A JUSTICE REPORT

Compensation for Compulsory Acquisition and Remedies for Planning Restrictions together with a Supplemental Report

PREPARED BY A SUB-COMMITTEE OF THE
COMMITTEE ON ADMINISTRATIVE LAW

CHAIRMAN OF THE SUB-COMMITTEE
DAVID WIDDICOMBE, Q.C.

A STEVENS Publication

A JUSTICE REPORT

Compensation for Compulsory Acquisition and Remedies for Planning Restrictions together with a Supplemental Report

PREPARED BY A SUB-COMMITTEE OF THE
COMMITTEE ON ADMINISTRATIVE LAW

CHAIRMAN OF THE SUB-COMMITTEE
DAVID WIDDICOMBE, Q.C.

LONDON
STEVENS & SONS LIMITED
1973

Published in 1973 by
Stevens & Sons Limited of
11 New Fetter Lane, London.
Reprinted 1970 by Stemax
(Stevens, Sweet & Maxwell)
11 New Fetter Lane, London

This Report has been prepared and published under the auspices of the JUSTICE Educational and Research Trust

SBN 420 44180

JUSTICE

British Section of the International Commission of Jurists

This Report, first published in 1969, together with the Supplemental Report, now published for the first time, have been endorsed by the Committee on Administrative Law and by the Council of Justice.

The sub-committee which prepared the original Report consisted of the following:

* David Widdicombe, Q.C. (Chairman)
* P. E. R. English
* Prof. J. F. Garner
* J. C. Harris
T. A. Johnson, A.R.I.C.S.
* V. W. E. Moore
W. G. Nutley, F.R.I.C.S.
* K. A. Oates
G. E. Palmer, F.A.I.

The legal members of the sub-committee, indicated by an asterisk in the above list, have prepared the Supplemental Report.

R. C. H. Briggs acted as secretary.

Since the Supplemental Report was completed the White Paper (Cmnd. 5124) has been published. Notwithstanding, it is felt that the present publication may be of value in any discussion on the White Paper and the Bill to implement it.

In the Report references to the Town and Country Planning Act 1971 have been substituted for references to the earlier Town and Country Planning Acts, now repealed. Other changes are referred to in the notes.

AUSTRALIA
The Law Book Company Ltd.
Sydney : Melbourne : Brisbane

CANADA AND U.S.A.
The Carswell Company Ltd.
Agincourt, Ontario

INDIA
N. M. Tripathi Private Ltd.
Bombay

ISRAEL
Steimatzky's Agency Ltd.
Jerusalem : Tel Aviv : Haifa

MALAYSIA : SINGAPORE : BRUNEI
Malayan Law Journal (Pte.) Ltd.
Singapore

NEW ZEALAND
Sweet and Maxwell (N.Z.) Ltd.
Wellington

PAKISTAN
Pakistan Law House
Karachi

CONTENTS

THE REPORT

PART III

ACQUISITION PROCEDURE

THE SUPPLEMENTAL REPORT

COMPENSATION FOR COMPULSORY ACQUISITION AND REMEDIES FOR PLANNING RESTRICTIONS

REPORT

INTRODUCTION

1. At the beginning of 1966 the JUSTICE Committee on Administrative Law was appointed, charged with the duty of considering and reporting on the following matters:

(a) procedures concerned with the limitation of the use of land under Town and Country Planning legislation and cognate powers;
(b) procedures concerned with the designation of land for and the subjection of land to all forms of compulsory acquisition and for the determination of compensation; and
(c) the jurisdiction of the High Court to review such procedures.

During the course of the Committee's deliberations, the Land Commission Act 1967 was introduced in Parliament. In view of the impact of the Act on some of the matters the Committee was intending to examine, in particular alterations made by it to the law relating to compulsory acquisition, the Committee thought it convenient to defer consideration of the second item until some experience of the working of the Act had been gained. Accordingly, the Interim Report of the Committee, published in 1967, dealt only with the first and last of the matters specified in its terms of reference.

2. Within a short time, however, it had become increasingly clear to the Committee that consideration of the outstanding matters ought not to be further delayed. Evidence of growing disquiet at the apparent unfairness not only of certain aspects of compulsory acquisition procedure, but also of the quantum of compensation payable on the acquisition of interests in land, was shown by the number of occasions on which prominence was given to these matters, and continues to be so given, in both the national and local press, and in questions and debates in Parliament. At an early stage it was decided that the scope of any inquiry should not be limited, and that apart

from the consideration of problems related to compulsory acquisition procedure and to the quantum of compensation, the Committee should also deal with interrelated problems concerned with the amount of compensation payable in respect of restrictions on the use of land which are imposed by general planning legislation.

3. The Committee's investigation had only just begun when the Chartered Land Societies Committee, in a memorandum to the Ministry of Housing and Local Government, published proposals for the amendment of the present law relating to compensation for compulsory acquisition and planning restrictions. The Committee felt that the memorandum could make a valuable contribution to the achievement of a just solution to a complicated range of problems. It believed too, that an examination by the Committee of the same problems could lead to the making of proposals similar in kind to those made by the Chartered Land Societies Committee, and also to proposals which were at variance or in conflict with them. If this were to occur, in so far as the opinions of the two Committees were in harmony, the need for reform would be doubly recognised. In so far as they were at variance, benefit would flow from a comparison of the divergent views of different teams of experts.

4. Shortly after starting on its work, for considerations both of speed and effectiveness, the Committee decided to delegate the consideration of the matters before it to a sub-committee composed of lawyers and surveyors. In this way it was hoped that with members drawn from the professions, from local authorities and from universities, solutions would emerge which were not only logical, fair and just, but practical in their application and politically capable of acceptance by all concerned. That which follows is the result of the sub-committee's deliberations.

Part I

Compensation Payable on the Compulsory Acquisition of Land

Introduction

5. A century or more ago, statutes which gave to local authorities and statutory undertakers wide general powers of compulsory acquisition were relatively unknown. Such power to acquire land compulsorily as did exist emanated from private or local Acts of Parliament, each of which contained its own provisions for the assessment and payment of compensation. With the advent of the Industrial Revolution a rapid increase occurred in the number of such Acts because railway companies, public utility authorities and similar bodies sought

to acquire land in order to satisfy essential community needs. Rather than that each individual Act of Parliament should contain its own compensation provisions, the Lands Clauses Consolidation Act 1845 was passed to provide a standard code of compensation which could be incorporated by reference into every relevant Act of Parliament passed thereafter. Today, although the statutory provisions regarding payment of compensation are to be found primarily in a number of recent statutes such as the Land Compensation Act 1961 and the Compulsory Purchase Act 1965, the basis of compensation paid to an owner of an interest in land which has been acquired compulsorily rests substantially on the law established by the 1845 Act, as amended by the Acquisition of Land (Assessment of Compensation) Act 1919.

6. The 1845 Act as interpreted by the courts establishes four main elements in a compensation claim:

(a) Compensation in respect of the interest in the land to be acquired.
(b) Compensation in respect of loss caused by any disturbance suffered as a direct result of the acquisition.
(c) Compensation in respect of severance, where damage is sustained by reason of the severing of the land purchased from other land of the owner.
(d) Compensation in respect of injurious affection where land suffers damage by reason of activity carried out on land which has been taken.

7. Although the right to claim compensation is now to be found in legislation such as the Land Compensation Act 1961 and the Compulsory Purchase Act 1965 some of the provisions are restatements of provisions contained in the 1845 Act. Consequently, the language of the law remains substantially unchanged, and is unintelligible to most people.

8. A greater criticism of the compensation code is that, with its roots in a period when compulsory acquisition of land affected fewer people than it does today, it has failed to give adequate recompense to those affected by compulsory acquisition in an age when it is of frequent occurrence and undertaken on a much larger scale.

9. Even though we have found substantial areas of injustice in the present law of compulsory acquisition and compensation, it would be misleading to suggest that the problem of determining the proper measure of compensation to be paid in any given circumstance was unique to this country and unparalleled elsewhere. Thus, although the Fifth Amendment to the Constitution of the United States adopted

in 1791 provides that " . . . nor shall private property be taken for public use, without just compensation . . . ", both the courts and the legislatures of that country are currently grappling with the problem of what type of damage arising from the compulsory acquisition of property should be met by an acquiring authority.[1]

Compensation payable in respect of interests in land compulsorily acquired

10. The law regarding the payment of compensation in respect of interests in land which have been compulsorily acquired is now to be found substantially in the Land Compensation Act 1961, the keystone of which is section 5, and the six " rules " contained within that section. The traditional formula of open market value as the price to be paid on acquisition, contained in rule 2 of section 5, can evoke no criticism on our part. The elucidation of the " market value " formula by some of the remaining rules within the section does, however, give cause for consideration and comment.

11. Rule 3 of section 5 provides:

> " The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory purchase powers."

The purpose of the rule is to exclude from the compensation payable on acquisition any value which can be attributed to the special suitability or adaptability of the land for some purpose, where the only persons prepared to pay a higher price on that account are a particular purchaser or an authority possessing compulsory purchase powers. Although the rule can be applied only in limited situations, doubt exists as to the extent of its application to cases where land was specially suitable or adaptable to the needs of a particular purchaser, and that purchaser was not concerned with the compulsory acquisition of the land. We have in mind cases where additional value is given to land because a neighbour might be prepared to pay more than others for that land in order to extend his premises. We believe that the rule should not apply to this sort of situation, and to others where a market for the land, however limited, could be shown to exist

outside the needs of the acquiring authority. We consider that a rewording of the rule is necessary in order to remove any doubt.

12. Rule 5 of section 5 provides:

> " Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for that purpose, the compensation may, if the Lands Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement."

With certain types of property such as churches and schools, for which there is no general demand or market, open market value fails to provide a just measure of compensation for the interest being acquired. Under this rule, compensation may in such cases be assessed as the cost to the owner of acquiring a suitable site elsewhere, and erecting any buildings on that site that may be needed. One significant effect of the application of this rule is that owners could find themselves in possession of property more valuable than that which had been taken from them. This seems to be unavoidable, since to provide otherwise would make the rule either impossible or extremely difficult to apply. We feel that, although the application of the rule is discretionary, general satisfaction exists as to the way in which the rule is made to operate, and that accordingly the Lands Tribunal should continue to exercise jurisdiction in this matter.

13. We should, however, like to express some concern at the way in which a " rule 5 " assessment could be defeated by an acquiring authority failing to provide an alternative site, as the availability of a site is in practice a necessary element of a claim to compensation based on the rule. We recognise that the authority is not bound to provide an alternative site and that the question of availability depends on planning needs. We also recognise that a problem exists as to the area within which reinstatement could reasonably be expected to take place. Yet a danger exists that an acquiring authority's failure to provide an alternative site could be motivated by a desire to avoid the additional burden of compensation it would otherwise be required to pay. In this connection we do no more than acknowledge the many difficulties inherent in seeking to provide through legislation general standards of administrative morality, but we hope that administrative action will be considered to alleviate our concern.

14. Some doubt has arisen as to whether reinstatement could be bona fide intended if the intention to reinstate was itself conditional upon the recovery of compensation under the rule. In the case of

Incorporated Society of the Crusade of Rescue and Homes for Destitute Catholic Children v. *Feltham U.D.C.* (1960) 11 P. & C.R. 158, the Lands Tribunal held that an intention to reinstate could be bona fide, even though reinstatement would have been impossible without the compensation being assessed under the rule. In the later case of *Festiniog Railway Co.* v. *Central Electricity Generating Board* (1962) 13 P. & C.R. 248, views expressed by Harman L.J. in the Court of Appeal suggest that this may not be so. We believe that the rule should be applied in accordance with the earlier decision, as to do otherwise would severely limit its applicability.

15. An essential requirement of the application of the rule is that reinstatement must be bona fide intended. We agree with the recommendations in the reports of the Uthwatt Committee [2] and of the Chartered Land Societies Committee [3] that the Lands Tribunal should be given power to direct that the whole or part of the sum awarded should be retained and paid as and when reinstatement takes place. This power would not, of course, prevent the owner from falling back on a rule 2 assessment and obtaining open market value if reinstatement did not take place.

16. The question of the date by reference to which rule 5 compensation is assessed is the subject of litigation at the date of this report.[4] In our opinion rule 5 compensation should be assessed by reference to the date when reinstatement takes place, or should reasonably have taken place, and not by reference to the date of notice to treat, and if this result is not achieved by the litigation, we think it should be achieved by legislation.

17. Under section 6 of the Land Compensation Act 1961, where land is acquired for the purpose of a scheme of development falling within the First Schedule to the Act, compensation for the land acquired is not to be increased or reduced by the effect of any development either proposed or carried out under the scheme, except in so far as the actual or proposed development might have taken place apart from it. Misgivings have arisen as to the precise meaning of these provisions in the light of the decision in *Halliwell and Halliwell* v. *Skelmersdale Development Corporation* (1965) 16 P. & C.R. 305. In that case valuers representing both owner and acquiring authority were held to have assumed incorrectly that they had to disregard changes of circumstances between designation of a site as a new town and service of

notice to treat, and to substitute in place of the actual happenings during that period development which might have taken place had the designation not been made. We accept the principle that changes in value caused by schemes of development falling within the First Schedule should be excluded in assessing the amount of compensation to be paid. Nevertheless, we think that an owner ought to be able to take into account changes which might have occurred had development not been induced by any such scheme. We dislike decisions such as that in the *Skelmersdale* case in so far as they seem to point the other way, and despite support for our view to be found in *Camrose* (*Viscount*) v. *Basingstoke Corporation* [1966] 1 W.L.R. 1100, we feel that, for the avoidance of doubt, the position ought now to be clarified.[5]

Planning assumptions

18. In assessing the market value of an interest in land, account is taken of existing planning permissions which benefit the land. In addition, in determining market value, it is assumed that planning permission would be granted in respect of the development of the land, in the circumstances set out in sections 15 and 16 of the Land Compensation Act 1961. Section 15 provides that planning permission shall be assumed for development in accordance with the acquiring authority's proposals, development within Schedule 8 to the Town and Country Planning Act 1971, and development of any class specified in a "certificate of appropriate alternative development" which may have been issued under section 17 of the Act.

19. Section 16 provides that where land to be acquired is comprised in a current development plan, certain special assumptions as to planning permission are to be made, depending on how that land is dealt with in the plan. So that if, for example, land is defined in the plan as the site for development of a specified description, it is to be assumed that planning permission for that kind of development would be granted. If no development is contemplated by the plan or the plan provides for the development of the land for a purpose which is considered unsuitable as a basis for the assessment of compensation, the owner of an interest in the land, or the acquiring authority, may apply to the local planning authority under section 17 of the Act for a certificate stating the alternative development (if any) for which planning permission might reasonably have been expected to be granted if the land were not proposed to be acquired by an authority possessing compulsory purchase powers. The section 17 procedure is not available, however, if the land is defined in the plan as being

within an area of comprehensive development (or an " action area "), or is allocated in the plan primarily for residential, commercial or industrial use.

20. A weakness in the scope of the provisions relating to assumptions as to planning permission is that the assumptions specifically set out in section 16 of the Act are related to the provisions of the development plan. Although this weakness is intended to be covered by the section 17 certificate of appropriate alternative development procedure, there are certain occasions when the certificate procedure cannot be used, yet an alternative use might be expected to be available apart from uses suggested by the development plan. An example may be given as an illustration of, say, a disused church hall in an area allocated in the development plan for residential purposes and containing a number of non-conforming uses. On the basis that the owner of property with a non-conforming use could visualise the continuance of that use for, say, a period of ten years unless his interest is compulsorily acquired, the owner of the church hall ought to be able to assume that planning permission would be granted for industrial or commercial purposes for a limited ten-year term. Unfortunately, under sections 16 and 17 it is not possible for him to make an assumption of this kind.

21. The owner is helped in this regard by section 14 (3) of the Act (the " hope value " provision) which does not require it to be assumed that planning permission would necessarily be refused for development, other than that which may be specifically assumed under sections 15 and 16. If section 14 (3) of the Act is to help an owner, the matter has to be taken to the Lands Tribunal and expert evidence introduced at that stage to support his case. We believe it would be better for the local planning authority to be brought into the determination of this matter at a much earlier stage by enlarging the applicability of the section 17 certificate procedure. Rather than wait for matters to be left to be determined by the Lands Tribunal, we would like to see the certificate procedure given a more universal application. We suggest, therefore, that the restrictions which limit the availability of the procedure, by excluding it in respect of land defined in the plan as an area of comprehensive development (or an " action area "), or allocated primarily for a use which is residential, commercial or industrial, be removed so that it be available in all cases where it might be possible to assume planning permission for development for a purpose other than that available to an owner under section 16.

Site value as a basis for compensation

22. In a particularly important and significant area of the law, market value as the dominant characteristic of the compensation code has been abandoned and replaced by a standard of compensation based on the site value of the land acquired. The material provisions relating to slum clearance compensation, as it is commonly called, are to be found substantially in Part III of the Housing Act 1957.

(*a*) Under section 42 of the Act, a local authority, if satisfied as respects any area that the houses in that area are unfit for human habitation and that the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings, may declare the area to be a clearance area. Section 43 gives the local authority power to acquire compulsorily the land comprised in the area.

(*b*) The standard of fitness is laid down in section 4 which provides that:

> " (1) In determining for any of the purposes of this Act whether a house is unfit for human habitation, regard shall be had to its condition in respect of the following matters, that is to say—
>
> (*a*) repairs;
> (*b*) stability;
> (*c*) freedom from damp;
> (*d*) natural lighting;
> (*e*) ventilation;
> (*f*) water supply;
> (*g*) drainage and sanitary conveniences;
> (*h*) facilities for storage, preparation and cooking of food and for the disposal of waste water,
>
> and the house shall be deemed to be unfit for human habitation if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition."

23. Compensation for acquisition is assessed in accordance with the provisions of the Land Compensation Act 1961 and section 59 (2) of the 1957 Act which provides that:

> " The compensation to be paid for land, including any buildings thereon, purchased as being land comprised in a clearance area shall be the value at the time the valuation is made of the land as a site cleared of buildings and available for redevelopment in accordance with the building bye laws for the time being in force in the district . . ."

The effect of section 10 of and para. 1 (2) of the Second Schedule to the Land Compensation Act 1961 is to provide that the amount of

compensation assessed in this way is not to exceed market value, so that if a cleared site is worth more than the site together with the buildings upon it, the lesser sum is that which is payable.

24. Site value compensation is also payable in cases of compulsory acquisition of unfit houses:

(a) not capable of repair at reasonable cost (sections 11 (3) and 12 (4) of the 1957 Act);
(b) in place of the making of a demolition order or closing order (sections 17, 19 and 29 (2) of the 1957 Act); and
(c) for the purposes of redevelopment (section 59 (3) of the 1957 Act).

25. The origin of site value as the measure of compensation is of some antiquity. Its presence can be seen in section 41 of the Housing of the Working Classes Act 1890 under which the arbitrator was required to receive evidence to prove that a dwelling-house was in a state of defective sanitation or repair or that its rental was enhanced by reason of its being used for illegal purposes or such overcrowding as was dangerous or injurious to the health of its inmates. In such cases the measure of compensation was accordingly reduced. Thus, if a house was overcrowded and the rental value of it was enhanced thereby, its value had to be suitably adjusted for compensation purposes. Similarly, if a house was unfit for human habitation the owner could recover only the value of the land and any materials on it. In making such a provision the legislature intended to prevent landowners from making a profit on the compulsory acquisition of their property where they had allowed the standard of accommodation provided to fall short of the minimum necessary for the preservation and maintenance of health. Where these standards were not met and the demolition of the properties affected became essential, compensation based on the value of the property acquired as a cleared site, and not at market value, was clearly justified. Present circumstances differ in that, whilst the measure of compensation remains the same, the standards of unfitness applied today are much higher. So much so in fact, that model dwellings erected in 1890 might well be considered today unfit by reason of lack of natural lighting, lack of storage facilities or the like.

26. For many years it has been recognised that site value as a basis for the assessment of compensation is frequently unfair. This has been acknowledged on many occasions and attempts have been made to raise the level of compensation in the following ways:

(a) By the temporary provisions contained in section 61 of and the Second Schedule to the Housing Act 1957 as amended by the Housing (Slum Clearance Compensation) Act 1965, whereby owner-occupiers received the amount of compensation that they would have received had the house not been declared unfit, so long as they were living in the house on December 13, 1955, had bought their interest between September 1, 1939, and that date and the compulsory purchase order had been made before December 13, 1965. In addition, where the interest was purchased between December 13, 1950, and December 12, 1955, the entitlement will apply to all orders made before December 13, 1970.
(b) By section 60 of the Housing Act 1957 and the Housing (Payment for Well-Maintained Houses) Order 1963 whereby, if a certificate is available that the house has been well maintained, a limited sum may be paid to reflect the expenditure on maintenance to the person responsible for it.

During the course of our deliberations the Government published its White Paper "Old Homes into New Houses," [6] containing proposals for amending the law relating to compensation for property compulsorily acquired under Part III of the Housing Act 1957 (and ancillary site value legislation). The effect of the proposals varies according to whether the interest in the house that is to be acquired is that of an owner-occupier or of a non-owner-occupier.

Owner-occupied houses

27. We should like to express our general satisfaction with the proposals contained in paragraphs 47–50 of the White Paper for supplementary payment of an amount equal to the difference between market value and site value (which is at present payable to a limited class of owners), to be paid in respect of all houses acquired compulsorily where site value compensation is applicable, where the house has been owner-occupied continuously since April 23, 1968, or, if acquired for occupation after that date, where the house has been owner-occupied for two years before commencement of the relevant proceedings leading to the purchase or vacation of the house.

28. Despite these proposals, we believe that the aims of the White Paper could be equally well achieved by abandoning the site value provisions and the supplementary payments procedure as the basis of compensation, and substituting the normal market value basis as

set out in section 5 of the Land Compensation Act 1961. Apart from the simplification of the law that this would produce, we believe it right that owner-occupiers should get compensation for disturbance suffered by them on the acquisition of their property (which they do not get as long as site value is the basis), and an acknowledgment of this claim under rule 6 of section 5 would be an additional argument for substituting market value as the basis of compensation.

Non-owner-occupier interests

29. Paragraph 51 of the White Paper proposes that the maximum amount which is at present payable as a supplement in respect of "well maintained" houses be doubled in the event of the compulsory acquisition of unfit tenanted houses or owner-occupied houses which do not benefit from the earlier proposals mentioned above. We believe that although these proposals would improve the position of non-owner-occupiers, the assessment of compensation in such cases would continue to have an arbitrary flavour, in so far as it would be built on principles which would not ensure that adequate compensation was always given to those concerned. In discussing this problem and attempting to formulate alternative proposals, we considered, but rejected as unsuitable, any relaxation of the standards of unfitness as laid down in section 4 (1) of the Housing Act 1957. We also considered the possibility of exempting houses from the rigours of the site value provisions if it could be shown that they could be made fit at reasonable cost. This procedure is available to objectors to compulsory purchase orders which take place under Part II of the Housing Act 1957 (in respect of demolition or closing orders) but not under the more extensive provisions of Part III of the Act. The danger was seen to be that if the right were extended to acquisitions under Part III, and it were possible to raise at the compulsory purchase inquiry the issue of whether property could be made "fit for human habitation" at reasonable cost, the existing compulsory purchase procedure could be unduly prolonged. Against this, there was no doubt that if the cost of putting property into repair were a factor which had to be taken into account, the local authority would have to consider this in deciding whether or not to condemn it as unfit and this could result in fewer objections to compulsory purchase orders. Even so, although such a requirement could reduce the number of properties represented at the inquiry as unfit, it might tend to prolong the inquiry in respect of other properties which the authority had classified as unfit and incapable of repair at reasonable cost. We unanimously accept the value of an owner being able to make a challenge of this nature under Part II of the 1957 Act. As regards its extension to Part III of the Act, difference of opinion existed between us as to whether or not this would result in a protraction of compulsory acquisition proceedings and thus not be acceptable as a practical solution.

30. In dealing with the question of slum clearance, we recognise that there was justice in the local authority not being required to pay full market value for properties which were unfit where the market value failed to reflect the cost of putting those properties into a fit state of repair. Where there is a shortage of houses for occupation and properties have a scarcity value, lack of repair is not always fully reflected in differences in market value between those in need of repair and those which are not, and we see no justification for landlords who have failed to carry out repairs to their property receiving as much in compensation as those landlords who have repaired. We believe that the best course would be to remove from a market value assessment the scarcity value element, a precedent for which exists in the "fair rent" provisions of the Rent Act 1965, now in the Rent Act 1968, and to assess the compensation to be paid on a capitalised "fair rent" basis.

Section 46 of the Rent Act 1968 provides that:

> "(1) In determining . . . what rent is or would be a fair rent . . . regard shall be had . . . , to all the circumstances (other than personal circumstances) and in particular to the age, character and locality of the dwelling-house and to its state of repair.
>
> "(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in the locality . . . is not substantially greater than the number of such dwelling-houses in the locality which are available for letting. . . ."

The section also provides that improvements carried out by the tenant otherwise than under the terms of the tenancy, or disrepair or defects due to the tenant's failure to comply with such terms, are to be disregarded in assessing the fair rent.

31. We believe that the "fair rent" provisions of the 1968 Act are working reasonably well, and that the concept of a fair rent can be suitably adapted to provide in capitalised form a just measure of compensation for tenanted property found unfit for human habitation according to the standards of unfitness laid down in section 4 of the Housing Act 1957. If this were done, it would considerably reduce the number of objections which are at present made to com-

pulsory acquisition, where often the real issue raised tends to be one of compensation rather than of acquisition. We believe, too, that in principle, site value provisions ought to be abolished in whichever statute they are found and replaced by the same rules for assessing compensation that we have now proposed.

32. We do not envisage the application of a capitalised fair rent basis of compensation to homes other than those classified as unfit. There could be no justification for extending its application to fit houses, and the non-owner-occupier should continue to get the scarcity value of the accommodation as reflected in capital sales. The distinction is justifiable because, were it not for the scarcity value of unfit houses, landlords would be obliged to make such properties fit if they intended to let them.

33. Consideration was then given to the effect of our proposals on property where site value exceeded market value and compensation was restricted to the lower market value. We recognise that if a capitalised fair rent basis of compensation were to be applied in such situations, the ceiling of compensation would be brought down if the fair rent basis gave a lower ceiling than that provided by market value. This consequence would be consistent with our general proposals and we feel that the capitalised fair rent basis of compensation should be the basis to be applied.

34. A further complication which arose under current legislation occurred where the unfit property acquired was partly owner-occupied and partly let. In these circumstances it was felt that full market value should be paid in respect of that part owner-occupied, and a capitalised fair rent paid in respect of the remainder.

35. We consider that in principle the same rules for assessing compensation for acquisition under Part III of the Housing Act 1957 should apply to acquisitions under Part II of the Act.

36. One further matter relating to slum clearance compensation which we thought needed attention was the meaning to be attributed to the word "house." It has been defined by Lord Denning M.R. in *Ashbridge Investments* v. *Minister of Housing and Local Government* [1965] 1 W.L.R. 1320 at p. 1324.

> ". . . it is apparent that a 'house' in the Act [of 1957] means a building which is constructed or adapted for use as, or for the purpose of, a dwelling. It need not actually be dwelt in, but it must be constructed or adapted for use as a dwelling, or for the purposes of a dwelling."

Other decided cases show that for the purposes of Part III of the Housing Act 1957 a house can be a building which has partially a commercial or business user, and a building which would not in general speech be called a house at all. The leading cases on the subject are:

Re Bainbridge, South Shields (D'Arcy Street) Compulsory Purchase Order 1937 [1939] 1 K.B. 500 (shops with living room over them held to be houses);

Re Butler, Camberwell (Wingfield Mews), No. 2 Clearance Order 1936 [1939] 1 K.B. 570 (garages and stores with dwelling-houses over held to be houses);

Annicola Investments v. *Minister of Housing and Local Government* [1966] 2 W.L.R. 1240 (block of forty-eight tenements with four shops at street level held to be a house);

Quiltotex Co. v. *Minister of Housing and Local Government* [1966] 1 Q.B. 704 (tenement block held to be a house);

Okereke v. *Brent London Borough Council* [1967] 1 Q.B. 42 (building containing three floors occupied by more than three families held to be a house for the purpose of section 15 (1) of the Housing Act 1961).

37. We feel that the meaning which has been attributed to the term "house" is unsatisfactory and that redefinition of the term is necessary. In particular it would seem that if an interest is acquired in respect of part of a building which is lawfully used for business purposes, that interest should, for the purposes of compensation, be separately treated and dealt with under the normal compensation provisions of the Land Compensation Act 1961. We agree with the proposal of the Chartered Land Societies Committee [7] that in deciding what constitutes a house "regard should be had to the existing use of the premises provided that such use is not in contravention of planning control and that premises which enjoy an established or authorised use for any commercial purpose should be deemed not to constitute a house, irrespective of whether or not they have been structurally altered since the time when they were last used for residential purposes."

Compensation for disturbance

38. In addition to the compensation paid for the actual acquisition of an interest in land, the owner of that interest may be entitled

to receive compensation in respect of the loss which he has suffered as a result of being disturbed in his enjoyment of it. There is no express statutory provision which confers a right to this kind of compensation, though its payment is recognised by statute in rule 6 of section 5 of the Land Compensation Act 1961.

39. In their approach to the kind of loss which may justifiably be claimed as disturbance, the courts apply tests analogous to those applied in actions for damages at common law. In *Harvey* v. *Crawley Development Corporation* [1957] 1 Q.B. 485 at p. 494 Romer L.J. said:

> ". . . the authorities . . . establish that any loss sustained by a dispossessed owner (at all events one who occupies a house) which flows from a compulsory acquisition may properly be regarded as the subject of compensation for disturbance provided, first, it is not too remote and, secondly, that it is the natural and reasonable consequence of the dispossession of the owner."

Thus, the courts have accepted as direct losses resulting from acquisition claims in respect of such items as removal expenses, depreciation of stock and fixtures, and diminution in the value of goodwill. Apart from the following criticisms we are content to have questions of remoteness and consequential loss worked out by the courts, and would prefer this to continue rather than have the development and expansion of the law hamstrung by detailed statutory provisions. We have moreover no objection to the recommendation of the Chartered Land Societies Committee [8] that the right to receive compensation for consequential loss be placed on a firm independent statutory foundation, so long as the right is expressed in general terms, so that the courts will not be unduly inhibited in its application. We have considered specific complaints made against the inadequacy of disturbance compensation and these, together with our conclusions, are discussed in the following paragraphs.

40. It is alleged that compensation is inadequate because payment is not made in respect of certain expenditure incurred by an owner on his property, such as in adapting or fitting out his house to a particular taste or in laying out a garden, unless it is subsequently reflected by an increase in the market value of the property. We do not believe that it should be otherwise. We would take a different view of expenditure incurred in adapting new premises to special

needs, as might arise if the interest acquired belonged to an invalid, but it would appear that such expenditure is recoverable as part of a claim to disturbance compensation.

41. A rule has been established by the courts that in assessing compensation for loss of goodwill to a business concern, no account is taken of any personal circumstances which prevent the owner from re-establishing his business elsewhere. In *Bailey* v. *Derby Corporation* [1965] 1 W.L.R. 213, the Court of Appeal held that in determining whether or not compensation could be claimed for the total extinguishment of goodwill, the state of health of the claimant, being only an " unhappy coincidence " was an extraneous consideration. We believe that it is right in such circumstances to draw an analogy with the liability which arises with regard to personal injury in the law of tort, whereby the wrongdoer is required to take his victim as he finds him, and to suffer the greater liability if that victim should possess an egg-shell skull. We therefore recommend that the rule applied in *Bailey* v. *Derby Corporation* be reversed and that the personal circumstances of the claimant, such as age and state of health, be taken fully into account.

42. We foresee further injustice if perchance the decision in *Bailey* v. *Derby Corporation* were extended. For example, at present, in determining whether alternative accommodation for a dispossessed trader is reasonable in the circumstances, inadequacy of capital is a factor currently taken into account. If the alternative accommodation is not reasonable, the trader receives compensation for the total extinguishment of his business. The danger exists, therefore, that the courts might come to regard inadequacy of capital as an extraneous matter and hold that it should be disregarded in determining whether alternative accommodation is, or is not, reasonable.

43. Mention has previously been made of the procedure under section 17 of the Land Compensation Act 1961 for the obtaining from the local planning authority of a certificate of appropriate alternative development. In *Hull and Humber Investment Co. Ltd.* v. *Hull Corporation* [1965] 2 Q.B. 145, the Court of Appeal refused to allow, as an element of disturbance, costs which had been incurred by an owner in connection with an appeal to the Minister for the purpose of obtaining a more favourable certificate of appropriate alternative development under section 17. Although we agree with the principles established in *Horn* v. *Sunderland Corporation* [1941] 2 K.B. 26, with which this decision is consistent, a real sense of grievance arises from the fact that initially an application under section 17, usually

made by the owner of an interest in the land to be acquired compulsorily, may be determined by the same authority that is acquiring the land. In seeking a certificate under section 17, an owner is doing no more than trying to establish that certain rights are attached to his property, so that if those rights are to be taken from him he should be adequately compensated. To meet this situation, where expense is incurred in appealing to the Minister against an unsatisfactory decision of the authority under section 17, we recommend that successful appellants (other than acquiring authorities) should normally be allowed the costs of their appeal, and that paragraph 5 of Circular No. 73/65 of the Minister of Housing and Local Government, which sets out the situations in which successful objectors should receive their costs, be enlarged to cover this matter.

44. It is sometimes suggested that costs should not be awarded in these cases because they are not normally awarded to successful parties in planning appeals. We believe that there is a material distinction between the two situations in that an element of compulsion underlies the use of the section 17 certificate procedure which is not present in the case of a planning appeal.

45. Where a scheme of compulsory acquisition exists, owners of adjoining business premises sometimes find that their trade suffers as a consequence of the scheme. Then, if their own interests are subsequently acquired by a further scheme, the compensation paid for loss of goodwill is assessed on trading figures depressed by the first scheme of acquisition. In so far as the existence of schemes of compulsory acquisition prevents traders whose interests are acquired compulsorily from receiving their true loss of goodwill we recognise that an element of injustice may exist. We do not believe that the making of discretionary *ex gratia* payments would be a satisfactory remedy. We considered other possible solutions, but as they were all impracticable, we have to admit we are unable to make recommendations to remove the injustice. We can do no more than draw attention to the problem.

46. We considered whether it was right that compensation paid for disturbance should be reduced by the amount of taxation which the owner would have had to pay had it not been for the compulsory acquisition of his interest. We feel that it would be better if taxation matters were not considered at the assessment of compensation stage. We recognise, however, that compensation cannot be considered on this point separately from damages in the law of tort, and that whatever rule is adopted should be the same for both fields of law.

47. The main statutory provision which imposes a duty on a local authority to provide alternative accommodation for dispossessed traders and residential occupiers is to be found in section 123 (7) of the Town and Country Planning Act 1971. It is not of universal application, but where it does apply (areas of comprehensive development and land contiguous or adjacent thereto), the local authority and the Minister are to exercise their powers to secure,

> "... so far as may be practicable, to persons who were living or carrying on business or other activities on any such land ..., who desire to obtain accommodation on such land, and who are willing to comply with any requirements of the authority as to the development and use of such land, an opportunity to obtain thereon accommodation suitable to their reasonable requirements, on terms settled with due regard to the price at which any such land has been acquired from them. ..."

We regret that the application of the duty to give those displaced an opportunity to return so far as may be practicable with the authority's plans gives rise to much dissatisfaction when it affects displaced traders. We are unhappy with the provision as it is now applied, and would prefer a more positive duty to be placed on local authorities to require them to have regard to the needs of those dispossessed.

48. Where alternative accommodation has been offered to residential owner-occupiers, some local authorities have adopted the practice of deducting from the compensation payable an amount to cover the cost of rehousing when there is no obligation on the authority to do this. Such amounts, known as "abatement," may sometimes be repayable should the accommodation be vacated within a stipulated time. We feel that the cost of providing alternative accommodation should be reflected in the rent to be charged and not act as an influence on the compensation actually paid for acquisition. We strongly deplore arrangements that are in the nature of "key money" and suggest that if administrative strictures are inadequate to prevent such activities, arrangements of this kind should be made unlawful by statute.

49. A further cause of dissatisfaction with the compensation code arises from the inability of persons whose property has been acquired compulsorily to purchase alternative accommodation with the compensation that they have received. We believe that some help should be given to persons so affected, and that it should be limited to the difference between the compensation paid and the cost of comparative alternative accommodation. Our general feeling was that such

help should be limited to residential owner-occupiers and take the form of interest-free loans secured by mortgages on the alternative accommodation acquired. These loans ought normally to be repaid over an agreed term though we differed as to whether this should extend to the date of disposal of the property or to the date of the death of the recipient. We thought that provision might also be made for the payment of interest if the period of repayment needed to be extended for good cause. We differed also as to whether or not proof of the need for such help should be a condition of its availability. We all agreed, however, that a strong case existed for some kind of interest-free loan to bridge the gap that existed between the compensation paid on dispossession and the cost of relocation elsewhere, and we recognised, as our differences indicate, that careful consideration would need to be given to the detail of its application. We propose that the principle of interest-free loans be established by recognition in statutory form, but that its detailed application be determined by the Minister by statutory instrument. ?

Compensation in respect of severance

50. In addition to compensation being paid in respect of the land which has been acquired, it may also be payable under section 7 of the Compulsory Purchase Act 1965 in respect of damage sustained by an owner of land by reason of the taking of part of that land and its severance from that part not taken. Where only part of a person's property is acquired and this causes damage to the remainder, the owner is not obliged merely to accept compensation for that damage. In certain cases he can require the acquiring authority to purchase the whole of his property and not just the part.

Section 8 of the Compulsory Purchase Act 1965 provides that:

> "(1) No person shall be required to sell a part only—
> (*a*) of any house, building or manufactory, or
> (*b*) of a park or garden belonging to a house,
>
> if he is willing and able to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal determines that—
>
> (i) in the case of a house, building or manufactory the part proposed to be acquired can be taken without material detriment to the house, building or manufactory, or
> (ii) in the case of a park or garden, the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the house . . ."

Where the property of which part only is to be acquired is of a kind other than that mentioned above, such as agricultural land, and the acquisition of part will cause damage to the part not to be acquired, the owner can compel the acquiring authority under the provisions of section 8 to purchase the whole of the property only if the quantity of land to be left with the owner would be less than half an acre.

51. We appreciate that for the purposes of determining whether the acquiring authority ought to purchase the whole of any property, the application of criteria which depend on considerations of material detriment, amenity or convenience has considerable merit. We do not feel, however, that there is sufficent justification for restricting the type of property in respect of which these criteria are applied, and employing in other cases considerations which are related only to area or size. We believe that too many distinctions are drawn between the different types of property and that the danger of the authority having to acquire more land than was justified could be safeguarded by a wider application of the "material detriment" requirement.

Compensation in respect of injurious affection

52. Where land suffers damage from the taking of other land belonging to the same owner, this gives rise to a claim for compensation for severance. Where land suffers damage by the carrying out of some activity on land which has been taken, this gives rise to a claim for injurious affection.

53. The present law relating to compensation for injurious affection draws a sharp distinction between damage caused to land where other land of the owner has been acquired compulsorily, and damage caused to land where no land of that owner has been acquired. In the former situation, apart from one significant defect, the compensation payable is adequate. In the latter situation, the compensation payable is generally inadequate and often non-existent. We do not quarrel with the relevant legislative provisions in so far as they distinguish between the two situations where damage arises and we believe that the distinction needs to be maintained. In our view, however, within each situation, reform of the law is both urgent and necessary.

54. Where part of an owner's land is taken, and damage is caused by activity upon it to that part retained, section 7 of the Compulsory Purchase Act 1965 ensures that adequate compensation is given in respect of that damage. Where, however, damage is caused to that

part retained, and some of this damage is caused by the use of that part which has been taken from the owner and some of it by the use of other land which has not been taken from him, a claim for compensation can only be made in respect of the damage caused by the use of that part taken from him. This rule, which was recently confirmed in the case of *Edwards* v. *Ministry of Transport* [1964] 2 Q.B. 134, means that an owner who loses merely a small part of his land in order to provide a footpath for a by-pass road, or a hard shoulder for a motorway, is entitled to receive compensation only for injurious affection in respect of damage caused to the part of his land retained through the use of the footpath or hard shoulder, and not in respect of damage caused to it through the use of the by-pass road or motorway. We believe that this decision should be reversed so that an owner who has had part of his land taken from him will receive full compensation for the injurious affection to the land he retains, regardless of whether or not the damage is caused by the use of land taken from him.

55. Where no land is taken from a person but damage has nevertheless been caused to his land by some activity undertaken on other land, compensation may be claimed under section 10 of the Compulsory Purchase Act 1965 if it can be shown that:

(a) the damage is a consequence of the lawful exercise of a statutory power;
(b) the damage flows from an act which, if done without statutory authority, would otherwise be actionable;
(c) the damage is in respect of an injury to land; and
(d) the damage arises from the construction or execution of works and not from subsequent user.

The provisions in the law which authorise the payment of compensation in respect of this kind of injurious affection recognise that no action for nuisance can be taken at common law against an authority acting within its statutory powers. In its place, the provisions confer on the injured parties a much less favourable statutory substitute. Injustice is caused by the exclusion of compensation for damage caused by subsequent user, so that an owner of land has no claim for any loss of value to his property following upon the construction of a motorway or airport on adjacent or nearby land, where that loss is caused by the user of such facilities (as distinct from the works involved in their construction), if none of his land has been taken for that purpose. We believe it to be a sad commentary on the present law that an owner of land in an area through which a motorway is to

be constructed should prefer that the motorway takes the whole of his property rather than go near to it.

56. In considering the question of payment of compensation for damage caused to land by the user of other land, possible courses that could be suggested are:

(a) that no compensation should be paid in respect of that damage;
(b) that compensation should be paid to any person who suffers damage to his interest in property as the result of an act authorised by statute, irrespective of whether or not an action at common law for nuisance would have been available if the damage had not been authorised by statute;
(c) that compensation should be paid to any person who suffers damage to his interest in property, if that damage would constitute an actionable nuisance at common law, were the damage not authorised by statute.

We consider that suggestion (a) substantially represents the position of owners of land (none of which is actually acquired) at the present time. We cannot support suggestion (b), as this would impose a wider liability on public authorities than that at present imposed on individuals, and could result, say, in compensation having to be paid to owners of high class residential property where the value of their interest has fallen as a result of the building by a local authority of a nearby housing estate. We favour, therefore, the application of a more general basis of compensation than is available at present, consistent with the principle contained in suggestion (c) above.

57. We believe that it is correct to draw an analogy with the common law action of nuisance, so that compensation should not be limited to damage to an interest in land which arises only from the construction or execution of works, but should include damage to an interest in land caused by subsequent user. In other words, if a common law action for damages would have been available but for statutory authority, compensation should be paid without exclusion as to user. We think that this should be the general rule, and that if there are to be exceptions to it, they should be justified in each case as exceptions. The general rule should certainly in our view apply to motorways and airports, and in the case of the latter, it should apply not just to the airport itself, but also to the taking off and landing of aircraft at the airport. The movement of aircraft in the vicinity of an airport is, in our view, inseparable from the use of the airport and should be treated as part of that use.[10]

58. We are aware that, in an attempt to alleviate the hardship caused by the fundamental injustices in this part of the law, *ad hoc* measures have provided help in particular cases. Thus, under the Airports Authority Act 1965, the British Airports Authority may make grants towards the cost of protecting dwelling-houses from the effects of noise and vibration. We do not regard *ad hoc* measures as an adequate remedy. While they may act as a palliative to alleviate distress at the extreme, they provide no substitute for a remedy of a general nature.

59. If our recommendations are accepted, we realise that it would place in juxtaposition the status of persons who suffer damage to an interest in land through the user of land acquired by an authority, and persons who suffer damage to an interest in land through the exercise of regulatory powers as occurs with the imposition of traffic management schemes or "no parking" restrictions. We believe that compensation through the compensation code ought to be limited to the former situation and that compensation for injury caused by the exercise of regulatory powers should continue to be governed by the particular code of law which grants such powers. In making these recommendations we recognise that we are drawing an artificial line between damage caused to land by the taking and use of other land, and damage caused to land by the user of other land without any taking. In the former situation, we would acknowledge a general right to payment of compensation. In the latter, payment of compensation would be on an *ad hoc* basis and depend on whether or not provision was made for such in the statute granting to the authority or other body concerned the power to act in the manner which has caused the damage.

60. We have not gone so far in our proposals as to suggest a comprehensive cure to meet all cases of depreciation in the value of an interest in land where this is due to State or other activity. Indeed, we do not believe that there exists a universally acceptable remedy for the problem of "worsenment," as it is now commonly called. Yet while we admit to not having achieved universal justice in this respect, we believe that the revision which we have suggested would achieve a greater justice in those cases where it is most merited.

61. Our proposals for the amendment of the law relating to payment of compensation for injurious affection to land caused by the user of other land, would be incomplete if reference were not made to a number of related matters. A common law action for nuisance becomes statute barred if action is not taken within six years of the cause of action accruing. We believe that by analogy a time limit

should be placed on the right to claim compensation. Difficulty could be caused by development over a period, and by the possibility that a further cause of action could arise in respect of a later injury resulting from that development. We suggest, therefore, that:

(a) the initial cause of action should arise or be deemed to arise as soon as the injury is caused, or on completion of the development, whichever is the later. Completion for this purpose would be certified by the developing authority;
(b) further claims should be allowable only if the claimant can show that he has suffered injury which was not foreseeable at the time of making any earlier claim;
(c) in the interests of certainty, a claimant should be required to take action within two years of his cause of action accruing, so reducing by four years the period that is available to an injured party in a nuisance claim.

We would add that in recommending changes in the law relating to injurious affection we envisage that they should apply to cases arising after the amending legislation. We think it would not be practicable to provide retrospective compensation for motorway and airport works which are already in existence, though extensions of existing works should qualify.

62. The possibility could arise that there might be some difficulty in determining at any given time the precise extent of any injury suffered by a claimant. To provide for this difficulty we suggest that the Lands Tribunal or other body determining compensation should have, at the election of the claimant, a discretionary power to order the withholding of the assessment of compensation for a period of up to two years, in order that the true extent of the injury to the claimant's interest could be ascertained. Although interest is normally payable on an award from the date of the Tribunal's decision, if the claimant opts for the exercise of the delaying power, payment of interest on the compensation should be at the discretion of the Tribunal. We do not feel that interest should be paid in respect of the period between the date of the injury and the date of the claim, or between the date of the claim and the date of the award.

63. There is some uncertainty as to whether the right to payment of compensation under section 10 of the Compulsory Purchase Act 1965 covers damage which has been caused to land by activity on other land which has been acquired by agreement or under the shadow of compulsory purchase. We can see no justification for making a distinction between injury to land caused from land acquired in this

way and injury to land caused from land acquired by the actual exercise of compulsory purchase powers. The present position is uncertain and we recommend that the availability of compensation should not depend on the incorporation of the right to receive it by the particular Act under which power to acquire land is given, but should be an overriding principle applicable in all cases of injurious affection.

Part II

Remedies in Respect of Planning Restrictions

Introduction

64. The ability or otherwise of an owner of an interest in land to claim compensation in respect of any loss he has suffered as a result of the exercise by a local planning authority of its power to control the development of land, can be explained historically but not logically. If an adverse planning decision is made in respect of an application for development of land other than for "new development," *i.e.*, in respect of an application for the development specified in Schedule 8 to the Town and Country Planning Act 1971 compensation for any loss suffered is available for cases falling within Part II of the Schedule. If an adverse planning decision is made in respect of an application for development of land not within Schedule 8 to the Act ("new development"), a condition precedent to the payment of compensation is that the owner or his predecessor in title should have made in 1948 a claim for loss of the development value of his land which the Town and Country Planning Act 1947 had sought to appropriate and transfer to the State. The financial provisions of the 1947 Act have not endured and for many years the development value of land has belonged to the owner of that land, though it is now subject to the payment of a "betterment levy" under the provisions of the Land Commission Act 1967.[11]

Compensation payable in respect of restrictions on "new development"

65. The present right to receive payment of compensation for restriction on "new development" depends on a claim having been made more than twenty years ago in respect of loss of development value which existed at that time, resulting in there being in respect of the land an "unexpended balance of established development value." It was questionable whether there is any fairness in distinguishing between the development value of land as it existed in 1948, upon which, provided a claim for its loss had been made,

compensation might be available, and the development value of land arising since 1948, when it is not. One result of this distinction is that in many cases no compensation is payable at all in respect of restrictions on "new development." The present position is quite absurd and clearly some change in the law is desirable. It could be altered either to provide that no compensation is payable in respect of planning restrictions, or to provide for the payment of compensation as part of a far reaching and comprehensive reform which ensures that its availability does not depend on factors pertaining in 1948. Practical grounds prevent us from supporting this latter proposal. If justice were to be done between individuals, any comprehensive scheme would need to relate payment of compensation to a "betterment levy" correlative, so that whenever an owner was met with a refusal of planning permission for "new development" he would receive compensation equal to the development value which would have been left with him after payment of betterment levy had that permission been granted and the value realised. We believe that to apply the "betterment levy" scheme in reverse, as it were, would create practical difficulties of the highest order.

66. It may well be that the real anomaly in this area of law is not that many people receive no compensation, but that a few people receive some in the shape of the "unexpended balance of established development value" attached to their land. Apart from the rough justice achieved between individuals by the existence of the "betterment levy" on development value realised, it is difficult to escape from the fact that transactions in land have, for the past twenty years, been undertaken with full knowledge that compensation for restrictions on new development is in the main non-existent, or, at the most, extremely limited. We believe that the community has now accepted that there should in general be no payment of compensation for such restrictions.

67. We are unable to propose the summary curtailment of the right to claim compensation in those cases where it is now available. We propose instead that where there is an "unexpended balance of established development value" in respect of land, the right to claim compensation should be redeemed over a fixed and limited period of time. It is of course accepted that payments which are made as a result of an accelerated run-down of "unexpended balances" would be recoverable, as they are at present, in the event of planning permission being subsequently granted for the development of the land to which the balance relates. We believe that this proposal, if accepted, would achieve far more than administrative neatness. It

would provide a fair, logical and acceptable principle free from the historical influences which at present plague this area of law.

Remedies in respect of restrictions on development other than "new development"

68. Since 1948, when planning control was universally imposed on the development of land, compensation has been payable in respect of any restriction on development where the development might be regarded as part of the existing use of land. We refer to development other than "new development," *i.e.*, the development set out in Schedule 8 to the Town and Country Planning Act 1971. Any restriction on development falling within Part I of the Schedule may allow the owner to serve a purchase notice on the local planning authority requiring it to purchase his interest. Any restriction on development falling within Part II of the Schedule may also give rise to a claim for compensation, under section 169 of the Act, of an amount equal to the depreciation in the value of the interest caused by the restriction.

Purchase notices under sections 180–191 *of the Town and Country Planning Act* 1971

69. If an application for planning permission to develop land is refused or is granted subject to conditions and the land is incapable of reasonably beneficial use, the owner can serve a purchase notice on the council of the county borough or county district in which the land is situated requiring them to purchase his interest in the land. Although the remedy is available for adverse planning decisions in respect of any development, it is the only remedy in respect of a restriction on development falling within Part I of Schedule 8 to the 1971 Act. This is because compensation cannot be claimed in this instance, whereas it is an available remedy in the other cases.

70. We doubt whether the present range of situations in which a purchase notice can be served under sections 180–191 is quite wide enough. By way of example, we mention two situations where purchase notice procedure is not available because the land is capable of reasonably beneficial use:

(a) factories or other buildings partly but not wholly destroyed by fire where planning permission to rebuild has been refused;
(b) undeveloped land, such as open spaces, allotments and sports fields, situated in residential areas, where planning permission for residential development has been refused.

Of particular consequence as regards paragraph (a) is that if the development is such as to fall within Part I of Schedule 8 to the 1971 Act, no compensation is payable, and the service of a purchase notice is the owner's only remedy. If he is then unable to show that the land is incapable of reasonably beneficial use, he is without any remedy at all. Hardship could, therefore, occur through a refusal to allow development falling within Part I of the Schedule, in that an owner has no remedy in compensation and might be unable to use the purchase notice procedure. We feel that where there has been an adverse planning decision in respect of land, the absence of a remedy for the owner of a building which has been partially damaged or the owner of a group of buildings where part of that group has been damaged is unsatisfactory, and ought to be cured by extending to this category the compensation provisions of section 169 of the 1971 Act. As regards paragraph (b), land could not be said to be incapable of reasonably beneficial use merely because planning permission for residential development has been refused. One major difficulty in the way of extending purchase notice procedure to include land used as open spaces, allotments and sports fields, is that, if a favourable certificate of appropriate alternative development was obtained by the owner, compensation would be based on the value of the land for residential development and this could lead to a danger that public authorities would be forced to take over all land used in this way. Thus, whilst we recognise that hardship occurs in the restricted applicability of purchase notice procedure, we are unable to make any clear and agreed recommendation as to how its application should be widened.

The definition of "owner" for the purposes of sections 180–191 *of the Town and Country Planning Act* 1971

71. Not all owners of interests in land incapable of reasonably beneficial use have the right to serve a purchase notice. As a result of a decision of the House of Lords in *London Corporation* v. *Cusack-Smith* [1955] A.C. 337, this right is limited to "owners" as defined in section 290 (*1*) of the 1971 Act, *i.e.*:

> "'owner', in relation to any land, means (except in sections 27 and 29 of this Act) a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let;"

This decision has led, *inter alia*, to the strange result that where

there is more than one interest in the land affected, a lessee in occupation who wishes to serve a purchase notice may be unable to do so, but that an owner not in occupation, who may have no reason to want his interest to be purchased can do so. This may mean that the person most affected by the decision which has made the land incapable of reasonably beneficial use is excluded from the right to serve a purchase notice. The provisions of sections 180–191 of the 1971 Act were clearly intended to give the occupying owner the right to dispose of his interest. Where there is only one interest in the land affected this object is achieved. Where leasehold interests are involved, the decision in the above case shows that the occupier is not always able to take the necessary action. Because of this we recommend that the meaning of "owner" for the purposes of sections 180–191 should be reconsidered so that the occupier of the land, or any person entitled to occupation (other than a mortgagee not in possession) should be entitled to serve a purchase notice in order to dispose of his interest.

72. We have also considered the position of the acquiring authority under sections 180–191. Whatever definition of "owner" is adopted, in cases where there is more than one interest in the land rendered incapable of reasonably beneficial use, the acquiring authority may find itself required to take only one of several interests in the land. This would be unsatisfactory from the authority's point of view, and we consider that the situation would be remedied if the authority, having been required to take one interest, had the power to acquire compulsorily the remainder.

Compensation for revocation or modification of planning permission

73. Irrespective of the kind of development authorised by a planning permission, then, if that permission is subsequently revoked or modified, compensation is payable under section 164 of the 1971 Act in respect of loss directly attributable to that revocation or modification. As mentioned in the Report of the Chartered Land Societies Committee (para. 100), section 164 (4) appears to exclude payment of compensation for development falling within Schedule 8, as it is provided that in calculating the compensation payable it is to be assumed that permission for such development would be granted. We have no knowledge of the section being applied in this way. If the question were to come before the courts, we doubt whether they would accept this interpretation. Yet if this were so, they could only do so by ignoring the statutory assumption of planning permission which had in fact been revoked. We agree with the

Chartered Land Societies Committee that the position is unsatisfactory, and in so far as the provisions could lead to an absurd result we endorse their plea for clarification.

The obligation to purchase the interests of persons affected by planning proposals under the Town and Country Planning Act 1971, *ss.* 192–208

74. Where planning proposals have been made in relation to land, certain owners of interests in the land unable to sell their interest except at a price substantially lower than that at which it might reasonably have been expected to be sold had it not been for those proposals may serve on the appropriate authority a notice requiring it to purchase their interest. The relative statutory provisions provide some relief to those affected by "planning blight."

75. Not all planning proposals relating to land give rise to a right to require an interest to be purchased. The right to serve a notice (called a blight notice) is limited to situations where proposals have taken a concrete form. It is inevitable that land will be affected by blight before that stage is reached and in so far as the present statutory provisions give no help to those whose interests are affected in this way, there exists an area of hardship which needs to be removed. It must be accepted that the earlier the blight notice procedure is made available to those affected, the greater will be the practical problems for the acquiring authority and the particular danger that the authority will be required to purchase land which it may not eventually need.

76. We considered, but rejected as unsuitable, proposals that the blight notice remedy should be available where a plan had been approved by the authority for the purposes of consultation, or where the authority has determined a policy to be followed as witnessed by the existence and use of unofficial plans, or where the authority had passed a resolution to act in any way that could involve compulsory acquisition of land by it.

77. We also gave consideration to the problem that arose where land is indicated in a structure plan or allocated in a local plan as required for the purposes of any functions of a local authority, etc. (s. 192 (1) (*a*) and (*b*) of the Act of 1971). A situation as described above occurred in *Bolton Corporation* v. *Owen* [1962] 1 Q.B. 470

where a notice to purchase was held to be not available, because although an area was allocated as residential in the development plan and was included by a written statement within a redevelopment area, no further indication was given as to who was to carry out the development which could have been done privately by persons other than the authority and without compulsory acquisition.

78. We moved at first in the direction of recommending that where compulsory acquisition is to take place the operative date for the service of a blight notice should be as soon as the authority had resolved to make a compulsory purchase order on the land, rather than at the later date of confirmation of the order by the Minister. The difficulty is, however, that if some but not all owners served blight notices on the making of a resolution, this could prejudice the objections of those who wished to challenge the compulsory purchase order, because there would then be additional pressure on the Minister to confirm it. We see the difficulty as one aspect of a more general problem, and one which ought to be looked at again when relevant legislation is next before Parliament.

79. With regard to the wider problem of planning blight, the finding of some earlier stage at which blight notice procedure might be available is both complex and intractable. Any democratic process must allow time between the making of proposals and their acceptance, for their full and complete discussion. Within the development plan framework, and having regard to the essential need for a pre-decision consultation process, we find it impossible to identify, for the purpose of establishing a legal right, any earlier period at which a blight notice could be served which would be acceptable as a practical proposition and be seen to be fair to one and all.[12]

80. However, where planning permission is granted for development not in accordance with the provisions of the development plan to a body possessing powers of compulsory acquisition, and that body is not the owner of the land to which the permission relates, this may be an event of a sufficiently definitive character to justify the service of a blight notice by the owner of an interest in the land. We would like to draw attention to the fact that planning blight

can arise as a result of a grant of planning permission in this way, and we believe that consideration should be given to an extension of the blight notice procedure to cover such cases.

81. Even if land falls within one of the established categories so as to allow service of a blight notice, the notice cannot be served by business owner-occupiers of interests in property having a net annual value in excess of £750. The purpose of this is to save authorities from having to purchase in advance of their immediate needs more land than they can afford. Apart from the case mentioned in the next paragraph, any removal of this limit would place a burden on authorities greater than they could endure. We believe, however, that there is a need for this limit to be reviewed, and that it should be such as is considered reasonable for authorities to bear.[13]

82. The Town and Country Planning Act 1971, s. 192 (1) (*j*), gives the right to serve blight notices to cases where a compulsory purchase order is in force and notice to treat has not yet been served. This right is not universally available but is restricted to owners of interests in land who would qualify for the service of a blight notice in other circumstances. A business owner-occupier of property with a net annual value in excess of £750, in respect of which a compulsory purchase order is in force but notice to treat has not yet been served, cannot therefore serve a notice requiring the purchase of his interest. We believe this limitation to be insupportable and that there should be a right to serve a blight notice in this situation regardless of the annual value of the property.

83. Before a blight notice can be served, proof that the owner of the interest has made reasonable endeavours to sell the interest must be shown. We believe that, although this should generally continue to be a necessary condition precedent to relief, it is clearly unnecessary in cases where a compulsory purchase order is in force and notice to treat has not yet been served.

84. A strange effect of the provisions relating to blight notice procedure is that premises such as churches, which are exempt from rating and do not have a rateable value, do not qualify for protection. We feel that if a monetary limit is to be retained, hereditaments with no rateable value should for the purposes of blight notice procedure be treated as having a rateable value not exceeding that limit, but that in such cases the assessment of compensation in accordance with rule 5 of section 5 of the Land Compensation Act 1961 should not apply.

PART III

ACQUISITION PROCEDURE

Value at date of notice to treat

85. Subsequent to an authority acquiring the right to acquire property compulsorily, a "notice to treat" must generally be served on the owner notifying him of the authority's intention to purchase his interest and of its willingness to pay compensation in respect of the acquisition. One effect of the service of this notice is to fix the interest to be acquired and its value for compensation purposes as at the date of the notice.

86. In *West Midland Baptist (Trust) Association (Incorporated)* v. *Birmingham City Corporation* [1968] 2 Q.B. 188,[14] the Court of Appeal held that where compensation was based on the cost of equivalent reinstatement (rule 5 of section 5 of the Land Compensation Act 1961), it should be determined at the date when work of reinstatement could reasonably have begun and not at the date of the notice to treat. Doubt was expressed by the court as to whether the date of the notice to treat was the correct date of assessment of compensation in Rule 2 cases. Sellers L.J. said at p. 206:

> " . . . It has been too long accepted and applied that where the value of the land has to be assessed the time for the assessment is the date of the notice to treat. This was so under the Lands Clauses Consolidation Act 1845, and it has been accepted to be so under the Acquisition of Land (Assessment of Compensation) Act 1919. The authorities, particularly in the light of present day conditions, do not provide very persuasive reasons for the conclusion, but in *Penny* v. *Penny* (1868) L.R. 5 Eq. 227 at p. 236 it was stated unequivocally:
>
> > 'The scheme of the Act I take to be this: that every man's interest shall be valued, *rebus sic stantibus*, just as it occurs at the very moment when the notice to treat was given.'
>
> From that date that does not appear to have been challenged. It is so stated and accepted in the textbooks and was expressly repeated in this court by Scott L.J. in *Horn* v. *Sunderland Corporation* [1941] 2 K.B. 26 at p. 48. Perhaps an even greater obstacle to a reconsideration of the courts of this long accepted principle is that it was recognised by statute in the Town and Country Planning Act 1944. The House of Lords may have greater freedom."

87. The date on which compensation for the interest acquired falls to be assessed is important in times of rising land values, because if there is substantial delay between the service of notice to treat and actual acquisition of the property, an owner could find himself receiving less in compensation than the loss he has actually suffered. It is true that once notice to treat has been served on an owner settlement of the compensation to be paid can be obtained by either party taking the matter to the Lands Tribunal and acquisition of title will then follow. We feel that this right does not give sufficient protection to the owner. Frequently he will wish to stay in his property for as long as the authority will allow him to do so. Sometimes an acquiring authority will serve a notice to treat without any desire to reach a settlement as quickly as possible and to complete the acquisition. Further cause for concern in this connection flows from the vesting declaration procedure of the Town and Country Planning Act 1968, whereby an owner's interest may be taken from him by the acquiring authority before the compensation to be paid has been determined. We believe that, if this procedure is used extensively, it could seriously aggravate the hardship to owners if the present rules remained unaltered.

88. It is quite clear that some date must be fixed for the assessment of compensation. One solution would be to adopt the view expressed by Salmon L.J. in *West Midland Baptist (Trust) Association Incorporated* v. *Birmingham City Corporation* [1968] 2 Q.B. 188 at p. 215 that the date is

> " . . . the date when compensation is agreed or assessed by the appropriate tribunal or the owner gives up possession, whichever is the earlier, for it is not until then that the equitable title passes and the loss is suffered . . . "

If this is not acceptable for any reason, we suggest that a notice to treat, in so far as it determines the assessment date of the interest to be acquired, should have a limited initial life of one year, but that renewal should be automatic for further periods of a year unless before its automatic renewal either party has referred the question of compensation to the Lands Tribunal (or other authorised body) for its determination, in which case it would continue without renewal. The date on which compensation for the interest acquired would be assessed would thus be the date of the notice to treat, or, if renewal has occurred, the date of the last renewal. To encourage greater certainty in compulsory purchase proceedings, we feel that should no reference be made within five years of confirmation of the

compulsory purchase order, the order shall cease to have effect. As a slight variation to the above but having the same effect, we suggest that the notice to treat served by the acquiring authority could be replaced by a notice of intent which would have the same legal consequence as the notice to treat except as regards the fixing of the date for the assessment of compensation. This would then be secured by the service of a notice to treat, which either the owner or the acquiring authority would be entitled to serve and which would have the limited life suggested above. In making these recommendations we realise that, whilst an owner will not suffer loss in areas of rising land values, he will not profit in areas where land values fall, and we accept this as a consequence of our proposals.

89. Where the notice to treat has been served by an acquiring authority it can only be withdrawn by the authority without the consent of the owner in limited situations. In cases where notice to treat is deemed to have been served the power to withdraw is generally excluded altogether. Under section 59 of the Housing Act 1964, a person who is served with an improvement notice under Part II of the Act may require the local authority to purchase his interest in the property. On service of the notice the authority is deemed to be authorised to acquire the interest and is deemed to have served notice to treat. Nothing in the Act excludes the right of the authority to withdraw the deemed notice to treat. We believe that there should be a prohibition on the right to withdraw in these cases, similar to the prohibition found in other areas of the law.

Notice of entry

90. Where the acquiring authority has served notice to treat, it may enter and take possession of the land not less than fourteen days after having served notice of intention to do so by means of a notice of entry. The notice is sometimes served by an acquiring authority where there is no immediate intention to enter and take possession. Indeed it can be served together with notice to treat and so give the acquiring authority an almost instantaneous right to take possession of the property, although it may not necessarily wish to do so. The practice creates hardship and uncertainty for the owners affected who are unable to arrange their affairs with any degree of finality. We consider that once notice of entry has been served, at the end of a period of fourteen days or such further period as the parties may together agree, the owner, lessee or occupier should be able to serve on the acquiring authority a notice requiring it to take possession, and if at the end of a period of fourteen days it has not done so, it should be deemed to have taken possession. As from that date the acquiring authority would then be liable to pay interest, and would be entitled to receive the rents and profits from the property. It has also been known for an acquiring authority to enter on part only of the land and we believe that those affected should be able to compel the authority to enter on the whole of it, and this could be done by a variant of the above procedure.

The determination of disputes

91. In the event of a dispute arising between an acquiring authority and an owner as to the amount of compensation to be paid in respect of the acquisition of his interest, or to related matters, the dispute may be referred for settlement to the Lands Tribunal. We hold the Tribunal in the highest regard and acknowledge its contribution to the just determination of disputes.

92. If justice is not to be denied, however, it must be available quickly and cheaply, and with a minimum of formality for all who seek it. These qualities are not provided in sufficient measure by the Lands Tribunal where procedure, custom and atmosphere is harnessed in this field to the determination of disputes of greater rather than lesser significance. A salient feature of the procedure for the determination of disputes relating to compensation in respect of land is that within the whole compass of civil litigation it is the only major area of law where no established tribunal exists to deal with minor claims and disputes.

93. We feel that there is a strong case for the establishment of inferior courts similar in status to local valuation courts, where minor disputes between an authority and an individual can be quickly determined. The need for special arrangements to deal with small cases has already been recognised by statute. Under the Lands Clauses Consolidation Act 1845 disputes over small claims could be determined by a sheriff's jury, and under section 278 of the Public Health Act 1936 disputed claims may be referred to magistrates for their determination.

94. We believe that a need exists for the establishment of local courts (" small claims compensation courts ") capable of determining disputes relating to small claims, in which the claimant is free from any obligation to pay court fees, free from any obligation to pay the costs of the other side, and where there is a minimum of formality in the proceedings. We do not anticipate that such courts will always dispense the standards of justice common to superior courts,

but even if something short of this is achieved we believe that the majority of those who refer to them will be satisfied with the result.

95. We see the jurisdiction of these inferior courts to be the determination of disputes in respect of claims not exceeding £5,000, but with the consent of both parties or of the Lands Tribunal, such disputes could continue to be determined by the Tribunal, so that cases where the real issue is a point of law or principle could be taken straight to the Tribunal even if the amount at stake is small. We do not envisage a right of appeal from these courts to the Tribunal except on a point of law. Each court would have three members, one of whom would be a qualified lawyer, one a qualified surveyor and the third a layman of standing drawn from a nominated panel.

96. Regardless of the forum which has been chosen for the determination of disputes, justice will not be achieved if the parties suffer through the absence of proper representation. We think that public money should be available to provide assistance for those appearing before small claims compensation courts, and that this assistance should entitle the recipient to the services of a surveyor. We endorse, therefore, the view of the Council on Tribunals expressed in its Annual Report for 1967,[15] that although legal aid in proceedings of this kind would meet a real need, there may well be a greater need for some form of assistance by surveyors.

97. As regards the jurisdiction of the Lands Tribunal, we consider legal aid at this stage may be equally vital to the needs of the parties as is surveyors' aid. Accordingly, we would like to see both forms of aid made available in proceedings before the Tribunal. In particular, we support the recommendation of the Lord Chancellor's Advisory Committee that legal aid be extended to cover such proceedings.[16]

98. Our proposals result from a reappraisal of the procedure for settling disputes. If our proposals for changes in the substantive law are also accepted, we envisage that there may be an increase in the number of disputes but we must accept this as the cost of justice. Small claims compensation courts could form a valuable part of the machinery of justice, and with other specialist tribunals concerned with matters relating to land such as Rent Assessment Committees and Local Valuation Courts making an equivalent contribution, the possibility of combining these functions within a single system of local courts could perhaps be considered.

SUPPLEMENTAL REPORT

Introduction

99. When the Report of JUSTICE was published in 1969 it recorded the "growing disquiet at the apparent unfairness not only of certain aspects of compulsory acquisition procedure, but also of the quantum of compensation payable on the acquisition of interests in land" and "the prominence given to these matters in both national and local press, and in questions and debates in Parliament."

100. The passage of three years since that Report has provided continued evidence of this unsatisfactory situation. The Secretary of JUSTICE has received letters giving details of apparent injustices and complaining that none of the Report's recommendations have been implemented. Public opinion has been aroused on a wide scale by the proposals for urban motorways and airports in and around London and other cities. The Law Society has published (October 1971) a Memorandum on Compensation and Planning Blight which attracted much attention in the Press. The Bolton Committee of Inquiry on Small Firms has reported (Cmnd. 4811, H.M.S.O., 1971), commenting on the inadequacies of compensation. The Report of the Commission on the Third London Airport 1971 (SBN 11 510171 3 *)—the Roskill Commission—contains significant recommendations on compensation in connection with the development of airports. Reports have circulated about the far-reaching views of the government-appointed Urban Motorways Committee, the report of which has not yet been published. And most recently one of the Working Parties set up by the Secretary of State for the Environment in preparation for the United Nations Conference on the Human Environment at Stockholm in June 1972 has recommended amendments of the law of compensation in its report "How Do You Want to Live? A Report on the Human Habitat" (H.M.S.O., 1972). Local authorities themselves often recognise that the compensation code is inadequate, and that their task would be facilitated if they could pay fairer compensation; in this connection the Sub-Committee note with interest the enlightened views of the Portsmouth City Council on compensation and blight recorded in their Minutes dated May 2, 1972, which made recommendations to the Secretary of State.

101. With this background, JUSTICE greatly regrets that it has taken successive governments so long to produce proposals for the amendment of the law. The original announcement of a review was made

as long ago as 1968. Even when proposals are formulated, the legislation does not always follow immediately, and it is not likely to be retrospective. It should not take so long to correct injustice.

102. In view of the long delay in government action, the JUSTICE Administrative Law Committee decided to convene the legal members of its Sub-Committee on Compensation to review the situation and consider whether the original report should be supplemented in any way.

103. Official proposals are now (August 1972) understood to be nearing completion. The adequacy of them remains to be seen. But the Sub-Committee feel bound to put on record their disquiet that the review of such an important branch of the law should have been left to departmental action. It appears that the proposals will take the form of a White Paper, instead of a Green, or a consultation paper.* This means that there will be only limited scope for modification of the proposals once they have been announced. The Sub-Committee think that it would have been better to have entrusted the review of this branch of the law to a more independent body, as has been done when major reviews of the code have been carried out in the past.

104. The reconstituted Sub-Committee decided not to attempt to review again the whole field of the previous Report, but to concentrate on three main topics, Disturbance, Injurious Affection and Blight Notices—and to consider them particularly in the light of The Law Society's Memorandum, the Bolton Committee Report on the problems of small firms, and other publications which came to their attention. This Supplemental Report takes each of those three topics in turn and then refers to certain other matters under the head of Miscellaneous.

105. Both the original Report and this Supplemental Report have been approved by the Committee on Administrative Law and by the Council of JUSTICE.

COMPENSATION FOR DISTURBANCE

106. The aspect of disturbance compensation to which we have given further consideration is the problem of compensation when an occupier of premises is dispossessed by compulsory acquisition and seeks to relocate himself in alternative premises. We considered this in our original Report (para. 49) when we recommended that "some help should be given to persons so affected, and that it should be limited to the difference between compensation paid and the cost of comparative alternative accommodation. Our general feeling was that such help should be limited to residential owner-occupiers and take the form of interest-free loans secured by mortgages on the alternative

* The White Paper (Cmnd. 5124) was published in October 1972.

accommodation acquired. . . ." Since then The Law Society (Memorandum, paras. 18.35–18.42) have reported in favour of wider assistance in such cases.

107. There appear to be two main reasons for the difficulties over re-location from a compensation point of view. The first reason is that the extra cost of alternative accommodation, albeit it may be reflected in the capital value of the premises, is not reflected in the occupational value of the premises to the person concerned. A small business may be forced to re-locate itself in expensive premises which contribute nothing to the profitability of the business and are not necessary for the conduct of it. Similarly a residential owner-occupier who is dispossessed may, in order to re-locate himself, be forced to purchase premises which are more expensive than he either requires or desires. In such cases the compensation received by the dispossessed person is likely to be insufficient to pay for the re-location.

108. The Law Society recommended:

(1) That where an owner of freehold or leasehold premises, after the compulsory acquisition of his interest, buys or rents alternative accommodation and the alternative premises are:

(a) more expensive to buy or rent; and

(b) confer no material advantage as compared with the original premises in terms of use, enjoyment or convenience;

then the acquiring authority should pay supplementary compensation not exceeding the difference in value between the original and the alternative premises or (in the case of business premises) the greater of (i) that difference and, (ii) the compensation which would have been payable (over and above the market value of the acquired premises) had the claimant's business been extinguished.

(2) The supplementary compensation should be related to the additional operating and running costs resulting from the move, capitalised over an appropriate period, the selection of the period to be a matter for the valuers, or in the case of dispute, the Lands Tribunal.

(3) Undue weight should not be given to the consideration of floor area.

(4) The additional cost (if any) of the alternative accommodation should be met, at the claimant's option, by a mortgage loan from the acquiring authority with discretion to waive interest in appropriate cases.*

* This presumably refers to the capital cost.

109. We agree generally with these recommendations. We think that this problem is not limited, as we originally supposed, to residential owner-occupiers. We accept that small businesses can be equally affected, and equally need assistance. We think the assistance should be available whether the alternative accommodation is purchased or rented, and that it should take the form of meeting the difference between what the displaced person has to pay for his alternative accommodation and its occupational value to him having regard to the accommodation he has lost and all other relevant circumstances. At the same time, whatever arrangements are adopted must contain safeguards to ensure that the dispossessed person does not enrich himself from the enhanced capital value of the alternative premises. For the owner-occupier who purchases alternative premises, mortgages free of interest or at reduced rates offer a solution. For the occupier of rented accommodation, the compensation for the person displaced could take the form of annual payments related to the circumstances of the individual with a right for the acquiring authority to capitalise the payments if desired. An upper limit would have to be set for the size of a small business which was to qualify for this type of assistance.

110. The second reason why relocation encounters difficulties is that the person displaced may not in law have sufficient security of tenure to attract any or any substantial compensation. Where a tenancy is for a year or less than a year, compensation is governed by section 121 of the Lands Clauses Consolidation Act 1845 (now s. 20 of the Compulsory Purchase Act 1965). In the case of business tenancies, section 39 of the Landlord and Tenant Act 1954, provides that compensation under section 121 shall be assessed without regard to the right of tenants under that Act to apply for a new tenancy, but subject to a minimum compensation of one or two times the rateable value of the premises being taken, according to the period of occupation.

111. In our view the compensation payable in such cases, if any is payable at all, is defective because it often ignores the realities of the situation. Many small businessses, for example, who occupy their premises on a short tenancy or a mere licence, and therefore have no security of tenure for compensation purposes, in reality enjoy considerable security of tenure. They may have been in occupation for many years, and have every reason to expect to continue in occupation for many years to come. Sometimes the freehold of their premises is owned by an associated company or by the major shareholder, or by a relative of the proprietor. We think the compensation in such cases should reflect the realities of the situation.

112. There is a discretionary power for an acquiring authority to pay compensation in such cases to be found in section 30 of the Land Compensation Act 1961. It provides (s. 30 (1) (*b*)) that the authority:

> "may pay to any person carrying on any trade or business in any such house or other building such reasonable allowance as they think fit towards the loss, which in their opinion, he will sustain by reason of the disturbance of his trade or business consequent upon his having to quit the house or building."

And (s. 30 (2)):

> "In estimating the loss of any person for the purposes of paragraph (*b*) of the preceding subsection, the authority shall have regard to the period for which the premises occupied by him might reasonably have been expected to be available for the purpose of his trade or business, and to the availability of other premises suitable for that purpose."

There are similar provisions in respect of acquisitions of land for housing purposes in sections 32, 63 and 100 of the Housing Act 1957 and in respect of land used for the purposes of agriculture in section 22 of the Agriculture (Miscellaneous Provisions) Act 1963.

113. We think the compensation contemplated by these sections should be mandatory, not discretionary, and should not be limited to these occupiers. If justice requires that it be paid, it should be paid as a matter of right. Also we think that a discretionary power is likely to lead to uneven application as between different areas; the Bolton Committee drew attention to Ministry of Housing & Local Government Circulars in 1956, 1959 and 1963 which found it necessary to urge local authorities to use their discretionary powers. We note from the Chartered Land Societies Committee's Report on Compensation for Compulsory Acquisition and Planning Restrictions (para. 69) that a precedent exists for making this type of compensation mandatory on the acquiring authority in section 33 of the Clywedog Reservoir Joint Authority Act, 1963. The section so far as is material is in the following terms:

> "(1) The Authority shall pay to any person displaced from any land acquired under this Act such sum as will be equal to the loss or expense which such person sustains or is put to by reason of his having to quit the land . . .
>
> (3) In determining any sum payable under this section regard shall be had to the period for which the land might reasonably have been expected to be available for occupation by the person displaced and the availability of other land suitable for occupation by him."

We recommend the general application of such a provision.

114. We think that section 39 of the Landlord and Tenant Act 1954 and section 42 of the Agriculture (Miscellaneous Provisions) Act 1968, which limit compensation in cases coming within section 20 of the Compulsory Purchase Act 1965, will both need to be reconsidered so as to harmonise with our recommendation for mandatory disturbance compensation.

115. We hope that these reforms will remedy most of the cases of injustice arising where the legalities and the realities of security of tenure part company. But there will remain the need for a " fall-back " discretionary power to deal with cases which are not met by our suggested reforms, and we think that there should be a general discretionary power for authorities to pay compensation for disturbance where in the opinion of the authority the circumstances of the case render it desirable.

116. Finally, on this subject of disturbance, we have considered the problems which can arise in connection with businesses which are totally extinguished by compulsory acquisition. Such a business can be placed in a very difficult position as regard the timing of the closure of the business. It if closes down too early, the acquiring authority claims that it should have carried on until notice of entry was served; if it carries on until the last moment and then claims a run-down in profits, the authority says it should have closed earlier. We think that a business should be relieved of the responsibility of deciding exactly when to close down, and that it should be enacted that it is to be deemed reasonable for a business to close down at any time after notice to treat, provided that the owner can show that he has made reasonable, albeit unsuccessful efforts, to relocate the business.

Injurious Affection

117. In our Report (para. 54) we expressed the view that in the case of compensation for injurious affection payable to an owner who has land taken from him, the decision in *Edwards* v. *Ministry of Transport* [1964] 2 Q.B. 134, should be reversed, so that the compensation takes into account the damage resulting to the land retained by the owner regardless of whether or not the damage is caused by the use of the land taken from him. We note that The Law Society (para. 14) takes a similar view.

118. We considered the question of injurious affection where no land is taken in paragraphs 55 to 63 of our Report. We think it is now universally recognised that this part of the law of compensation

should be changed, and that the owner of land near, for example, a motorway, should be compensated for any injurious effect of the motorway on the value of his land. Discussion centres on the best method to adopt for effecting such compensations.

119. In our Report we favoured the idea that compensation should be paid to any person who suffers damage to his interest in land if that damage would constitute an actionable nuisance at common law were the damage not authorised by statute. On further consideration, we are not now satisfied that this proposal would work, because of the difficulty of fitting many of the larger kinds of public works, such as highways into the common law concept of nuisance. To meet this difficulty, the majority of the Sub-Committee thought that there should be a statutory listing of certain public works and activities as being deemed to be actionable nuisances for the purposes of compensation for injurious affection. This view accords with that expressed by The Law Society (para. 19). The list would include highways, airports, railways and hovertracks, sewage works, power stations, penal institutions and possibly institutions for persons of unsound mind.

120. A minority of the Sub-Committee preferred a solution by means of defining standards which if infringed would give rise to a right of compensation. Thus, to suggest an example, if a motor way produced noise levels affecting a particular property above recommended standards such as those proposed in the Wilson Committee's Final Report on Noise (Cmnd. 2056), compensation would be payable. Smoke, smells, dirt, etc. (but not visual intrusion) would be dealt with in a similar way. One advantage seen for this proposal was that it would allow compensation to be paid for damage to interests in land caused by regulatory or similar measures not arising from the acquisition of land by public bodies.

121. The Sub-Committee were unanimous in rejecting the proposal put forward by the Chartered Land Societies and the Association of Municipal Corporations for defining a zone around or adjoining a new public work within which compensation for injurious affection would be available. Unless the zone were drawn so widely as to be ineffective, it would give rise to invidious distinctions between property within and without the line of the zone. We note that The Law Society (para. 20) also does not favour this solution.

122. The Sub-Committee have noted with interest the wording of section 11 of the London Transport Act 1963, which section is also incorporated in subsequent London Transport Acts. This section provides that:

> "The Board shall make compensation to the owner, lessee and occupier of any land, house or building which shall be injuriously affected by reason of the working of Work No. 1" (an underground railway) "notwithstanding that no part of the property of such owner, lesssee or occupier is taken by the Board; provided that all claims for compensation under this section shall be made within two years from the date of the opening for public traffic of that portion of the works which is alleged to cause such injurious affection and, failing agreement, shall be settled by arbitration."

This is a simple amendment of section 68 of the Lands Clauses Consolidation Act 1845 (now s. 10 of the Compulsory Purchase Act 1965) which brings into the scope of compensation damage resulting from the use of the land as well as from the execution of the works. A clause like this, coupled if necessary with a statutory list of deemed nuisances, would achieve the change in this part of the law of compensation that we want to see.

123. An additional way of dealing with properties injuriously affected by public works is by acquisition. The public authority carrying out the work would acquire the property, paying compensation based on the market value of the property unaffected by the "scheme" underlying the work, *i.e.*, the normal basis of compensation when land is taken. The authority could then either retain the land for development or sell the property in the market for what it would fetch in its situation as affected by the works. The owner of the land would thus be fully protected as to the value of his property and any loss due to injurious affection would fall on the authority. Suggestions for dealing with injurious affection in this way have been made in several quarters; see *e.g.*, The Law Society's Memorandum (paras. 21 and 22) and "How Do You Want to Live" (para. 2.49).

124. We certainly think that powers of compulsory acquisition of land should be extended to cover land injuriously affected by public works at any rate in urbanised areas. But a discretionary power for the authority to acquire such land is not enough. There must be a complementary power for the owner of the land to compel the authority to purchase the land if he desires to dispose of it. We therefore endorse the proposal of The Law Society (para. 21) that the owner of land injuriously affected should be able to serve a purchase notice on the authority executing the works.

125. Proposals for dealing with injurious affection by making grants to owners for sound-proofing, double-glazing and similar work

do not appeal to us. No doubt the power to pay for such works should exist but we are strongly of the view that no owner should be limited to them as his sole remedy for injurious affection.

Blight Notices

126. In our Report (paras. 74–84) we considered the statutory powers available to an owner of land to serve a "blight notice" requiring the appropriate authority to purchase his land when it is adversely affected by planning proposals. Such a notice can be served when the land falls within one or other of the descriptions listed in section 192 of the Town and Country Planning Act 1971, all of them being land which is affected by a proposal which has reached the stage of definite decision or confirmation. We pointed out that blight could occur earlier than this, while the proposals are in the procedural stages, but we are unable to define a point in those earlier stages at which we could recommend that the right to serve a blight notice should arise.

127. Since our Report the Ministry of Housing and Local Government issued Circular 46/70, which listed a further seven descriptions of land in respect of which a blight notice could be served, all of them being land affected by the earlier stages of planning proposals, such as the submission of plans or a compulsory purchase order to the Minister for approval. We welcome this non-statutory extension of the blight notice procedure, particularly as it does succeed in defining the earlier point in time for service of a notice which we found difficult.

128. Two points, however, arise for comment. The first is that the Circular only recommends local authorities to accept blight notices in the non-statutory cases, and in the experience of our members not all local authorities are willing to use their discretionary powers in these cases. The second is that in the experience of our members, government departments are not as ready and willing to sanction loans and make grants in the non-statutory cases of blight notices as they are in the statutory cases, notwithstanding the assurance in Circular 46/70, and in the Department of the Environment Circular Roads 8/72, that loan sanction and grants would be forthcoming in the non-statutory cases.

129. This to our mind makes it vital that the categories of blight notice in Circular 46/70 should be enacted in legislation as soon as possible. It is not satisfactory to leave them merely as recommendations to local authorities.

130. We also wish to record our agreement with The Law Society (para. 32 [2]) that the right to serve a blight notice should accrue also where an owner is refused planning permission to develop his land, and the ground, or one of the grounds for such refusal, is that the land is or may be required for public purposes. And we draw further attention to our own proposal (para. 80) that the right to serve a blight notice should also arise where planning permission is granted for development not in accordance with the development plan to an authority possessing compulsory purchase powers, which authority is not the owner of the land to which the permission relates.

131. We repeat our view that the £750 limit of net annual value as a qualification for service of a blight notice in non-residential cases should be reviewed (para. 81); we note that the limit in Scotland is now £1,500.

132. The Law Society (para. 34) recommended the reinstatement of the provisions of Part IV of the Land Compensation Act 1961, which provided for payment of additional compensation to persons whose land has been compulsorily acquired or acquired under the shadow of compulsory powers if within five years of such acquisition planning permission were obtained for carrying out additional development of the land. These provisions were repealed by the Land Commission Act 1967, but were not reinstated by the Land Commission (Dissolution) Act 1971. We agree that these provisions did help to remove a genuine grievance and that they ought to be reinstated.

Miscellaneous

133. The attention of the Sub-Committee was drawn to paragraph 14 of the Ministry of Housing and Local Government Circular 73/65, dealing with the award of costs to partially successful objectors at certain public enquiries. The paragraph provides that "Where an objector is partly successful in opposing an order or proposal . . . , the Minister will make an award related to a proportion of the relevant costs. Such cases arise for example where the Minister, in confirming a compulsory purchase order, excludes part of the objector's land . . .". We consider this inadequate. An objector's costs are not necessarily proportionate to his degree of success; he may incur the same costs in securing that part of his land which is excluded from the order as he would have incurred if he had been wholly successful. We think that the rule should be that full costs are awarded in cases of partial success, unless in the view of the Minister costs necessarily incurred to achieve the partial success would have been less.

134. We considered the interesting proposal of The Law Society (paras. 30 and 35 (1) of its Memorandum) that the pre-1919 practice of paying an extra amount over and above the market value of the land as recognition of the fact that the owner was an unwilling vendor should be revived, on the grounds that it would remove much of the sting of compulsory purchase and therefore alleviate blight. The Urban District Councils Association is reported to take the same view (*The Times*, July 7, 1972), and to favour a return to the pre-1919 increment of 10 per cent. The Law Society did not commit themselves to the form or amount of the increment. Although some members of the Sub-Committee supported the idea of an extra payment, others did not and it was agreed merely to record that our views were divided on the point.

135. We noted that since our Report the proposals in the White Paper "Old Homes into New Houses" (Cmnd. 3602, 1969) for increasing compensation to the owner-occupiers of unfit houses by a supplementary payment of an amount equal to the difference between market value and site value have been implemented (Housing Act 1969). While we welcome this change in the law, we still think, as we did in 1969 (paras. 22–35) that the site value basis of compensation should be abolished altogether. The procedure whereby the Medical Officer of Health "represents" houses as unfit for human habitation is in our view an arbitrary and unsatisfactory arrangement. Over the years, the Secretary, and members, of JUSTICE have had many complaints about the unfairness of it in relation to particular properties. A house in a clearance area can be declared unfit for comparatively trivial defects which are capable of remedy at small expense, but the procedure under Part III of the Housing Act 1957, does not permit the possibility of remedial action to be taken into account. Further, as long as the site value is retained, there is no right to compensation for disturbance. If the site value basis is abolished, we repeat the view expressed in our Report (paras. 29–35) that the way to deal with non-owner-occupied houses is to provide for compensation by reference to the value of the house in its existing condition at the "fair rent" under the Rent Act 1968. We envisage that any question of whether a non-owner-occupied house falls into the "unfit" category would be decided at the compensation stage, thus avoiding the delays and public enquiries associated with the present procedure.

Revised Summary of Main Recommendations

Part I—Compensation payable on the compulsory acquisition of land

1. The restrictions which limit the right to make application for a certificate of appropriate alternative development under section 17 of the Land Compensation Act 1961, whereby it cannot be applied for in respect of land defined in the development plan as an area of comprehensive development, or shown in the plan as allocated primarily for a use which is residential, commercial or industrial, should be removed (paras. 18–21).

2. "Owner-occupiers" of land which include thereon houses unfit for human habitation, should receive market value on the acquisition of their interest, and also compensation for disturbance, in place of compensation assessed on the "site value" of the land to be acquired wherever this basis of assessment applies (paras. 27–28 and 135).

3. The compensation paid in respect of the acquisition of non-owner-occupier interests in land which include thereon houses unfit for human habitation, should no longer be assessed on the "site value" of the land wherever this basis applies, but should be assessed on the basis of a capitalised "fair rent." The effect on market value of scarcity of accommodation should be ignored, but regard should be had to the age, character and locality of the dwelling-house and to its state of repair (paras. 29–31 and 135).

4. In assessing the compensation to be paid for disturbance, full account should be taken of the personal circumstances of the claimant such as his age and state of health (para. 41).

5. Successful appellants (other than the acquiring authority) should normally be allowed the costs of their appeal to the Minister in connection with the issue of a certificate of appropriate alternative development (paras. 43–44). Objectors to a compulsory purchase order who are only partially successful should be awarded their full costs unless in the view of the Minister the costs necessarily incurred in achieving partial success would have been less than the full costs incurred (para. 133).

6. The practice of some authorities of deducting from the compensation to be paid an amount known as "abatement money" or "Key money," to cover the cost of rehousing those affected by compulsory acquisition, should be brought to an end (para. 48).

7. In order to help residential owner-occupiers displaced by the compulsory acquisition of their property to purchase alternative accommodation, loans free of interest or at reduced rates of interest should be made available, on terms to be determined by the Minister (para. 49). Similar assistance should be made available where small businesses are displaced (para. 109).

8. Compensation for disturbance should not be refused merely because of the absence of legal security of tenure; the actual prospects of continuance of occupation should be taken into account. The discretionary powers to pay compensation for disturbance in certain cases where there is no legal security of tenure in *e.g.* section 30 of the Land Compensation Act 1961, should be made general and mandatory (paras. 110–112).

9. To help in cases where a business is forced to close on account of compulsory acquisition of its premises, it should be enacted that it is to be deemed reasonable for the business to close down at any time after notice to treat, provided that the owner can show that he has made reasonable, albeit unsuccessful, efforts to relocate the business (para. 116).

10. The right of an owner of certain types of land, such as agricultural land of which part only has been taken, to require the acquiring authority to purchase the whole should not be dependent upon consideration of the area or the size of the part not acquired, but should depend on whether or not the part acquired can be taken without material detriment to the part not acquired (paras. 50–51).

11. Where part of an owner's land is taken from him and damage is caused to the part retained by the use of other land not taken from him, compensation should be payable in respect of that damage (paras. 54 and 117).

12. Where no land is taken from an owner, but damage is caused to his land by the user of other land acquired by an authority possessing powers of compulsory acquisition, compensation should be payable. Of the several ways of determining the right to compensation in such cases, the majority of the Sub-Committee preferred the method of having a statutory list of public works which are deemed to be actionable nuisances for the purposes of compensation (paras. 56–63 and 118–122).

13. Authorities should have power to acquire compulsorily land which is injuriously affected by public works, at any rate in urban areas, and the owner of land injuriously affected should have the right to serve a purchase notice on the authority (paras. 123–124).

Part II—Remedies in respect of planning restrictions

14. Where there is in respect of any land an "unexpended balance of established development value," the right to claim compensation for restrictions on "new development" should be redeemed over a fixed and limited period of time (paras. 65–67).

15. Where a building has been partly but not wholly destroyed, and planning permission to rebuild has been refused, there should be a right to receive compensation under section 169 of the Town and Country Planning Act 1971 (para. 70).

16. The meaning of the term "owner" for the purposes of sections 180 to 191 of the Town and Country Planning Act 1971 should be reconsidered so that the occupier of land or any person entitled to occupation (other than a mortgagee not in possession) would always be entitled to serve a purchase notice in order to dispose of his interest (para. 71).

17. The seven discretionary cases listed in Ministry of Housing and Local Government Circular 46/70 where blight notices may be served should be made statutory, together with certain other cases (paras. 127–130).

18. The £750 limit of net annual value as a qualification for service of a blight notice in non-residential cases should be reviewed (paras. 81 and 131).

19. An owner of an interest in land in respect of which a compulsory purchase order is in force but notice to treat has not yet been served should be entitled to serve a notice requiring the purchase of his interest regardless of the annual value of the property (para. 82).

20. The provisions of Part IV of the Land Compensation Act, which were repealed by the Land Commission Act 1967, should be re-enacted (para. 133).

Part II—Acquisition procedure

21. Once notice of entry has been served, at the end of a period of fourteen days or such further period as the parties may together agree, the owner, lessee or occupier should be able to serve on the acquiring authority a notice requiring it to take possession, and if at the end of a period of fourteen days it has not done so, it should be deemed to have taken possession (para. 80).

22. Local courts ("small claims compensation courts") should be established to hear and determine disputes relating to claims not exceeding £5,000. Public money should be made available to provide surveyors' aid for claimants appearing before such courts (paras. 93–96).

1. See the Committee on Public Works, Print No. 31, 88th Congress, 2nd session, "Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally Assisted Programs" (1964).
2. "Final Report of the Expert Committee on Compensation and Betterment" (1942) Cmd. 6386, p. 78.
3. Para. 28 (3).
4. *West Midland Baptist (Trust) Association (Incorporated)* v. *Birmingham City Corporation* [1968] 2 Q.B. 188 (C.A.). The House of Lords subsequently ([1970] A.C. 874) laid down the rule recommended in the text.
5. The Court of Appeal have now confirmed that the law is as recommended in the text: *Wilson* v. *Liverpool Corporation* [1971] 1 W.L.R. 302.
6. Cmnd. 3602. The proposals were enacted in the Housing Act 1969. For further comment see the Supplemental Report, para. 135.
7. Para. 48 (3).
8. Para. 44.
9. For further comment, see Supplemental Report, paras. 106–109.
10. For further comment, see Supplemental Report, paras. 117–125.
11. Since publication of the Report, the Land Commission Act 1967, was repealed.
12. For further comment, see Supplemental Report, paras. 126–129.
13. For further comment, see Supplemental Report, para. 131.
14. Subsequently the House of Lords ([1970] A.C. 874) upheld this decision. As regards Rule 2 cases, the date of assessment was stated to be the date when compensation is agreed or assessed by a tribunal or when entry on the land takes place, whichever is the earlier.
15. Para. 60.
16. This recommendation has now been implemented.

IMPLEMENTATION OF MAIN RECOMMENDATIONS

Implemented

JUSTICE recommendation	2 —	Housing Act 1969
„ „	6 —	White Paper (Cmnd. 5124), para. 45

Partly Implemented

JUSTICE recommendation	4 —	White Paper (Cmnd. 5124), para. 51
„ „	7 —	„ „ para. 42
„ „	8 —	„ „ paras. 47, 49 and 50
„ „	10 —	„ „ para. 56
„ „	11 —	„ „ para. 29
„ „	12 —	„ „ paras. 22–28
„ „	13 —	„ „ para. 20
„ „	17 —	„ „ para. 59

Not Implemented

JUSTICE recommendations 1, 3, 5, 9, 14, 15, 16, 18, 19, 20, 21 and 22.

JUSTICE

British Section of the International Commission of Jurists

JUSTICE is an all-party association of lawyers concerned, in the words of its constitution, "to uphold and strengthen the principles of the Rule of Law in the territories for which the British Parliament is directly or ultimately responsible: in particular, to assist in the administration of justice and in the preservation of the fundamental liberties of the individual." It is also concerned to assist the International Commission of Jurists in its efforts to promote observance of the Rule of Law throughout the world.

JUSTICE was founded in the Spring of 1957 following a joint effort of leading lawyers of the three political parties to secure fair trials for those accused of treason in Hungary and South Africa. From this co-operation arose the will to found a permanent organisation. A preamble to the constitution lays down that there must be a fair representation of the three political parties on the governing Council, which is composed of barristers, solicitors and teachers of law.

In the fifteen years of its existence, JUSTICE has become the focal point of public concern for the fair administration of justice and the reform of out-of-date and unjust laws and procedures. It has published authoritative reports on a wide variety of subjects, the majority of which are listed at the end of this report. Many of them have been followed by legislation or other government action. In Commonwealth countries, JUSTICE has played an active part in the effort to safeguard human rights in multi-racial communities, both before and after independence.

Membership of JUSTICE is open to both lawyers and non-lawyers and inquiries should be addressed to the Secretary at 12 Crane Court, Fleet Street, London, E.C.4. Tel. 01–353 9428.