A REPORT BY JUSTICE

Complaints against Lawyers

CHAIRMAN OF COMMITTEE

GEOFFREY GARRETT

CHARLES KNIGHT & CO. LTD.
LONDON
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Barrie Lloyd

The following also took part in the work of the Committee: George Bean, Q.C. (until his appointment as a High Court Judge), Ben Whitaker, M.P. (until his ministerial appointment), Arthur Prothero and John Walker.

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COMPLAINTS AGAINST LAWYERS

INTRODUCTORY

1. The original thought which led to the formation of this Committee was a suggestion that a study should be made of the question whether complaints against members of the legal profession should be investigated by or with the assistance of persons other than lawyers. The immediate context of this suggestion was the effort which JUSTICE had been making to require that there should be an independent investigation of complaints against the police. Many of the arguments put forward in relation to the police were thought to be equally applicable in relation to lawyers, with the added point that to adopt such a view in relation to complaints about lawyers would assist the case in relation to the police. During the period of the Committee's deliberations the support for an independent element in investigations relating to the police and to lawyers has undoubtedly grown amongst the public, the police and lawyers alike.

2. From this starting point a series of preliminary and unofficial discussions and enquiries led to the view that a rather broader approach should be adopted. Accordingly the Council of JUSTICE approved the setting up of a Committee with the following terms of reference:

(a) To enquire into and report on the present methods available for investigating complaints against members of the legal profession.

(b) To report on the adequacy of such methods from the point of view of the complainant.

(c) To suggest, if necessary, possible improvements.

3. From the commencement of its enquiries the Committee encountered a certain understandable tendency on the part of lawyers to suggest that exaggerated importance was being given to the shortcomings of practitioners and that the investigations would not, in the end, be found to be worthwhile. The members of the Committee however, in discussions amongst themselves and with others whose views they have sought, have concluded that, although it is true that the practising branches of the legal profession consist in the main of people working under great pressure and conscientiously striving to provide the best possible service for the public, there is a significant number of instances giving rise to complaints and that this, in turn, has produced a considerable amount of adverse publicity in the Press and elsewhere which has damaged and is likely to continue to damage the public image of both the law and lawyers. The Committee have therefore felt it necessary to set out some of the reasons which have led them to believe that this enquiry is of very real importance to the legal profession, and why its ultimate proposals should be of value both to the public and to the profession.

4. The main body of this report has been arranged in separate parts as follows:

Part I An appreciation of the significance, both to the legal profession and the public at large, of the existence of complaints and the manner of dealing with them.

Part II A review of the existing methods.

Part III A review of evidence received by the Committee relating to allegations of dissatisfaction with enquiries into complaints.

Part IV The Committee's general conclusions.

Part V The Committee's recommendations.

The report also includes two appendices:

Appendix A A description of the present methods available for investigating and dealing with complaints against lawyers.

Appendix B An account of the special circumstances relating to complaints against lawyers acting in criminal proceedings.

Acknowledgments

5. We would like to record our appreciation of the helpful co-operation we have received from the Senate of the Four Inns of Court, the Bar Council and The Law Society in the compilation of Appendix A of our report, and to pay a very warm tribute to our Secretary, Barrie Lloyd, who though carrying on a busy practice has served us both efficiently and unstintingly. We would also like to thank Christopher Rowland for his help in analysing the methods used by other professional bodies to investigate complaints.

PART I

AN APPRECIATION OF THE SIGNIFICANCE BOTH TO THE LEGAL PROFESSION AND THE PUBLIC AT LARGE OF THE EXISTENCE OF COMPLAINTS AND THE MANNER OF DEALING WITH THEM.

6. The law is of the very essence of all social activity and is a necessary base on which to establish all those human rights and fundamental freedoms which are today universally accepted as proper human aspirations. In this sense the law may be said to consist not only of the substantive law with its procedural and administrative rules but also of those who practise it. The effectiveness of the law is largely dependent on the integrity and competence of practitioners and the way in which they communicate the rules to the individual and apply them in his interest. Notwithstanding the hallowed fiction that everyone should know the law, the individual will only know the aspects which have affected him personally and his reaction will be conditioned and coloured by the attitudes and activities of the practitioner. The resultant sense of justice or injustice which follows any contact with the law will therefore depend to a large extent on the practitioners, and especially on the establishment of adequate communication between the practitioner and the individual.

7. Lawyers are closely identified by the public with the law itself, even with the form and drafting of legislation which are clearly not the practitioner's functions, and are held to form part of it. It is their duty to explain and interpret the law as it affects the individual and their responsibility to uphold and improve respect for it. Any failure on their part is peculiarly liable to attract publicity. The public assumes lawyers to be above the average in knowledge and competence and since it identifies lawyers with the law, which the public is in effect required to accept as infallible, it considers faults of lawyers to be more important and less excusable than those of others.

8. In the light of such thoughts we take the view that an examination of the methods of dealing with complaints made against members of the legal profession is an important and necessary study. Whilst the number of complaints may be small in relation to the total activities of lawyers, we believe from the figures given in Part III and Appendix A of this report that the total is too high to be treated with complacency.

9. If the law is to be as effective as it should be, it must be generally respected in all its manifestations. It falls into disrespect not only by reason of judicial decisions which laymen do not understand but also through the shortcomings of the legal profession and the publicity which is given them. It is fully accepted that the Press on behalf of the public should keep a watchful eye on the law. Lawyers must accept the corollary that, being in the public eye, they should not only maintain high professional standards but be prepared to investigate fairly, rigorously and effectively any allegations made against them and to do so in such a manner that justice is manifestly seen to be done in the eyes of both the lawyers and the public.

10. We believe that the true significance of complaints against lawyers is not always appreciated. Invoking the law and its processes is not usually an end in itself. In most cases it is directed towards some result which has a positive and lasting effect on the life, liberty, activities or property of an individual. An error or failing on the part of a lawyer may have far reaching consequences for the client outside the scope of the legal process itself which cannot be rectified within the process or on appeal. Members of the public therefore tend to assess legal professional conduct in the light of its personal effect on themselves. This is natural enough, bearing in mind that usually the public has little knowledge, if any, of the technicalities of the law itself and of the rules of professional conduct. Moreover every such complaint involves a strong feeling of personal condemnation of the lawyer and an urgent seeking for recompense. Since the lawyer is associated in the mind of the complainant with the law itself there is a suspicion that the law, whether exemplified by the courts or the internal professional governing bodies, is not likely to provide a satisfactory answer to the complaint. This must mean that it is necessary to be sure that all complaints are considered with such meticulous care as to satisfy the public's requirement of visible justice, not merely the lawyer's own specialised standards.

11. Many complaints arise by reason of unfortunate results which are not necessarily the fault of the complainant's legal advisers. Nevertheless

answers given to complaints in these cases are often felt by the complainant to be unsatisfactory in that no remedy is forthcoming and no clear explanation is given as to why this is so. The dissatisfied litigant looking for a scapegoat is a phenomenon well known to most lawyers. We believe that, generally speaking, any person who feels he has grounds for complaint about the conduct of a lawyer should have the right to such an investigation as will lead *either* to a clear explanation why the complaint is not justified *or*, if the complaint is found to be justified, of what remedy is open to him and how it may be obtained, or of what action is being taken with regard to the complaint. It is open to question whether the condemnation of a lawyer by his own professional body can be said to be a remedy but there is no doubt that it may give some satisfaction and, where it is justified, is clearly necessary for the rigorous maintenance of proper professional standards.

12. In cases which are concerned with the civil law, it seems scarcely necessary to emphasise here the variety of ways in which the conduct of a lawyer may be or may seem to be unsatisfactory from the point of view of a lay client. The present overwhelming complexity of the law as a whole and the pressure under which lawyers are obliged to work are matters of common knowledge. Such conditions are often a direct cause of delays and inadequate communications, both of which lie at the root of most complaints. If a lawyer's conduct results in quantifiable damage to the client, there is usually no serious obstacle in the way of obtaining adequate redress by further legal process. It must be remembered however that the client may be seriously affected by delay, with all its consequent worries, for which there may be no remedy or recompense. For this reason it remains a matter of importance that it should not require a lengthy process to establish that the conduct of a lawyer has been blameworthy (even if it does not amount to negligence) both to provide a sanction against such conduct and to satisfy the client that his interests are cared for.

13. In the sphere of the criminal law the situation is entirely different. Here the liberty, livelihood and reputation of the individual are involved and the possibility of remedy is very much less. It is also true that the opportunity for the individual to seek redress is immensely hampered if, through the fault of his lawyers, he is in custody. We have thought it appropriate to include as Appendix B a report covering particular problems and complaints which arise in connection with the administration of the criminal law.

PART II

A REVIEW OF THE EXISTING METHODS.

14. The bodies which at present may investigate complaints against lawyers are:

(a) the Professional Conduct Committee of the General Council of the Bar;
(b) the Complaints Committee and the Disciplinary Committee of the Senate.
(c) the Professional Purposes Committee of The Law Society and the Department which assists the Secretary of that Committee;

(d) the Solicitors' Disciplinary Committee;
(e) the Complaints Tribunals established under the Legal Aid [Panel (Complaints) Tribunals] Rules 1951 and the Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968;
(f) local Law Societies.

Descriptions of the constitution and procedures of these bodies are given in Appendix A.

15. In considering the manner in which complaints are investigated by these bodies, and any recommendations for the future, it is essential to bear in mind the differences between the two professions. There are only about 2,400 practising barristers compared to 23,000 practising solicitors. Barristers have comparatively little personal contact with their clients and those contacts are mainly concerned with advocacy and court work. When the outcome of court proceedings is unsatisfactory to the client, it is difficult for an investigating body to ascertain whether the barrister was in any way at fault. Solicitors' contact with their clients is far more personal and consequently a more fruitful source of complaint; moreover they are often blamed for what may be a mistake or error of judgment on the part of the barrister.

16. In each of the years 1967 and 1968 the Professional Conduct Committee of the Bar Council were required to deal with 43 cases. The number required to be dealt with by The Law Society in each of these years appears to have been between 4,000 and 5,000 of which perhaps only half had any appreciable substance.

17. In attempting any general assessment of the methods of these investigating bodies it is also important to remember that the purpose of the investigation may be either to ascertain whether the barrister or solicitor concerned has been guilty of unprofessional conduct or to ascertain whether the complainant has a justifiable grievance and, if so, how best it may be remedied. For example, the Disciplinary Committee of the Senate and the Solicitors' Disciplinary Committee are quasi-judicial bodies which try charges of professional misconduct against barristers or solicitors: they are not concerned to ascertain whether the complainant has a grievance and cannot be expected to do more than communicate their findings to the complainant. On the other hand investigations by a local Law Society, such as those conducted by the Birmingham Law Society, are primarily directed to satisfying the grievances of complainants. We apprehend that the principal function of the Legal Aid Complaints Tribunals is to prevent any abuse of the legal aid schemes; their procedure is somewhat formal, the Rules requiring an application to be made in one of the specified forms and to be supported by an affidavit setting out the facts; and their hearings resemble trials by the Disciplinary Committees. The department of the Law Society endeavours to fill both roles: its officers investigate whether there is a *prima facie* case of professional misconduct but they also endeavour to remove the cause of complaint and to obtain satisfaction for the complainant. The Professional Conduct Committee of the General Council of the Bar also

endeavour to fulfil both roles but the emphasis is on investigating whether there is a *prima facie* case of professional misconduct.

18. Difficulty arises over complaints involving negligence. Both professions regard gross negligence, whatever this may mean, as misconduct. Complaints alleging gross negligence are consequently investigated with a view to referring them to the appropriate Disciplinary Committee unless, in the case of solicitors, The Law Society anticipates that civil proceedings may be contemplated: in such cases it is considered desirable and in the best interests of the complainant that disciplinary proceedings should await the outcome of the civil proceedings. The Bar considers that as barristers cannot as a general rule be sued for negligence this problem does not arise. Where however a complaint involves an allegation of negligence not amounting to professional misconduct, neither profession will investigate it even though circumstances may seem to justify a reprimand or warning. The Law Society considers that the complainant should seek his remedy in civil proceedings. The Bar Council considers that it would raise insuperable difficulties to decide whether the manner in which a barrister exercised his discretion in the conduct of litigation was so negligent as to merit a reprimand and that it would not really be of assistance to a complainant if the barrister were to be reprimanded. The complainant is therefore left without a remedy. The sanction against a barrister for negligence out of court, for example delay in dealing with papers, really rests with the solicitor: he can withdraw the papers and refuse to brief the barrister. But in the case of solicitors it causes considerable dissatisfaction to a complainant to be told that his complaint is one of negligence and that he should consult another solicitor. We do not accept that civil proceedings for negligence would necessarily be prejudiced by prior disciplinary proceedings any more than they are by criminal proceedings, which are frequently brought before a writ for negligence is issued. In any case the assumption that the theoretical possibility of a civil claim in negligence is of some value to the complainant is by no means always justified, because apparently negligent conduct is not at all the same as a good *prima facie* case which would support a civil action. For instance, negligence in the form of delay may well not produce quantifiable damage; negligence leading to increased costs may provide no cause of action for a legally aided litigant; the effect of negligence on the result of a trial may be impossible to establish after the event; the amount of possible damages expressed in terms of money may easily fail to justify the high cost of litigation.

19. Any review of the systems operated by the two professions must recognise several factors:

(a) many of the complaints are without any merit and made by disgruntled people who could never be convinced that they have no cause for complaint:

(b) complaints often involve long and complicated stories: unravelling the facts in order to ascertain whether they contain a justifiable grievance is a lengthy and tedious business:

(c) the amount of time which members of the professions can devote to investigating complaints is severely limited: to employ whole time officials or independent firms of solicitors for the purpose is very costly and must be paid for by the professions.

In our view these factors lie at the root of most of the dissatisfaction with the present systems of investigating complaints. The department of The Law Society, with its whole-time staff, is overloaded with work even though the number of serious complaints is not great: in consequence it may be that some complaints are not investigated as fully as would be desirable. The Professional Conduct Committee of the Bar Council depends largely on voluntary service and we doubt whether it could cope with any appreciable increase in the number of complaints without employing full-time paid personnel. We think that it is unlikely that the Bar would be willing to provide additional funds for this purpose.

20. We have little comment to make on the general procedures of the different investigating bodies. We have no doubt that, within the limits of their resources, they endeavour to investigate complaints thoroughly and that their decisions are fair and impartial expressions of opinion. It is however a matter for comment that, where a complainant wants to have the opportunity of explaining his complaint orally, considerable reluctance is shown by the investigating bodies to arrange for the complainant to be interviewed, if indeed they will agree to interview him at all. Whilst the Complaints Committee of the Senate may, in difficult and serious cases, instruct a solicitor to make enquiries and report to them, and The Law Society may, in some cases too, arrange for an officer of the Society or for an independent solicitor to interview the complainant, the complainant is not as a rule given the opportunity of explaining his complaint personally before a decision is made as to whether or not there is a *prima facie* cause of complaint against the lawyer.

20a. It is also to be noticed that the investigating bodies vary in the extent to which they give reasons when they reject a complaint. The tendency of the Bar Council and The Law Society is to say as little as possible: the Complaints Committee of the Senate normally gives no reasons. This attitude arises from the fear that, in some cases, a reasoned explanation will only provoke a long and fruitless correspondence, and possibly a writ for libel. We cannot accept that these reasons are sufficient for not giving a complainant a proper explanation as to why his complaint is being rejected and we make recommendations as to this in Part V of this report.

21. The Special Complaints Tribunals established in connection with both civil and criminal legal aid do not appear to have been of value or significance to the individual lay complainant. The figures of complaints dealt with under the 1951 Rules are not available. In respect of the 1968 Rules we are informed that no complaints have been referred to tribunals since the rules came into force in October 1968. The reason for this may well be found in what appears to be the main weakness of the regulations, namely, that cases can be referred to the tribunals only if The Law Society or the Bar

Council in their discretion so decide. There is no appeal from this preliminary decision and the basis of the decision does not consist of any particular enquiry and does not involve giving any reasons. In the realm of legal aid it is frequently the fact that the complainant does not know how to process a complaint and is not likely to be capable of putting up a convincing and reasoned case.

22. On the other hand, under these rules the possibility of a civil claim for damages for negligence does not inhibit an enquiry. This supports our views expressed in paragraph 18 above and is an improvement on the systems operated by the professional bodies.

23. It should also be remarked that the legal aid complaints tribunals have lay participation and greater apparent independence than the professional bodies. They also have power to make orders reducing or cancelling remuneration or requiring the payment of costs. Such orders have a clearly "remedial" significance to the complainant.

Methods adopted by other professional bodies

24. We have obtained particulars of the methods adopted by certain other professional bodies in dealing with complaints against their members and we gratefully acknowledge the co-operation of their ruling bodies in supplying us with information. The various methods display certain points which have significance in relation to this report and we have therefore summarised them briefly under appropriate headings.

(a) *Lay participation*

The General Medical Council has—or *may* have—its own non-medical member and its Disciplinary Committee of nineteen members has a legal assessor and must contain at least two laymen. Under the National Health Service Rules, the Medical Services Committee (who deal with 'alleged failure to comply with terms of service') must have three laymen and the Medical Tribunals are chaired by a Barrister or Solicitor.

The Press Council has an independent Chairman and five lay members in a total of 25.

The Royal Institute of Chartered Surveyors has a Barrister sitting as Legal Assessor when either the Council or the Disciplinary Committee operates.

The Institution of Chartered Accountants in England and Wales has no outsider on either its Investigating, Disciplinary or Appeals Committees.

(b) *Multi-level investigation*

The General Medical Council's Statutory Disciplinary Powers provide for a preliminary investigation by the President and an optional reference to the Penal Cases Committee before a reference to the full Disciplinary Committee, from which there is an Appeal to the Privy Council. Under N.H.S. rules complaints are dealt with by Medical Services Committees which report to Executive Councils. These in turn may refer to Medical Tribunals and there is an Appeal to the Minister.

The Press Council Secretariat investigates complains prior to reference to a Complaints Committee investigation and the Council itself alone issues decisions from which there is no Appeal.

The R.I.C.S. provisions provide for a preliminary consideration by the Council; a three man enquiry as to the existence of a *prima facie* case; a hearing and a possible further reference to the Council.

The Chartered Accountants' system has an Investigation Committee, a Disciplinary Committee and an Appeals Committee.

(c) *The complainant's position*

Under G.M.C. procedure a complainant may prosecute before the Disciplinary Committee but very seldom does. If a complaint is rejected on a preliminary basis by the President or the Penal Cases Committee then no further redress is available.

Under N.H.S. rules the complainant carries the matter through as a party to the whole procedure, may be assisted but not represented at the earlier stage and may be represented by solicitor or counsel before the Tribunal, and on appeals to the Minister.

The Press Council procedure is that of a Tribunal, the complainant pursuing his own case throughout.

(d) *The effect of an apparent possibility of negligence*

Both the G.M.C. and the N.H.S. rules provide for a distinction between wrong treatment and failure to treat. The former is considered by the G.M.C. to be a matter for civil litigation and therefore complaints on such grounds are presumably rejected. Under N.H.S. rules however complaints founded on wrong treatment are investigated. The latter clearly may involve both civil negligence as well as improper conduct but it does not appear that in this situation the complaint is necessarily rejected.

The Press Council will only consider a complaint after any legal proceedings have been completed or on the footing that the complainant gives a release in respect of all legal claims.

The Chartered Accountants avoid making pronouncements which might affect the legal rights of parties and where necessary advise complainants to pursue their legal remedies. The same applies to the Chartered Surveyors.

PART III

A REVIEW OF EVIDENCE RECEIVED BY THE COMMITTEE RELATING TO ALLEGATIONS OF DISSATISFACTION WITH ENQUIRIES INTO COMPLAINTS.

25. The Law Society has no statistical breakdown of matters coming to the attention of its department that deals with complaints, and has not given us any total annual number.

It may however be taken as reasonably certain that the total of complaints of all kinds received by the Law Society relative to solicitors' conduct is between 4,000 and 5,000 per annum. On the available evidence we estimate that about 25 per cent are not investigated because they appear to involve an allegation of negligence and that about 50 per cent are found after investigation to be unjustified. This would produce in any year something over 3,000 "unsuccessful" complainants who, if not given clear explanations, might be liable to feel dissatisfied.

26. Though we have not formally invited or heard evidence relating to complainants' dissatisfaction we have drawn information from various

sources and have studied the available material with great care. It is not possible to reproduce such material in detail and the infinite variability of cases and their extremely informal and inconsistent presentation preclude a statistical analysis.

27. Our evidence derives from various sources and we would mention in particular the John Hilton Bureau of the *News of the World*, the general files of JUSTICE, the individual experiences of our members and a variety of press comments and reports.

28. The John Hilton Bureau has been engaged in providing written personal replies to readers over a period of 20 years at the average rate of 150,000 replies per annum. A substantial number of these relate to lawyers and the law. Neither the exact number nor an analysis can be expected but the Bureau has provided us with both a report giving the general impressions of a barrister and a solicitor who have been dealing with these matters and a detailed precis of 25 recent and typical cases.

29. JUSTICE receives a considerable number of complaints about the law and lawyers. Many are concerned with the criminal law and the gist of these is set out in Appendix B. An analysis of some 40 recent cases relating to civil law has been made and a report on them, together with an analysis and precis of some 16 cases which had been considered by The Law Society, were before us.

30. The experience of our members (we include representatives of the Citizens Advice Bureaux, the Press, the Bar, solicitors and academic lawyers) has been considerable, and apart from the normal contacts in our professional lives some of us have during the period of the Committee's deliberations made a particular point of accepting the task of investigating complaints and complainants' alleged troubles.

31. From these sources we feel justified in establishing the following findings:—

(a) The law itself, its complexities, peculiar language, delays and costs, and the increasing contacts of ordinary citizens with it, are not only fertile fields in which complaints arise but actually render explanation and the restoration of confidence difficult. Answers given to complainants seldom recognise or meet this difficulty.

(b) The existing systems of dealing with complaints frequently do not succeed in meeting and reducing the sense of frustration and impotence which is common to almost all complainants. The John Hilton Bureau seems to have substantial success in this respect but of course without any power of decision.

(c) The rejection of complaints which appear to disclose a possible claim for negligence is a widespread cause of disappointment and irritation. There may be cases where the fault is reasonably clear cut and related to a non-contentious matter and in such cases, if the complainant is put in touch with a new solicitor, his grievance can often be quickly remedied. But to a person who has been involved for a long time in unsatisfactory litigation and feels that he has not been well advised, the terse suggestion that because negligence may be involved he should now consult another solicitor, with the prospect of further probable delay and cost, is discouraging and likely to be resented.

(d) Complainants feel that although they make a complaint as a personal matter of their own and in the hope of some remedy, the complaint quickly develops into an investigation of professional misconduct in which the complainant is of no real importance. In effect, the existing systems are criticised for not fully recognising the complainant's position and needs.

(e) Sheer delay in dealing with complaints is a widespread cause of dissatisfaction. It appears common for several months to elapse before any concrete result emerges. The public is often expected to accept the results of overwork in solicitors' offices but may well feel that overwork in The Law Society is not a valid excuse for delay in investigating complaints.

(f) Dissatisfaction is a state of mind which often prevents a clear statement of its own cause but we are driven to conclude from our enquiries that most dissatisfied complainants make two main criticisms, first a failure to keep them fully informed of the progress of the investigation and secondly a failure to provide an explanation for the reasons lying behind the rejection of their complaint. We have already pointed out that lack of communication is at the root of many complaints. For those who have already suffered from this with a solicitor, it is infuriating to meet it again in official quarters.

(g) A number of complainants feel aggrieved when what they think should be a formal decision of The Law Society, or at least of a committee, appears to be issued as the personal view of an Assistant or Secretary. This feeling has less or more substance according to whether the edict is made in the early stages or after extended enquiries. If the purpose is only to explain why a complaint cannot proceed, then a Secretary's letter (provided it is sufficiently explanatory) is normally acceptable. If, however, the purpose is to indicate what is to be taken as a decision, then it is expected that the authority of The Law Society itself will be seen to be involved.

(h) Some complainants consider that their position in relation to that of the lawyer is not properly recognised. They feel that they are handicapped not only by their own possible intellectual disparity or inarticulateness but by the cost of further advice, the difficulty of getting possession of documents, the problem of finding time for interviews and the physical task of producing long letters. All these hinder a complainant from producing a complete and convincing case. In setting up his case he expects (perhaps with some justification) more help than he usually gets.

(i) In varying degrees a high proportion of complainants have themselves to blame for their troubles by reason of their attitudes to others, to the law and especially to lawyers. This does not necessarily mean that they do not in the end have real cause for complaint. It must in such cases be the responsibility of the professions as a whole to make certain that a serious attempt is made to investigate the complaint and to take appropriate action.

PART IV

THE COMMITTEE'S GENERAL CONCLUSIONS

32. It is quite clear that a substantial number of complaints are made each year against members of the legal profession and that a significant number of the complainants are left unsatisfied that their complaints have been fully or properly investigated. We believe that to a great extent this is due, in the case of solicitors, to the sheer inability of the available staff and resources of The Law Society to deal with the volume of cases received by them. In some areas the local Law Society has instituted a voluntary system which has helped to alleviate the situation.

33. We are firmly convinced that a very high proportion of the complaints originate in or involve a "failure to communicate". This applies both to complaints as to conduct and to complaints that the original complaint has not been properly investigated. Such a failure can arise in many ways and may itself be a good cause of complaint. It may be simply insufficient information or it may be the use of unintelligible language. It may be delay or failure to answer enquiries. It may be due to lack of understanding or lack of interest.

34. We feel that the profession does not always sufficiently realise that its services are no longer rendered mainly to those who are accustomed to consulting barristers and solicitors on business or family matters or to those who through ignorance will accept the handling of their affairs without question. The new clients often do not go to a solicitor to give him instructions but to be told how to deal with a particular set of circumstances. They may never before have needed legal assistance and they do not understand the need for the many activities and requirements which are commonplace to lawyers, such as searches and enquiries in conveyancing, formal pleadings in litigation, formal statements from witnesses and the necessity of attending to other pressing matters. Clients are entitled to a proper explanation as to what has to be and has been done, and failing it will blame the lawyer concerned and possibly the whole profession.

35. Consequently we consider that all lawyers, and particularly solicitors, should accept it as a positive and normal duty to take adequate steps to ensure that the lay client is kept informed of the lawyer's activity. We use the word "adequate" in recognition of the fact that the nature and extent of the explanation will vary in relation to many factors, including the wishes of the client. In general, the client should always be aware of what is being done and why; what has to be done and when; and roughly what liability for costs is being and is likely to be created.

36. In view of the variability and subjective nature of such a duty we do not consider that every failure to discharge it should be treated as unprofessional conduct. Nevertheless, persistent or gross failure should merit serious treatment and, at the least, some kind of reprimand. We have no doubt that The Law Society would even today so treat such conduct. It is however a matter of degree and we feel that the standard should be raised.

37. We wish to emphasize that although the duty we have suggested may appear to put yet further burdens on the practitioner it cannot be denied that the proper fulfilment of the relationship between the lawyer and his client demands adequate communication. In practice the extra effort required to keep the client properly informed may well in the long run save the solicitor a great deal of work and expense by obviating complaints. Moreover, the recording of such communication will prove of great value in ascertaining costs, in maintaining continuity in the matter whether by one or successive individual practioners, and in enabling the lawyer to provide a comprehensive and effective answer to any subsequent complaints.

38. It is evident from the complaints which we have examined and from the information given to us by representatives of The Law Society, the Senate and the General Council of the Bar, the Birmingham Law Society and others that a high proportion of complaints against lawyers start in an atmosphere of confusion, misunderstanding and insufficient factual details. This is inevitable in the light of what has already been said regarding the frequent lack of proper communication, the relatively unsophisticated nature of many persons who are obliged to come in contact with the law and especially the complex state of the law itself.

39. The presentation of a complaint is in a lawyer's mind a legal process demanding precision, order and some formality but to the layman this need is less clear. Since no special process or form is officially required for lodging a complaint, the complainant frequently presents his case very badly. He is liable to go to one or other of the extremes—either a sweeping but unsupported allegation or a mass of detail without orderliness or selection for relevance.

40. Because of this situation we believe that the effective and expeditious disposal of complaints is seriously hampered. In the case of The Law Society it emerges from the evidence that the available time of the secretaries and staff of the Professional Purposes Committee is so heavily engaged in investigating complaints and enquiries relating to conduct that the opportunity of a full and detailed examination of more difficult cases is reduced and there seems to be a tendency for badly presented complaints to be rejected at too early a stage. In the case of other bodies such as the Hilton Bureau, and no doubt other newspaper readers' services, the same difficulty arises and the total activity which can be undertaken is limited for the same reasons. In the case of complaints which are brought to other members of the profession, the main result of the poor presentation is that many practitioners feel that they simply cannot afford the time (which is unlikely to be paid for) to undertake investigations except on rare occasions.

41. We believe that to meet this point it is essential to use the voluntary services of members of the legal profession on a broader basis for the purpose of a preliminary sifting of complaints and untangling of the confused situation from which they usually arise. We consider that on the grounds discussed in Part I of this Report the profession owe it to the public to be willing to assist in this way and it is plain that this debt of the profession as a

whole should not merely be discharged by the few but should be spread as widely as possible so as to render the burden on each individual a tolerable one and to make such a service available throughout the country in a manner bearing some relation to the incidence of complaints.

42. We would emphasize that this suggestion is in no way an attempt to remove from the governing professional bodies their full responsibilities for investigating complaints which have some substance. Our purpose is to ensure that the responsibility can be more effectively discharged by reason of the existence of a preliminary process which should serve to eliminate wholly unjustified complaints, could lead through a conciliation process to the withdrawal of some complaints and would enable only the more substantial complaints to be brought before the official bodies or directed into civil actions where that course appears to be appropriate.

43. In formulating our recommendations as to the preliminary examination of complaints we have borne in mind a number of factors:—

(a) Speed in carrying out the investigation is essential. A minor complaint will often grow into an obsession if it is not met quickly. A complaint which is really an allegation of negligence may be disposed of before any damage has resulted if the solicitor's attention is drawn to the facts before it is too late, e.g. a writ can be issued before a claim is statute barred.

(b) Many solicitors are already overburdened with work and it is indeed the pressure of work which is the root cause of many complaints. It would therefore be unrealistic to put forward any recommendation which would be likely to throw a heavy additional burden on a few members of the profession. Moreover the profession, already protesting that much of the work they do is not properly remunerated, could not be expected voluntarily to undertake an excessive share of additional unpaid work.

(c) Having reached the conclusion that the present system of investigating complaints must be supplemented by some form of preliminary investigation, we are faced with the position that only lawyers can effectively and speedily undertake the work. At the same time we have to meet the criticism that lawyers are acting as judges in their own cause and this can only be done by introducing laymen to the system. In our recommendations we have endeavoured to reconcile these conflicting factors.

(d) A very common complaint has been that no solicitor will take up a complainant's case when he is making allegations against another solicitor. We have no doubt that there is some substance in this complaint, particularly when solicitors are asked to act against another solicitor in the same locality. This can bring about a denial of justice and we consider that if the image of the profession is to be improved a solution to the problem must be found.

44. We are satisfied that if our recommendations in Part V regarding the preliminary investigation of complaints are implemented, pressure on the limited resources of The Law Society (and to a lesser extent also the Senate and Bar Council) would be relieved. Consequently a more thorough examination of the fewer but more substantial complaints reaching these bodies would be possible, even if they involved allegations of negligence.

45. We hold that every complaint which reaches the stage of official examination must be treated as capable not only of containing a possible injustice but also of having a serious effect on the profession's public relations. It is desirable that every complainant should feel that he has been justly treated after a fair and unprejudiced hearing.

46. We believe that if our recommendations in Part V are implemented, most complainants will be satisfied that their complaint has been fully and properly investigated and, so far as is possible, that the cause of complaint has been remedied. Nevertheless it is inevitable that some complainants will still feel seriously dissatisfied because, for example, they feel that statements or counter-statements have not been fully tested or that some particular evidence has not been made available. To deal with such cases we consider that it is desirable to have a Review Body to whom a complainant can refer if he is still dissatisfied after he has exercised his right to have the complaint investigated by the Bar Council, the Standing Complaints Committee of the Senate, or The Law Society. We appreciate that sometimes the continued dissatisfaction will be due to an obstinate refusal to recognise that there is no substance in the complaint but it would not be possible to segregate these complainants from those who are genuinely dissatisfied until the reviewing body has investigated the facts. The Review Body should not consist solely of lawyers and should not sit as an appellate tribunal. It would have no concern with the proceedings of the Disciplinary Committee constituted under the Solicitors Acts or of the Disciplinary Committee of the Senate.

PART V

THE COMMITTEE'S RECOMMENDATIONS

47. We recommend that both the Bar Council and The Law Society should draw the attention of all practitioners to the real need to ensure good communications (in the sense referred to in this report) with lay clients, and to indicate that persistent or gross failure in this regard may very well amount to professional misconduct.

48. We propose a system of preliminary investigation of complaints at local level aimed at eliminating wholly unjustified cases, clearing up those which are easily remedied and channelling the remainder to the appropriate quarters with some added clarification. We consider this system should be based on voluntary services and operated by local law societies with the participation of laymen. We set out hereunder the outline of such system but we realise that the distribution and strength of local law societies may render it difficult for the scheme to be established throughout England and Wales in precisely the manner suggested. Nevertheless, we emphasize that the incidence of complaints must bear a relationship to the number of practising lawyers in any area with the result that the burden should not be too heavy in areas where the strength is least. The need for localisation is important,

but should not necessarily mean the establishment of enquiry panels on a strictly geographical pattern and in some areas a combined effort may be appropriate. We refer hereafter to a local Law Society as meaning that society or combination of societies which may be considered to be capable of operating the scheme in any given area.

49. Each local Law Society should appoint and maintain a small Standing Committee who would be responsible for the conduct of the scheme and will require some secretarial assistance.

50. Each local Law Society should set up three panels:—

Panel A to consist of lawyers willing to investigate complaints against members of the profession.

Panel B consisting of practising solicitors willing to act in civil proceedings against other members of the profession.

Panel C, consisting of lawyers and laymen from whom an *ad hoc* Complaints Committee will be appointed. Each Complaints Committee should consist of a lay Chairman and two lawyers, one of whom may be a barrister. Where a complaint involves a barrister, one member of the Committee should be a barrister.

51. The lawyers forming Panel A need not be practising lawyers. They could include retired solicitors (particularly married women), members of the local Bar, academics who have previous practical experience and possibly experienced legal executives.

52. On receipt of a complaint, which need not necessarily be against the complainant's own solicitor, the secretary to the Standing Committee would refer the complainant to a member of Panel A, normally the next in rotation, and send to the complainant a short letter explaining the purpose of the investigation and what may follow from it. Formalities would be kept to a minimum and, though initially a complaint should be established in writing, it will in most cases be necessary for the investigator to interview the complainant in order to understand the substance of the complaint.

53. The investigator should as soon as possible classify the complaint in relation to the following categories:—

(a) a case that appears capable of being disposed of by informal intervention and explanation;
(b) a case apparently involving an allegation which is likely to lead to a civil claim for damages;
(c) a *prima facie* case of professional misconduct;
(d) a case too involved or difficult for local treatment;

and should so inform the Secretary.

54. (i) Where the complaint falls into category (a) the investigator may be able to satisfy the complainant by explaining the position or he may have to refer the complaint to the solicitor concerned in order to ascertain further facts. He should then endeavour to satisfy the complainant either by expounding the true position or by persuading the solicitor to take some necessary action. The role of the investigator should emphatically *not* be to pass judgment.

(ii) If the complainant in a category (a) case is still not satisfied, he should be informed that he can have his complaint referred either to a Complaints Committee or direct to The Law Society. Reference of a complaint to a Complaints Committee will not preclude the complainant from taking his complaint to The Law Society at a later stage.

(iii) Proceedings before a Complaints Committee should be entirely informal and no record should be kept of complaints which are finally disposed of by an investigator or the Committee. The role of the Committee should be that of conciliators and they should be assisted by an unbiased summary of the matter prepared by the investigator. No complaint should be rejected without a full explanation of the reasons being given.

55. Where a complaint falls within category (b) the investigator will inform the complainant that the next available member in rotation of Panel B will act for him, if he wishes. The member of Panel B would be obliged, if required by the complainant, to accept instructions on a normal professional basis.

56. Where the complaint falls within category (c) the investigator should prepare an unbiased summary of the matter and pass it with the complaint and any other papers to the Standing Committee who may thereupon refer the case to The Law Society accompanied by the summary and any other comments which the Standing Committee think fit.

57. Where the complaint falls within category (d), which necessarily includes cases involving a multiplicity of documents, cases of unusual complexity and those which for any reason are thought to be too onerous or unsuitable for local treatment, the complainant should be informed that he may himself refer it direct to The Law Society or that the Standing Committee will do so on his behalf. He should be informed further that in the latter case the investigator or the Committee may add such comment or report as the Committee think fit.

58. For dealing with complaints involving members of the Bar, the Standing Committee should maintain contact with the Bar Council and the local Bar Circuit so as to be able to call upon the assistance of a barrister to sit on a Complaints Committee as an alternate to one of the solicitor members. In such cases, references to The Law Society in the foregoing recommendations should be read as references to the Bar Council.

59. In relation to complaints dealt with by the Bar Council, the Senate or the Law Society we recommend:—

(a) that there should be a greater willingness by these bodies to interview a complainant personally so that the precise nature of his complaint can be properly understood.
(b) that a complainant should be kept fully informed at all stages of the action taken on his complaint.
(c) that a full explanation, capable of being understood by the complainant without further legal advice, must always be given when any complaint is wholly or partly rejected.

60. In relation to complaints against solicitors dealt with by The Law Society's department, we recommend that any final decision with regard to the rejection of a complaint should be a decision of the Professional Purposes Committee.

61. We recommend that the Bar Council and The Law Society should jointly set up arrangements whereby a Review Body can be appointed to hear any complainant who still remains dissatisfied after his complaint has been investigated by the Bar Council, the Standing Complaints Committee of the Senate, or The Law Society. As the complainant will in effect be appealing from the decision of a body consisting exclusively of lawyers, we consider it important that the Review Body should include a lay element. We therefore suggest that a Review Body should consist of a lay chairman and at least two other members who may be lawyers, but if there are more than two other members, they should not all be lawyers. A Review Body should be appointed on an *ad hoc* basis; it should sit locally; but the members should not be drawn from the immediate locality of the complaint. The functions of the Review Body will be to consider the complainant's grounds of dissatisfaction, examine the record of proceedings and decide whether or not there is a *prima facie* case for further investigation. If there is, the Review Body would request the Bar Council or The Law Society to reconsider the proceedings in whole or in part. If there is not, the Review Body would give a further explanation aimed at removing the complainant's dissatisfaction. The Review Body would not be concerned with a decision of a local Complaints Committee. A complainant who is dissatisfied with a decision of a local Complaints Committee should first exercise his right to refer his complaint to the Bar Council, the Senate, or The Law Society, as may be appropriate. Nor would the Review Body be concerned in any way with review of the proceedings of the Disciplinary Committees. In our view, it would be desirable for an annual report of the work of the Review Bodies to be published, but such a report should not identify the parties to individual proceedings that were thought worthy of detailed mention.

62. The public erroneously believe that the Disciplinary Committee constituted under the Solicitors Acts is simply a Committee of The Law Society and that, as The Law Society is the body which enforces discipline amongst solicitors, the Committee is consequently biased. We recommend that this Committee should be renamed the "Solicitors' Disciplinary Tribunal" but we do not consider that any change in its consitution or functions is called for.

63. We recommend that the apparent possibility of an allegation of negligence should not be treated either by the Senate, the Bar Council or The Law Society as a reason for terminating or suspending enquiries into a complaint. We believe there is no compelling reason for the present practice, especially as the same considerations do not apply to complaints under the Legal Aid Rules. Of course, the complainant should be told of his common law rights, but in a manner which he can understand and which has regard to the realities of his position rather than the mere theoretical possibilities.

APPENDIX A

A DESCRIPTION OF THE PRESENT METHODS AVAILABLE FOR INVESTIGATING AND DEALING WITH COMPLAINTS AGAINST LAWYERS

Preliminary

64. Part I of this Appendix describes first, the procedures of The Law Society; secondly, the constitution and procedure of the Disciplinary Committee constituted under the Solicitors Acts, and, thirdly, the activities of a local Law Society, the Birmingham Law Society, in relation to complaints against solicitors.

65. Part II describes the procedures of the General Council of the Bar and the Senate of the Four Inns of Court in relation to complaints against barristers.

66. Part III describes the procedures of the Complaints Tribunals, established under the Legal Aid [Panel (Complaints) Tribunals] Rules 1951 and the Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968.

PART I—SOLICITORS

The Procedures of The Law Society

67. Complaints made about the conduct and etiquette of solicitors are initially investigated by a department headed by the Secretary to the Professional Purposes Committee, which also advises members on points of professional etiquette. Besides the Secretary, the department is staffed by five Assistant Secretaries who are also qualified solicitors and by a number of Legal Executives. The Law Society has no statistical breakdown of matters coming to the attention of this department and has not given us any total annual number. We were informed that the department has to investigate or deal with an average of between 300 and 400 enquiries and complaints in a month. The enquiries mentioned are enquiries about the propriety of conduct: they are not requests for guidance. They are therefore expressions of dissatisfaction which are treated in effect as complaints.

68. There are no formal rules for making a complaint but The Law Society requires a complaint to be made in writing so that, if necessary, the solicitor can be given the opportunity of considering the precise nature of the allegations against him. In some difficult cases the complainant may be interviewed by a member of the Society's staff to clarify the complaint.

69. The department does not investigate complaints in respect of which the complainant appears to have a legal remedy, for example, complaints which involve negligence. In such cases, The Law Society advises the complainant to find another solicitor and will ask a local Law Society to help the complainant to find one.

70. Where a complaint appears to involve professional misconduct as well as negligence, The Law Society as a general rule takes the view that it

should not intervene, first, for fear of prejudging the issues if there is any possibility that proceedings for negligence might be brought against the solicitor concerned and, secondly, because the feeling is that in the first instance the complainant is best served by obtaining his remedy in the courts rather than by the formal disciplinary proceedings against the solicitor concerned. The complainant is warned in a case of this type that any action The Law Society might take will be of a disciplinary nature only and he is advised to consult an independent solicitor. It is suggested to the complainant that, if any aspect of the complaint does involve professional misconduct, his new solicitor should in due course report the matter to The Law Society. Once the question of negligence has been dealt with, The Law Society will then investigate, if approached, the professional misconduct aspect. In cases which appear to involve gross negligence or serious neglect The Law Society will consider the exercise of the various powers under the Solicitors Acts, which may result in an investigation of the solicitor's accounts leading to disciplinary action.

71. If on the face of a complaint, it is clear that professional misconduct, possibly of a criminal nature, has been committed, The Law Society may either send the complaint to the Director of Public Prosecutions so that criminal proceedings, if appropriate, can go forward before disciplinary proceedings are brought, or it may send the complaint to the Society's solicitors with instructions to make enquiries to see whether the allegations can be substantiated for the purpose of proceedings before the Disciplinary Committee. If so, a solicitor in private practice is instructed by the Society and is named as complainant before the Disciplinary Committee.

72. The Law Society do not as a general rule investigate complaints against a solicitor where the relationship of solicitor and client does not exist. For example, where there is a complaint by a party to litigation against the solicitor for the other party, the complaint will not be considered unless made by the complainant's own solicitor. The Law Society takes the view that a solicitor is bound to protect his client's interests and in doing so there is always a possibility of antagonism towards him by a party with whom his client is in dispute. The Law Society, in complaints of this nature, tries to ascertain from the complainant's own solicitor whether or not there is substance in the complaint. Where the complaint appears on the face of it to be of a serious nature and the complainant is unrepresented or is a litigant in person, The Law Society will take the matter up with the solicitor against whom the complaint has been made.

73. If the complaint does not fall into the categories mentioned in paras. 69 and 72, a stencilled letter is sent to the complainant asking whether he objects to his complaint being sent to the solicitor for his comments. If the complainant objects, investigation of the complaint is not taken further although it may be that The Law Society will interview the complainant and ask whether he objects to a report of the interview being sent to the solicitor concerned. Assuming no objection is raised, a letter or a copy report is sent to the solicitor in terms which vary according to the nature of the complaint. If the complaint is unlikely to be the subject of disciplinary proceedings, the

solicitor is simply informed of the complaint and asked for his observations. Where the complaint may be the subject of disciplinary proceedings, if a satisfactory explanation by the solicitor is not given, a letter is sent warning him that although the matter has not yet been submitted to the Disciplinary Committee, it may be necessary to do so, and that his reply may then be used in evidence against him.

74. If the explanation from the solicitor appears to be satisfactory to the person charged with the investigation of the complaint on behalf of The Law Society, either the Secretary to the Professional Purposes Committee or an Assistant Secretary in his department, a copy of the explanation is sent to the complainant together with comments to the effect that so far as The Law Society is concerned the explanation is satisfactory.

75. Where no explanation is given by the solicitor or where the explanation given is considered to be unsatisfactory, the matter is passed to the Professional Purposes Committee with a recommendation from the Secretary's Department. Solicitors instructed by The Law Society may at this stage be employed to make further enquiries. If so, the complainant is notified and he is warned that any action The Law Society may take will be disciplinary action only. The complainant is not called as a witness before the Professional Purposes Committee but if the Society's solicitors have been instructed he will have the opportunity of making a statement to them. Once the enquiries have been completed, the Council of The Law Society, acting through its Professional Purposes Committee, may either a) personally reprimand the solicitor or b) write the solicitor a warning letter together with observations on his conduct or c) refer the complaint to the Disciplinary Committee. Again, a solicitor in private practice is named as the complainant in any proceedings before the Disciplinary Committee.

76. As a result of applications made by The Law Society's solicitor, orders were made by the Disciplinary Committee against 24 solicitors in 1966, against 40 solicitors in 1967 and against 51 solicitors in 1968.

77. The Law Society has a discretion under the provisions of the Solicitors Acts to refuse to issue a practising certificate, or to issue a certificate subject to conditions, to a solicitor who has been asked to give an explanation of his conduct and either neglects to give one or fails to provide a sufficient or satisfactory explanation. An appeal from such refusal or from conditions imposed upon the issue of a certificate lies to the Master of the Rolls. In 1966 two solicitors, and in 1967 three solicitors, were informed by The Law Society that they had failed to give satisfactory explanations in respect of matters affecting their conduct and were notified of the Society's discretion in respect of future applications for practising certificates. In 1968, eight solicitors were similarly notified and in two cases the threat that the discretion might be exercised was withdrawn after the receipt of a satisfactory explanation.

78. Under S. 11 of the Solicitors Act, 1965, The Law Society may invite a solicitor to give an explanation within a specified period (not being less than

eight days) in respect of a matter where there has been a complaint of undue delay. If neither a sufficient nor a satisfactory explanation is received from the solicitor within the time stipulated, The Law Society has power to take over the documents in the possession of the solicitor so far as they relate to the matter complained of. The Law Society's powers under S. 11 were exercised in one case in 1967 and in eight cases in 1968.

The Constitution and Procedure of the Disciplinary Committee Constituted under the Solicitors Acts.

79. The Committee is not a Committee of The Law Society but a separate and distinct tribunal appointed by the Master of the Rolls under the Solicitors Acts from among present and past members of the Council of The Law Society.

80. A maximum of twelve members are appointed to the Committee but a complaint is normally heard by a division consisting of three members only.

81. The Committee have power to make the rules as to the procedure and these are set out in the Solicitors (Disciplinary Proceedings) Rules, 1966.

82. Proceedings before the Disciplinary Committee may be brought by a layman direct without reference to the Law Society.

83. Proceedings are begun by filing a form of application asking that the solicitor may be required to answer the allegations and that his name be struck off the Roll or such order be made as the Committee think fit. An affidavit setting out all the material facts on which the complainant relies must be filed in support of the application. The purpose of the affidavit is to enable the Committee to decide whether or not there is a *prima facie* case against the solicitor. The Committee may decide without any formal hearing that the affidavit discloses no case to answer in which case the application is dismissed without the solicitor being notified at any stage by the Committee that a complaint has been made against him.

84. Where an application, made by the layman, is dismissed because no case for the solicitor to answer has been shown, the Committee have power to refer the matter to The Law Society. The Law Society usually sends the papers in such a case to its solicitors to investigate. The solicitors make their report to The Law Society which may, if it is thought that the complaint is justified and can be substantiated before the Committee, instruct its solicitors to take over the conduct of the proceedings in place of the layman.

85. Where the Committee are satisfied that the application reveals a *prima facie* case for the solicitor to answer, the solicitor is notified and supplied with copies of the application and the affidavit in support and a day is fixed for the hearing of the application. The hearing is held in camera in order not to prejudice the solicitor's reputation if he is acquitted. The parties may be represented by solicitor or counsel or they may appear in person. The proceedings resemble a full High Court action and the evidence of the parties and their witnesses is heard orally although there is power in certain circumstances to receive affidavit evidence. The Committee must set out

their findings in the Order, which must be in writing. The decision of the Committee is given in public and the Press are admitted.

86. An appeal against any order made by the Disciplinary Committee lies to the Divisional Court and from there with leave to the Court of Appeal and to the House of Lords. There is no appeal against a finding that there was no professional misconduct.

The Activities of a Local Law Society.

87. The Birmingham Law Society has adopted the policy of investigating complaints made by members of the public against its members.

88. The Society will not investigate a complaint if the solicitor concerned is not a member of the Birmingham Law Society. It refers cases which may possibly result in proceedings before the Disciplinary Committee to The Law Society and also passes to The Law Society especially difficult and confused complaints.

89. Where a complaint is one of delay, the Society has made it a practice for its Vice-President for the time being either to write to the solicitor concerned for an explanation or to make an approach to him on a personal basis. Many of the complaints arise from omission on the part of a member of a solicitor's staff and the Society has found that the approach usually results in a principal bringing the matter up to date to the satisfaction of the complainant.

90. A similar approach is made in relation to complaints as to costs. Where a charge in the Society's view cannot be justified, the Society through its Vice-President is often able to arrange some accommodation by the solicitor to the satisfaction of the complainant.

91. In cases of complaints involving negligence, the Society advises the complainant to consult another solicitor and will, if necessary, direct the complainant to a solicitor who will act for him.

PART II

BARRISTERS

The Procedures of the General Council of the Bar.

92. Whilst the Senate of the Four Inns of Court is now the authority for discipline in respect of all members of the Bar, the General Council of the Bar has made investigation into complaints against barristers since the Council's establishment in 1895, as part of its object in maintaining proper professional standards. It should be made clear, however, that a complaint against a barrister need not necessarily pass through the hands of the Bar Council but may be made direct to the Senate.

93. A complaint addressed to the Bar Council must be made in writing although there is no set form. The Professional Conduct Committee of the Bar Council do not hear complainants in person and therefore accept

prima facie anything that is said by the complainant in his written complaint.

94. On receipt of a complaint the papers are sent to a member of the Professional Conduct Committee with a view to his placing before the Committee an unbiased account of the basis of the complaint. In cases of difficulty, a further member of the Committee may be asked to read the papers and, if a technical legal topic is involved, the opinion of a barrister specialising in the topic may be taken.

95. The Chairman of the Committee has power to reject outright any complaint which in his opinion is frivolous, vexatious, misconceived or otherwise not deserving of submission to the Committee.

96. If, after hearing the reporting member's account of the complaint, the Committee do not feel that there is a *prima facie* case of complaint against the barrister concerned, the complaint may be rejected. If the complainant indicates that he is dissatisfied with the decision of the Committee, he is informed of his right to go to the Senate direct.

97. Where the Committee feel that it is necessary or desirable to have from the barrister his version of the relevant events, he is informed of the complaint and invited to give his explanation in writing. The barrister however may choose to give his answer to the Committee either orally or in writing. The answer is not revealed to the complainant unless the barrister's consent to do so is given. The Bar Council feel that this procedure encourages the barrister to be as frank as possible and experience has shown that the barrister will be frank if he feels that his reply can be given in confidence to the Committee.

98. If the Committee feel that the complaint will probably have to go to the Senate the barrister is warned, when he is notified of the complaint, that he is under no obligation to submit an explanation to the Committee but that anything which he does submit will be carefully considered before a final decision is reached.

99. Where it appears to the Committee that there is a conflict of fact, the Committee will send the papers to the Senate for investigation unless the complaint is not in their view sufficiently serious to justify such a course. The Committee may, if they decide on the latter course, nevertheless issue a warning or a reprimand either orally or in writing to the barrister concerned.

100. Where the Committee are satisfied that there is a *prima facie* case of complaint which ought to be referred to the Senate, the Committee inform both the complainant and the barrister of their decision.

101. Where a *prima facie* case of complaint is not in the Committee's view sufficiently serious to be referred to the Senate, the Committee notify the barrister either orally or in writing of their decision and may at the same time tender any advice or admonishment which may seem to be appropriate in the circumstances. The action taken may, if the Committee think fit, be reported to the complainant.

102. The Committee dealt with 43 cases in 1967, six of which were referred to the Senate, and 43 cases in 1968, three of which were referred to the Senate. There were six cases of admonishment by the Committee of a barrister in 1967 and seven in 1968.

103. The Committee do not investigate complaints involving negligence not amounting to professional misconduct or complaints about the exercise by a barrister of his discretion in dealing with the conduct of the case.

The Procedure of the Standing Complaints Committee of the Senate of the Four Inns of Court.

104. The Senate took over the responsibility for exercising disciplinary powers over barristers from the Inns of Court in April, 1967.

105. The Complaints Committee of the Senate investigate complaints brought to the notice of the Senate affecting any member of the Bar and determine whether or not a *prima facie* case of complaint exists. A complaint may be brought to their notice by a member of the public, a solicitor, another barrister or by the Professional Conduct Committee of the Bar Council.

106. The Committee do not investigate a complaint against a barrister involving negligence alone. The Committee do however investigate a complaint where it appears that the negligence is sufficiently grave to amount to professional misconduct.

107. On receipt of a complaint the Committee may, if it is thought necessary or desirable, invite the barrister concerned to comment in writing or in person on the complaint. The Committee do not send the barrister's answer to the complainant because it is felt that it is an advantage to the Committee to have a full and frank reply from the barrister, unhindered by the fear that libel proceedings might be brought against him.

108. If the Professional Conduct Committee of the Bar have already investigated the complaint, the Committee do not repeat the work done by the Bar Council. The Committee will review the complaint and make such further enquiries as may be necessary before arriving at their decision.

109. The Committee do not see or hear a complainant at any stage of their deliberations but they may before reaching their decision make enquiries of the solicitors involved in the circumstances leading up to the complaint and may, in appropriate cases, instruct a firm of solicitors to investigate and report to the Committee.

110. The Committee may in respect of any complaint decide a) that no disciplinary action should be taken, or b) that there is a *prima facie* cause of complaint but, although the matter is not sufficiently serious to justify disciplinary proceedings, it should be reported to the Treasurer of the barrister's Inn with a view to a formal reprimand or c) that the complaint shall form the subject matter of a charge before the Disciplinary Committee of the Senate.

111. The Committee do not give reasons to the complainant if the complaint is rejected.

112. If the Complaints Committee decide that the matter should be referred to the Disciplinary Committee, the Complaints Committee arrange for Counsel to formulate the charge and to present the case to the Disciplinary Committee and would normally for this purpose appoint a solicitor to instruct Counsel.

The Procedures of the Disciplinary Committee of the Senate.

113. The Disciplinary Committee of the Senate are an *ad hoc* body appointed by the President of the Senate to hear cases referred to it by the Complaints Committee. The Disciplinary Committee consists of seven members of the Senate who have not been concerned with the investigation of the complaint before the Complaints Committee. Save that one of its members may be a Judge of the Supreme Court, the members of the *ad hoc* Committee must be practising barristers. Unlike the Disciplinary Committee constituted under the Solicitors Acts a member of the public cannot go direct to the Disciplinary Committee of the Senate but must first satisfy the Complaints Committee that he has a *prima facie* cause of complaint.

114. When a barrister is to be charged before the Disciplinary Committee, he is supplied with a copy of the charge as soon as practicable and is informed that he may deliver an answer to the Disciplinary Committee. The barrister may if he wishes appear at the hearing by Counsel with or without an instructing solicitor.

115. The hearing by the Disciplinary Committee is in private. After the hearing the Committee state the facts and the finding on the charge. The finding to be stated is the majority one and a transcript of the statement and finding is sent to the President of the Senate who notifies the Treasurer of the barrister's Inn. The complainant is normally notified in writing of the decision.

116. A barrister who has been found guilty of misconduct by the Disciplinary Committee may 1) be disbarred 2) be suspended (either unconditionally or subject to conditions) 3) be ordered to repay or forego fees or 4) be reprimanded. Where the decision is disbarment or suspension, the charge, the finding and the sentence of the Disciplinary Committee are published. In cases in which a barrister is ordered to repay or forego fees or which involve a reprimand, the Committee may arrange for the decision to be published, if they think fit. Where a charge has not been proved, the decision of the Committee is not published unless the barrister expressly calls for it to be published.

117. An appeal from the decision of the Senate lies to the Judges.

118. During the year ending November, 1968, the Complaints Committee of the Senate received fifteen complaints. The Complaints Committee decided that no disciplinary action should be taken in six of the complaints, one of the complaints was withdrawn, three complaints resulted in a barrister being reported to the Treasurer of his Inn, one was the subject of formal disciplinary proceedings before the Disciplinary Committee who found the

barrister guilty of some of the charges and passed a sentence of disbarment, one case was referred to the Bar Council for consideration of action under the complaints procedure set up under the Legal Aid Scheme, and the remaining three complaints had not yet then been disposed of.

119. During the year ending November, 1969 nineteen complaints were received by the Complaints Committee, ten were against barristers practising in this country and the remainder were overseas or non-practising barristers. The Complaints Committee decided that no disciplinary action was necessary in six of the complaints, four of the complaints resulted in a barrister being reported to the Treasurer of his Inn, three formal charges were preferred against barristers and in due course will be dealt with by the Disciplinary Committee and the remaining six complaints were then still under investigation.

PART III

LEGAL AID COMPLAINTS TRIBUNALS

The procedures under the Legal Aid [Panel (Complaints) Tribunals] Rules, 1951 and the Legal Aid in Criminal Cases (Complaints Tribunal) Rules, 1968.

120. The 1951 rules were made under paragraphs 27 to 32 of the Legal Aid Scheme, 1950.

121. The jurisdiction vested in the Tribunals set up under the 1951 rules is designed to ensure that a high standard is maintained by the profession in the administration of the Legal Aid Scheme. A complaint may be made against a barrister or solicitor arising out of his conduct as a member of a Legal Aid panel or in relation to his professional conduct generally. A Tribunal established under the 1951 rules have power, where a complaint is substantiated, to make an order excluding the solicitor or barrister from any Legal Aid panel for such period as they think fit and to make provision for the payment of the costs of the proceedings arising out of the complaint. The order against a solicitor may include the partners of the solicitor concerned.

122. The 1968 rules were made under S. 82 of the Criminal Justice Act, 1967 and make provision for a Complaints Tribunal to hear and to determine complaints against any barrister or solicitor arising out of his conduct when acting in criminal proceedings for a legally assisted person or his professional conduct generally. Where a complaint is substantiated against a barrister or solicitor, a Tribunal may, under the 1968 rules, exclude him from acting further in criminal proceedings for a legally assisted person and may reduce or cancel remuneration payable to him under a Legal Aid Order and may order him to pay the costs of the proceedings arising out of the complaint. Any order made against a solicitor may also extend to the partners of the solicitor.

123. Conduct which falls short of misconduct may result, under the 1951 rules, in exclusion from a panel or, under the 1968 rules, in an order excluding

a barrister or a solicitor and his partners from acting for a legally assisted person in criminal proceedings.

124. A complaint may only be referred to a Tribunal where the Bar Council in the case of a barrister, and The Law Society in the case of a solicitor, are of the opinion that there may be a good case for imposing upon the barrister or the solicitor any one of the penalties provided for in the rules.

125. The Tribunal will, in the case of a complaint against a solicitor, consist of the President (or failing him the Vice-President) of the Law Society, three solicitors and a representative of the Lord Chancellor and, in the case of a complaint against a barrister, consist of the Chairman (or failing him the Vice-Chairman) of the General Council of the Bar, three barristers and the representative of the Lord Chancellor. Three members of a Tribunal are sufficient to constitute a quorum but under the 1968 rules one of the three members of a Criminal Complaints Tribunal must be a person (not being a practising barrister or solicitor) nominated by the Lord Chancellor.

126. The procedure under the 1951 and the 1968 rules resembles the procedure under the Solicitors (Disciplinary Proceedings) Rules for making application to the Disciplinary Committee. The applicant to a Legal Aid Complaints Tribunal must however be authorised by either the Bar Council or the Society as the case may be. The application must be supported by an affidavit and a *prima facie* case has first to be established to the satisfaction of a Tribunal before the barrister or solicitor is notified of the complaint. The hearing, however, is in private and the Tribunal may, in their discretion, act on evidence given by affidavit.

127. An appeal lies from a decision of a Tribunal to the High Court.

APPENDIX B

SPECIAL CIRCUMSTANCES RELATING TO COMPLAINTS AGAINST LAWYERS ACTING IN CRIMINAL PROCEEDINGS

128. A prisoner who believes he has been wrongly convicted, for example by reason of the failure of his solicitors to trace and bring to court an important witness, theoretically can bring an action against them for damages on the grounds of negligence but he has a heavy burden of proof to discharge and, even if successful, this would not necessarily secure his release from prison. If an action were to succeed, there would be *prima facie* grounds for the Home Secretary to refer the case back to the Court of Appeal under Section 17 of the Criminal Appeal Act, 1968, but this would afford no guarantee that the Court would quash the conviction. Additionally it is far from easy for a prisoner to obtain the necessary permission from the Home Secretary to start a civil action.

129. The Court of Appeal (Criminal Division) may agree to hear a new witness if, in his application, the prisoner can prove to the satisfaction of the

court that the failure to trace the witness was entirely due to the negligence of his solicitor, but there are many cases in the files of JUSTICE in which such requests have in the past been refused. Provisions of the Criminal Appeal Act, 1966, since re-enacted in the Criminal Appeal Act, 1968, gave the Court wider powers to review convictions than it possessed before and, in particular, introduced a more liberal attitude to applications to call fresh evidence. It is too early as yet to judge the extent to which the Court will make increasing use of these fresh provisions but it is clear that caution will be exercised to avoid what was referred to by the Court in *R. v. Stafford and Another* (1968) 3 All E.R. 752 as "the public mischief" which might ensue were the impression to be gained that the court will generally admit fresh evidence when verdicts are being reviewed.

130. In general a convicted person cannot dissociate himself from the failings of his defence lawyers and the way in which they conduct a defence on his behalf. Thus, if witnesses or documentary evidence are available but are not produced on the advice of his barrister, it must be seldom that a prisoner will have a remedy. Equally even to-day we can hardly conceive of a successful appeal against an unjustified plea of guilty if it is made voluntarily on the advice of a barrister.

131. The responsibilities of lawyers to their clients in criminal trials are thus very heavy and at times difficult to discharge in their best interests. If there are indications of police malpractice or fabricated evidence, the barrister has to consider very carefully whether or not to risk incurring the hostility of the trial judge or letting in his client's record, if he has one. He may be offered a dozen or more defence witnesses, any one of whom may unwittingly and unexpectedly destroy his client's defence. He may have to decide that the evidence the prosecution intends to produce, although some of it may be suspect, is bound to procure a conviction and therefore regard it as a duty to his client to persuade him to plead guilty to a lesser charge in order to save him from the inevitability of a long sentence. There are also many occasions when the client himself creates difficulties and complications by not telling his solicitor the whole truth, or by remembering vital facts or potential witnesses only at the last minute.

132. By reason of the above, convicted prisoners will sometimes complain about the conduct of their defence even by the most competent and conscientious solicitors and barristers when they have no good cause to do so. The fault may often not lie with the lawyer but with our system of criminal trial, which turns what should be a search for truth into a tactical battle of wits, with counsel having to make a continuing series of gambling decisions. A client who does not fully understand the rules and the pitfalls cannot be expected to understand why his barrister did not cross-examine prosecution witnesses or call his own witnesses. The only remedies for this type of complaint are fuller communication and consultation, and more detailed explanations than are sometimes offered.

133. There are further sources of complaint which arise from the reluctance of some solicitors to undertake criminal work. Many firms of solicitors,

particularly in London, will not touch it for a variety of reasons. The result is that those who do undertake it may find themselves so overloaded that they cannot devote sufficient time to the cases they take on, or have to delegate them to young and inexperienced clerks. They may also meet with considerable difficulty in persuading the legal aid authority to sanction the cost of expert scientific evidence, or of the tracing of witnesses by enquiry agents, which may be vital to the conduct of the defence.

134. The training and organisation of barristers does not always conduce to the efficient handling of criminal defences. The passing of examinations and being called to the Bar do not mean that a barrister has proved competence in court work or strategy. He may profit much or little from his pupillage and then be sent to sessions or assizes by his clerk to undertake a difficult defence, perhaps of an innocent man, without any guarantee that he will be able to do it efficiently. Some barristers' clerks are reluctant to turn work away from their chambers and are therefore easily tempted to offer Mr. B., who has just finished his pupillage, when Mr. A. is asked for but is not available. In other jurisdictions, notably France, a trainee barrister has to conduct a number of cases under the surveillance of his master and to be certified by him as competent before he is allowed to take a case on his own. The hazard that a client may find himself in the hands of an inexperienced barrister has been considerably increased by the rapid growth in the crime rate, and by the extension of legal aid. The new training system of the Bar may remedy this problem.

135. The absence of any system of fixing dates for trials in many courts also provides clients with causes of complaint which may reflect unfairly on solicitors and barristers alike. It certainly makes the conduct of a defence more difficult than it need be. Once a case has been put in the lists, it may come on at any time and the solicitor can usually only discover at 4 p.m. the previous evening whether or not it will be tried the following morning. He therefore has to keep his witnesses practically on immediate call and hope that he will get them all to court in time. The barrister who has been briefed and has studied it may be irrevocably committed to another case and someone else will have to take over at the last minute. One of the commonest complaints in letters from prisoners reads, "my brief didn't turn up and I had one whom I only saw for ten minutes before the trial and he hadn't a clue what the case was about."

136. There are thus a number of causes of complaint which are outside the control of the individual members of the legal profession concerned and can be remedied only by a change in our system of arranging trial dates and the training and organisation of the legal profession for the work of undertaking criminal defences. A client who has been let down through one of these causes can only rarely expect to find a remedy, however genuine his grievance may be. There remain to be considered complaints against conduct for which individual barristers and solicitors are wholly or mainly responsible. The various categories of complaint enumerated below have all been brought to the notice of JUSTICE and on investigation have been found justified in varying degrees.

Solicitors

137. Under the general headings of negligence and lack of concern the following allegations appear from time to time.

(a) Failure to trace witnesses and bring them to court.
(b) Failure to obtain vital scientific evidence.
(c) Putting a young or incompetent clerk in charge of the case.
(d) Taking inadequate statements.
(e) Failure to visit in prison and to arrange a conference with a barrister.
(f) Briefing an inexperienced barrister.
(g) Fraternising with police and prosecution.
(h) Lack of confidence in client's protestation of innocence resulting in advice to plead guilty and lack of zeal for defence.

The general circumstances which give rise to complaints of this character have been dealt with in paras. 131 to 135.

138. The standards of efficiency and conscientiousness of individual solicitors, and firms, vary enormously. From time to time JUSTICE obtains from the defending solicitors the papers of prisoners who ask for help with their appeals, and the differences are striking. Some firms go to immense trouble, whether in legal aid cases or not. Full proofs are taken from all possible witnesses and their potential reliability assessed. A barrister's advice on evidence is sought in advance and explained to the client. The brief to the barrister analyses the evidence in the depositions in relation to that of defence witnesses and indicates lines of defence and possible pitfalls. Even if a plea of guilty is contemplated, all the factors which could go to mitigation are carefully analysed and useful witnesses suggested. At the other end of the scale there are briefs which just say, "Herewith depositions and proofs of evidence. Counsel will please attend sessions on behalf of our client and do what he can to secure an acquittal." The worst offenders in this respect are to be found among the firms which take on more cases than they can handle efficiently with the staff at their disposal.

139. The shortcomings of barristers will be discussed in later paragraphs but it should be pointed out here that they also have cause to complain if, because their instructing solicitors are inefficient, they may unjustifiably have to take the blame for failure. They cannot be expected to do their job properly with inadequate information and unsharpened weapons. A properly prepared brief can mitigate some of the difficulties caused by the need to instruct a fresh barrister at the last minute. It must therefore be asked why they do not themselves complain and decline to accept inadequately prepared and documented briefs. Frequently a brief is delivered to a barrister at such a late stage before the trial that it is too late for the barrister to return it without doing harm to the interests of the client. Theoretically barristers are free to return an inadequate brief but in practice they can do so only at considerable sacrifice to themselves. If a firm of solicitors regularly sends briefs to a particular barrister, or to a particular set of chambers, it may well decide to transfer its patronage if its briefs are returned for fuller instructions. The remedy may lie in the hands of the Clerks of the Peace who could substantially reduce the sums allowed on taxation for inadequate briefs.

140. In respect of private defences complaints of overcharging are frequently made, but are very difficult to assess. Thus a fee of £30 may be charged for a brief appearance at a Magistrates Court. It may seem excessive, but it can mean a partner spending the whole morning out of his office and it has been estimated that a solicitor has to earn at the rate of between £6 to £10 an hour to cover his overheads and obtain a reasonable margin of profit. On the other hand, there are firms which take all the cash that is available from the prisoner's family, allot it to remand and committal proceedings, and then apply for legal aid for the actual trial. Another abuse is to ask the client for a substantial sum to cover the cost of employing a named barrister and only to pay him a fraction of the amount so obtained. In one instance a client wrote direct to a barrister to complain of the poor defence he had put up for £500, when his fee had in fact been £200. Sums of £40/£50 are sometimes demanded for a simple application to a judge in chambers for bail, for which the barrister's fee may be as low as 10 guineas, or of £200 for mounting an application for leave to appeal. Prisoners' wives and families sometimes have to go to extreme lengths to raise the sums demanded.

155. Regrettably, it is seldom appreciated that they may in such cases invoke the jurisdiction of the court to order the delivery of a Bill of Costs and to call for its taxation. It should be remembered that apart from the technical provisions of the statutory jurisdiction under the Solicitors Act, and the stringent time limits imposed thereunder, the court has an original and inherent jurisdiction over its officers to determine whether or not a Bill of Costs is fair and if not, to make provision under the general law for an appropriate repayment. Further, overcharging by a solicitor in a Bill of Costs may result in disciplinary proceedings for professional misconduct.

156. A fairly frequent complaint concerns the failure of a solicitor, acting under legal aid, to give advice and assistance in the drafting and presentation of notices of appeal. In March 1960, Section 23 (4) of the Legal Aid and Advice Act, 1949, was brought into force. It gave solicitors acting under a Defence Certificate the right to claim fees for giving advice and assistance within the time allowed for lodging a notice of appeal (then 10 days), but did not give the prisoner the right to receive assistance. The provisions were however poorly publicised. Many solicitors made no attempt to make use of them and in October 1967 a check made by the Registrar of the Court of Appeal (Criminal Division) revealed that only 10 per cent of applications received showed any signs of professional assistance. The Criminal Appeal Act, 1966, automatically extended the time within which assistance could be given to 28 days, and the Criminal Justice Act, 1967, made it obligatory for a solicitor acting under a legal aid order to give advice and assistance without any time limit. The new provisions were brought into force in October 1968. They also allowed a prisoner or a solicitor to apply for an appeal aid order in cases which had merit and required investigation, but despite this JUSTICE still receives letters from prisoners saying that, when they have asked their solicitor for help, they have been told, in various terms, that their legal aid ceased on conviction. In a debate in the House of Lords on 22nd of January of this year, the Lord Chief Justice said that in a sample

recently taken only 5 per cent of applications coming from London Sessions had been professionally assisted. In practice, a majority of barristers and solicitors do give informal advice immediately after the trial, but this is no substitute for drafting an effective notice and making representations in cases which have merit. A prisoner who is so deserted after his trial has virtually no remedy; nor is a solicitor who consistently fails to assist his clients likely to be warned or disciplined.

157. There are some solicitors who, if they feel that there has been a serious miscarriage of justice, will go to great lengths to assist with appeals and petitions to the Home Secretary without expecting any fee. There are others who will leave a prisoner on his own after having taken fees for the trial and do not seem even to be aware that they are entitled to assist him informally, for example by writing to the Registrar outlining the merits of the application and asking that special consideration be given to the granting of legal aid.

Barristers

158. Complaints against barristers are of a different character as they mainly concern the tactical conduct of the defence. The barrister who has not mastered his brief before arriving at the court of trial is in the majority of cases the victim of the system rather than personally at fault. In civil cases a good barrister will try to keep his solicitor up to the mark. In criminal cases there will as often as not be simply a delivery of papers and a brief conference with the client in the cell. Barristers are sometimes very reluctant to interview clients in prison. One of the most competent solicitors engaged in criminal practice has had to make it a rule that he will not brief a barrister who will not undertake in advance to visit the client in prison.

159. Complaints made by prisoners against individual barristers include:—

(a) Excessive pressure to plead guilty or to agree to a deal with the prosecution, rather than to defend the charge. It is sometimes alleged that barristers do this so that they can be free to go off and fight another case.

(b) Pressure to plead guilty accompanied by an indication, which is not realised, that the sentence will be light.

(c) Refusal to call witnesses who, in the eyes of the client, could provide valuable evidence.

(d) Failure to cross-examine prosecution witnesses or to raise important points through ignorance of the facts of the case.

(e) Being frightened of the trial judge, or generally incompetent.

(f) Not staying in court for the summing up.

(g) Failure to discuss the possibilities of an appeal.

160. In provincial cities in particular there are complaints from time to time that barristers pull their punches in attacking police evidence for fear that they will be given no more prosecution briefs.

161. The Committee are unable to assess the extent to which such complaints are justified. We have no doubt that a high proportion arise from a failure

to explain sufficiently clearly the advice which has been tendered or the tactics which it is proposed to adopt. Some are obviously made by vindictive criminals who, having been caught and convicted, will seek to lay the blame on everyone but themselves. Many however are made by criminals who genuinely believe in the justification of their complaints and it is the very fact that such complaints are made which renders it important that there should be adequate methods for investigating them and explaining to the complainant the result of the investigation. It must be borne in mind that a man's liberty and reputation is usually at stake in criminal proceedings; and there can be few more galling experiences for a man than to have to sit in court and listen to his barrister missing points which he believes might preserve his freedom. If in fact he has lost his liberty because of a mistake by his barrister then he may have a valid cause of complaint.

162. Because of the numerous complaints received by JUSTICE we recommended in our report to the Widgery Committee that a mixed tribunal should be set up to supervise the general working of the criminal legal aid system. We envisaged that the tribunal would not only investigate complaints of inefficiency and inadequacy but would endeavour to secure that legal aid orders were given out fairly and without favouritism to all firms in the area that were competent to deal with them. It would also be made aware of any serious gaps in facilities available in any particular area.

163. There was a period when, after discussion with the Home Office, we had reason to expect that such a tribunal might be established and that it would play an important role in improving the general standard of legal aid defences. In the outcome the challenge was not met, and there were set up the separate Tribunals described in Part III of Appendix A which have very limited functions and give the complainant no right of access. We still think that there is a need for a body which will enquire vigorously into the deficiencies and abuses of the system.