



Scottish Association of Law Centres

Manifesto

Community Planning

"The benefits of an effective system of community planning would be... strategies and services which better reflect the needs and wishes of individuals and communities; a common set of priorities; programmes which fit together and do not conflict; and helping to achieve best value from the sum total of public resources devoted to an area"

Report of the Community Planning Working Group page 7. July 1998.

The Scottish Parliament

'The Parliament should be accessible, open and responsive to the needs of the public; that participation by organisations and individuals in decision making would be encouraged; that views and advice from policy specialists would be sought as appropriate; that committees would play an important new role in the Parliament'.

White Paper on Devolution 1997

CONTENTS

1.	INTRODUCTION	PAGES 3 - 5
2.	SUMMARY OF MAIN PROPOSALS	PAGES 6 - 12
3.	LEGAL SERVICES AND LEGAL AID	PAGES 13 - 20
4.	HUMAN RIGHTS	PAGES 21 - 25
5.	HOUSING	PAGES 26 - 36
6.	DEBT AND LEGAL PROCEDURE	PAGES 37 - 42
7.	IMMIGRATION, ASYLUM AND RACE RELATIONS	PAGES 43 - 46
8.	MENTAL HEALTH	PAGES 47 - 51
9.	DISABILITY RIGHTS	PAGES 52 - 53
10.	CRIMINAL INJURIES COMPENSATION	PAGES 54 - 57
11.	INFORMATION ABOUT SALC`	PAGES 58 - 59
12.	MEMBERSHIP OF SALC	PAGES 59 - 61

INTRODUCTION

This Manifesto is the product of working with people in communities in Scotland for twenty years on a wide variety of issues including debt, criminal injuries compensation, housing rights and mental health. Delivering an essential service to thousands of people every year has enabled staff, in Scotland's law centres, to assess the law's appropriateness and effectiveness in real life situations. Also, it has been possible to comprehensively analyse and evaluate the operation of "social welfare law".

The Scottish Association of Law Centres has therefore come together to propose reforms to the delivery and administration of justice in Scotland. This Manifesto is directed to Members of the Scottish Parliament as they have the power and the responsibility to change laws and procedures which cause injustice. Based on the fundamental premise that our society is founded on the inherent dignity of the individual and that people should have access to justice, this Manifesto outlines a raft of different proposals including changes to existing law, improving procedures and introducing legislation to protect the most vulnerable in our society. The effect of each proposal will deliver significant benefits to ordinary people who often feel powerless and vulnerable within a complex system

In the course of their work, Law Centres are involved in cases which bring people into daily contact with the court system. Generally, we are not involved in the high profile cases which attract the support, understanding and sympathy of commentators, key people and public alike. Examples include housing disputes, poindings and warrant sales, mortgage arrears and involuntary detentions under Mental Health legislation. It is therefore crucial that the experience of ordinary people is incorporated into MSPs' deliberations for change so that a genuine understanding is achieved of 'what's going on'. For example the rules under the Criminal Injuries Compensation Scheme mean that compensation is minimal if you

have been subjected to a pattern of severe sexual abuse. At £3,000 it is far lower than what most people would imagine and expect!

As a large proportion of our work is not funded by legal aid, but there is a clear need for our expertise, we are constantly seeking non-governmental sources to fund this unmet legal need. This strategy rather conflicts with our clear experience of ordinary people and their needs. People want our service extended and not just maintained. Community Law Centres do make a difference using a variety of indicators! For example, we are able to prevent most evictions being carried out, and our successes in claims for compensation for house disrepair are unrivalled. The work of skilled people does reduce injustice.

Ultimately, SALC believes that the best way to reduce injustice, promote social inclusion and reduce inequalities is to initiate a programme of sustained investment in community law centres throughout Scotland. This would complement the legal services already offered by our colleagues in private practice. Law Centres bring a variety of direct benefits to the community including "ownership" of the service delivered, democratic accountability and offer an opportunity to increase individual skills through serving on management committees.

This recommendation is made at a time of increasing expectation about the potential of the Human Rights Act, which will permit provisions of the European Convention on Human Rights to be pursued in the domestic courts. It is SALC's intention to build up expertise in tackling social welfare problems using the Act.

MSPs face the challenge of embarking on a firm policy of promoting and enabling justice in Scotland. In reality there will always be injustice but laws can be passed/amended, structures established/reformed and people informed/trained so as to minimise the risks of injustice. The following Manifesto has been designed to provide concrete proposals and SALC will willingly assist you in delivering effective

reforms including meeting with individual MSPs, advising committees, serving on panels e.g. the Housing Advisory Panel proposed in the Green Paper and delivering evidence to any Committees of Inquiry.

SALC looks forward to working with you!

Bob Lennie,
SALC Chair,
June 1999

MAIN PROPOSALS

This document consists of proposed changes to Social Welfare Law by the Scottish Association of Law Centres. In summary, our main proposals are as follows.

1 LEGAL SERVICES AND LEGAL AID

1.1 Law Centres

- a Legal advice and representation on social welfare issues should be available to all those who need it. There should be a national network of Law Centres to facilitate this. The costs of this should be met from a range of sources including the Scottish Legal Aid fund, the budgets of local Partnerships, local authority funds, Scottish Homes funds and other sources.
- b The Scottish Association of Law Centres should be publicly funded.

1.2 Representation at Tribunals

Representation at Tribunals should be covered by Legal Aid funds.

1.3 Domestic violence

Emergency court work to prevent domestic violence should not be subject to Legal Aid contributions or court fees.

1.4 Regulation of Lay Representatives:

"Lay" representatives should be subject to an independent regulatory regime to ensure public accountability.

1.5 Accident Claims

The whole system for compensation for the victims of accidents ("delict") requires re-examination: including the option of "no fault compensation".

2 HUMAN RIGHTS

2.1 Human Rights Commission

- a A Human Rights Commission should be appointed. Its scope should include not just those rights embodied in the Human Rights Act but also all those substantive rights provided for in the Universal Declaration of Human Rights.
- b The Commission should be entitled to receive complaints from any person wherever located.

2.2 Law Centre Network

A properly funded network of Law Centres should be provided to promote the enforcement of Human Rights and the development of appropriate remedies.

2.3 Equality Committee

SALC recommends the establishment of an Equality Committee and supports the establishment of the Equality Unit within the Executive Secretariat.

3 HOUSING

3.1 Mortgage arrears

Ejection for mortgage arrears should only be granted by the court where it is reasonable to do so. It must not be automatic.

3.2 Tenancies

- a There should be one form of tenure, based on the current “secure tenancy”, for all social sector tenancies.
- b Everyone should have a legal right to accommodation.
- c All tenants should have an enforceable right to a house of a habitable standard.

3.3 Eviction

Tenants with three months rent arrears should not be evicted automatically.

3.4 Housing Associations

- a Parliament should expand the February 1999 Green Paper (An Agenda for Scotland’s Housing) to include a discussion of the governance of “Social” Landlords.
- b All social housing providers receiving public funding should have responsibilities to homeless persons in terms of Part II of the Housing (Scotland) Act 1987.

3.5 General

- a There should be a specialist Housing Court, with Legal Aid being available.
- b Rents in the private sector should be more closely regulated.
- c The regulation of Houses in Multiple Occupation should be reformed.
- d There should be a full inquiry into the legal rights of hostel dwellers.
- e The law on remedies for disrepair should be reformed.

4 DEBT AND LEGAL PROCEDURE

4.1 Warrant sales and Earnings arrestments

- a Those on state benefits such as Income Support and Job Seekers Allowance should not be subject to warrant sales.

- b Sheriff Officers should be expressly prohibited from holding a warrant sale where the proceeds will only cover their own expenses.
- c The availability of conjoined arrestment orders (see part D section 3) should be promoted.
- d No warrant sale should be arranged against a debtor who is already subject to an earnings arrestment.

4.2 Court procedures

- a Where a court allows “time to pay” a sum sued for, the debtor should not be deemed to consent to any other claim made, such as a claim for eviction.
- b The disconnection of a major utility, such as gas or electricity, should be prohibited without a court order, which should only be granted where reasonable.
- c Court fees should be waived for those qualifying for Advice and Assistance, or Legal Aid.

5 IMMIGRATION, ASYLUM AND RACE RELATIONS

5.1 Legal Aid

Some form of Legal Aid should be extended to cover representation at all levels of the Immigration Appellate system. The IA system covers both asylum seekers and those wishing to immigrate.

5.2 Macpherson Report

The recommendations of the Macpherson report should be implemented in full in Scotland.

5.3 Annual Statistics

The Crown Office should be placed under a mandatory legal duty to publish annual statistics on the prosecution and outcome of racial crimes.

5.4 Race Relations Standing Committee

The Scottish Parliament should have a standing committee to ensure that legislation is consistent with the Race Relations Act and to keep the state of race relations in Scotland under constant review.

5.5 Children

Local Authorities should retain the power to help all children independently of their immigration status.

6 MENTAL HEALTH

6.1 Radical Reform

Mental Health legislation should be radically reformed, taking as its starting point the community based ideal and dealing with the more extensive services available within a community setting.

6.2 Role of Nearest Relative

The Mental Health (Scotland) Act 1984 prescribes who is the “nearest relative” of those with mental health problems and grants this person rights. This is often entirely inappropriate. The definition of “nearest relative” should be amended to take account of the individuals choice and personal relationships.

6.3 Improvement of Appeal Procedures

A right of appeal or review against initial detention in a Mental Health Institution should be introduced. All appeals should be heard speedily and within a maximum of five days of the appeal being lodged.

6.4 Review of Ongoing Detention

Where a patient is detained for six months, and their health improves during that time, review of detention should be available before the Sheriff, and not only by the Mental Welfare Commission.

6.5 Legal Aid

Any person detained, or threatened with detention in a psychiatric hospital, should be automatically entitled to Legal Aid to object to or appeal against their detention regardless of financial status.

6.6 Detention in the State Hospital

A right to apply for a transfer out of the State Hospital when conditions of special security are no longer required, should be introduced speedily.

6.7 Community Care Orders

The Mental Health (Patients in the Community) Act 1995 should be revoked

7 DISABILITIES

7.1 Funding

Law Centres should be granted additional resources to develop and expand their services to people with disabilities.

7.2 Disabled Facilities Grants

A scheme for disabled facilities grants should be introduced in Scotland to enable people with disabilities to make appropriate adaptations to their houses.

8 CRIMINAL INJURIES COMPENSATION

8.1 Role of Scottish Parliament

The Scottish Parliament should assume powers over the Criminal Injuries Compensation Scheme so as to achieve consistency over its responsibilities for both civil claims and criminal law.

8.2 Time Limit for Claims

The time limit for application for Criminal Injuries Compensation should be extended from two years to three years.

8.3 Injury by Family Members

Where an applicant has been injured by a family member, the application should not be subject to additional conditions, save that the perpetrator will not benefit from the award.

8.4 Rescuers

Rescuers who help a victim and suffer an emotional injury should not be excluded from compensation.

8.5 Loss of earnings

These should be compensated in full.

8.6 Tariff

The tariff should be reformed to allow additional compensation for multiple injuries, and to be adjusted for inflation annually.

8.7 Awards for Sexual Abuse

Awards for sexual abuse and post-traumatic stress disorder should be reformed.

1 LEGAL SERVICES AND LEGAL AID

"Too many Scots are excluded, by virtue of unemployment, low skill levels, poverty, bad health, poor housing or other factors, from full participation in society. Those of us who benefit from the opportunities of life in modern Scotland have a duty to seek to extend similar opportunities to those who do not. Social exclusion is unacceptable in human terms; it is also wasteful, costly and carries risks in the long term for our social cohesion and well-being. This Government is determined to take action to tackle exclusion, and to develop policies which will promote a more inclusive, cohesive and ultimately sustainable society."

Introduction to "Social Exclusion in Scotland", February 1998.

1.1 Purposes of legal services and legal aid

In every society there will always be a degree of injustice, social or otherwise. We believe that the law should be used to minimise social injustice as far as possible, and that legal services and legal aid should be provided to resolve social disputes in the most just and equitable manner.

Law Centres specialise in Social Welfare Law. They are run by representatives of the community they serve, and they provide legal services to alleviate the worst problems of poverty and disadvantage.

Our resources are allocated to issues like defending eviction actions, challenging the provision of sub-standard housing, fighting unfair dismissals, defending debt actions and using court procedures to protect debtors, claiming Criminal Injuries Compensation, representing women and children before the Children's Panel and the Sheriff Court, representing clients with Mental Health problems, and a whole range of other similar areas.

1. Legal Services and Legal Aid

A very large proportion of this work does not receive Legal Aid funding and so this work would not be done without other sources of funding.

1.2 **Funding for Law Centres**

It is recognised that funding for organisations in the voluntary sector, such as Law Centres, is obtained from a range of sources. While this enables organisations to become flexible in the services that they provide, it also creates a high degree of insecurity. When one source of funding comes to an end, this often has a seriously adverse effect on the whole organisation and other service components can be jeopardised.

At present most Law Centres obtain funding from local authorities and this is augmented by payments through the Legal Aid Board and funding from other charitable sources such as the Lottery.

It is proposed that funding for law centres should be put on a more secure footing. It should be recognised that Law Centre clients are faced with some of the most extreme social disadvantages. People require legal advice and representation when a social problem becomes a legal problem, for example, where they are faced with an eviction action or they have been unfairly dismissed. In these circumstances it is often only a law centre which can represent such an individual who is facing social exclusion due to the seriousness of the problems arising.

We therefore believe that a substantial part of the cost of advice and representation on problems of social welfare law should be covered directly by public expenditure. Law Centres have a unique capacity to defend the rights and interests of those subject to the most extreme poverty and disadvantage by using the full range of court and tribunal procedures. However in many of these procedures, such as employment tribunals, there is no Legal Aid available at all, and in others, such as

eviction actions, it is practically impossible to obtain Legal Aid. Despite this, some of the most important decisions in clients' lives are made in these courts and tribunals, for example, whether a tenant is evicted, or whether a sacked employee is reinstated.

We believe that this work should be recognised as being extremely valuable and important and should be funded accordingly. Law centres are capable of being funded from a variety of sources, but if this work is to continue, then it is essential that such funds are made available. We therefore propose that funding for law centres should be given a high priority by appropriate bodies including the Scottish Legal Aid Board, Social Inclusion and Regeneration Partnerships, Local Authorities, Scottish Homes and other appropriate sources.

It is also necessary for law centres in Scotland to form a mutually supportive network for the exchange of information, joint projects such as preparation of the recent report on "Unmet Legal Needs of Disabled People in Scotland" and other projects. We therefore propose that the Scottish Association of Law Centres should be publicly funded.

Law Centres have shown themselves to be extremely innovative, efficient, cost effective and accountable organisations, and this funding should be seen as first step towards a comprehensive network of Law Centres in Scotland.

1.3 Representation at Tribunals

Legal representation at Tribunals should be covered by Legal Aid funds. There are a number of reasons for this.

Firstly, the present situation may well contravene the European Convention on Human Rights. This is true for a range of Tribunals. In particular, in Employment Tribunals, employers are generally represented by solicitors or advocates whilst

employees often have no representation or unqualified representation. Employment Tribunals have become an extremely complex and specialised area in which the applicant without specialist representation is at a great disadvantage. This is reflected in relative success rates. It seems certain that if such an extension of Legal Aid is not made this will be challenged before long. It should be borne in mind that in unfair dismissal cases it will soon be competent to award sums of up to £50,000, and in other types of cases there may well be no time limit at all.

Lack of representation is a particular problem before the Employment Tribunal in discrimination cases, whether on grounds of race, gender or disability. In many race cases, for example, there will be little or no direct evidence of discrimination and it requires a skilled representative to bring the complaint. Complex analysis of the evidence and law will often be required in submissions which again requires skilled representation. Black and ethnic minority citizens cannot, therefore, access an important legal remedy unless they can access the appropriate assistance in race complaints. Similar issues arise where other types of discrimination occur.

There is currently no legal aid available for representation at Appeals and Tribunals for people seeking asylum or with immigration problems. A significant number of people who are already severely disadvantaged by their circumstances and do not have English as a first language may therefore be seriously prejudiced by lack of suitable representation.

SALC believes that there should be an extension of Legal Aid funding to allow for legal representation at Tribunals.

1.4 The need for representation

Representation is not necessary for everybody in every Court or Tribunal. It all depends on the circumstances. Representation is, however, either essential or highly desirable in Courts or Tribunals dealing with very important matters.

Representation is also more necessary for those who have less ability to deal with complex facts or law. Such disadvantage might be by reason of education, intelligence, language difficulties, emotional disability or other relevant factor.

Generally, taking into account all the above, representation is likely to be necessary for most people in most matters.

1.5 Choice

Choice of representative is essential. Law Centres are totally committed to this notion and in effect if choice is not provided, representation will not be available to a range of individuals.

There may have been a breakdown in the relationship between certain individuals and certain organisations, or there may be a conflict of interest between an individual seeking advice and an organisation offering it. In any event, it is often crucial for an individual to have a choice of more than one representative.

1.6 Qualifications and Accountability

Representation must always be by somebody with appropriate skill, training, supervision and qualification.

This does not necessarily have to be a solicitor with the caveat, however, that most “informal” lay representatives are not adequately publicly accountable and this is an area which requires attention with a view to creating appropriate qualifications and external complaints procedures for lay representatives.

With this caveat, however, Law Centres are not hostile at all to representation by appropriately skilled lay representatives such as Welfare Rights Officers, CAB volunteers, Trade Union Representatives, Victim Support Scheme Members and so

1. Legal Services and Legal Aid

forth. This is, however, an area where significantly increased regulation is necessary.

There will be areas of law which solicitors currently are well trained to undertake and it is neither desirable nor necessary that resources be put to training up lay representatives as well.

As things develop there will be new remedies where it may be that there are few solicitors or, indeed, none of any category of lay representative available. As new areas develop attention will need to be given as to which profession, background or agency is most appropriate to provide representation. This is not a matter that should be left only to the random decisions of often unaccountable and unmonitored organisations.

1.7 Legal Aid

In order to ensure both that representation by solicitors is available where appropriate, and to provide for choice, some form of Legal Aid must be available for all Tribunals.

This does not mean that Legal Aid should be given automatically. There is no form of Legal Aid currently in the civil sector which is completely automatic. In stating that Legal Aid should be available SALC is not saying that an indefinite guarantee of Legal Aid should always be made. Each case would require to be looked at on its own merits in accordance with current criteria, e.g. the importance and complexity of the case, probable cause, and general reasonableness. Subject to these qualifications, accordingly, Legal Aid should be available for all Tribunals.

SALC's policy is "let many flowers bloom" albeit with some degree of regulation to ensure fundamental principles of quality and public accountability. Legal Aid should be available as well as appropriately skilled and qualified lay representatives and,

indeed, SALC also supports the provision of funds to assist in Tribunal representation through giving direct grants to Law Centres or Tribunal Representation Units.

The history of the development of legal services is that a multiplicity of forms of provision is desirable. The system is far too complex for a central agency to plan in advance what all needs will be throughout the country.

If the system builds in choice and variety then there is some reasonable prospect that more legal remedies will be employed and more needs met.

1.8 Emergency Legal Aid for Domestic Violence

Civil legal aid should be made more accessible for those involved in emergency matrimonial breakdown. Currently, where a spouse is involved in a matrimonial breakdown and possibly at great risk from violence, a Legal Aid solicitor cannot carry out any work involving taking protective measures without ascertaining the client's likely Legal Aid contribution and obtaining this from her. Failure to do this will result in the solicitor's account being unpaid up to the extent of the likely contribution in the event of legal aid being refused. It is unrealistic for spouses in that situation to find the likely contribution immediately. It may be as high as £1,800. Some limited work could easily be carried out to protect the spouse without a means assessment being necessary. At the very least persons on Working Families Tax Credit or Incapacity Benefit should automatically obtain a "passport" to the carrying out of this emergency work.

1.9 Judicial Training

SALC believe strongly that mental health issues should be dealt with by specifically trained designated sheriffs. It is extremely important that these issues are dealt with by sheriffs who are aware of the effects of different forms of mental illness and their

treatments and are also aware of regimes available both in hospital and within the community for assisting those with a mental health problem.

1.10 **“No Fault” Compensation**

The press, legal theorists and, indeed, many victims of accident and injury have commented on the “lottery” that is the law on compensation for negligence (“delict”). The scope of the law is unclear. Of its nature, the legal test lags well behind scientific, technical and medical developments. The consequence of this is that often the costs of innovation are paid for by victims and not by commercial organisations (or the rest of society) who profit.

At the same time, levels of compensation are quirky: particularly owing to the increasing popularity of the Jury Trial in Scotland. Concern has recently also focused on the considerable costs of litigation in this area: not just legal fees but also the fees of medical and other technical experts.

SALC believes that all those who suffer significant and genuine injury and illness through no fault of their own should receive social support and this includes financial support. The area has been examined in detail in the past and SALC believes that it is now overdue for re-examination. There should be a full Select Committee Inquiry into the quirks, gaps and costs of the current system and these should be contrasted with a no fault compensation and social insurance model. The objective should be to ensure that all those who suffer disadvantage should receive compensation rather than no compensation for many and a lot for the few.

2 HUMAN RIGHTS

"Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world."

Preamble to the Universal Declaration of Human Rights

2.1 Human Rights generally

SALC welcomes the radical reforms of the Human Rights Act. It poses a tremendous opportunity, and challenge, to the people of Scotland to ensure that the enactments of the Scottish Parliament and our procedures and practices are, broadly speaking "fair". Yet, of all reforms, the Human Rights Act is the most "top down". Five years ago it was hardly on the agenda whilst few, if any, members of the public seem to have knowledge of even one of the rights given by the Act. (A SALC survey of members of the public was abandoned as none of the members of the public approached could tackle any of the questions). Yet, of course, among those representing and advising the most powerful institutions of the country, knowledge of the Act and how it may be used, is already extensive. SALC is concerned that those in deprived and vulnerable circumstances will not obtain any of the benefits of the Act for many years unless something is done to tackle this disparity of knowledge and access to remedies.

SALC is also concerned by a problem still more fundamental. The "Human Rights Act" does not cover all human rights: on the contrary it covers largely procedural rights (albeit such procedural rights may have a social result). SALC is concerned that in our society those rights brought into our domestic law by the Human Rights Act should not become viewed as the only human rights.

2. Human Rights

The Universal Declaration of Human Rights is the fundamental international instrument of which the United Kingdom is a signatory. We must never forget that we all have duties in respect of that Declaration even though there is currently no direct remedy to obtain the rights in the Declaration not otherwise covered by the Human Rights Act. In a society where four out of ten children apparently live “on the bread-line” (a large proportion of these being concentrated in Glasgow, Clydeside and Dundee) we should have in the forefront of our mind articles 22 and 25 of the Universal Declaration of Human Rights which state: -

“Everyone as a member of society has the right to Social Security and is entitled to the realisation, through National effort and International co-operation ... of the Economic Social and Cultural Rights indispensable for his/her dignity and the freedom of development of his/her personality. Things which are essential for the enjoyment of life in a modern society and are intended to be enjoyed by everyone through public use should be made accessible to every individual, whether handicapped or not. This is necessary in order to allow every individual to develop freely his/her own personality or to meet the essential needs of his/her personality.”

25.1. “Everyone has the right to a standard of living adequate for the health and well being of himself/herself and his family including food, clothing, housing and medical care and the necessary Social Services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or rather lack of livelihood in circumstances beyond his control”.

If the broad range of Human Rights are kept in our minds, Scotland as a society will be able to work towards a fruitful life for all: however if Human Rights are left to merely procedural matters then all we will be able to achieve is to ensure that those in disadvantage continue to be so but are able to console themselves with the thought that the law says their disadvantage is fair and non discriminatory.

How does SALC propose that these issues be tackled?

2.2 Human Rights Commission

SALC supports the proposal for the appointment of a broad Human Rights Commission. Its scope should include not just those rights embodied in the Human Rights Act but also all those substantive rights provided for in the Universal

Declaration of Human Rights. A wide range of “constituencies” must appoint the Commission. It must have powers to fund individual cases, investigate and make recommendations to both national and international organisations. To preserve its independence, SALC proposes that Commissioners be appointed for four years and should not be re-appointable.

As an organisation which hopefully will reflect all Scotland’s people, SALC would propose that the Commission be chaired by an independent consultant who would pay attention to the process only.

2.3 International Obligations

Scotland has a high reputation internationally. As a society and an economy we have a vast range of complex links with other societies and economies many of whom are vulnerable economically and affected by decisions taken in Scotland to a disproportionate extent. An aspect of the Commissions’ responsibilities must be to examine all our linkages with vulnerable societies and economies to establish whether any acts by any organisation or individual based in part or in whole in Scotland have a direct or significant indirect effect on the Human Rights of that vulnerable society or economy. In respect of these matters, accordingly, the Commissioner should be entitled to receive complaints from any person wherever located.

2. Human Rights

2.4 Legal Services

SALC elsewhere makes detailed proposals for development of access to remedies for all in our society. It must be recognised that those in disadvantage, through poverty, disability, social or geographical isolation, emotional or mental health problems, age, or youth, have particular needs. These needs are often best met by community or user controlled organisations and law centres have a proud place among such. If remedies are to be pursued and education provided to such deprived and disadvantaged groups then a properly funded network of independent community or user controlled law centres must be provided for. Those in disadvantage should have access to as skilled a quality of legal advice and representation as the most powerful in our society and this will mean providing adequate funding. Law centres do not just pursue individual cases for individuals they also provide education, training and publications which are accessible to everybody.

2.5 Discrimination and Equal opportunities

The Scottish Parliament will have the duty to promote and encourage equal opportunities in the way the Parliament works and the power to impose a duty on any public body to promote equality of opportunity.

The Report of the Consultative Steering Group makes some very positive recommendations in relation to family friendly working practices within the Parliament. An Equality Committee was established by the Parliament in June and SALC believes it will allow all legislation to be “equality proofed” and it’s effects monitored. This Committee is required in order to avoid legislation in breach of European Law and this Committee should be additional to a Human Rights Commission.

2. Human Rights

Committees will play a key role in engaging civic society in the work of the Parliament and will enable members to draw on the expertise of many organisations and individuals outside Parliament. SALC will work with the Equality committee to end discrimination in modern Scotland.

SALC welcomes the decision to establish an Equality Unit in the Executive Secretariat of the Scottish Office. The Government has announced that it is 'committed to placing equal opportunities high on the policy agenda' and we look forward to the Scottish Parliament taking a strong and active interest in equality issues.

3 HOUSING

"The creation of the new Scottish Parliament and Executive provides an exciting opportunity to develop housing policies and programmes directly relevant to Scotland's needs and circumstances and to deliver a pattern and quality of housing appropriate for Scotland in the 21st Century"

Donald Dewar, in "Investing in Modernisation" February 1999.

"The Government's objectives are to ensure the provision of high quality, well designed housing which is affordable for all is energy efficient and which supports the integration and regeneration of communities rather than dividing them."

Housing Green Paper as above.

There could hardly be anything more important to the people of Scotland than provision of housing. Law centres have, for over a generation, been among the most consistent providers of advice, representation, and educational consciousness-raising for those in disadvantaged circumstances with regard to housing. SALC believes that changes to Housing Law are of prime importance.

3.1 Mortgage arrears

Mortgage arrears are a problem for many people in Scotland, but the law provides very little protection for Scottish home owners. Substantial protections exist in England, but in Scotland home owners can be ejected where as little as two months payments are outstanding. Ejection for mortgage arrears should not be allowed unless a Court is satisfied that it is reasonable.

Mortgage lenders are entitled to evict persons where for example the borrower may

3. Housing

in fact be reasonably well covered through social security provisions or where the borrower will be in a position to sort matters out if given reasonable time. Many lenders already operate reasonably. A large number however do not. There seems to be no particular reason why home owners should be less well protected than tenants. The Court should look at all the circumstances before determining whether ejection should be granted.

3.2 Law Centres and Housing Law

Law Centres' record for assisting those in poor housing conditions, threatened with eviction or homelessness are unrivalled. Law centre Board Members and Staff have seen generations of children and young people disadvantaged by dilapidated housing, damp conditions and poor communal facilities as well as social and geographical isolation. Law and legal remedies can only provide a "sticking plaster" in any individual case. On the other hand they can provide a means of assisting those in disadvantage to draw attention to their plight as well as a means to try to "draw a line" below which an individual's circumstances cannot fall.

Accordingly, until there is good, warm, well-designed and repaired housing for all in Scotland, Law Centres will continue to assert, and assert vigorously, the rights of their clients.

As described elsewhere, proper provision of Law Centres for those in disadvantaged circumstances is utterly fundamental to the provision of housing rights for all. Law Centre legal staff have built up formidable expertise in housing matters and delivered what, had hitherto, been an unmet legal need e.g. enforcing legal rights through litigation.

Law Centres' direct experience has enabled staff to agree on many reforms and proposals for the Scottish Parliament and these are but **some of them**.

3.3 A Right to Accommodation for All

Efforts to work out who is deserving or undeserving in terms of homeless persons legislation have been largely unsuccessful and in any event can result in significant discrimination against children whose circumstances are judged along with that of their parent or parents. No matter what behaviour an individual may have embarked upon, in general forcing him/her to be either absolutely roofless or in unsatisfactory or temporary accommodation causes more problems.

SALC proposes that there be a right to accommodation for all. This would not necessarily be the housing of the individual's choice: in some circumstances particular forms of housing with strict supervision may be necessary. Experiments with regards to "foyers", supervised accommodation and so forth have all borne fruit. Such a right would not remove a dispute but it would keep it within the scope of a basic acceptance that no one should ever be utterly without respite.

SALC believes that the Government's vision for housing, as contained in the Green Paper, should be adopted as the acceptable standard and right for people. A reasonable timescale should therefore be announced for the delivery of "high quality, well designed housing which is affordable for all, is energy efficient and which supports the integration and regeneration of communities rather than dividing them".

3.4 Dampness and Disrepair

Scotland has a notoriously damp and cold climate yet provision of insulation and modern heating systems in Scotland is worse than in England and lamentable compared with most other comparable countries. There is of course a resource issue that can and should be tackled. This should be backed up by a **right to a decent house**. This could be by way of providing for retrospective application of

3. Housing

certain provisions of the Building Regulations even to existing buildings. A still simpler proposal would, simply, be that every home let out for human habitation be provided with either a gas or storage heating system meeting designated criteria.

There is no point in a right without a remedy: Remedies in terms of Scots Law to get repairs done are woefully inadequate and SALC would propose that an enforceable and effective right to repair should be available in **a newly created "Housing Court"**. SALC looks forward to the government's imminent consultation paper on 'how best to improve home energy efficiency in Scotland with particular reference to helping the most vulnerable groups' (Housing Green Paper paras. 2.52 - 2.57) This is a matter which should be expedited!

This consultation process should include a comprehensive review of the Law of Repair in Scotland: particularly specific implement and Environmental Protection Act remedies.

3.5 Social Tenancies

The Tenants Charter in terms of the Tenants Right Act has proved largely successful as a "law in action". SALC of course has concerns with the right to buy in respect that it constrains the availability of social housing in tackling need. With that caveat however, the "secure tenancy" can claim to be a successful legal structure providing as it does a solid raft of rights and duties no matter what the individual's tenancy agreement says. The assured tenancy regime in terms of the Housing (Scotland) Act 1988 cannot claim such a pedigree. It requires a "do it yourself" drafting exercise which at best has had variable results and upon occasion produces gobbledygook.

SALC proposes that all those providing housing using in part or in whole public funds ("social housing") should be required to use a new social tenancy based on the concepts behind the secure tenancy regime. The rights and duties of all should

3. Housing

be embodied in statute but this should be enhanced by the provision of a required model tenancy agreement which all providers would require to use. It could be added to but not detracted from. This would mean that we could be sure that all tenants were given a proper document accurately reflecting minimum rights which would be a significant improvement from the currently somewhat chaotic situation where some tenants receive documents which are better ignored.

SALC supports the Green Paper proposal that legislation be introduced to create a single social tenancy. This should be enacted as a matter of urgency. (3.20-3.23)

One of the fundamental features of the tenancy agreement between social landlords and a tenant must be the removal of the right by all social landlords to use “Ground eight” of the relevant eviction provisions. This is known as the mandatory ground for recovery of possession and is widely interpreted as meaning that there is no defence to it. Law Centres have been able to defend tenants against such unfairness, but those who are unable to avail themselves of expert advice and representation often are evicted through running up rent arrears of three or four months through no fault of their own. Whatever reforms are made to tenancy agreements ground eight must not be replicated.

3.6 Private Sector Housing

Private sector housing is often used by young people and students or those in highly disadvantaged circumstances (for instance those who have been refused housing by Housing Associations or local authorities). Yet the regulation of private sector housing remains inadequate. SALC supports a root and branch Reform to the regulation of Houses in Multiple Occupation and would propose that an annual Safety Certificate be compulsory in all cases. This Safety Certificate should cover means of exit, fire extinguishers, smoke detectors, wiring, furnishing and proper insurance. A model tenancy agreement with minimum, and unalterable, provisions

should be compulsory for all HMO's and rent arrears should be unenforceable where these requirements are not met.

3.7 Housing Disputes

Many housing disputes go to either Housing Benefit Review Boards or are dealt with internally by a local authority Housing Association without the possibility of the matter being fully considered by the Court. (Judicial Review being the only, and largely inadequate, remedy). All the decision making by public and quasi-public organisations (including local authorities and many Housing Associations) needs to be examined in detail to establish whether adequate procedural protections exist. Many matters such as Housing Benefit Review and Homeless and Housing Applications would appear to fail to comply with Human Rights Legislation as no Independent Tribunal has any involvement. This is a matter to which the Human Rights Commission may no doubt give attention.

Providing some form of Legal Aid is made available some of these disputes could go to a Specialist and Independent Housing Tribunal chaired by a Sheriff or someone of similar status or, alternatively, a Specialist Housing Court should be created. A prestigious Housing Tribunal or Specialist Housing Court could deal with all housing or quasi-housing disputes, with the exception of claims for compensation and might build up expertise and procedures to provide a speedy remedy, for instance in disrepair cases.

3.8 Community Landlords

There is a wide range of Housing Associations in existence currently and it is also proposed by the Government that new Community Landlords should be created. It is not SALC's purpose to discuss the "grand" strategy here but whatever view is ultimately reached there are certain legal issues that require attention.

3. Housing

The first, very generally, is the governance of social landlords. Many Housing Associations, for instance, are accountable to a wide range of partners including tenants, local authorities, local community organisations and individuals. Others have weak forms of accountability if any at all. In that respect SALC does not consider the monitoring role of Scottish Homes to be accountability: monitoring and democratic accountability are not the same thing.

This is an area involving many issues, particularly, given that the same points may be germane to new community landlords and, accordingly, SALC proposes that the Parliament expands the February 1999 Green Paper (An Agenda for Scotland's Housing) to include the discussion of the Governance of "Social" Landlords.

As social housing becomes subject to an increasing variety of landlords SALC has increasing concern with regard to the rights of those in disadvantage whether it be through unsatisfactory housing or indeed homelessness. New generation social housing providers, in contrast to local authorities, have no duties to the homeless as a matter of law, for instance.

SALC is, accordingly, of the view that all social housing providers receiving public funding should have responsibilities to homeless persons in terms of Part II of the Housing (Scotland) Act 1987.

Complications would arise from that and SALC is of the view that these would best be tackled by a new statutory requirement that all social landlords enter into a formal and binding arrangement in partnership with local authorities as regards those organisation's statutory responsibility to those in disadvantage due to homelessness.

This requirement should be linked with general reform to the statutory requirements that currently apply to the management of waiting lists and allocation of housing by Housing Associations and other Social Landlords. The law requires to be amended

in any event owing to Human Rights Legislation. Some of the required reforms include the following examples which are given by the February 1999 Green Paper:

For example:-

Section 19 of the Housing (Scotland) Act 1987 specifies that a local authority should not take into account certain factors (e.g. age for those over sixteen, income etc.) in considering whether an applicant is entitled to be admitted to a housing list.

Section 20 of the 1987 Act requires that the local authority in allocating housing to ensure that reasonable preference is given to persons with specified needs including homeless persons and that other factors are not taken into account (e.g. length of residence, age over 16, income etc.).

and

Section 21 of the 1987 Act requires the local authority publish any rules which it applies governing admission of applicants to the waiting list and priorities for allocation and transfers.

These duties shall apply to all social landlords and not just Local Authorities. Very generally the strategy SALC would propose here is to ensure that Housing Associations and new Community Landlords retain accountability, managerially and as a matter of individual rights, not just to their tenants but also to potential tenants and local authorities with strategic responsibilities for the whole community.

3.9 Fully Mutual Housing Co-operatives

Fully Mutual Housing Co-operatives are generally, a form of Housing Association where in order to be a member of the landlord body one needs to be a tenant and, correspondingly in order to be a tenant one needs to be a member. While there are problems (in relation to organisations receiving public funding) of accountability to

potential tenants (a problem common to many Housing Associations) this is a participatory model which should remain an option for public authorities developing new forms of tenure as well as tenants themselves.

Unfortunately the law has not been adequately adjusted to take into account the use of this special form of tenure. Generally SALC believes the legal position of Fully Mutual cop-operatives deserves re-examination. More specifically however the major, obvious, gap currently is that the tenants of Fully Mutual Housing Co-operatives receive little statutory protection. They are neither "secure" in terms of the 1987 Act nor "assured" in terms of the 1988 Act. In theory they are subject to removal at the instance of the landlord without any room for a defence. This is the case even if the Tenancy Agreement offers extensive contractual rights. There is room for argument that these contractual rights do not apply once the tenancy has been brought to an end.

SALC believes that the position of the tenants of Fully Mutual Housing co-operatives is anomalous. They are part of the Housing Association Movement and should benefit from any new "Social Landlord Tenancy" (based on the "secure" tenancy regime) which may be brought in. At the very least they should be "assured" tenants in terms of the 88 Act.

3.10 Hostels

The position of those living in hostels, foyers and other temporary shared accommodation is unsatisfactorily dealt with by Scots Law. Reform is urgently required. Many of those living in hostels are very vulnerable due to poverty, mental illness or addiction. Law Centres have struggled for some time to use the Court system to clarify the position and something has been achieved. Nonetheless the current position is unsatisfactory. In particular some of those residing in permanent accommodation are often led by the landlords to think that they do not have assured

tenancies and have difficulty obtaining expert advice on this point. On the other hand others residing in plainly temporary accommodation may be able to seek and obtain extensive protection which may be contrary to the purpose of supplying temporary accommodation in the first place.

The law requires to be reformed to permit a clearly designated category of accommodation to be supplied by *bona fide* housing providers with minimal but nonetheless codified protections to temporary residents. All other accommodation should be subject to ordinary landlord and tenant law and the protections flowing from this. The law requires to be drafted in such a way as to avoid attempts to bring larger numbers of tenants into unprotected status. Fundamentally, minimal "human rights" should be introduced. For instance, it should not be possible for hostel occupiers to be summarily evicted at night, without notice.

Reform of the law here will be a complex matter: SALC proposes that the relevant select committee hold an investigation into the matter early in the Session of the New Parliament.

3.11 Rent assessment in the private sector

Rent Assessment Committees presently have the power to assess private sector rents. However they can only assess whether or not a landlord is charging a "market rent" and this is usually considered by comparing appropriate rent levels in comparable areas. These procedures do nothing to keep rent levels within parameters which are affordable to tenants. Also tenants of very limited means often obtain Housing Benefit, and this guaranteed payment also results in upward pressure on private sector rent levels.

SALC recommends that "market rent" be abolished as a criteria for setting private sector rents. Housing Benefit should cover the full amount of private sector rent, but

the Rent Assessment Committee, or possibly a new Housing Court, should fix private sector rent levels on the basis of recognised methodologies, for example, return on capital over time, or maintenance costs plus margin. The onus should be on the landlord to establish that a rent level is reasonable.

3.12 Mandatory Arrears Direct Payments

In many cases landlords, in particular Local Authorities, will accept repayment of rent arrears in an eviction by use of Arrears Direct which means £2.55 per week is deducted from the tenant's benefits. However, there seems to be no logical use of this provision and in some cases it will be refused when a tenant has rent arrears of only £200 or £300, when in other cases it will be accepted when rent arrears are £2,000 or £3,000.

In all these circumstances it is usually the case that the tenant's rent is being fully met by Housing Benefit and thus the arrears are not increasing. Where this is the case, SALC believes there should be a requirement compelling social landlords to accept Arrears Direct payments. This may require a limit on the amount of the arrears rather than applying across the board in all cases.

4 DEBT AND LEGAL PROCEDURE

“Tackling Scotland's health problems is also about recognising and attacking the health inequalities which have increasingly seen the more affluent enjoy much better health than people who are less well off. ...Over the last twenty years or so, the gap in death rates between the most and least affluent categories has widened and a King's Fund publication in 1995 states that, in Britain, death rates were 2 - 3 times higher among disadvantaged social groups than among the more affluent, and the disadvantaged were likely to die about eight years early. ... In 1981 the standardised mortality rate in the most deprived area was 120% above the rate in the most affluent areas. By 1991, this difference had increased to 162%.”

Chapter 1, Working Together for a Healthier Scotland. February 1998.

SALC recognises that the Debtors (Scotland) Act 1987 has been a major step forward in the enforcement of debts in Scotland. From the recent Scottish Office research on the operation of the Act, and from our own experience, it seems to us that the Act has been successful in providing both a more efficient and more clearly understood method of debt enforcement, while at the same time outlawing the more excessive practices which existed prior to 1987.

SALC believes however that the operation of the Act could be improved in a number of ways.

4.1 Poundings and Warrant Sales

In our experience creditors are far too willing to start proceedings for poundings and warrant sales. This is particularly true in regard to enforcement of Council Tax. This often happens in the most inappropriate of circumstances where for example

4. Debt and legal procedure

debtors are on income support or state pension and have no other income.

In most of these cases the initiation of such procedures only causes undue alarm to the debtor and when the Sheriff Officer proceeds with a poinding he/she finds that the debtor is of such limited means that it is impossible to produce any funds through poinding and warrant sale.

SALC believes that this factual situation should be reflected in the law. Debtors who cannot possibly afford to pay off their debts should not be subject to alarming procedures such as poinding and warrant sale. At present there are defences to poinding and warrant sale procedure, for example where Sheriff Officers have failed to comply with the appropriate procedure, or where the sum of money to be produced by the warrant sale will not even cover the Sheriff Officers' expenses.

SALC proposes that there be an additional defence to a warrant sale. The enforcement procedure of poinding and warrant sale should not be available against those in receipt of specified state benefits such as Income Support or Job Seekers Allowance. This could be achieved by inserting a further provision in the Act to enable debtors on these benefits to apply for a recall of poinding.

SALC believes that this would have a number of positive consequences:

Firstly, it would clarify the position for creditors. Creditors at the moment can be fairly clear that those on income support will not have sufficient funds to pay off anything except minimal debts. Creditors would therefore be less inclined to encourage those on state benefit to take on debts which they could not afford to pay back.

Secondly, those debtors temporarily claiming certain state benefits would be

protected. Those debtors who require to claim certain state benefits because they are between jobs, would be protected while they were in that position. This protection would no longer be available when the debtor returned to employment and a higher level of income.

Thirdly, a greater proportion of certain debts, e.g. Council Tax arrears, would be paid. If this defence were available, there would be more debtors telling the court that they were on state benefit. This would enable appropriate creditors to obtain payments direct from benefit to cover such debts as council tax arrears.

Fourthly, the poorest members of the community would be better protected. Debtors in this situation are of course the least likely to have any property which could be poidned.

Finally, in relation to poidnings and warrant sales, many warrant sales continue to be instructed in situations where the proceeds of the sale are very low, in fact so low that they fail to cover the actual sale expenses. The proportion in which not even expenses are paid off has doubled from 40% to 82% in recent years. SALC believes that this is an unacceptable use of warrant sale procedure.

The Act as it currently stands simply allows debtors to seek to recall the poidning where the total value of the items poidned is less than the likely expenses of the sale. The expenses allowed to Sheriff Officers in poidnings and warrant sales are fixed by the legislation.

SALC proposes that this defence continues, but that in addition the Act be amended to put an obligation on Sheriff Officers not to proceed where the total value of the articles poidned is less than the expenses of the sale. In order to facilitate this calculation, the standard form of the inventory of articles poidned should contain a note of the current expenses laid down in respect of these procedures. This would clearly have to be updated as and when the fees are updated. In this way it would

4. Debt and legal procedure

be easy to see whether any net benefit would ensue from proceeding with the warrant sale.

4.2 **Summary Diligence**

This is the procedure whereby agreements can be registered. On "default" no court involvement is necessary for creditors to obtain the equivalent of a Court Decree. This is wrong in principle. Summary diligence should be abolished.

4.3 **Earnings Arrestments**

SALC believes that the introduction of earnings arrestments has been a positive measure in regard to the enforcement of debts in Scotland. In general, the procedures are sound but some improvements to the system could be made.

Firstly, in our experience, very little use appears to be made of conjoined arrestment orders, a type of order which enables a sum arrested from wages to be divided between different creditors. This appears to be a very useful procedure for those with multiple debts. It may be that these are uncommon because of lack of awareness. SALC would therefore recommend that there be a clear standard statement in court summonses that where a debtor admits a debt, payment may be enforced following the court order by way of an earnings arrestment and that where more than one court order for debt is granted against a debtor, the amount arrested from wages remains the same but no more than that amount may be divided between relevant creditors.

Secondly, SALC believes that the existence of earnings arrestments is a recognition that only a certain specified amount of a debtor's income should be allocated to the payment of debt. In these circumstances we believe that it is not justifiable for

creditors to be allowed to proceed with other methods of debt enforcement at the same time. SALC therefore recommends that any poinding executed against a debtor who is already subject to an earnings arrestment should be invalid.

4.4 Time to pay and Additional claims

At present when a Summons is served in relation to an eviction action which includes rent arrears the Defender receives a form which allows him/her to apply to the Court to make a Time to Pay Order. However, it is clear from practice and experience that Defenders when they receive this form are totally unaware that by accepting the claim for the monetary payment and by making an application to the Court for a Time to Pay Direction they are accepting not only that payment is due, but also that they should be evicted. This is a major problem in the whole Summary Cause eviction procedure. The Summary Cause Rules should be amended to show that the application for time to pay directions applies only to payment of money. There should be a specific new Rule relating to applications for time to pay directions in actions which also involve other craves including recovery of heritable property. It should be clearly stated that an application for a time to pay direction relates only to the payment part of the action and is not a consent to Decree for the eviction part.

4.5 Disconnection by Major Utilities

The disconnection of the major utility should only be able to take place on the basis of a Court order being obtained. In order to obtain such a court order the supplier would require to show the Court that it was reasonable to grant this. Major utilities should include fuel and possibly telephone. Disconnection of water should not be legal at all given the possible health problems that this could cause. Essentially this would mean that the fuel companies would require to satisfy a Court before they

4. Debt and legal procedure

disconnected someone. If they have someone who has simply refused to pay for no good reason then the fuel company should be able to obtain their order but if, as is more often the case, there are good underlying reasons for non payment then this would provide a degree of protection, not only of course for the consumer but for the consumer's household. This provision would be analogous to what already happens in relation to most tenancies.

4.6 Court fees

The limit for small claims actions currently stands at £750. The fee payable to the Sheriff Clerk for lodging a small claims summons in court is £6 for sums up to £49.99, and £36 for sums claimed of £50 or over. For many people on low income or benefit the lodging dues, is a serious deterrent to proceeding.

By way of comparison, those wishing to apply to the court for divorce under the simplified procedure, that is a divorce based on 2 years separation with consent for 5 years, can have the court dues waived if they qualify under the Legal Advice & Assistance Scheme. A system similar to that adopted under the simplified divorce procedure should be applied to small claims actions which will hopefully have the benefit of availing this procedure to a larger section of the public.

SALC also recommends that all court fees are waived where a litigant is in receipt of a prescribed state benefit or Legal Aid. In the latter case, public money is simply transferred from one public body to another, and entails unnecessary bureaucracy.

5 IMMIGRATION, ASYLUM AND RACE RELATIONS

United Nations Declaration on Human Rights states that

“Everyone has the right to seek and to enjoy in other countries asylum from persecution”.

UN Convention on the Status of Refugees defines a refugee as:

“Any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it.”

5.1 **Representation for asylum seekers and immigration appellants.**

There is currently no legal aid available for representation at Appeals and Tribunals for people seeking asylum or with immigration problems. A significant number of people who are already severely disadvantaged by their circumstances and do not have English as a first language may therefore be seriously prejudiced by lack of suitable representation.

We believe as stated above that there should be an extension of Legal Aid funding to enable representation at all forums deciding questions relating to immigration.

5.2 **Macpherson Report**

Racism, both overt and institutionalised, exists in Scotland. A thorough examination of many Scottish institutions would uncover the institutionalised racism identified in

5. Immigration, Asylum and Race Relations

the Macpherson report. The new Scottish Parliament will be responsible for all the major institutions providing public services in Scotland including the police, Crown office, health service, education, housing and social work. Best practice should be established from the outset.

The Macpherson report has recommended wide ranging changes to the working practices of all of the above institutions. The recommendations in the Macpherson Report should be implemented in full in Scotland. Key recommendations of the Macpherson Report include the following;

1. To establish a ministerial priority for “the elimination of racist prejudice and the demonstration of fairness in all aspects of policing”
2. To prosecute police officers involved in racist behaviour
3. To discipline (usually dismiss) officers guilty of racism
4. To make police officers liable to disciplinary action for first five years of retirement
5. To independently investigate serious complaints against police officers
6. Police must understand the term “racist incident” to include actions they would not usually recognise as a crime
7. Immediate review of racism awareness training for police
8. To set targets for recruitment of ethnic minority police and support staff.

The Home Secretary has recognised that the Report does not just concern the police, saying “The Macpherson Report challenges us all, not just the police service..... to tackle discrimination wherever it is found...It places a responsibility on each of us. We must make racial equality a reality.” In education for example the Report recommends that the national curriculum be amended in order to equip pupils to reject racism and value diversity. The same changes should be made to the Scottish curriculum.

SALC welcomes the Report’s identification of institutional racism as being “The collective failure of an organisation to provide an appropriate and professional

service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.” SALC expresses reservations about the proposals in the Report regarding prosecutions for private expressions of racism and the proposals to change the “double jeopardy” rule. With respect to the latter, we believe that there must be ‘finality’ to the legal process.

Although responsibility for the Race Relations Act is reserved to Westminster, this does not mean that discrimination is irrelevant to the Scottish Parliament, as Article 14 of schedule 1 to the Human Rights Act (on the Prohibition of Discrimination) recognises that racism and race discrimination are attacks on Human Rights. Scottish legislation must comply with the Human Rights Act and therefore Article 14 imposes a duty on the Scottish Parliament to address discrimination.

5.3 Monitoring of Racial Crimes by the Crown Office.

The Crown Office does not appear to monitor the prosecution and outcome of racial crimes despite calls to do so on many occasions over a number of years. Despite the new duties created under Section 306 of the Criminal Procedure (Scotland) Act 1995 they have produced only one report with no evidence of monitoring by the Crown Office. Citizens of Scotland and the black and ethnic minority communities in particular have no way of gauging whether racial crimes are being dealt with appropriately and seriously enough. Such information is required to instil the necessary public confidence to encourage citizens of black and ethnic minority origin to come forward and make complaints with the knowledge that they will be prosecuted rigorously and sensitively.

The Crown Office should be placed under a positive and immediate mandatory legal duty to publish annual statistics on the prosecution and outcome of racial crimes

5. Immigration, Asylum and Race Relations

including prosecutions, successful or otherwise under Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995. They should report on the use of Section 96 of the Crime and Disorder Act in sentencing where racial motive is established leading to aggravation of the offence. They should report on the use of non-harassment orders for racial crimes under the Protection from Harassment Act 1997 by the Crown.

5.4 Standing Committee on Race Relations.

(See also part B section 5 on the proposed Equality Committee and the actual Equality Unit.)

Issues of equal opportunities and race relations in particular are often dealt with as an addendum to the principle business of any matter.

A standing committee should be established from the outset within the new Scottish Parliament to ensure that the state of race relations in Scotland is under constant review. The committee should ensure the compatibility of all legislation and initiatives with the Race Relations Act and ensure that positive efforts are made by the Parliament to reflect the needs and ensure full participation by members of black and ethnic minority communities living in Scotland in all parliamentary business initiatives. This committee should work closely with the Human Rights Commission to ensure that discrimination is addressed as a Human Rights issue.”

5.5 Asylum Seekers and Local Authorities

The Immigration and Asylum Bill appears to seek to restrict the powers of Scottish Local Authorities to help asylum seekers and their children. This is the case even where children are "in need", or there are persons suffering from serious mental health problems. SALC believes that Local Authorities should retain their powers to help all those in need notwithstanding their immigration status.

6 MENTAL HEALTH

'Poverty, unemployment, housing and the environment around us are all inextricably linked with health. Only by tackling these vital issues will we achieve the sustained health improvement we need, in the spirit of the World Health Organisation's vision of health, which was defined as long ago as 1948, as " a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity".

Chapter 1, Working Together for a Healthier Scotland. February 1998.

The substantive law on mental health issues in Scotland has changed little since the 1960's. Although the Mental Health (Scotland) Act was introduced in 1984 it did little but consolidate legislation which had gone previously. As a result SALC feels strongly that the legislation is now out of step with present thinking on community based service provision for those with mental health problems. Both the health service and the social services now concentrate on such a community centred approach, whereas the legislation revolves strongly around the old hospital based medical model.

In the "Consensus for Change" report which followed upon the Consensus for Change conference hosted jointly by the Law Society of Scotland, Scottish Association for Mental Health and Royal College of Psychiatrists, a strong and united call was made for sweeping reform to mental health legislation. This was endorsed by users of the services as well as legal and medical professionals.

SALC feels that rather than make changes to the present legislation, a new Mental Health Act should be drafted taking as its starting point the community based ideal and dealing with the more extensive services available within a community setting. SALC also **believes** that mental health detention issues should be taken away from

6. Mental Health

the Sheriff Court and a tribunal system introduced, to remove the feeling of “criminalisation” common to users of the present system. SALC hopes that the Millan Committee recently set up by the Government, will be the start of a move towards just such sweeping reform.

If however sweeping change is not made, then there are a number of issues within the Mental Health (Scotland) Act 1984, which should be addressed immediately and where change could be made with little effort.

6.1 **“Nearest Relative”**

Section 53 of the Mental Health (Scotland) Act 1984 gives a definition of “nearest relative”. This is very prescriptive in its terms. It creates a list of relatives and the nearest relative would be either the person on the list who cares for the individual, or the first person on the list whom the individual has as a relative. If, for example, the individual has both a mother and a father then the elder of them would be the “nearest relative”. However it does not take account of actual relationships - or lack of them - and does not allow the service user to choose whom they would wish to have as nearest relative. The position does carry with it quite considerable rights, including receipt of information about detention and the right to request the release from detention of an individual. The present system can, and has, resulted in substantial iniquity, for example: a learning disabled adult who has been abused by a relative and that relative then becomes the patient’s nearest relative in terms of the legislation; a same sex couple where the partner would not be defined as nearest relative within the legislation.

The Westminster Government has already indicated a clear intention to change the definition of nearest relative within the English mental health legislation, following a case presently being taken through the European Court of Human Rights. A

preliminary decision from Europe has indicated that the nearest relative legislation is in breach of the convention.

SALC calls upon the Scottish Parliament to make immediate changes to the definition of nearest relative within the Scottish legislation.

6.2 Appeals in Short Term Detention

Section 24 detention lasts for a period of 72 hours. There is no right of appeal or review for this detention. SALC believes that such a right should be provided immediately, to bring the legislation into line with the European Convention on Human Rights.

Section 26 detention extends for a period of 28 days following the original 72 hour detention. There is a right of appeal to a Sheriff contained within the legislation. However there are no Sheriff Court Rules in relation to how such an appeal should be conducted and SALC members have found that, in practice, raising an appeal and having it heard within the 28 day period can be extremely difficult, making the right of appeal meaningless. Specific Sheriff Court rules should be promulgated to ensure that such appeals can be heard speedily and within a maximum of five days of the appeal being lodged.

6.3 Six Month Detention

For detention in terms of section 18, an application to a Sheriff must be made. This can be opposed by the individual. However if it is granted, it lasts for a period of six months. If the patient's health improves and s/he no longer requires to be subject to detention, the only review available would be to the Mental Welfare Commission.

SALC believes that a right of review by the Sheriff should be available within the six month period.

6.4 Legal Aid for Mental Health Hearings

The Legal Aid system allows advice by way of representation - ABWOR - to be made available to clients where action is taken in relation to them under the Mental Health (Scotland) Act 1984. However the same financial test applies to legal advice and assistance in this area as in all other areas of law.

In England, however, in 1996 the regulations were changed so that anyone involved in similar hearings in terms of the Mental Health Act 1983 is entitled to free legal advice and assistance regardless of their income or capital.

SALC believe that it is unfair and discriminatory that those in England have free access to legal advice while those in Scotland may well have to pay a contribution outwith their means, or indeed be ineligible for legal advice and assistance altogether. It should be remembered in this regard, that receipt of any disability benefit will automatically mean that some contribution to legal fees will be required.

SALC believes that regardless of any changes to the Mental Health Act itself, change must be made to the legal aid legislation immediately to bring Scotland into line with England and Wales.

6.5 Detention in the State Hospital

In terms of section 29(4) an individual transferred to the State Hospital has 28 days within which to appeal against the transfer. Thereafter, there is no right to apply for a transfer out of the State Hospital where detention might still be appropriate but the security of the State Hospital is no longer required. It should be remembered that some 50% of individuals in the State Hospital have no criminal conviction. For a

number of years there has been evidence of considerable “log jamming” causing lengthened detention in Carstairs, due to the lack of available local beds. SALC believe that a right to apply for a transfer should be introduced urgently.

6.6 “Hidden sectioning” of incapax persons

In the recent House of Lords decision, R -v- Bournemouth Community and Mental Health NHS Trust ex parte L [1998] 3 All ER 289, it was held that someone who was incapable of leaving hospital or refusing treatment did not require to be detained. SALC firmly believe that legislation should be immediately introduced to reverse the effects of this decision and provide the same protections for incapax persons, presently available to everyone else.

6.7 Mental Health (Patients in the Community) Act 1995

The Mental Health (Patients in the Community) Act 1995 was a new piece of legislation brought in to avoid the situation where users of mental health services were kept on long term detention in terms of the Mental Health (Scotland) Act 1984 even when they were living in the community. The legislation however has substantial flaws and has been little used.

SALC believe that this piece of legislation should be scrapped and the issues of community care examined as part of the over reaching discussion to be had around mental health legislation.

7 RIGHTS FOR DISABLED PEOPLE

" Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account."

UN Declaration on the Rights of Disabled Persons

7.1 SALC Report on the Legal Needs of Disabled People

In 1998 SALC received funding from the lottery to research the legal needs of disabled people in Scotland, examining whether their needs were presently being met. A report was published and launched in February 1999.

The report makes clear that legal rights of disabled people are not presently being met within the legal system in Scotland and that disabled people themselves feel strongly that more requires to be done to provide a system accessible, in the widest sense, to disabled people in Scotland.

SALC is now considering how best to take forward the outcomes of the research and believes strongly that present law centre services should be built upon and expanded to provide the service that disabled people within Scotland need and deserve.

7.2 Disabled Facilities Grants

The Housing Grants, Construction and Regeneration Act 1996 is an English Act which provides for improvements and adaptations to houses occupied by people

with disabilities. The Act imposes obligations on housing authorities to make grants for certain purposes. These purposes include, amongst other things:-

- (a) facilitating access by a disabled occupant to and from a dwelling, or the building in which a dwelling or flat is situated;
- (b) making the dwelling or building safe for a disabled occupant and other persons residing with him;
- (c) facilitating access by the disabled occupant to various rooms in the house;
- (d) improving any heating system in the dwelling to meet the needs of the disabled occupant or, providing such heating system suitable to meet his needs;
- (e) facilitating access and movement by the disabled occupant around the dwelling in order to enable him to care for a person who is normally resident in the dwelling and is in need of such care.

People with disabilities have the right to obtain such grants in certain defined circumstances. This Act however does not extend to Scotland and people with disabilities in Scotland do not have the same rights to such grants. SALC recommends that a similar scheme of disabled facilities grants should be introduced in Scotland.

8 CRIMINAL INJURIES COMPENSATION

"Everyone has the right to liberty and security of person"

Article 5, European Convention on Human Rights

8.1 Rights of Victims: - Criminal Injuries Compensation

SALC members have always had a particular concern with compensation for victims of violence: law centres have been among those providing most publicity to Criminal Injuries Compensation as well as large volumes of advice and representation to individuals. The Criminal Injuries Compensation Scheme is designated by the Scotland Act as a “cross border” authority and SALC believes that the opportunity should be taken to draw administration of the authority into the scope of the Scots Parliament as provided for by Section 89 of the Act. This would provide the Scots Parliament with an opportunity to enhance the rights of victims in a way that is consistent with reforms to our criminal law and our traditions of concern for victims of crimes of violence. The Home Office is currently undertaking a consultation exercise on CICS. Whilst SALC awaits the results of this with interest, it is not anticipated that many of the most urgent needs will be addressed.

Assuming the Scots Parliament takes control over Criminal Injuries Compensation, opportunities would be introduced to tackle some of the needs for law reform here and these are as follows:

8.2 Two Year Time Limit

There is a two year time limit for applications to the Criminal Injuries Compensation

Scheme (albeit with some discretion). This is one year less than under the common law and under the previous arrangements. It causes confusion particularly those in the most disadvantaged circumstances and should be amended back to three years.

8.3 Family Violence

The tests applicable to those suffering from family violence are higher than those for other applicants. There is a higher onus on the applicant to show why prosecution has not been brought whilst in the case of family violence between adults the applicant requires to have stopped living in the same household before the application was made. Whilst no modification should be made the requirement that the perpetrator of violence should not benefit, the particularly high requirements in the cases of family violence are not necessary and seem discriminatory.

8.4 Rescuers

The current arrangements do not reflect the common law as regards Rescuers. Rescuers who do not know a victim beforehand and who suffer an emotional injury such as post traumatic stress disorder, are entirely excluded by the current arrangements and this seems unfair to those who suffer seriously in aiding unknown members of the public.

8.5 Loss of Earnings

Under the current arrangements there is no form of compensation for loss of earnings or earning capacity for the first 28 weeks of incapacity. Of course those who suffer for longer periods do obtain compensation for this as well as other heads of loss. It is obviously welcomed that those more seriously injured are prioritised. However loss of earning or earning capacity for up to 28 weeks can have a

8. Criminal Injuries Compensation

devastating effect at least where an individual does not have the benefit of statutory sick pay for instance being self employed, casually employed, unemployed but seeking work and so forth. The loss of earnings arrangements in the Criminal Injuries Compensation Scheme should reflect the common law.

8.6 The Tariff

The Criminal Injuries Compensation arrangements make a payment for each injury based on a previously set down “tariff”. Space does not permit proper analysis of the problems occasioned by the tariff and assuming the Criminal Injuries Compensation Scheme is brought within the scope of the Scottish Parliament SALC would welcome an opportunity to make detailed submissions. The main issues however are there is **no** means whereby the tariff levels are adjusted automatically for inflation. The current levels are already seven or eight years out of date and the easiest means of dealing with this matter would be to automatically adjust the levels for inflation. **Another issue is that serious** unfairness is also encountered by those suffering from serious multiple injuries. Broadly speaking the amount a victim receives for a serious multiple injury is not much different from simply one injury alone. Thus the loss of an arm **and** a leg is treated as a multiple injury generating an award of £44,000 (that is £40,000 for the arm and £4,000 for the leg). This is only £4,000 more than the loss of one limb. The tariff either needs reforming or, alternatively, common law principles should be applied.

8.7 Sex Abuse Victims: Tariff

SALC members have always had particular concern of the victims of rape and sexual and physical abuse particularly when the victim encountered this during childhood. Such individuals are often doubly victimised: they suffer a crime of violence and then the Criminal Justice System, in part through the requirement for

corroboration, has difficulty in coping with these crimes of violence and the rates of prosecution and conviction rate seems much lower than other crimes of violence. Historically the authorities have often had a “blind spot” to the existence of sexual crimes at all: particularly child abuse. This discrimination is replicated in “tariff” or “standard awards” to sex abuse victims who may receive an award either for the abuse itself or for the emotional result. One way or the other the amounts awarded are low. For instance a pattern of severe abuse (repetitive treatment, indecent acts involving digital or other non-penal penetration and or oral genital contact lasting up to three years) generates an award of only £3,000. Save for the most serious emotional disorder caused by a crime of violence, the most that a victim can expect to receive for post traumatic stress disorder and so forth is £7,500. The tariff levels particularly affect the victims of child sex abuse as, whilst their lives may be devastated, it is often very difficult to establish a wage loss claim. All these tariff levels require reform or provision for the application of common law principles where unfairness would otherwise result.

Scottish Association of Law Centres

June 1999

INFORMATION ABOUT S.A.L.C.

The Scottish Association of Law Centres (“S.A.L.C.”) is the representative organisation of community controlled Law Centres in Scotland. Its management comprises:

- representatives from the Management Committees of its full members
- the Principal Solicitors of those full members.

To be a full member of S.A.L.C. the Law Centre must:

- be a Charity and, accordingly, any surplus must be reinvested for the purposes of the Law Centre;
- have, as its objectives, among others, the relief of poverty, reduction of exclusion or deprivation, the removal or reduction of discrimination through the use of the legal system;
- employ solicitors capable of undertaking advice, assistance and representation in all Courts and Tribunals in Scotland and, in particular, be in possession of a current Practising Certificate. Normally a Law Centre requires to employ at least two fully qualified solicitors. (One with more than 3 years post qualifying experience);
- fundamentally, be accountable to a local community, a community of interest or a user group.

In practice all Law Centres also have educational objectives. S.A.L.C. is exclusively funded by its members.

The full members of the Scottish Association of Law Centres are listed below. There are, in addition, a number of associate members. Associate members are generally those Law Centres which meet all the criteria apart from 'user or community control'. Associate members include Scottish Child Law Centre, Equal Opportunities Commission, Refugee Council, ENABLE and a number of others. Altogether Law Centres in Scotland employ around 35 to 40 solicitors and a further 20 to 30 admin and support staff. Also, there are nearly 70 volunteer Board Members and Management Committee Members.

MEMBERSHIP OF SALC

Full members of the Scottish Association of Law Centres all tackle unmet legal need and they are listed in alphabetical order:

Castlemilk Law Centre is located in the Castlemilk area of Glasgow. Set up in the 70s, it is the oldest Law Centre. Covering a population of around 20,000 to 25,000, it employs 5 solicitors. It tackles a wide range of unmet legal needs including housing law and has specialisms in women's rights and disability law. It has pioneered community legal education. *[31/32 Dougrie Drive, Glasgow, 0141 634 0313/6900]*

Drumchapel Law & Money Advice Centre is located in Drumchapel, Glasgow. It covers an area of approximately 30,000 to 35,000 and employs 3 solicitors & 3 money advice workers. It undertakes a wide range of housing law matters, particularly associated with benefits and debt. It also has a particular specialism of complex issues concerning benefits and money advice generally. Its staff have written a number of specialist texts. *[Unit 28, 42 Dalsetter Avenue, Glasgow, 0141 944 0507]*

East End Community Law Centre is located in the East End of Glasgow, covering a population of approximately 30,000. It employs 3 solicitors and tackles a wide range of unmet legal needs including housing advice, information and representation. It has developed a particular concern on the rights and needs of prostitutes and has also pioneered legal education in schools. *[1018 Tolcross Road, Glasgow, 0141 778 8887]*

Ethnic Minorities Law Centre is located in central Glasgow and tackles all the unmet legal needs of ethnic minorities in Glasgow, particularly those who may have any language or cultural impediment to access to mainstream services. It covers a wide range of unmet legal needs, including housing law, immigration and discrimination issues. *[41 St. Vincent Place, Glasgow, 0141 204 2888]*

Govan Law Centre undertake works in the Greater Govan area, Glasgow, covering a population of around 30,000. It employs 3 solicitors and tackles a wide range of unmet legal needs with particularly emphasis towards housing law matters. Its staff have written and lectured extensively, particularly in housing law. It has a prolific leafleting campaign and a wide range of training projects. It runs a number of “outreach” surgeries. *[43 Burleigh Street, Glasgow, 0141 440 1687]*

Legal Services Agency has 3 “bases”: its head office in central Glasgow, another full time office in Edinburgh and a “part time” office in Greenock. It, as appropriate, takes referrals from the whole of Scotland but most particularly the former Strathclyde, Edinburgh and Lothians. It employs 9 solicitors and tackles a wide range of unmet legal needs with a particular emphasis on housing law and disablement - particularly dementia and mental health problems. It is one of the leading community legal education organisations in Scotland and has a lengthy publications list including a number in ethnic minority languages. *[134 Renfrew Street, Glasgow, 0141 353 3354]*

Paisley Law Centre employs 4 solicitors and covers Paisley and the surrounding area which encompasses a population well in excess of 50,000. It tackles a wide range of unmet legal needs with particular interest in housing law, disablement and mental health issues. It has an extensive local training programme as well as a well respected publications list. *[65 George Street, Paisley, 0141 561 7266]*

The Law Centre, Dumbarton covers the Dumbarton and surrounding areas. It employs 2 solicitors covering a wide range of unmet legal needs. It undertakes training locally and has had particular involvement in influencing local policies. It runs a number of “outreach” surgeries and has wide contacts in the local community. *[129 High Street, Dumbarton, 01389 733155]*

For further information, a summary document, or the printed Manifesto contact:

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