutory scheme he did not have an unfettered and absolute discretion whether or not to bring the relevant sections into force. To ignore completely the wishes of Parliament and to attempt to introduce a scheme of his own design was "constitutionally dangerous and flew in the face of common sense" Lord Browne-Wilkinson said. Thus the powers of the Executive were checked, and Michael Howard was forced to withdraw his scheme.

Reflecting, perhaps, just how far the judiciary has been prepared to go in recent cases, Lord Mustill, in a dissenting speech, said that in deciding to strike down the secretary of state's new scheme the court threatened to disturb the delicate balance of the unwritten rules concerning the respective powers of parliamentarian, administrator and judge. In his view, the judiciary were coming too close to administering the country. It remains to be seen if such sentiments indicate the start of retrenchment by the judges.

Encouragingly, the Law Commission has sanctioned the wide interpretation of standing applied recently by the courts, and has recommended that courts should carefully consider its discretion not to award costs against an organisation bringing an appropriate case in the public interest. The liberalisation of the standing rules and the willingness of the judiciary to delineate the limits of the power of executive suggest that the trend of constitutionally important cases brought by groups and organisations in the public interest will continue.

Stephen Cragg is a solicitor at the Public Law Project

housing law

Unmeritorious and Unprejudiced but Right: Recent Developments in Housing Law

special feature by Stephen Knafler

Merits. Judges often refer to the "merits" of a particular litigant's case. But what do they mean when they say that a case lacks "merits" or is "unmeritorious" or, indeed, when they say they can see the "merit" in a particular case?

The answer is that the judges mean 2 things. Firstly, merits means "the actual and intrinsic rights and wrongs of an issue, esp. in a law case, as distinct from extraneous matters and technicalities" (Collins English Dictionary). Secondly, meritorious means "deserving".

What lies behind "merits"?

The unspoken premise, of course, is that the judge has a discretion whether or not to grant the relief sought by one s client (which is why one's client has to be deserving) and that he or she is entitled to exercise that discretion according to how one's client has behaved (looking at conventional standards of what is right and proper).

But judges, even of the High Court, only possess only a limited discretion. Sir Thomas Bingham defined judicial discretion in "Should Public Law Remedies Be Discretionary" (1991) PL Spring as follows: "... an issue falls within a judge's discretion if, being governed by no rule of law, its resolution depends on the individual judge's assessment (within such boundaries as have been laid down) of what is fair and just to do in the particular case. He has no discretion in making his findings of fact. He has no discretion in his rulings on the law. But when, having made any necessary findings of fact and any necessary ruling of law, he has to choose between different courses of action, orders, penalties or remedies he then exercises a discretion. It is only when he reaches the stage of asking himself what is the fair and just thing to do or order in the instant case that he embarks on the exercise of a discretion".

Thus legitimate discretion is exercised only after the facts and the law have been decided. And it follows then that the "merits" of a particular litigant's case or behaviour should be of no relevance when it comes to deciding facts or making rulings of law. In theory. So when a judge or one's opponent starts to talk in general terms about the merits or otherwise of one's case it is often useful to clarify in one's own mind at least whether one is indeed seeking the exercise of a discretionary power and if so what type of merits are truly of relevance to the exercise of that particular power; or whether, in fact, one is not seeking the exercise of a discretionary power at all.

The recent case of Rogan v Woodfield Building Services Limited (1994) 27 HLR 78 is a practical example of the following characteristics of our legal system:

(1) Only some types of litigant have to show that their case has "merits": tenants in housing cases for example usually have to show "merits" but commercial tenants often do not;

(2) A litigant who is not meritorious can expect the judge not only to exercise a legitimate discretion against him, but also to make rulings of law than he or she would not otherwise have done.

Legal background

As the reader will be aware, s 48 of the Landlord and Tenant Act 1987 provides that:

> "(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served upon him by the tenant.
> (2) Where a landlord of any such premises fails to comply with subsection (1), any rent or service charge otherwise due from the tenant to the landlord shall ... be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection".

What it used to mean

Prior to Rogan, s 48 had been considered by the Court of Appeal in Dallhold Estates (UK Limited v Lindsey Trading Inc [1994] 17 EG 148.

Dallhold was a piece of commercial litigation in which the landlord was a prestigious company incorporated abroad. Its registered address abroad was given as its address in the Lease. But it had solicitors in the United Kingdom acting for it and was readily available for service of documents whether in the United Kingdom or abroad. The tenant, itself a substantial company (although in administration), also incorporated abroad, had for years been serving notices on the landlord's solicitors

in the United Kingdom. There was no question, then, of the tenant not being able to pay rent to or serve notices on its landlord at a United Kingdom address, or of the tenant being misled or prejudiced in any way by the landlord's failure to comply strictly with s 48, in that no formal notice complying with s 48 had been served, although a number of letters had been written giving the landlord s name and address and the names and addresses of his agents in the United Kingdom.

The Court of Appeal in Dallhold held nonetheless that rent was not lawfully due for the purposes of the instant proceedings because a Notice served under s 48 must be written and: "must state that the address given is the address at which notices, including notices in proceedings, may be served on the landlord by the tenant; and that it would not be sufficient to state an address which is shown to be such that, if notice in proceedings were served on the landlord at that address, it would in any particular circumstances be held to be effective service. In short, the tenant is to be told at what address notices, including notices in proceedings, may be served".

Nothing could be clearer than that. The Court of Appeal was completely certain as to what Parliament intended by s 48 of the Act. The "merits" of the tenant's actual behaviour (in not paying rent then taking a highly technical point with nothing intrinsically to recommend it) did not come into it. Furthermore, this was an interpretation which had hitherto prevailed in innumerable cases in the County Courts.

What it now means and why

Like the tenant in Dallhold, Mr Rogan had also got into rent arrears. Again, like that tenant, he knew full well his landlord's address for the purposes of serving notices and paying rent. In both cases the landlord had before trial served a notice which by any standard complied with s 48 (so that the rent would have to be paid). Mr Rogan, however, was not the tenant of an agricultural and sporting estate of 940 acres in Hertfordshire, but of a flat in London, W9 let to him under a Rent Act 1977 tenancy. His rent arrears amounted to only £4,540.00 as at the date of trial (as compared to the £75,000.00 owed by Lindsey) and yet Mr Rogan's case (and not Lindsey's case) was described by the Court of Appeal as having no "merit" or "purpose". Indeed, Sir Ralph Gibson began the final part of his judgment in Rogan with the words: "There is in my judgment no substantial merit or purpose in this plaintiff's appeal"

The upshot of it all was that the Court threw the doctrine of precedent out of the window and held that tenants do not have to be served with a notice stating in terms what their landlord's address is for the service of notices including notices in proceedings, providing the landlord's name and address within the United Kingdom is given without qualification in the tenancy agreement.

There is no exception in the Act relating to landlords whose name and address in the United Kingdom is contained in tenancy agreements. The decision appears to be contrary to the most obvious meaning of the words of the Act. It is contrary to the clear ratio of Dallhold with its reference to the insufficiency of notices which do not contain the statement required by s 48 in terms but merely provide an address (such as that contained in tenancy agreements) at which as a matter of law tenants are entitled to serve all notices on the landlord.

Had Rogan been the first case on s 48 the decision would have been remarkable only as a piece of highly purposive statutory interpretation. Place it alongside Dallhold, however, and one sees not exactly one law for the rich and another for the poor (because Rogan will apply to rich and poor alike) but a straight down the line piece of statutory interpretation which just happened to bestow a significant advantage on tenants, reached in the "neutral" context of a commercial tenant's rent arrears, stood on its head with little ceremony upon the realisation that it also advantaged a large number of residential tenants whose behaviour was seen as "unmeritorious"; in reality it is at the very least no worse than that of commercial tenants such as Lindsey.

In Rogan the suspicion must be that the perception (shared by all judges of that particular Court of Appeal) that Mr Rogan's behaviour had not been "meritorious" influenced not the exercise of a legitimate discretion (because none existed in this case for the Court to exercise) but a ruling on the law. If that is right, it is a great pity because it means that the rule of law itself has been undermined; not just because a binding precedent was abandoned on the basis of a flimsy distinction; not just because the plain words of Parliament were not given effect to; but also because the perceived lack of "merits" of Mr Rogan's case (and of the many cases of Rent Act and Housing Act tenants standing behind him) appear to have influenced a ruling on the law. This is just the area in which judges have no discretion and in which they ought not to be influenced in the slightest by perceptions of the individual litigant s conduct.

What is wrong with "Merits"

Now that the judiciary is entirely professional, and predominantly liberal in outlook to boot, there are advantages for tenants in a system in which "merits" plays an important role. There are high awards in disrepair and illegal eviction cases (although many judges plainly dislike the punitive element of damages in Housing Act 1988 cases); it is now extremely difficult for public sector or large private sector landlords to obtain and enforce possession orders based on rent arrears against represented tenants.

But as soon as "merits" are considered to be relevant to anything beyond the real discretion vested in judges there is a danger that tenants whose personal behaviour is perceived as poor is more likely to lose legally good but technical cases which a well resourced commercial litigant whose behaviour has been poor could to hope to win. In effect, the small householder has had the protection afforded to him by statute significantly reduced.

Prejudice

Rogan is also a case on prejudice. The fact that the commercial tenant in Dallhold had also suffered no detriment whatever did not attract adverse personal criticism of its behaviour or appear to influence the result of the case. But Mr Rogan's case was deprecated because, (and it was perfectly true): "The tenant suffered no detriment whatever by the failure to put the additional words in the notice".

Linked to this expectation that litigants such as tenants in housing cases ought to have "meritorious" cases is the growing expectation in the public law field, that such litigants have to show "prejudice" before the law will assist them. In other words, although they have demonstrated that the public law decision under challenge is unlawful, the judge will not make an order of Certiorari unless he or she considers that in addition to having been the subject of unlawful administrative action the intrinsic rights and wrongs of the applicant s case merits the issue of a prerogative order.

This causes problems in homelessness judicial review cases in which an attempt is made to quash a decision because the reasons given under s 64 of the Act are not adequate.

Need for reasons under s 64 of the Housing Act 1985

As is well known the local housing authority is obliged by s 64 of the Housing Act 1985 to give reasons for its decisions. The Courts have held for years that whenever a statute imposes a duty to give reasons Parliament must have intended the reasons to be proper, intelligible and adequate in the sense that they address and resolve the substantial issues of fact and law raised by the individual case: see, for example, Re Poyser and Mills Arbitration [1964] 2 QB 467 and, more recently, Save Britain s Heritage v SSE [1991] 1 WLR 153. Otherwise there would be no force in the statutory requirement to give reasons.

Proper, intelligible and adequate: Hinds

Whether reasons are in any case adequate depends on the statutory context (Save Britain s Heritage).

In R v Islington LB ex p Hinds (1994) 27 HLR 54 it was held that there were 4 factors implicit in the homelessness statutory context which had bearing upon the standard of adequacy.

The first was the need of the applicant to learn whether and if so on what basis an adverse decision might be challengeable and his broader interest in knowing that at least the decision was rational and apparently unbiased. The second was the need of the Court (or local government ombudsman or county court, as issues relevant to the decision might arise in such a forum) to be able to speedily grasp the legal and factual basis of the decision, in order to judge whether it was reviewable. The third was the existence of ratepayers and others competing for housing stock who are entitled to know that the decision was properly made. The fourth was the need for public confidence in government which is improved by the knowledge that rational and reasoned decisions are being made: the obligation to give reasons imposing discipline and restraining arbitrary decision-making.

In Hinds the local authority s reasons for its decision were plainly inadequate in that they did not set out and resolve the substantial issues of fact raised by the case.

Relief withheld

One would therefore expect the decision to be quashed and the case remitted to the local authority for a further decision which might also be adverse to the applicant, of course but, if so, at least for adequate and therefore lawful reasons. But in Hinds the judge held that on the facts the local authority, if the case were remitted to it, would be bound to re-decide that the applicant had made himself intentionally homeless. The judge decided that the applicant had not been prejudiced by the unlawful decision and refused to make an order of Certiorari quashing the decision.

Conclusion at odds with reasoning

If, as the judge himself suggests, the rationale for adequate reasons extends beyond considerations which apply in purely adversarial decision-making, then to refuse relief on the ground that the applicant would inevitably ultimately fail within further hypothetical Court proceedings is not logical. The decision is unlawful in part because its inadequacy prejudiced the interests of persons not before the Court, the interests of the public in general and the interests of the individual applicant not just in succeeding in his application but of failing only as the result of a patently rational and unbiased exercise of executive power. For these reasons it is essential that the Court formally marks the occurrence of an unlawful exercise of power by quashing the decision — leaving the local authority free to re-decide the case, of course, as it sees fit.

But there are other reasons which suggest that it is wrong to refuse to grant Certiorari when a decision is so badly worded as to be in itself unlawful.

The right of the High Court to withhold relief

It is of course right to say that Prerogative remedies are discretionary. This means that the Courts can refuse to intervene to prevent citizens having to submit to unlawful executive acts. It also means, because unlawful acts are in effect lawful and binding unless and until quashed, that the Court has the power to make lawful that which is ultra vires; to legitimise acts of the executive which are unsupported by Parliamentary authority or even flout it directly.

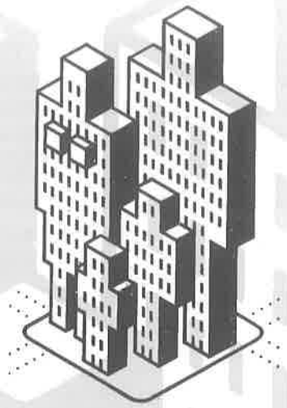
The origins of this legitimising power are historical rather than logical, but there is no doubt that the power exists and that it is frequently exercised.

Inevitability of Outcome

The reason that Certiorari was withheld in Hinds was that the outcome was inevitable. If the decision were quashed and the

case remitted for a further decision that further decision would be, so the judge felt, inevitably adverse to the Applicant and legally unimpeachable. So quashing the badly worded decision was pointless.

Now this is not law for purists. The relationship between citizen and state is left governed by a decision which is ex facie unlawful, simply because a lawful decision to the same effect could hypothetically have been made (but which there is now no need to actually make). The neater and fairer solution clearly would have been for the judge to have simply quashed the offending decision because it was unlawful and left it to the local authority to actually the make a lawful and unchallengeable decision to the same effect if it could.



In his lecture "Should Public Law Remedies Be Discretionary" Sir Thomas Bingham sets out a number of different circumstances in which the High Court exercises its power to legitimise unlawful executive acts. Dealing with cases in which relief is refused because of the inevitability of the outcome he said:

'Judges of the highest distinction have held that an applicant who has been unlawfully and unfairly denied a right to be heard may be denied relief if the outcome would have been no different if he had been heard. Sir William Wade has referred to the dubious doctrine that a hearing would make no difference , and in a recent case I gave six reasons for expecting (by which I really meant hoping) that such cases would be of great rarity:

(i) Unless the subject of a decision has had an opportunity to put his case, it may not be easy to know what case he could or would have put if he had had the chance.

(ii) As memorably pointed out by Megarry J. in John v Rees [1970] Ch 345 402, experience shows that that which is confidently expected is by no means always that which happens.

(iii) It is generally desirable that decision-makers should be reasonably receptive to argument, and it would therefore be unfortunate if the complainant s position became weaker as the decision-maker s mind became more closed.

(iv) In considering whether the complainant s representations would have made any difference to the outcome, the court may unconsciously stray from its proper province of reviewing the propriety of the decision-making process into the forbidden territory of evaluating the substantial merits of a decision.

(v) This is a field in which appearances are generally thought to matter.

(vi) Where a decision-maker is under a duty to act fairly the subject of the decision may properly be said to have a right to be heard, and rights are not to be lightly denied.'

That was the line Roger Henderson QC took in another recent case which touched on the duty to give reasons in a homelessness context, R v West Dorset DC and West Dorset Housing Association ex p Gerrard (1994) 27 HLR 150:

'I do that [quash the decision] mindful of the public law decisions starting perhaps with Ridge v Baldwin [1964] AC 40 and subsequent authorities, that it is generally right that the court should not assume that it is in a position to make the relevant decision or to remake it, but, instead, to allow a remaking of a decision by the relevant body. It is to be remembered that in Ridge v Baldwin when the matter was in due time reconsidered, some people did change their minds.

Not all shut doors are, in truth, shut, not all minds are closed when it comes to representation of a case.

Unease at the prospect of discretionary refusal of relief has been expressed at the highest level, certainly in the context of commercial cases:

it must be wrong in principle, when a litigant has succeeded in making good his case and has done nothing to disentitle himself to relief, to deny him any remedy unless, at any rate, there are extremely sound reasons in public policy for doing so (Lord Oliver, R v Attorney General ex p Imperial Chemical Industries [1987] 1 CMLR 72 @ 109.

In R v SSHD ex p Nelson (1994) Independent 2 June the enforced resignation of a police sergeant was quashed because of inadequate reasons, but the chief constable was not permitted to supplement the inadequate reasons because of the likelihood of subsequent rationalisation of a decision that had not been properly considered at the time.

One would have thought that this approach would have had the ultimate stamp of authority, part of the seminal dicta of Lord Diplock in Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374:

'I have described the third head as procedural impropriety rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.'

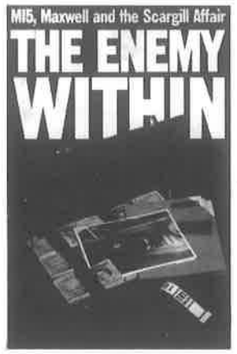
Be that as it may there is now a split in the approach of judges to homelessness judicial reviews based upon inadequate reasons between those who will almost always quash (and who will only rarely allow the local authority to bring in further evidence as the real reasons for a decision) — as in Gerrard, R v Tynedale ex p Shield (1990) 22 HLR 144, R v Croydon LB ex p Graham (1993) 26 HLR 286 — and those who will refuse Certiorari if the outcome is considered inevitable as the result of further evidence filed by the local authority as part of the litigation — Hinds, R v Westminster CC ex p Ermakov (1994) 27 HLR 168, R v Swansea CC ex p John (1982) 6 HLR 24.

It would be a pity, as the law edges ever closer to imposing a general requirement to give reasons for all administrative decisions, if the significance of such reasons lessens as the result of cases which emphasise the willingness of the Court to listen to amended/expanded reasons and its willingness of the Court to take no action if it considers the outcome of any fresh decision inevitable. For in judicial review cases the role of the Court is to review the propriety of the actual decision-making process under attack; not, however apparently obvious it is to the Court, to make its own decision for its own reasons based upon its own perception of the intrinsic rights and wrongs of the applicant's case.

Stephen Knafler is a barrister at 6 King's Bench Walk

THE ENEMY WITHIN: MI5, MAXWELL AND THE SCARGILL AFFAIR. By Seumas Milne. Verso; 344 pages; £16.95

"Milne's appalling story shows secret Government in full and evil flower" - Alexander Cockburn.



A story which involves, amongst others, the security services across several countries, payments from the former Soviet Union, left-wing trade union leaders, Libyan interests and a megalomaniac newspaper proprietor may be the stuff of espionage novelists. Seumas Milne's excellent book The Enemy Within - MI5, Maxwell and the Scargill Affair combines all of these; but this is not the stuff of fiction, this is a description of real events.

On 5 March 1990 the Daily Mirror front page screamed out "Scargill and the Libyan Money: the Facts", promising to tell us "the authentic story of the miners and Gaddafi cash". This was the beginning of a concerted campaign against Arthur Scargill, Peter Heathfield and the NUM ostensibly led by the Mirror and Central Television's The Cook Report which ultimately involved lawyers and the courts. Milne's book sets out in great detail how this campaign certainly began a long time before 5 March 1990 and involved the shadowy figures who lurk within MI5.

The central part of the Mirror-Cook allegations related to monies allegedly paid to the NUM by the Libyan Government following the strange incident of the publicised meeting in 1984 between the now-discredited former NUM Chief Executive Officer Roger Windsor and Libyan leader Muammar el-Qaddafi. The claim was that this money had been subsequently used by Scargill and Heathfield to pay off personal debts. The subsequent enquiry headed by Gavin Lightman QC - whose role in the whole affair is certainly not without question - dismissed these allegations, but called into question the handling of the money which had been received through international solidarity throughout the strike. As the story developed a number of legal actions were commenced, including a disastrously unsuccessful attempt to "Get Scargill" by the Certification Officer and a successful action by the NUM against Lightman arising from his breach of copyright in selling the report which the union had commissioned from him.

The book charts in great detail the machinations which surrounded the collection and movement of the large amounts of cash required to keep the union and strike functioning after the seizure of union funds by court- appointed sequestrators and the dark activities of those who wished to see the miners and their leader defeated.

Those funds kept the union structures effectively functioning during the strike and after. As Milne quite rightly points out, those who criticised the secrecy which shrouded the accounts missed the point somewhat. The accounts were not created out of desire for secrecy but out of necessity. Faced with the full gamut of the anti-union laws, the financial methods used by the miners' leaders were the only way of carrying on the fight for independent trade unionism.

The key point of Milne's book is, without doubt, the deep and mysterious role of the security services in their unstinting efforts to undermine organised labour. This included the strange goings on within the UK press, led by Robert Maxwell - a man who always kept his options open - who had links not only with the British secret services, but also with Mossad and the KGB.

As Alexander Cockburn, reviewing the book in the US magazine The Nation states: "the intelligence services - particularly MI5 - were never called to account for their original vendetta against the miners, the same way as they have evaded any reckoning for their murderous activities in Northern Ireland. Milne's appalling story shows secret government in full and evil flower". The whole affair is perhaps best summed up in the quote from, of all people, Roy Hattersley with which Milne begins the book: "Never underestimate the British establishment's ruthless determination to destroy its enemies".

Steve Gibbons

Blackstone's Guide to the Criminal Justice and Public Order Act, 1994 by Martin Wasik and Richard Taylor (Blackstone Press Limited, 1995)

The Criminal Justice and Public Order Act 1994 swept away rights such as the right to silence and the right to peaceful protest. Save for so-called "anti-terrorist" legislation, it marks the low-point of this government's respect for civil liberties. Despite fairly extensive coverage of the Act through its Parliamentary stages, most people are still only generally aware of the extent of its provisions. For example, few realise that under the Act police officers can banish any individual from a given area of land on the basis that they think that person is going to commit an offence of "aggravated trespass". If that person comes back within three months he or she commits an offence. Worse still, there is no appeal from the police officer's order (save for the hopeless remedy of judicial review, which essentially means that the applicant has to show that the police officer took leave of his or her senses). It is an injunction without any safeguards and the sooner ordinary citizens wake up to this Act the better. In that respect the Blackstone's Guide (the first publication to deal with the Act) is to be welcomed. However, whether it is worth the money is another matter.

the sooner ordinary citizens wake up to this Act the better

The Guide costs £19.95 for 343 pages which at first blush seems reasonable. However, 203 of the 343 pages contain the text of the Act. The remaining 140 pages largely contain a reworded version of the Act: a structure that practitioners and students are familiar (and bored) with. Not such good value on reflection.

To be fair, this book is better than several recently published (which literally have only a few hundred words not taken from the particular Act in question), but for nearly £20 a more in-depth analysis should be provided. The only really useful feature is the references to Hansard. In these post-Pepper days, these are an essential requirement for lawyers. Otherwise, its probably better to buy a copy of the Act straight from HMSO for £18.

Keir Starmer is a barrister at Doughty Street Chambers.

The Child Support Act: YOUR RIGHTS AND HOW TO DEFEND THEM Third edition November 1994; published by Crossroads books, PO Pox 287,London NW6 5QU, England

by Lisa Connerty

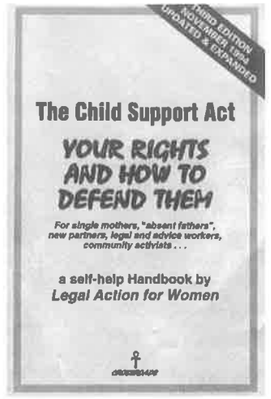
Described as a "self help handbook", this slim and extremely useful text is the work of Legal Action for Women, a legal service for women based at the King's Cross Women's Centre .

LAW have been working with those affected by the Child Support Act since the Dept of Social Security began preparing for the Act in 1991. Working with the Campaign against the Child Support Act they have built up impressive experience of the intimidatory tactics and obscurantist techniques used by the Department of Social Security to dissuade those with rights from exercising them and have drawn upon that experience in the production of this aptly named resource.

The book is not however in any sense a practitioners text, nor even a guide to the law in the same way as the invaluable handbooks published by the Child Poverty Action Group, for example, having no index or statutory annotations. It is strongly practical in its orientation without being simplistic and clearly designed to be accessible to a wide range of users. It succeeds in this aim and would be of use to all advisors, including those legally qualified, as it concentrates on strategy, using LAW's in depth knowledge of the methods and procedure used by the Agency and drawing upon the Agency guidance (published only after sustained pressure) and letters from the Agency to MP's as well as the personal experience of LAW's caseworkers.

All advisors working in welfare will be familiar with the bewilderment caused by the administrative practises of the DSS and the difficulties in mounting a legal challenge to assist those adversely affected by them. The Handbook provides an example of this in its explanation of, for example, the declaration at the conclusion of the Maintenance Application Form which initially required one signature for two separate declarations, the first being a declaration that information provided was complete and accurate and the second being the far more momentuous authorisation of the Secretary of State to collect maintenance. As a result of public pressure this declaration has now been amended with the result that the procedure now gives those affected more time to seek advice. This type of problem, practical yet potentially fraught with legal difficulties, and its solution occurs throughout the text.

The text is clearly laid out with essential advice in bold type and numbered sections dealing with common problems, for example the section headed "attendance at interviews is not compulsory" appears under this heading in the index enabling the user to access the required information swiftly. This may be somewhat disconcerting to those used to a more conventional layout but the text is in fact roughly chronological with application form problems at the beginning and arrears problems at the end and thus not too disturbingly non linear. It also contains some useful sample letters.



The text is free from excessive dogma while remaining uncompromising in its critical stance; thus the term "single mother" rather than "single parent" is used throughout, the authors explaining that 95% of single parents are mothers, yet the problems encountered by men through the implementation of the Act are neither unaddressed or overstated.

The Handbook is available from the publishers at a number of prices and it is hoped that purchasers will pay the maximum price they can afford. Get your organisation to buy a gross!

Lisa Connerty is a trainee solicitor at Wilsons

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