A REPORT BY **JUSTICE**

Administration under Law

CHAIRMAN OF COMMITTEE

KEITH GOODFELLOW, Q.C.

75p net

JUSTICE

British Section of the International Commission of Jurists

CHAIRMAN OF COUNCIL
The Rt. Hon. Lord Shawcross, Q.C.

VICE-CHAIRMAN
The Rt. Hon. Lord Tangley, K.B.E.

CHAIRMAN OF EXECUTIVE COMMITTEE
Sir John Foster, K.B.E., Q.C., M.P.

VICE-CHAIRMAN
Geoffrey Garrett

HON. TREASURER
The Rt. Hon. Sir F. Elwyn Jones, Q.C., M.P.

COUNCIL

Prof. J. N. D. Anderson, O.B.E.
Bryan Anns
Peter Archer, M.P.
Peter Benenson
Michael Bryceson
Peter Carter-Ruck
Lord Foot
The Rt. Hon. Lord Gardiner
Edward Gardner, Q.C.
Prof. J. F. Garner
Sylvester Gates, C.B.E.
John Gauntlett
Prof. A. L. Goodhart, K.B.E., Q.C.
Percy Grieve, Q.C., M.P.
Lewis Hawser, Q.C.
Muir Hunter, Q.C.
Philip Kimber
James Lemkin
Prof. Lord Lloyd
Herbert Lloyd
Ainslie Nairn
Paul Sieghart
The Hon. Sam Silkin, Q.C., M.P.
Jonathan Stone
Peter Webster, Q.C.
William Wells, Q.C., M.P.
Basil Wigoder, Q.C.
W. T. Williams, Q.C., M.P.

DIRECTOR OF RESEARCH
Alec Samuels

SECRETARY
Tom Sargant, O.B.E., J.P.

LEGAL SECRETARY
Henry Hodge

12 Crane Court, Fleet Street, London, E.C.4
01-353 9428

A REPORT BY **JUSTICE**

Administration under Law

CHAIRMAN OF COMMITTEE

KEITH GOODFELLOW, Q.C.

LONDON
STEVENS & SONS
1971

Published in 1971 by Stevens & Sons Limited of 11 New Fetter Lane, London, and printed in Great Britain by The Eastern Press Ltd. of London and Reading

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

SBN 420 43710 X

©
Justice
1971

JUSTICE

British Section of the International Commission of Jurists

The Committee

Keith Goodfellow, Q.C. (Chairman)
Leon Brittan
Albert Chapman
Percy Everett
Arthur Gadd
Prof. J. F. Garner
Richard Greenslade
K. A. Oates
H. B. Sales
Alec Samuels
Roger Warren Evans
David Widdicombe, Q.C.
Colin Braham (Secretary)

This report has been endorsed and approved for publication by the Council of Justice.

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

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

INDIA
N. M. Tripathi Private Ltd.
Bombay

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

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

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

PAKISTAN
Pakistan Law House
Karachi

CONTENTS

	PARAS.
INTRODUCTION	1–9
PART I—THE PRESENT SYSTEM AND PROPOSALS FOR REFORM	10–25
Defects of the Present System	10–11
Various Proposals for Reform	12–19
The Possibilities and Limitations of Legal Reform	20–22
Our Proposals for Reform	23–25
PART II—PRINCIPLES OF GOOD ADMINISTRATION	26–55
Pre-Decision Representations	30–35
Prohibition of Retrospective Decisions	36
Duty to Ascertain the Facts	37–42
Duty to Provide Accurate Information	43–46
Administrative Time Limits	47–50
Duty to State Reasons	51–53
Publicity	54–55
PART III—AN ADMINISTRATIVE DIVISION OF THE HIGH COURT	56–86
The New Division	56–59
Original Jurisdiction	60–62
Right of Action	63–70
Remedies	71–76
Appellate Jurisdiction	77–79
Appeals from the Administrative Division	80
Principles of New Procedure	81
Outline of Procedure	82–86
Conclusion	87

PAGE
Summary of Recommendations 36
Acknowledgments 37
APPENDIX
Principles of Good Administration . . . 38

ADMINISTRATION UNDER LAW

INTRODUCTION

1. The Law of England has long protected the person and property of the citizen from acts of arbitrary power by government. In part this has been achieved by a refusal to recognise governmental authorities as having any special status, or their acts as having any distinctive quality. In the past, proposals to create a distinct body of administrative law to regulate the relations between citizen and government have often been resisted as threats to this "equality under the law" of citizen and government, and as an erosion of the rights of the citizen.

2. In modern society, however, the citizen and government are manifestly unequal in power. Government through its many agencies and in the performance of the varied duties imposed upon it by Parliament can affect the citizen in most aspects of his life. The advent of a motorway may destroy the peace of his home, but other provisions of a development plan may confer a value on his land which it would not otherwise have had.

3. Many of the powers conferred on government are discretionary in nature and inevitably so. It is not therefore possible for the law to regulate the exercise of such powers in terms of private right and infringement of right, yet the manner in which administrative discretions are exercised may be critical for the citizen. They may also be critical for the community. Thus administrative decisions which benefit or harm the individual citizen are often decisions the equity of which cannot be judged simply as between the citizen and government, because the interests of the wider community are also affected.

4. Considerations of policy and politics are also frequently involved in the making of administrative decisions. The courts have always and rightly been conscious of the constitutional importance of not attempting

to overrule or revise decisions taken on such grounds. Nevertheless this attitude, together with the restricted powers presently available to the courts, has severely limited their ability to ensure a just balance between citizen and government.

5. With the growth of governmental powers and agencies, there has necessarily been a growth of law which is administrative in the sense that it defines such powers, constitutes such agencies and prescribes the scope of their activities. Such growth, however, has been piecemeal and unsystematic. There is now a widespread view that the present situation is unsatisfactory and that the citizen is in need of greater protection. The development of a coherent body of administrative law is no longer seen as a threat to the citizen, but as one means by which such protection might be provided.

6. It is, however, important to consider the question of reform not merely as one of giving the citizen greater protection against government. It is equally important in any reform to encourage good administration: to ensure that any fresh remedies given to the citizen cannot be exploited to disrupt administration or merely to delay the making of effective decisions. The object must be to afford the citizen greater protection by giving the courts both simpler and more discriminating means of dealing with administrative decisions by which the citizen is aggrieved.

7. With these objectives in mind the Committee proposes:

(a) the creation of a new Administrative Division of the High Court of Justice with its own procedure and with power to grant new remedies;

(b) the enactment of a general statement of the Principles of Good Administration.

8. The Committee considers that, in the absence of legislative reform, the courts cannot develop adequate remedies appropriate to present needs. Such reform, however, should provide a new framework within which administrative law can develop from precedent to precedent, rather than a detailed administrative code.

9. Other proposals, such as the enactment of a Bill of Rights, are considered in this report. The essential need, however, is to replace the present maze by a comprehensive yet simple reform and not merely to add a further element to the maze, no matter how admirable that element in itself may be. We believe that the proposals described in this report best meet this need.

PART I

THE PRESENT SYSTEM AND PROPOSALS FOR REFORM

DEFECTS OF THE PRESENT SYSTEM

10. In England we have no system of administrative law or separate administrative courts on the Continental or indeed any other pattern. Administrative law—the law relating to the administration and especially the law governing relations between the various government agencies and the private citizen—is of the same nature as the rest of our law; the basic rules are the same and it is applied by the same courts. This means that administrative law has never been reviewed by Parliament as a whole; it has grown piecemeal and each new manifestation of governmental control over citizens has been regulated by its own statute. The resultant complex of powers vested in the administration and the limited powers of redress enjoyed by the courts have many defects and can frequently result in a denial of justice. These defects may be outlined as follows:

(1) *Complexity of procedure*

Owing to the piecemeal growth of the law contained in a mass of different and unrelated statutes, there is no common procedure whereby a citizen can seek redress of his grievance before the courts. Thus—

(a) The plaintiff may seek a prerogative order of certiorari or prohibition; but these orders are hemmed around by strict procedural rules and they will apply only where the act of the administration complained of is of a judicial or quasi-judicial nature—a category which is often very difficult to define.

(b) The more specialised orders of mandamus or habeas corpus will fit only certain limited situations.

(c) In other circumstances the plaintiff may seek a declaration; this is a remedy which has grown in

popularity in recent years owing to its comparative freedom from technicalities, but, like the prerogative orders, it is a discretionary remedy, and there are circumstances in which it will not lie.

(d) In a number of instances a statute may confer a right of appeal, but sometimes this right may lie to the local magistrates, sometimes to the county court; sometimes to quarter sessions; sometimes to an administrative tribunal and possibly from thence to the Court of Appeal; sometimes to the High Court; sometimes to a Minister with no subsequent appeal to the courts. In most of these cases any right of appeal to the courts may be exercised only on strictly limited grounds and if no appeal is in fact made on such grounds, then such grounds may not subsequently be used as justifying an application to the courts for some other form of redress. Moreover, where such a statutory right of appeal exists, no other remedy may be available.

(e) Finally, these remedies are normally available only to a person having sufficient standing (*locus standi*) and the rules determining what constitutes a sufficient standing are obscure and differ in detail according to the type of remedy.

Thus a citizen wishing to obtain redress against the administration must find the correct procedure to which his grievance can conform: if there is no such procedure available, or if he chooses the wrong procedure, then there can be no remedy.

(2) *Inadequacy of remedies*

Not only is there a complexity and inadequacy of procedure; there is also all too often an inadequacy of remedy. Thus an order of certiorari can only quash an illegal decision and cannot vary it. A declaration is, as the name indicates, merely declaratory of the plaintiff's rights and carries no legal assurance that the administration will recognise the decision. More important than this, there is rarely any review procedure, except in the case of some

statutory appeals, where the plaintiff will be able to obtain from the court an order reversing or re-forming (as distinct from annulling) the administrative decision complained of. Government departments have a wider range of exemption from process than is reasonable or necessary. There is also no power enabling the court to award damages to a plaintiff who has suffered an injury, perhaps by reason of delay, as a consequence of what is found by the court to have been an illegal decision.

(3) *Lack of expertise*

The courts before which disputes involving the administration are heard lack any special expertise in administrative matters. The judges of the High Court or the county courts usually have had no personal experience of administration or of administrative disputes—though some may have had experience of (for example) planning matters when they were at the Bar—and there are no experts within the court staff on whom they can call for advice. Perhaps more important, traditional English court procedure, where the judge is expected to be an arbiter deciding the case on the facts before him, is not always appropriate for the determination of a dispute in the administrative sphere. The citizen plaintiff is rarely as well equipped to make out a case as is the government department defendant; the former and his advisers will not necessarily know the details of the administrative process, what relevant documents may exist, or understand the internal procedures of the particular department. Moreover, the Queen's government must be carried on, and legal technicalities should not be pursued to an extreme where efficient public administration becomes impossible. We are therefore of the opinion that facilities and expertise should be available to a court determining administrative disputes that are not normally required by courts determining disputes between private individuals. In particular we are of the opinion that it is desirable that the court should have investigatory powers to find out the essential facts on its own initiative, and to require the production of documents and the giving of oral evidence which neither the citizen nor the administration may propose or even desire to produce or to call. The judges in these matters should also be empowered, again on their own initiative, to take advice from experts, either as witnesses or possibly as assessors, as to standard administrative practices, and to obtain guidance as to the practicability of proposed courses of action.

(4) *Limited grounds for review*

The grounds on which complaint can be made against an administrative decision are limited and are grounds of procedural defect rather than substantial error. These may be summarised as follows:

(a) Failure to observe the rules of "natural justice." This ground is only relevant where some judicial or quasi-judicial duty is cast upon the administration before making its decision.

(b) Failure to observe some procedural requirement laid down in a statute if the applicant can show substantial prejudice.

(c) Excess of power, or exceeding the powers granted by an enabling statute (*ultra vires*).

(d) Error of law on the face of the "record" or decision.

11. That the present state of administrative law is far from satisfactory is a view which is by no means limited to JUSTICE. The Law Commission has recently found that a substantial body of informed opinion regarded an inquiry into administrative law as "an undertaking of considerable importance and even of some urgency." The Commission themselves, in a submission to the then Lord Chancellor, recommended that a Royal Commission should be established to inquire into administrative law. The former Lord Chancellor's response was that the "right time" for such an inquiry had not yet arrived but the Law Commission should in the meantime review existing arrangements for the control of administrative acts.[1]

[1] "Administrative Law" (Law Com. No. 20) Cmnd. 4059, May 1969, paras. 2 and 10; *Hansard*, House of Lords, Vol. 306, cols. 189–190 (December 4, 1969).

Various Proposals for Reform

12. We now consider some of the proposals recently made for strengthening the citizen's protection against the administration. Some of them deal specifically with administrative law, some do so only by implication. Most of them have at least the merit of bringing greater clarity to what, as we have previously indicated, is an exceptionally murky area of governmental powers and individual rights.

13. The Parliamentary Commissioner for Administration plays a valuable part in protecting the citizen from injustices caused by "maladministration." But while we believe the institution to be necessary, we do not believe it to be sufficient. As has been pointed out by JUSTICE on previous occasions,[2] the Commissioner's jurisdiction is at present seriously limited by statute; he cannot act unless an M.P. requests him to do so, and insufficient publicity is given to many of his decisions. However, even if these defects were remedied by revisions to the constituent statute of 1967, we still do not consider the Commissioner would be able to fulfil the tasks we expect our proposed Administrative Division to undertake. Even in the Scandinavian countries of his origin, the Ombudsman does not replace the "ordinary" courts; he supplements them. The Ombudsman principle is designed to rely on no more effective sanctions than public opinion; when the citizen has suffered a substantial injustice through some breach of the law at the hands of the administration, he expects and is surely entitled to a substantial remedy. This is not to say, however, that our proposals would make the Commissioner superfluous. There would always remain many instances of maladministration that could not be redressed by any court, and our "Principles of Good Administration" would give the Commissioner useful and specific guidelines for future action.

14. There is at present a renewed interest in the idea of identifying and protecting basic freedom by means of a new Bill of Rights, perhaps in the form of a statute immune from amendment or repeal except by a special

[2] See, for example, Annual Report for 1970, at p. 14.

majority of both Houses of Parliament. This proposal leads to some serious though not necessarily fatal, difficulties, of which the most formidable is that, under our constitution, Parliament can not only confer a special constitutional protection, but can also take it away. The present Lord Chancellor, who himself had previously advocated a Bill of Rights, noted that "Parliament with its sovereign power could deliberately flout its own Bill of Rights" though he also pointed out that "any deliberate infringements would have to be carefully thought out in advance and made manifest in the legislative process."[3] The Committee believe, however, that irrespective of the introduction or continued absence of a Bill of Rights the kind of reforms we have proposed are urgently needed.

15. We agree that "the price of liberty is eternal vigilance," but we find that in practice and in present circumstances the threat lies much less in a broad challenge to basic freedoms than in detailed and specific acts or omissions which work to the citizen's disadvantage and for which he cannot obtain adequate redress. It is little consolation for a man to know that his right to free speech is secure if he is unable to make pre-decision representations to the authorities contemplating the construction of a motorway within a few feet of his house.

16. The French Conseil d'Etat is an institution which has been much, albeit with reservation, admired for its expertise and effectiveness. It has indeed been suggested that we build an English institution on the French model and Professor J. D. B. Mitchell has mentioned[4] the Judicial Committee of the Privy Council as the most suitable foundation for such an edifice. We consider, however, that the Conseil d'Etat draws its strength from specifically French history, traditions and methods of administration, and that to import an institution isolated from its supporting environment would be to invite failure.

17. In Australia the State of Victoria has considered a proposal that there should be an administrative tribunal

[3] *The Sunday Times*, July 19, 1970.
[4] [1965] *Public Law* 95.

separate from the ordinary courts, but from which a right of appeal would lie to the courts on points of law. In principle this is similar to the general tribunal proposed by the Whyatt Report.[5] The implementation of the Victoria proposal certainly merits close attention. In New Zealand, an Administrative Division of the High Court has recently been established.[6]

18. In their recent report[7] the Society of Conservative Lawyers have suggested the setting up of a separate Administrative Court, whose functions would be similar to those of the Administrative Division which we propose.

19. We ourselves gave very careful consideration to the idea of a separate court. Our aim was to achieve the best possible balance between necessary innovation and desirable continuity. We were convinced that a "Conseil d'Etat" went much too far in the direction of innovation and that a mere "Administrative List" within an existing division of the High Court did not go far enough. We preferred the solution of an Administrative Division because this offered an effective reform that would nevertheless make no major break with tradition and in particular would retain the prestige attaching to the High Court.

THE POSSIBILITIES AND LIMITATIONS OF LEGAL REFORM

20. It would be quite unrealistic to suggest that any code of law or judicial process can protect the citizen against every "injustice" suffered at the hands of administrative bodies. A wide range of disputes between the individual and administration falls outside the range of all law: grievances can arise from the remoteness and impersonal quality of government agencies, and from the situations which they have the authority to regulate; complaints are made about the personal style of administrators and the ways in which they behave towards those whose lives they administer; and there are many conflicts that

[5] See Garner, *Administrative Law* (3rd ed. 1970), p. 105.
[6] Judicature Amendment Act 1968.
[7] Conservatives Think and Care for You (1970).

arise merely from the fact of being governed. There is no system of law which can resolve all conflicts of this kind. For example, if Parliament decides, as it has decided, to expropriate property from its owners by paying them only the site value (though this principle has now been abandoned in respect of owner-occupiers: Housing Act 1969), it may be seen by some as an injustice; but it is not an injustice which the courts can redress, nor ought they to be asked to do so. Some injustices, however, are appropriately dealt with in the courts, and it is important that all such injustices that can effectively be redressed in the courts should be so redressed.

21. The reform of English administrative law would not, however, suddenly tip the constitutional scales against the state and in favour of the private citizen. That balance is determined by factors far weightier and more deeply rooted in the social and political order than any rules governing the conduct of public administration. Nevertheless there are several respects in which such reforms would significantly improve relationships between the Government and the governed, raise the quality of public administration, guarantee a greater openness and demonstrable "fairness" in the use of government power and give the individual a better chance of redress against improper administrative decisions.

22. The danger of "judicialisation" of the administration is recognised and would meet with considerable resistance from public authorities. Good administration is, however, not undermined by the fact that a minority of cases become the subject of judicial decision. Already under existing procedures officials of public authorities are frequently given codes of conduct to follow, *e.g.* in social security (supplementary benefits) and in land disposal (following Crichel Down). Further, it is not to be assumed that greater judicial control will impede the administration or undermine confidence in it. Experience with the Parliamentary Commissioner has shown that many complaints are ill-founded and his inquiries have frequently led to the vindication of the public service.

Our Proposals for Reform

Our recommended reforms fall into three broad categories.

23. First, there are changes in the rules of law with which the public administration must comply. The basic objective must be to secure the giving of swift and reasoned decisions. In certain fields, notably town and country planning, the administrative authority is already subject to statutory time limits for making decisions; in most fields however no time limit has been imposed. One possible reform is the introduction of a general time limit or a comprehensive range of different time limits, so as to minimise delay. A second rule which could be applied more widely is the requirement that a public authority must, upon request, provide a written statement of the reasons supporting its decision. We think that, following the example of the Tribunals and Inquiries Act 1958, which lays down certain minimum requirements to observe, it is necessary to enact a general code of administrative procedures which we call " Principles of Good Administration " (see Part II, and Appendix).

24. Secondly, there are changes in the legal remedies available to the citizen where there has been a failure on the part of the administration to comply with such rules. It is a frequent complaint, for example, that even where the citizen is successful in challenging the legality of an administrative decision, the only consequence is its annulment. Where a void planning condition is struck down the present planning permission frequently is struck down with it. Thus successful litigants, by defeating an objectionable condition, simply lose the benefit of the permission altogether. It is rarely possible for the citizen to obtain compensation for loss that he has suffered as a result of the illegality. Success, in administrative litigation, is often a pyrrhic victory. If the courts or tribunals are to be able to provide real remedies for administrative injustice, their power to award damages, including damages for delay, must be extended. This strengthening of the range of legal remedies is examined in Part III of this report.

25. Thirdly, there are changes in the structure, composition and jurisdiction of the independent bodies (whether courts or tribunals) to whom the citizen is entitled to turn for redress. Procedural reforms fall within this category and should be given high priority: the Law Commissioners in their recommendations to the Lord Chancellor single out this aspect of reform as a possible subject for early action by a special sub-committee. They suggest that " it might be possible to give early review to the differing scope and incidents of the prerogative orders, the declaratory action and the injunction, with a view to evolving as far as possible a single form of procedure for reviewing acts and omissions of the administration."[8] These structural and procedural reforms are, in the long run, of great importance. Our proposals on these matters are explained in Part III of this report.

[8] " Administrative Law " *op. cit.* in note 1, above, at para. 11.

Part II

PRINCIPLES OF GOOD ADMINISTRATION

26. The Committee's proposals envisage the coherent and orderly growth of administrative law out of decisions taken by the new Administrative Division of the High Court. They also reflect the conviction that a legislative framework of principles is not only helpful to the work of the Division but is indeed a prerequisite of the satisfactory development of English administrative law. We have identified areas in which it is necessary to introduce legislative principles, and have carefully examined the practicability of doing so from the technical and drafting point of view.

27. The Principles should apply only to those administrative decisions which particularly affect individuals (as distinct from those which merely affect the community at large), and from which the law otherwise provides no right of appeal. There should however be excluded from the scope of the Principles those decisions which by law the particular authority is bound to make, and in which it has no element of choice or discretion.

28. The Principles should in general apply to all government departments and agencies, local authorities, statutory undertakings and nationalised industries. It should also be open to the Lord Chancellor by order to make the Principles applicable in whole or in part to other bodies who enjoy powers of control over the citizen. It would however be necessary to provide that the Principles should not apply to decisions of a business or commercial character taken by such authorities. The Principles should be presumed to be incorporated in new legislation unless expressly excluded.

29. Our proposed "Principles of Good Administration" are set out in full in the Appendix. In the section which now follows we explain the purpose of each of the principles.

Pre-Decision Representations

30. The first principle is that those who are to be affected by a decision should have the right to make representations before the decision is taken. There are already many special rules, varying in detail from statute to statute, which require both central and local authorities to afford opportunities for pre-decision representations. And there are many important processes of pre-decision consultation which occur even in the absence of any statutory requirement: in local government, there are frequently long discussions between planning officers and applicants for planning permission: in central government, there is the example of the Department of Trade and Industry, where it is common for discussions to precede decisions about office development permits, industrial development certificates and the remission of import duty.

This practice should be generalised, and the citizen given a *right* to make his views known.

31. The Committee proposes the following rule:

> "Before making any decision an authority shall take all reasonable steps to ensure that all persons who will be particularly and materially affected by such decision have been informed in sufficient time of its intention to make the decision, and shall afford to all such persons a reasonable opportunity of making representations to the authority with respect thereto."

"All reasonable steps" means measures by way of inquiry, verification, deliberation or otherwise as are in all the circumstances of the case necessary according to good administrative practice.

32. It is essential that the rule should both impose a *duty* upon the authority to arrange for pre-decision representations, and allow the authority a proper margin for the exercise of its judgment as to the most appropriate procedure to adopt in any particular case. Within the framework of such a rule it would be for the courts to develop a body of case-law to guide authorities as to the adequacy or inadequacy of the different techniques available: written representations, for example, or individual

private consultation, or public inquiry, committee " hearings " (with or without legal representation), or reference to an independent person or body. In any particular case, the court would be required to " have regard to " any special pre-decision rules already laid down by Parliament for that case. In this way, there would gradually emerge a body of case-law on the subject.

33. The rule proposed by the Committee departs from present legislative practice in one particular respect. Instead of conferring a right to a hearing only on persons likely to be prejudicially affected, or " aggrieved " (a word commonly used in existing statutes) it generalises the category to those particularly and materially affected. This formula is important for three reasons:

(a) First, the test which it embodies is objective. It is not for the authority to exercise any arbitrary discretion as to who should be heard. There is, of course, an element of judgment in determining the " likely " effects of a decision, and who is likely to be " materially " affected; but because the test is objective, a limit is placed upon the arbitrary or unreasonable exercise of that judgment.

(b) Secondly, the formula includes the word " particularly." It distinguishes between those who are affected by a decision in the same way and to the same extent as the public generally, and those who are affected in some additional way. Only the latter would enjoy a right to be heard; the public generally could continue to rely on the conventional avenues for the expression of political opinion and the exertion of political influence.

(c) Thirdly, no formal distinction is made between those likely to be harmed by the decision and those likely to benefit from it. This removes from administrative law the difficult concept of the person " aggrieved," with its inherent ambiguity; it is replaced by a more general concept (material effect) which is likely to be easier to administer.

34. The Parliamentary Commissioner has decided that the action complained of must have been taken in relation to the person aggrieved himself and that he cannot accept a complaint from a person who claims to have sustained injuries in consequence of action taken in relation to another person.[9] The concept of a " person particularly and materially affected " would also contain this limitation.

35. There remains one feature of this rule which would call for amplification by the courts: the duty of the authority to take all reasonable steps to ensure that those affected are informed. One of the most frequent complaints about current administrative practice, particularly in local government, is that insufficient publicity is given to official notices; they are too frequently hidden away in an unobtrusive " public notices " column in a local newspaper, couched in legal terminology and printed in small type. The present law requires no more. The new legislation should of course make it clear that an authority is entitled to use public advertisement, in the appropriate case, as a means of informing those likely to be affected; but it should remain the duty of the authority, as the proposed rule suggests, to take all reasonable steps to ensure that the advertisement is intelligibly drafted and well-positioned. Ineffective publicity could, under this rule, be censured by the courts and might lead to the annulment of the subsequent decision or to the award of damages.

Prohibition of Retrospective Decisions

36. It is generally accepted that decisions having retrospective effect are wrong and contrary to the notion of " the rule of law." Although retrospective legislation represents a greater and more common danger than do retrospective administrative decisions, we consider it desirable that the Principles should expressly condemn retrospective decisions.

It needs, however, to be recognised that exceptionally the power to make a decision having retrospective effect is necessary in order to relieve some unintended hardship

[9] Annual Report for 1968, February 18, 1969, House of Commons Paper No. 129, p. 6, para. 15.

or to relieve some particular wrong. Accordingly the Committee proposes the following rule:

> "No decision shall have retrospective effect unless the decision is taken to relieve particular hardship resulting from an earlier decision."

Duty to Ascertain the Facts

37. It is a common complaint made against administrative authorities that they take action without making proper inquiries: "they did not know the *full* facts," "they had their facts wrong," "they just wouldn't listen to the facts." Many such complaints merely conceal other, unstated, objections: that the authority, having ascertained the facts, has disregarded the complainant's interest, or that the authority has taken a different view from the complainant about the relevance of certain facts. The true objection may be even more general in nature—a feeling that Whitehall is so far removed from the regions that it is "impossible" for administrators to know the real facts: even the Town Hall may sometimes seem to be too remote in this sense.

38. Many such complaints are therefore inherent in the very process of government. Yet it would be quite wrong to dismiss them all in this way. There remains an area of real concern, where feelings of injustice run high and where the law could provide a remedy. The Franks Committee, discussing inspectors' reports, put the matter as follows [10]:

> "The first part of an inspector's report should summarise the relevant evidence and set out his findings of fact and inference of fact based thereon. The second part should set out the reasoning from those facts, including the application to the particular case of any considerations of policy, and should normally conclude with recommendations for the Minister's action. The inclusion of recommendation is important, since the inspector hears the evidence at first hand and has an opportunity of immediately relating what he hears to the physical facts of the case by personal inspection of the land."

[10] Report of the Committee on Administrative Tribunals and Inquiries, July 1957, Cmnd. 218, p. 71, para. 328.

39. It is interesting, though somewhat depressing, to note that the reports of inspectors on planning matters frequently fail to comply with the spirit of this recommendation although they should do so: see Town and Country Planning (Inquiries Procedure) Rules 1969. The "findings of fact" are sometimes no more than a statement of the obvious and uncontroversial and omit to find the facts which were in issue upon which the decision might largely turn. Most of these critical findings have to be inferred or assumed from the terms of the recommendations. This is obviously unsatisfactory; yet the courts will not intervene.

40. The justified complaint is this: a public authority at present owes no legal duty to the individual to investigate his case thoroughly and carefully. If the authority gets its facts wrong, and the individual suffers as a result of this, there is very little he can do. He may be able to have the decision annulled by the Divisional Court [11] on the grounds that there was "no evidence" to support the authority's conclusion. The courts however take so indulgent a view of what is sufficient evidence to support a ministerial decision that such appeals rarely succeed. In any event the question whether there is any evidence to support a finding or decision is fundamentally different from the question whether the finding or decision was made upon all the relevant evidence. The individual may, in certain circumstances, have the right to argue his case anew before a tribunal, or even a court.[12] Even if he is successful, however, in changing the decision or annulling it, he can go no further. If the delay has destroyed the commercial viability of his business he cannot claim compensation; if his family life has been disrupted in the meantime, he cannot complain. More commonly, he can achieve

[11] Of the Queen's Bench Division, sitting in London.

[12] Examples: national insurance tribunal; county court; magistrates' court.

neither a reversal of the decision nor compensation. A decision based on an incorrect view of the facts, but otherwise not technically defective, is in practice very difficult to challenge in English law.

41. The Committee propose action on two fronts.

First, Parliament should enact the following principle of good administration:

> "It shall be the duty of an anthority in proceeding to a decision to take all reasonable steps to ascertain the facts which are material to the decision."

The effect of such a provision would be to create a "professional" duty of care, owed unambiguously to the individual or individuals to whom the decision related.

Secondly, the courts should be given power to intervene if a decision is made on insufficient evidence or upon incorrect facts: see Part III of this report.

42. A decision could not be open to challenge, under the above principle, *merely* because the authority had taken an incorrect view of the facts: this aspect of the administrative error would be dealt with by the extension of the court's powers. But the combination of the two principles would, we believe, strengthen the constraints placed by law upon the administration, and decrease the incidence of carelessness and inaccuracy in the conduct of official inquiries and research.

Duty to Provide Accurate Information

43. One of the most remarkable gaps in English law is the absence of a remedy for the "irresponsibility" of the public authority that carelessly provides the individual with inaccurate information—even where the information refers to the authority's own actions. The explanation lies in part in the failure of English common law to develop, before 1964, liability for negligent statements of any kind. Administrative law shared the defects of the general common law. However, in *Hedley Byrne* v. *Heller* [1964] A.C. 465 it was held that there is a general duty of care arising out of certain special relationships not to cause economic

loss to another by reason of negligence in careless misstatements. By the same token, there has been a failure to understand the special requirements of administrative law and to recognise that in his relations with the state the citizen needs the protection of special rules. The common law has thus proved largely inadequate: even now, as a result of the qualifications adopted in *Hedley Byrne*, it remains inadequate, for a public authority may, in dealing with a request for information, expressly exclude liability for negligence.

44. The Committee proposes the following rule:

> "Where a written request is made to any authority for information relating to the discharge of its duties or the exercise of its powers, being information that ought reasonably to be given, it shall be the duty of the authority to take all reasonable steps to ensure that such information is given expeditiously and is accurate."

It is essential that a principle as broad as this should be subject to effective limits. This formula contains three limiting factors; first, the authority's duty extends only to requests which refer to *its own* functions: secondly, unreasonable requests do not have to be met, though the final decision as to what is "unreasonable" rests with the courts; thirdly, there is no absolute liability for inaccuracy—the authority is not required to act as the individual's insurer or guarantor, but to be liable only for lack of "due diligence." We are satisfied that with these qualifications the principle proposed would enhance the fairness and the openness of administrative procedures.

45. The authority's duty to provide information should, in our view, be extended further. For example, minutes of local authority meetings (including committee meetings) should be generally accessible: the rule that they may only be consulted by electors has no place in modern administrative law. Similarly the accounts of local and other public authorities should be made public. In the Scandinavian countries, notably Sweden, there has long been freedom of access to such public documents.

46. The Committee considers that the same principle should be introduced into English law, and that it would have a beneficial effect upon administrative procedure.

Administrative Time Limits

47. The problem of delay is one of the most common and most serious grievances against the administration, *e.g.* the Inland Revenue and the Department of the Environment. The statutory "deemed refusal" principle that operates in planning law is strongly endorsed as a useful precedent, though it is recognised that some matters, such as the consideration of possible housing and highway schemes, are not susceptible to fixed or short time limits. The Skeffington Report on People and Planning (1969) urged wider public participation, yet this principle seems to cause increased delay and anxiety.

48. At the lower level of decision-making in public administration the deemed refusal principle should be endorsed, and at the higher level a "two months" principle would be a most useful principle with which to press tardy public authorities. Wider delegation to officers should also contribute to speedier decision-making. The problem of staffing inadequacies contributing to delay is recognised.

49. The common law has never developed any technique for censuring administrative delay: the courts have been dealing with the exercise of express statutory powers and have therefore been unwilling to supplement the provisions of the statute. Nevertheless time limits have been introduced by Parliament in a number of different fields, *e.g.* in town and country planning and housing law.

50. The Committee believes that a general residual time limit of two months should be introduced by way of the following rule:

> "Where an authority receives a request in writing from any person to make a decision in pursuance of a statutory duty which prescribes no time limit for making such decision, it shall be the duty of that authority to make the decision to which the request relates within two months of the date of the receipt of the request by the authority. Provided that where the said period of two months is extended for a further specific period by agreement between the authority and the said person, this sub-paragraph shall have effect as if for the period of two months there were substituted the period as extended; and provided further that where by reason of exceptional circumstances, particulars of which are to be notified, it is impracticable to make a decision within the said period, and the decision is made as soon as the circumstances permit, the authority shall be deemed to have complied with this sub-paragraph."

Decisions in pursuance of a statutory *power* or *discretion* should also be made within a reasonable time:

> "Where an authority receives a request in writing from any person to make a decision in pursuance of any statutory *power* or *discretion* it shall be the duty of that authority to make the decision to which the request relates within a reasonable time of the date of the receipt of the request by the authority."

Duty to State Reasons

51. No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions. In a number of fields Parliament has successfully imposed upon public authorities a duty to state their reasons, especially the Tribunals and Inquiries Act 1958, s. 12. Experience, particularly in the field of town and country planning, indicates that the existence of a duty to state reasons does have a beneficial effect, both on the quality of the decision and upon public confidence in the whole process, and that it should be enacted as a general principle of good administration. The duty to state reasons should be openly recognised as an inherent element in the concept of natural justice.

52. The Committee therefore proposes the following rule:

"An authority shall upon request in writing give a written statement of the reasons justifying any decision it has made."

It is not suggested that the written statement of reasons should always be served with the decision, or as part of it: that would generate a heavy burden of administrative work which might not be justified. The qualifications of the duty both in terms of time and the interest of the person making the request would provide the authority with an adequate protection against oppressive requests. Equally the obligation already discussed to give information as to the exercise of duties and powers must be subject to some limitations.

53. These limitations, it is suggested, should be as follows:

"An authority may refuse to give information or a statement if—

(a) to give such information or statement would be prejudicial to national security: or

(b) the relevant request was made more than two months after the date on which the duty was finally discharged or the power finally exercised or the decision made, as the case may be: or

(c) the relevant request is made by a person not particularly and materially affected by the decision and to give a statement of reasons would be contrary to the interests of any person so affected."

PUBLICITY

54. Parliament has frequently made specific provision for the publicity which is to be given to administrative decisions, *e.g.* in town and country planning matters.

55. This *ad hoc* approach to the publication of administrative acts is, in our view, inadequate. What is needed is a complete reversal of the traditional approach—the old idea that everyone is presumed to know the law and what is done under it and must therefore bear the responsibility for finding out what it is. Within the sphere

of public administration responsibility should be placed squarely upon the public authorities, not upon the individual. The Committee proposes the following simple rule:

"An authority shall take all reasonable steps to ensure that its decisions are made known to those persons likely to be affected by them."

Within the framework of such a general rule, it would be for the courts to develop a body of case-law to assist the public administration in establishing the most satisfactory modes of publicity.

Part III

AN ADMINISTRATIVE DIVISION OF THE HIGH COURT

The New Division

56. Public authorities perform many varied functions and the discretionary element varies from function to function. It would therefore be impracticable to prescribe a single uniform right of appeal to be used in all cases. Such a remedy would moreover involve the destruction of the many existing administrative tribunals, the majority of which have proved satisfactory within their own specialist fields.

56A. The complexity and haphazard diversity of the present English administrative scene does however go far beyond functional necessity and serves to obscure the general problems of administrative law. A deliberate attempt now needs to be made to create a more coherent system having courts and judges capable of developing, shaping and enforcing a distinct corpus of administrative law and, in the process, of focusing the attention of administrators and lawyers alike upon the problems of justice in administration.

57. The Committee proposes that a fourth division of the High Court should be created, an Administrative Division, in which the judges could sit with assessors when necessary. Such a Division would have both an original jurisdiction (exercised by a single judge, as in the other divisions of the High Court) and an appellate jurisdiction (exercised by its Divisional Court, consisting of three judges) from decisions of inferior courts and tribunals.

58. If the courts are to be given greater powers to intervene in administrative matters, then it is important that such intervention should be administratively well informed in administration: hence the proposal that assessors could sit with the judge in the Administrative

Division. The types of case that would come before the Administrative Division would be very varied in their subject-matter and we have formed no final or detailed views as to the qualifications and experience of the assessors, except that they should be well versed in administration.

59. The Administrative Division would thus be in a position to provide the cohesive influence which English administrative law now lacks. It would exercise both the existing original and appellate jurisdictions in administrative matters now vested in the High Court, and the new general powers of review proposed in this part of the report.

Original Jurisdiction

60. It is important that the court should not have power to review administrative decisions in general. Such a power would stultify administration and give to the courts a function which they are not fitted to perform. An administrative decision made after observance of all the necessary procedures (see the Principles of Good Administration) and upon all the material facts, should, unless vitiated by an error of law or want of good faith, be free from challenge in the courts.

61. Equally however, it is important that a right of action should arise if the decision has not been fairly and responsibly made and the citizen has thereby been affected. If this principle is to be made effective, the circumstances giving rise to a cause of action need to be extended beyond those presently recognised by English law.

62. The remedies which the court can grant must also be appropriate. The question which any prospective litigant rightly asks is: "If I succeed, how will I benefit?" In administrative matters the present answer which English law gives to this question is most unsatisfactory. The usual remedy is to quash or set aside the offending decision, but to give no compensation for any loss which that decision may have caused. This principle of "back to square one" understandably has little appeal to the aggrieved citizen, who may somewhat cynically suppose

that all that in substance will happen is that the administrative authority will be given a second opportunity to arrive at the same decision without on the second occasion offending against the procedural rules. There is therefore an urgent need to extend and rationalise the remedies which the court can grant.

Right of Action

63. It is proposed that a right of action should arise in relation to an administrative decision from which no right of appeal to a specialist tribunal or to an inferior court exists, in favour of a person particularly and materially affected by that decision, in any of the following circumstances:

(i) if the decision was taken in breach of any of the Principles of Good Administration;
(ii) if there was a material error in the facts upon which the decision was based;
(iii) if the decision was based upon an error of law;
(iv) if the decision was not made in good faith;
(v) if the decision was required to be made in accordance with the rules of natural justice and was made in disregard of those rules.

64. As part of the general reform of administrative law it will be necessary to consider the usefulness of existing specialist tribunals of appeal. In some cases it may be appropriate to abolish them, but in the majority of cases it will probably be right to maintain them. In all cases, however, it will be necessary to ensure that the right of appeal to such tribunals is at least as wide as the right of action outlined above. Provided that this principle is adopted, it will be unnecessary for the Administrative Division of the High Court to exercise an original jurisdiction where a right of appeal from the administrative decision lies to such a tribunal. In such cases the Administrative Division's jurisdiction should be merely appellate.

65. A similar review will need to be made of the appellate jurisdiction of an inferior court (*i.e.* magistrates' courts and quarter sessions). In general it is suggested that

magistrates' courts are not the best tribunals for the determination of administrative appeals. On the other hand there is much to be said for giving the new circuit courts an original jurisdiction in administrative matters similar to to that of the Administrative Division of the High Court, but only exercisable in relation to the decisions of local authorities and not in relation to those of central government.

66. A right of action should only arise in favour of a person "particularly and materially affected" by the decision for the reasons already considered in Part II. The importance of the Principles of Good Administration have also been considered in Part II. In this connection it is only necessary to point out that a right of action would also arise if no decision were made within the appropriate time (see Rule 5 of the Principles of Good Administration).

67. It is right that the court should intervene if the decision is based on an error of fact. Although Rule 3 of the Principles of Good Administration requires an authority "to take all reasonable steps to ascertain the facts which are material to the decision," this of itself is not sufficient. The effort, though made, may not have succeeded. There may have been a positive error of fact, rather than omission to ascertain a material fact.

68. In many cases the decision is made following a hearing at which interested parties have attended to give evidence. In such cases there will have been disputed issues of fact and it is in general right that the authority making the decision should also determine such issues. It is, however, undesirable that the court's power to intervene in such cases should be limited as at present to those cases where there is "no evidence" to support a finding of fact (*i.e.* where there is no evidence upon which a reasonable man could make the finding). It should be able to intervene where the finding is against the weight of the evidence and to substitute the correct finding. It should also be empowered to make findings of fact on the evidence where the deciding authority has failed to make the finding, and even to hear fresh evidence upon a material issue of fact,

provided there is sufficient reason why such evidence was not tendered to the authority before the decision was made.

69. The concept of "error of law" (which in this context includes the doctrine of *ultra vires*) is sufficiently familiar and calls for no comment. Although there are elements in the doctrine of *ultra vires* which require that irrelevant or improper consideration or purposes should not determine a decision made in pursuance of a statutory duty or power, English law has no fully developed doctrine of "good faith" such as many other European legal systems have. It is suggested that such a broad but vital doctrine should become part of English administrative law so that the court could intervene where a decision is taken for reasons, purposes or motives other than those for which the power of decision was conferred.

70. "Breach of the rules of natural justice" should only constitute a cause of action if the rules apply to the particular decision, *i.e.* if the decision has to be made by the authority as a decision of a dispute between two or more parties.

Remedies

71. The Administrative Division should have power to grant all the usual remedies which the High Court can grant, such as declarations and injunctions. It should also have power to suspend and quash decisions as the High Court presently has. In addition, however, the court should have the following new powers:

(i) to remit a decision to the authority for reconsideration in accordance with the judgment of the court;
(ii) to vary or reverse the decision;
(iii) to direct an authority to give a decision within a specified time; and
(iv) to award damages.

72. The final decision as to the remedy appropriate to the circumstances of the particular case must rest with the court. Thus, if a decision was irremediably wrong it would normally be appropriate to quash it. If, however, the decision had been made on an erroneous basis of fact, then

the choice would lie between a remission to the authority for reconsideration or a variation or reversal of the decision by the court itself. If upon the correct facts the correct decision followed as a matter of law, then the court would make the appropriate decision: if, however, the decision involved an element of administrative discretion, then the proper course would be to remit the decision for reconsideration.

73. In addition to making the appropriate order in relation to the decision complained of, the court should have power to award damages. In general, English law does not presently consider that the citizen has any right to compensation if he is adversely affected by an administrative decision which does not infringe his proprietary rights. The Committee consider that such a right should be recognised, so that any person who is particularly and materially affected by an administrative decision and who succeeds in his cause of action should be entitled to recover from the authority damages for any loss which he suffers. Provided this right is plainly recognised, then the quantification of damage can be according to well-established principles.

74. This new right to damages is of considerable importance because it will provide a new answer to the question: "If I succeed, how will I benefit?" The answer will be: "The error of the decision will be corrected and any damage done by that error will be compensated."

75. It is not envisaged that the court would normally make a single final order. Thus, for example, where remission for reconsideration was the appropriate order, the authority would have to file its revised decision in the court and the proceedings would not come to an end until it was clear that the revised decision was free from objection. Moreover, in such a case it would normally not be appropriate to assess damages until the terms of the revised and unobjectionable decision were known, because only then would it be possible to know what damage the plaintiff would not have suffered had that decision been given in the first place. This also illustrates a limitation of

importance upon the right to recover damages. It would be wrong to suppose that damages will be awarded in every case in which the plaintiff succeeds in his action. The only damages recoverable will be such harm as would not have been suffered had the correct decision or correct procedures been followed in the first place. Conversely, the court may award damages in cases where he correct procedures have not been followed, but where the decision itself is allowed to stand.

76. It will also be necessary to confer the right to award damages upon specialist tribunals and inferior courts to whom appeals from administrative decisions initially lie.

Appellate Jurisdiction

77. The appellate jurisdiction of the Administrative Division would be exercised by a Divisional Court consisting of three judges of the Division. Save in exceptional circumstances, assessors would not sit in the Divisional Court.

78. An appeal would lie to the Divisional Court from the decision of any specialist tribunal or inferior court in an administrative matter. Ministers of the Crown would not, however, fall within this description of a specialist tribunal, even when their decision was given on appeal from the decision of a local authority. Thus, complaints against decisions of the Secretary of State for the Environment on planning matters would come, if at all, within the original jurisdiction of the court and not within its appellate jurisdiction, irrespective of whether the Secretary had made the initial decision himself (as on a "called in" application), or upon appeal from the decision of a local authority.

79. If, as has already been proposed, the grounds of appeal to specialist tribunals or inferior courts are made at least as wide as the grounds for an action in the High Court, and if such tribunals and courts have the power to award damages, then there should properly be a general right of appeal from their decisions which falls short of a rehearing, but enables the Divisional Court to confirm, reverse, or vary the decision appealed against.

Appeals from the Administrative Division

80. Since an appeal to the Divisional Court would be a second appeal from the original decision it is undesirable that an appeal should lie from the Divisional Court to the Court of Appeal and thence to the House of Lords. It is recommended either that an appeal should lie with leave directly to the House of Lords, or that it should lie to the Court of Appeal only. On balance the former would seem preferable. Appeals from decisions of the Division in the exercise of its original jurisdiction would, however, lie to the Court of Appeal and thence, with leave, to the House of Lords in the usual way.

Principles of New Procedure

81. So far as the original jurisdiction of the Administrative Division is concerned, a new and distinctive procedure will be required which should be based on the following principles:

(1) Although the traditional English system of trial between adversaries should be the main element of the procedure, it is desirable that the court should also have an investigatory function to be exercised by the court of its own motion, particularly during interlocutory stages.

(2) As a first step in any proceedings this investigatory function should be exercised by the court to determine if there is a prima facie right of action. This initial inquiry should not depend solely upon what the plaintiff alleges, because the court can require information from the authority whose decision is challenged. Nevertheless it is important that such an initial inquiry should be made in order to screen or sift complaints, so as to ensure that the time of the court and of administrative authorities is not wasted in dealing with trivial and misconceived actions.

Outline of Procedure

82. The Administrative Division should have a Registrar. Proceedings would be commenced by originat-

ing summons to be filed with the Registrar and served upon the authority whose decision is challenged. It would not be mandatory upon the plaintiff initially to specify the final relief which he sought, but it would be necessary for him to state the grounds upon which he claimed to have a right of action and to provide, on affidavit, evidence of a prima facie case. In some cases the plaintiff might in the nature of the case have little more than reasonable grounds for believing that he had a right of action and in such cases it would be sufficient to establish those grounds of belief.

83. The Registrar would then, through his staff, make his initial investigation. The plaintiff and the defendant authority would appear on summons before him and the Registrar, after hearing the parties, would decide what explanations, documents and evidence should be produced by the parties initially. At this stage of the proceedings the authority would not be merely able to adopt an attitude of "no case to answer." The Registrar could in his discretion require the authority to make a positive case. It would also be open to the Registrar to make an investigation, in the absence of the plaintiff, of the authority's files and to call for explanation of what they disclosed. Such a right would be valuable because it would avoid the suspicion that the authority was suppressing embarrassing facts or documents by a claim of privilege and yet also prevent prying plaintiffs from making a roving investigation of the authority's files. It would, however, be necessary for the Registrar to make available to the plaintiff those documents which the Registrar considered material together with a record of all explanations given by the authority in regard to them. It is not suggested that this general investigation should replace the more familiar procedures of discovery of documents, administration of interrogatories and delivery of further particulars. This additional power is however an important and necessary extension of the interlocutory powers of the court.

84. If at the end of this interlocutory stage the Registrar was satisfied that the plaintiff had a prima facie right of

action, he would so certify and the action would proceed to trial. If, however, he refused such a certificate, then, subject to the plaintiff's right to appeal to the judge against the Registrar's refusal, the action would at that stage be dismissed.

Costs would at all stages be in the discretion of the court, but the discretion would be exercisable in accordance with established principles.

85. Difficult problems of privilege are bound to arise in administrative cases. The interposition of the Registrar or court between the plaintiff and the defendant authority should however enable the Registrar or court to inspect documents for which privilege is claimed (save where national security is involved) and determine if the claim is well founded. Even if the document is to be withheld from the plaintiff, the court having inspected it ought to be able to take account of it in the plaintiff's favour in arriving at its decision.

86. Because of the nature of the Division's appellate jurisdiction no special problems of procedure are likely to arise. Appropriate provision could be made by amendment to the existing rules of the Supreme Court.

Conclusion

87. This report is not a blueprint for perfect harmony between the citizen and the administration; indeed such harmony is not attainable. The present arrangements for protecting the citizen are, however, not only unsatisfactory but (and this is the main point) manifestly capable of improvement. The proposals contained in this report offer a reduction in the complexity of procedures and an increase in the number of effective remedies. Neither innovation nor the status quo is to be valued for its own sake; these proposals, it is thought, respect the valid claims of both continuity and reform. By a statement of general principles and the creation of a new Administrative Division of the High Court, they offer the prospect of the growth of

a coherent body of administrative law, capable of adapting itself to the needs of succeeding generations.

Summary of Recommendations

(1) To secure the giving of swift and reasoned administrative decisions, Parliament should enact a Statement of the Principles of Good Administration as a framework for all government departments, local authorities, statutory undertakers and nationalised industries. A draft of such a Statement is set out in the Appendix. Its principal features are designed to ensure that:

(a) people likely to be particularly and materially affected by a decision of an administrative authority are told about it beforehand, and are given a reasonable opportunity of being heard;

(b) the authority will ascertain all material facts before taking the decisions;

(c) decisions are taken promptly, are supported by reasons, and are made known to people likely to be affected by them;

(d) authorities will give information about what they are doing promptly and accurately whenever it is reasonably asked for.

(2) To improve the remedies available to the citizen where there has ben a failure to comply with the Principles, there should be created an Administrative Division of the High Court.

(3) This Division should have:

(a) original jurisdiction at the suit of a person particularly and materially affected by an administrative decision from which there is otherwise no appeal, if it was taken in breach of the Principles or based on a material error of fact, or an error of law, or not made in good faith, or made in disregard of the rules of natural justice where these apply;

(b) power (in its original jurisdiction) to grant all the existing High Court remedies, and also to remit the decision to the authority for reconsideration, to vary or reverse the decision, to direct an authority to make a decision within a specified time, and to award damages;

(c) appellate jurisdiction, exercised by three judges of the Division, from the existing specialist tribunals and the administrative jurisdiction of the inferior courts.

(4) Judges in the Administrative Division should sit where necessary with assessors who should be experienced in matters of administration.

(5) The Division should develop a new procedure with two main features:

(a) there should be a single originating summons thereby obviating the need for the plaintiff to specify the remedy sought;

(b) the Registrar of the Court should have power to investigate the facts and merits of the case and, at his discretion, to require the defendant authority to state a positive case, and in the absence of the plaintiff, to examine files.

Acknowledgments

The Committee is greatly indebted to Roger Warren Evans for his invaluable services as secretary during the earlier period of its deliberations and to Colin Braham who took over his duties and assisted in the drafting of our report.

APPENDIX

PRINCIPLES OF GOOD ADMINISTRATION

1. Before making any decision, an authority shall take all reasonable steps to ensure that all persons who will be particularly and materially affected by such decision have been informed in sufficient time of its intention to make the decision and shall afford to all such persons a reasonable opportunity of making representations to the authority with respect thereto.

2. No decision shall have retrospective effect unless the decision is taken to relieve particular hardship resulting from an earlier decision.

3. It shall be the duty of an authority in proceeding to a decision to take all reasonable steps to ascertain the facts which are material to the decision.

4. Where a written request is made to any authority for information relating to the discharge of its duties or the exercise of its powers, being information that ought reasonably to be given, it shall be the duty of the authority to take all reasonable steps to ensure that such information is given expeditiously and is accurate.

5. Where an authority receives a request in writing from any person to make a decision in pursuance of a statutory duty which prescribes no time limit for making such decision, it shall be the duty of that authority to make the decision to which the request relates within two months of the date of the receipt of the request by the authority. Provided that where the said period of two months is extended for a further specific period by agreement between the authority and the said person, this sub-paragraph shall have effect as if for the period of two months there were substituted the period as extended; and provided further that where by reason of exceptional circumstances, particulars of which are to be notified, it is impracticable to make a decision within the said period, and the

decision is made as soon as the circumstances permit, the authority shall be deemed to have complied with this sub-paragraph.

6. Where an authority receives a request in writing from any person to make a decision in pursuance of any statutory *power or discretion* it shall be the duty of that authority to make the decision to which the request relates within a reasonable time of the date of the receipt of the request by the authority.

7. An authority shall upon request in writing give a written statement of the reasons justifying any decision it has made.

8. An authority may refuse to give information under paragraph 4 or a statement under paragraph 7 if—

(a) to give such information or statement would be prejudicial to national security: or

(b) the relevant request was made more than two months after the date on which the duty was finally discharged or the power finally exercised or the decision made, as the case may be: or

(c) the relevant request is made under paragraph 7 by a person not particularly and materially affected by the decision and to give a statement of reasons would be contrary to the interests of any person so affected.

9. An authority shall take all reasonable steps to ensure that its decisions are made known to those persons likely to be affected by them.

10. Where by any statute or statutory instrument express provision is or shall hereafter be made in respect of matters referred to in "The Principles of Good Administration," compliance with the said statute or statutory instrument shall to that extent be presumed to be compliance with "The Principles of Good Administration."

Note: "all reasonable steps" means measures by way of inquiry, verification, deliberation or otherwise as are in all the circumstances of the case necessary according to good administrative practice.

JUSTICE PUBLICATIONS

The following reports and memoranda published by JUSTICE can be obtained from the Secretary:

Published by Stevens & Sons	Non-Members	Members
The Citizen and the Administration (1961)	57p	37p
*Compensation for Victims of Crimes of Violence (1962)	25p	17p
*Matrimonial Cases and Magistrates' Courts (1963)	20p	13p
*Criminal Appeals (1964)	37p	25p
Compensation for Compulsory Acquisitions and Remedies for Planning Restrictions (1969)	50p	35p
The Citizen and his Council—Ombudsmen for Local Government? (1969)	50p	35p
Privacy and the Law (1970)	80p	57p
Published by Charles Knight & Co.		
Complaints against Lawyers (1970)	50p	35p
Home Made Wills (1971)	20p	15p
Published by JUSTICE		
The Prosecution Process in England and Wales (1970)	40p	30p

The following reports in the Stevens series are out of print, but photostat copies may be obtained from the Secretary on application:

Contempt of Court (1959)	50p
Legal Penalties and the Need for Revaluation (1959)	20p
Preliminary Investigations of Criminal Offences (1960)	40p
The Law and the Press (1965)	60p
Trial of Motor Accident Cases (1966)	75p
Home Office Reviews of Criminal Convictions (1968)	40p
Duplicated Reports and Memoranda	
Report of Joint Working Party on Bail	15p
Evidence to the Morris Committee on Jury Service	15p
Evidence to the Widgery Committee on Legal Aid in Criminal Cases	15p
Report on Planning Enquiries and Appeals	20p

*Reduced from original price

Evidence to the Departmental Committee on Maintenance Limits	12p
Rights of Minority Shareholders in Small Companies	15p
Civil Appeals: Proposals for a Suitors' Fund	15p
Reparation by the Offender	15p
Complaints against the Police	15p
Transcript of JUSTICE Conference on	
'A Ministry of Justice'	£1 *
'Perjury'	£1 *

Memoranda by Committee on Evidence

1. Judgments and Convictions on Evidence	10p
2. Crown Privilege	10p
3. Court Witnesses	10p
4. Character in Criminal Cases	10p
5. Impeaching One's Own Witness	10p
6. Identification	10p
7. Redraft of Evidence Act, 1938	10p
8. Spouses' Privilege	10p
9. Availability of Prosecution Evidence to the Defence	10p
10. Discovery in Aid of the Evidence Act	10p
11. Advance Notice of Special Defences	10p
12. The Interrogation of Suspects	15p
13. Confessions to Persons other than Police Officers	10p
14. The Accused as a Witness	10p
15. Admission of Accused's Record	10p
16. Hearsay in Criminal Cases	10p

Published by International Commission of Jurists

The Rule of Law and Human Rights (Principles and Definitions)	60p

* Members: 75p

Back numbers of the Journal, Bulletin and Review and special reports of the International Commission of Jurists are also available.

JUSTICE

British Section of the International Commission of Jurists

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

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

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

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