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Review of Government Legal Services

Report by Sir Robert Andrew KCB

October 1988

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REVIEW OF GOVERNMENT LEGAL SERVICES

REPORT BY SIR ROBERT ANDREW KCB

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October 1988

REVIEW OF GOVERNMENT LEGAL SERVICES

CHAPTER I

INTRODUCTION

I was asked to undertake a review of government legal services with the following terms of reference:

> "to consider:
>
> 1. what legal services are needed by the Government;
>
> 2. how those services can most effectively and economically be provided and organised, taking account of the Government's policies of privatisation and of contracting out;
>
> 3. what changes are needed in the management of legal staff in Government service, including their recruitment, retention, training, deployment and remuneration, so as to make best use of them;
>
> and to make recommendations."

1.2. I began my task in March 1988. Since then I have studied the existing literature on the subject and have interviewed a large number of people, lawyers and non-lawyers, both in the Government service and outside. Many of them supplied me with written evidence. A full list of those who have given me information and views is appended. I am most grateful to all of them for generously giving me their time. I should also like to express my particular thanks to Mr Mike Williams who has acted as my assistant in carrying out the review and whose experience and skill have been of the greatest help; and to Miss Patsy Tong who has done my typing with speed and efficiency. I now submit my report. The conclusions I have reached and the recommendations I make are of course entirely my own responsibility.

Background

1.3. The immediate origins of the review lay in concern expressed by the Law Officers during 1987 at the state of the Government's legal services. They argued that because salaries were substantially lower than in the private sector the Government was failing to attract and retain sufficient lawyers of good quality to carry out the necessary work of providing legal advice, drafting legislation and prosecuting offenders. In particular, they were alarmed at the loss of experienced officers who could not be replaced, the heavy burden which was being put on the remaining staff and the consequent adverse effects on morale and efficiency. The position was being made worse by a heavy legislative programme and the increasing use of the process of judicial review to challenge the Government's decisions in the courts. The recently established

Crown Prosecution Service presented a special problem in that it was nearly 30% understrength and losing experienced staff at a disturbing rate. Departmental Ministers shared these concerns and supported the Law Officers' plea for urgent action to improve the pay of government lawyers. It was recognised, however, that pay was only part of the problem and that a wider review was needed.

1.4. The issues raised in my terms of reference are not new. The way in which legal services are provided for central government has developed over the years in a somewhat haphazard way, which owes more to history than to logic*. The office of Treasury Solicitor dates back to the middle of the 17th century. During the following centuries a number of Government Departments acquired legal officers, while others were content for the Treasury Solicitor to act for them. The office of Parliamentary Counsel, responsible for the drafting of legislation, dates from 1869, and the office of Director of Public Prosecutions from 1879. The head of the Lord Chancellor's Department was appointed in 1885 and the Foreign Office has had a legal adviser since 1876, although the Law Officers did not acquire their staff until 1931 and the post of Home Office legal adviser was not established in its modern form until 1933.

1.5. During the past 100 years or so the arrangements for the provision of legal services have been scrutinised on a number of occasions. Two themes recur in these examinations: the question of whether the Government's legal services should be organised on a centralised or de-centralised basis; and the difficulty of recruiting good lawyers to work for the Government. Because these themes are so close to the heart of the present review, it is worth summarising the findings of some of the previous reports.

1.6. In 1875 a committee under Sir George Jessel, Master of the Rolls, was set up to examine the legal business of government. It concluded that although there should not be a single office for the conduct of all government legal business, the departmental solicitors should have a common head in the form of the Treasury Solicitor. Legal staff in Departments were for the most part to be employed on a non-established basis, in the hope that this would encourage transfers between the government service and the private sector. That hope was not fulfilled, but legal staff did not achieve established status until the end of the First World War. During the 1920s and 1930s arguments about whether there should be a central legal department to handle litigation and conveyancing were pursued by successive Treasury Solicitors but resisted by the Treasury. In the years before the Second World War recruitment was causing considerable difficulties, and in 1944 a committee was set up under Sir Alan Barlow, Second Secretary at the Treasury, to consider the situation which would

*In the following summary I have drawn on a useful article by Gavin Drewry, Reader in Social Administration in the University of London, published in Public Administration, Spring 1981, under the title "Lawyers in the UK Civil Service".

exist after the War. It recommended improvements in salaries to give senior lawyers parity with administrators (to the indignation of many of the latter) and the creation of an advisory committee chaired by the Treasury Solicitor to co-ordinate the recruitment and promotion of lawyers.

1.7. The Priestley Royal Commission on the Civil Service (1955-56) concluded that lawyers recruited into the Civil Service should be paid on a basis of fair comparison with outside earnings. The Fulton Committee in the mid-1960s again dwelt on the problem of recruiting good quality staff in a competitive market and again addressed the problem of centralisation, concluding that the Treasury Solicitor should be designated as head of the Legal Service, with responsibility for the central management of lawyers. But although the desirability of centralising conveyancing and litigation was accepted, the Committee rejected a proposal that all legal branches should be placed under the Treasury Solicitor, stressing the importance of Departments retaining control of their legal advisory services and of the interplay between departmental lawyers and administrators. Centralised management did not become a reality mainly because the Lord Chancellor's Department did not wish to participate in such a scheme and the title of Head of the Legal Service was not adopted. Nevertheless, the Fulton Committee stimulated discussion about the role and status of specialists in the civil service, and this continuing debate forms part of the background to the present review.

1.8. The argument over centralisation was given a new twist with the creation of large new Departments in 1970, including the Department of Trade and Industry and the Department of the Environment. Some of the components of the new Departments had had their own legal staffs, while others had relied on the Treasury Solicitor. There was disagreement about what should happen in future and Sir Edmund Compton was asked to resolve the problem. His report in 1971 recommended a compromise: he endorsed the view that in Departments where legal advice was of continuous importance lawyers should be integral members of the departmental team, while in Departments where legal matters were of less importance advice should continue to come from the Treasury Solicitor. Litigation and conveyancing were to be centralised under the Treasury Solicitor, who was to be head of a Legal Career Service, with a collective system of central management. The Law Officers' Department was to remain as a small secretariat, staffed largely by secondment from other Departments. These recommendations were generally accepted and form the basis of the present arrangements. (Compton was not required to consider the Lord Chancellor's Department, Parliamentary Counsel's Office, prosecution arrangements, the Foreign and Commonwealth Office or the position in Scotland and Northern Ireland.)

Scope of Present Review

1.9. I have interpreted my terms of reference widely to cover all the legal services needed by central government, but have not included locally-administered services like the magistrates courts, although I have taken evidence from several local authorities to ascertain how they obtain the legal services they require. The present organisation of legal services in Whitehall is complicated and confusing. If one were starting with a clean sheet one could probably devise a simpler and tidier model; but that is not the position. I have not thought it appropriate to address the question of whether there should be a single Ministry of Justice on the lines favoured by many other countries; but I have considered the relationship between the Law Officers, the Treasury Solicitor's Department and the operating Departments and the case for more central management of the lawyers employed by government. Because the Crown Prosecution Service has only recently been established as a result of lengthy consideration of a Royal Commission recommendation, I have not thought it right to question either the principle of having such a service or the model on which it has been organised; but I have addressed other issues, including the staffing problem.

1.10. I have concentrated on England and Wales, where the most serious problems of recruitment and retention have been encountered; but I have visited Scotland and Northern Ireland during the course of my review and deal with the situation there in a separate chapter. I also deal separately with the Foreign and Commonwealth Office which is in a rather different position from other Government Departments.

1.11. Before embarking on the body of my report I should mention a problem of definition. There is no single and generally accepted term to describe the lawyers employed in central government. Within Whitehall the term "Government Legal Service" is confined to England and Wales and includes some lawyers (eg solicitors serving the Metropolitan Police) who are not part of central government. The "Legal Groups" represent a more precise classification, but exclude the staff of Parliamentary Counsel's Office and the Crown Prosecution Service, while the term "Legal Career Service" excludes the Lord Chancellor's Department and Scotland and Northern Ireland. As a convenient piece of shorthand I propose for the purpose of this report to use the phrase "Government Legal Service" in a rather loose sense to include all lawyers employed in central government. Later in the report when dealing with managerial issues it will be necessary to be more precise. Another piece of shorthand is the use of male gender pronouns in preference to the rather cumbersome alternatives.

CHAPTER II

LEGAL SERVICES NEEDED BY THE GOVERNMENT

2.1. The first of my terms of reference invites me to consider what legal services the Government needs. In some respects the legal services required by central government are similar to those required by other large organisations. The Government employs staff, purchases goods and services, buys and sells property, raises and spends money, enters into contracts and engages in a wide variety of activities capable of giving rise to disputes which, if not resolved, may lead to legal proceedings. In these fields it needs access to legal advice and services, such as conveyancing and litigation, in exactly the same way as any other large organisation.

2.2. But this is only part of the story. The Government's activities go far wider than those of any commercial or industrial organisation. Its powers bear on the community as a whole and it is concerned with issues of public as well as private law. Government operates largely through the use of legal powers, within a framework defined by Parliament and in the glare of constant publicity. Its decisions and actions may raise fundamental issues of political power, personal liberty or national security. They may also, if not properly handled, bring the Government into conflict with Parliament and the Judiciary. Moreover, government responsibilities include functions which have no parallel elsewhere, such as the promotion of Parliamentary legislation, the administration of justice, the conduct of international relations and the provision to the public of a number of services of a regulatory nature. The legal services needed by the Government, therefore, go wider and, because they involve the public interest and constitutional issues, in a sense deeper than those required by other bodies.

2.3. Thus, the legal component of the work of government is both very large and of the first importance. Ministers require on a regular basis advice on a wide range of policy issues with legal implications, from the privatisation of public assets to planning appeals and immigration, in the knowledge that their decisions and actions may well be challenged in the courts. New policies have to be implemented by legislation, necessitating a heavy programme of Parliamentary Bills often of great complexity and controversial in character. The law needs to be kept under review and reformed where necessary. There is a steady stream of civil litigation varying from major commercial deals to minor personal injury claims; and of conveyancing work varying from large property transactions to individual houses. Those who contravene the law must be punished: the prosecution of offenders is an important area of activity, involving not only the Crown Prosecution Service but Departments like Inland Revenue and Customs and Excise. There are judicial appointments to be made, courts to be administered and services to be provided to the

public on such matters as land registration, fair trading and the protection of those unable to manage their own affairs. Intergovernmental relations must be conducted within a framework of international law.

2.4. For the purpose of this review I propose to consider the legal services needed by the Government under the following headings:

a. legal advice

b. preparation of legislation

c. civil litigation

d. conveyancing

e. criminal prosecution

f. administration of justice

g. services to the public

h. international affairs

i. law reform.

2.5. It is difficult to see how any of these services can be dispensed with. It may be that some of them could be reduced in volume; but in fact the trend seems to be in the opposite direction. For example, if there were less legislation it would probably be of better quality; but successive governments have found it impossible to restrict the flow of Bills. The legislative programme seems to increase inexorably in both size and complexity and the only effective constraint is that of Parliamentary time. The present Parliamentary session has seen the Local Government Finance Act, which amounted to 152 Clauses and 13 Schedules and the Education Reform Act, which ran to 236 Clauses and 13 Schedules. After the heavy legislative programme of the post-War years the average number of pages of new statutes (excluding Consolidation Acts) passed annually dropped in the 1950s to 745; but since then it has risen progressively to an average of 1,204 in the 1960s, 1,466 in the 1970s and to over 2,000 in 1986 and 1988. (There was a reduction in 1987 - election year.) Much recent legislation has been controversial as well as complex and this has no doubt been a factor in the increasing frequency with which government decisions are challenged in the courts. The number of cases of judicial review rose from 491 in 1980 to 1,169 in 1985 and in 1987 reached 1,529. The burden of litigation in which the Government is engaged is formidable. For Michaelmas Term 1988 the Treasury Solicitor's List of Cases for Hearing includes 102 cases in the Crown Office List, 29 for the Court of Appeal and 5 for the House of Lords. The need to absorb the far-reaching law of the European Communities and the complex jurisprudence of the European Court of Human

Rights has added new dimensions to the work of government lawyers; and there will be further developments with the advent of the Single Market in 1992. More generally, society seems to be becoming increasingly litigious, partly no doubt as a result of increased prosperity. The growth in economic activity has increased the number of takeovers and mergers, while developments in the City have led to a growth of regulatory systems. The growth in crime has increased the load on the courts and the prosecution system. Some of these developments have added to the work of lawyers generally; others are of particular relevance to the government. On any reckoning, it is clear that the demands of government for legal services have increased greatly in recent years and show no sign of diminishing.

2.6. That does not mean that all the services must necessarily be provided within government. In the next chapter I describe in more detail the existing arrangements for handling the Government's legal business and in Chapter IV go on to consider the extent to which work might be undertaken by the private sector.

CHAPTER III

PRESENT ARRANGEMENTS

3.1. I set out below a brief account of the way in which legal services are at present provided to the Government. The Annex to the Chapter contains a short statement about the legal work of each of the main Departments and shows the number of legal staff at the various levels in each Department.

Legal Advice

3.2. Legal advisory services are mainly provided by lawyers directly employed by government. There is, however, some variation in the organisational arrangements for the provision of these services. Most of the Departments which make extensive use of legal services (the Home Office (HO), Department of Health (DH), Department of Social Security (DSS), Ministry of Agriculture, Fisheries and Food (MAFF), Inland Revenue (IR), Customs and Excise (C&E), Welsh Office (WO), Department of the Environment (DOE), Department of Trade and Industry (DTI) and the Health and Safety Executive (HSE)) have their own legal departments on which they rely almost entirely for legal advice. The remaining Departments rely on the Treasury Solicitor's Department for these services; but several (Ministry of Defence (MOD), Department of Education and Science (DES), Department of Energy (DEn), Department of Transport (DTp), Department of Employment (DEm)) have outstations of Treasury Solicitor's lawyers located within them. I have referred to these Departments later in my report as "the smaller Departments" to reflect the fact that they have less legal work than other Departments of State. One or two smaller bodies with particular legal components in their work, such as the Office of Fair Trading and the Criminal Injuries Compensation Board, have their own in-house lawyers.

3.3. From time to time government needs legal advice of a highly specialised sort and out of the normal run of government business. When such advice is not available from in-house lawyers Departments seek it elsewhere. The most common sources of outside advice are the so-called Treasury Counsel (ie practising Barristers who are retained on a full-time basis as Counsel for the Crown). However, when advice is needed on major commercial enterprises, Departments consult law firms in the private sector who have the necessary expertise.

Preparation of Legislation

3.4. Virtually all primary legislation is drafted by lawyers in the Office of Parliamentary Counsel. The exceptions are minor Private Bills, Private Members' Bills and occasionally Consolidation Bills, the drafting of which is sometimes done by private sector "Parliamentary Agents", some of whom are former Parliamentary Counsel. The draftsmen in Parliamentary Counsel's Office do their work in accordance with instructions to Counsel which are normally drafted

in the Department sponsoring a particular Bill by the departmental advisory lawyers. The exception to this is in Inland Revenue where the drafting of instructions to Counsel is done by administrators in the technical and policy divisions.

3.5. Subordinate legislation, ie regulations, statutory instruments, Orders in Council etc, are normally drafted in Departments by the advisory lawyers. Very occasionally such subordinate legislation is drafted by Parliamentary Agents or other outside lawyers.

Civil Litigation

3.6. The litigation divisions of the Treasury Solicitor's Department handle most government litigation in England and Wales, the exceptions being MAFF, Customs & Excise and Inland Revenue whose legal departments do their own litigation and the Department of Social Security where much of the litigation in relation to war pensions, social security and occupational pensions is done by the Department's own legal staff. In all cases recourse is had to Treasury Counsel and other private barristers for advice on cases and for advocacy in the higher courts. Litigation work constitutes a very heavy burden for government lawyers and Treasury Counsel.

Conveyancing

3.7. The Treasury Solicitor's Property Division is responsible for most government conveyancing work but, with the large scale disposal of prison officer housing and Ministry of Defence property, the division has been compelled to contract out substantial amounts of work, especially in parts of the country at some distance from London.

Criminal prosecution

3.8. Since its creation in 1986 the Crown Prosecution Service (CPS) has assumed the main responsibility for prosecuting offenders in England and Wales, with the Serious Fraud Office taking responsibility for prosecutions in major fraud cases. However, several Departments - DSS, DTI, IR, C&E and MAFF - usually conduct their own specialist prosecution work and call on the services of the CPS only rarely. Much of this prosecution work is in practice handled by executive staff working as "solicitor's clerks" under the supervision of departmental lawyers. This includes appearances in magistrates courts and also appearances in chambers applications in the High Court and the Crown Court. These rights of audience for non-lawyers are provided either in relevant statutes, eg the Customs & Excise Management Act, or by agreement or acquiescence of the Judges and Masters concerned. By contrast, CPS prosecutions in magistrates courts must be conducted by Crown Prosecutors themselves (ie qualified lawyers), and the powers of the CPS to delegate even case screening work to executive staff has been challenged and is currently subject to judicial review. On the other hand, departmental lawyers in specialist prosecutions are, like Crown Prosecutors, excluded from rights of audience in the Crown Court and higher courts and have therefore to engage Counsel to prosecute cases in these courts.

3.9. I return to this vexed question of rights of audience later in my report (Chapter VII).

Administration of Justice

3.10. The administration of justice is principally the responsibility of the Lord Chancellor. It includes the making of judicial appointments, the administration of court and legal services (including the legal aid scheme) and the promoting of law reform. Responsibility for this work lies mainly with the Lord Chancellor's Department, except that the administration of the magistrates court service is done in the Home Office and that Department also has the main responsibility for promoting criminal as opposed to civil law reform.

Services to the Public

3.11. Several bodies have as their raison d 'être the provision of specialist legal services directly to the public. Almost all the work of such bodies involves the law in one respect or another, but the bulk of it is performed by administration group staff usually under the supervision of lawyers. I visited six bodies in this category and these are described briefly in the following paragraphs.

3.12. **The Land Registry** is responsible for the registration and transfer of title to land throughout England and Wales.

3.13. **The Charity Commission's** function is to act as official custodian for charities by maintaining a register of charities and promoting the effective use of charitable resources.

3.14. **The Office of Fair Trading** administers the 1973 Fair Trading Act and other statutes in the area of competition, including restrictive trade practices and consumer credit.

3.15. **The Public Trust Office** carries out the functions previously performed by the Public Trustee Office and also the administrative work of the Court of Protection and the Court Funds Office. These functions include executorship and administration of the estates of deceased persons and the management of the affairs of persons suffering from mental disorder.

3.16. **The Official Solicitor's Office** provides confidential advice to the Supreme Court, and represents minors, persons of unsound mind and persons committed for contempt of court. It also handles judicial and other trusteeships and the administration of the estates of the deceased.

3.17. **The Criminal Injuries Compensation Board** is responsible for making payments from public funds to the innocent victims of violent crime.

International Relations

3.18. Legal advice to government on international relations is provided mainly by legal advisers in the Foreign and Commonwealth Office with whom I deal in Chapter X.

Law Reform

3.19. The law of the land, both civil and criminal, is in constant need of revision, clarification and reform, and the Government looks chiefly to the Law Commission to meet this need. The impetus for revision and reform of the law comes from a number of sources. The Law Commission itself has a rolling programme of reforms and revisions which includes major items such as the codification of the criminal law and consolidation work. Secondly, individual Departments, either directly or through the Lord Chancellor, make proposals for reform of the law in the area for which they are responsible. Thirdly, outside bodies with an interest in law reform, such as the Law Society, academic lawyers etc, recommend subjects for review to the Law Commission.

3.20. The Law Commissioners themselves, though appointed by the Lord Chancellor, are independent of Ministers and it is their task to determine the emphasis of the work. They tend to be specialists in various aspects of the law and each has a team of civil service lawyers working to him. The teams conduct the necessary research, formulate proposals and draft reports. They are mainly lawyers on secondment from the Lord Chancellor's Department but are assisted by research assistants who are young law graduates working at the Commission for periods of up to three years. In addition, there is a group of parliamentary draftsmen seconded from the Office of Parliamentary Counsel whose task it is to draft appropriate Bills to accompany the Law Commission's proposals. Implementation of the recommendations of the Law Commission falls either to the Legislation Divisions of the Lord Chancellor's Department or to the Department with responsibility for the subject matter. The Law Commission attaches much importance to the need to provide those responsible for implementation with appropriate draft legislation.

3.21. The main responsibility for the state of the criminal law rests with the Home Secretary who may from time to time put proposals for reform to the Law Commission in the same way as other departmental Ministers. The Home Secretary also from time to time refers particular subjects, such as the law of evidence, to the Criminal Law Revision Committee. This is a Standing Committee which has always been chaired by a senior member of the Judiciary. It is serviced by Home Office lawyers and support staff. I understand that one of the reasons why there have been fewer references to the Committee in recent years has been the shortage of supporting lawyers in the Home Office.

Ministerial Responsibility

3.22. Ministerial responsibility for government legal services appears to have developed piecemeal rather than in accordance with any coherent strategy. The Law Officers, whose own Department provides a kind of private office support service for them, are the Government's principal legal advisers, while the Lord Chancellor is primarily responsible for the administration of justice and associated functions. The Treasury Solicitor and the Director of Public Prosecutions report direct to the Law Officers and to that

extent the Law Officers are responsible to Parliament for all work that falls under the formers' jurisdiction, including the Crown Prosecution Service, as well as for the Serious Fraud Office. Although the Law Officers are responsible for the lawyers in the dedicated divisions of the Treasury Solicitor's Department located in MOD, DES, Energy, Transport and Employment, the Departmental Ministers take responsibility for their work. In other Departments the responsibility for departmental legal staff and their work belongs to the Minister in charge of the Department.

3.23. There is no single Ministerial responsibility for Parliamentary Counsel's Office, perhaps not surprisingly in view of its unique position at the interface between the executive and the legislature. For administrative and financial management purposes the Office is part of the Office of the Minister for the Civil Service and in that sense comes under the Prime Minister. However, individual Counsel are answerable to the Ministers of the Departments whose Bills they are engaged on for matters arising from those Bills, although they can also consult the Attorney General on professional matters; and the Lord President is responsible for matters concerning the Parliamentary programme.

3.24. For those Departments providing direct services to the public (Paras 3.11-3.17) the picture is also complex. The Land Registry comes under the overall responsibility of the Lord Chancellor, as do the Public Trust Office and Official Solicitor's Office. The Charity Commission is headed by a Commissioner but Ministerial responsibility lies with the Home Secretary. The Office of Fair Trading comes under the wing of the Secretary of State for Trade and Industry and the Criminal Injuries Compensation Board under that of the Home Office.

ANNEX TO CHAPTER III

THE LEGAL WORK OF DEPARTMENTS AND STAFF NUMBERS AT END JULY 1988

Treasury Solicitor's Department

The Treasury Solicitor's Department provides legal services to most other Government Departments. It provides legal advice to Departments which do not have their own advisory lawyers and litigation and conveyancing services to almost all Departments. There is also a division dealing with European matters. Five Departments have outstations of advisory lawyers from the Treasury Solicitor's Department located within them (MOD, Employment, DES, Energy and Transport). The Treasury Solicitor's Department also deals with Bona Vacantia (ie the administration of the estates and property rights of those who die intestate and of dissolved companies etc), and the Treasury Solicitor, as Queen's Proctor, deals with litigation in matrimonial suits and legitimation cases. Also within the Treasury Solicitor's Department is situated the Statutory Publications Office. The current complement of lawyers in the Treasury Solicitor's Department is 175 of which 163 posts are filled. The breakdown by grade is as follows, with the staff-in-post figures shown in brackets.

Grade	No	(SIP)
1	1	(1)
2	1	(0)
3	9	(10)
5	37	(37)
6	59	(57)
SLA/7) LO)	68	(58)
	175	(163)

Treasury Solicitor's Department Outstations

Ministry of Defence

There are five advisory lawyers in MOD's outstation: a grade 4, 3 Grade 6s and a Grade 7. The Department has relatively little legislative work for a Department of its size, but the lawyers advise on the whole range of MOD matters. These include constitutional and prerogative issues in relation to the use of the Armed Forces, civil legal matters in connection with MOD's activities as an employer, purchaser of goods and services and land owner, and implications for MOD of the Government's international rights and obligations under various treaties. On the Procurement Executive side the emphasis is on contract advice, including that on foreign and international procurement law, and on dealing with claims and indemnities. (Advice on Service law and discipline is provided to MOD by the Chief Naval Judge Advocate for the Royal Navy and Royal Marines, the Director of Army Legal Services for the Army and Director of RAF Legal Services for the RAF. These are not counted for the purposes of this review as part of the Government Legal Service.)

Department of Education and Science

The DES outstation consists of 6 advisory lawyers: one Grade 3, 2 Grade 5s and 3 Grade 6s. They are mainly engaged on the drafting of instructions for Parliamentary Counsel and giving of advice and assistance on the passage of the Department's Bills through Parliament. They also draft regulations and Orders under the Education and other Acts. More generally they advise and assist on all legal matters in which the Department has an interest, both those arising under the Education Acts and those arising in other areas of law such as employment law, EC law and human rights. The advisory lawyers in the outstation also work closely with TSD litigation lawyers on cases involving the Department.

Department of Employment

This Department has a TSD outstation of 16 advisory lawyers: one Grade 3, 4 Grade 5s, 6 Grade 6s, and 5 in the SLA/LO range. The Legal Division provides the Department with similar advisory and legislative services to those provided in the DES. The subject matter in the Department of Employment includes trade union and industrial relations legislation, employment and training legislation, discrimination in employment, issues relating to health and safety at work, industrial training and employment protection.

Department of Energy

The Department's Legal Division is a TSD outstation of 11 lawyers: 1 Grade 3, 4 Grade 5s and 6 in the Grade 6 /SLA range. The lawyers perform advisory and legislative functions in Energy matters similar to those provided by the DES and Employment outstations on education and employment matters. In recent years the emphasis has been on privatisation, especially Gas and Electricity, but the Legal Division has also been involved in advisory work on Sizewell, the aftermath of Chernobyl, problems relating to offshore oil and gas and coal mining subsidence.

Department of Transport

The Department of Transport has a TSD outstation of 15 advisory lawyers (14 in post at the time of writing). It is headed by a Grade 3 and has 5 Grade 5s, 3 Grade 6s and 6 in the SLA/Grade 7 range. They provide legislative and advisory services on all Transport subjects: matters arising from road contruction (land acquisition, compulsory purchase); vehicle and operator licensing and bus deregulation; shipping and aviation issues; and EC and other international transport matters.

Lord Chancellor's Department

The Lord Chancellor's Department exists to enable the Lord Chancellor to discharge his responsibility for promoting general reform of the civil law, for the procedure of the civil courts and for the administration of the Supreme Court (Court of Appeal, High Court and Crown Court) and County Courts in England and Wales and for the legal aid scheme. In addition the Lord Chancellor is

responsible for advising the Crown on the appointment of judges and certain other officers, and is himself responsible for the appointment of certain members of the judiciary and magistrates. The Lord Chancellor's Department also includes the Official Solicitor's Office, which is responsible for the administration of the affairs of those unable to do this themselves, and the Public Trust Office, whose main function is to undertake the business of executorship and trusteeship for estates for which there is no private provision. The Lord Chancellor's Department's present complement of lawyers is 103 and all but 7 of the posts are filled. The breakdown by grade is as follows.

Grade	No	(SIP)
1	1	(1)
2	2	(1)
3	9	(7)
4	1	(1)
5	14	(13)
6	30	(30)
SLA/7) LO)	46	(43)
	103	(96)

Law Officers' Department

The Law Officers' Department is in essence the Chambers of the Attorney General and services both the Attorney General and the Solicitor General who are the chief legal advisers to the Government and are ultimately responsible for all Crown litigation and prosecutions. Including the Legal Secretary (Grade 2) there are 10 civil service lawyers in the Department in the following grades. All are on secondment from other Departments.

Grade	No	(SIP)
2	1	(1)
5	4	(4)
6	5	(5)

Crown Prosecution Service

The Crown Prosecution Service was established in 1986 as a new independent service to handle the prosecution of criminal proceedings in England and Wales. It is headed by the Director of Public Prosecutions. The service has a headquarters in London and 4 regions divided into 31 areas. Its staffing position is as follows.

Grade	No	(SIP)
1	1	(1)
2	1	(1)
3	5	(5)
4	9	(9)
5	53	(51)
6	137	(131)
7 (SCP)	515	(474)
Crown Prosecutor	1067	(663)
	1788	(1335)

Serious Fraud Office

The Serious Fraud Office was created under the 1987 Criminal Justice Act to investigate and prosecute cases of serious or complex fraud under the Act. It is headed by a Grade 2 lawyer and has a total lawyer complement of 26 but 4 of the posts were vacant at the time this report was written. The breakdown by grade is shown below.

Grade	No	(SIP)
2	1	(1)
3	1	(1)
5	6	(6)
6	18	(14)
	26	(22)

Office of Parliamentary Counsel

Parliamentary Counsel are responsible for the drafting of government Bills, except for those exclusively relating to Scotland, and for advising Departments on all aspects of Parliamentary procedure. There are 30 Parliamentary Counsel at present, graded as follows.

Grade	No	(SIP)
1	1	(1)
2	9	(9)
3	5	(5)
5/6/7*	15	(15)
	30	(30)

* Junior Counsel are not graded in the normal way for this range in the Open Structure.

The Law Commission

The Law Commission's function is to keep the law under review with a view to its systematic development and reform (Section 3(1) of the Law Commission Act 1965). It is headed by five Commissioners (who are lawyers but not themselves part of the Government Legal Service) and employs a total of 13 lawyers. In addition there are five Parliamentary Counsel seconded from the Office of Parliamentary Counsel and thirteen research assistants, who are young law graduates employed for limited periods of normally one year. The grade breakdown of the thirteen lawyers is as follows:

Grade	No	(SIP)
4	1	(1)
5	1	(1)
6	4	(4)
SLA/7	5	(5)
LO	2	(2)
	13	(13)

Ministry of Agriculture Fisheries and Food

MAFF is one of the three Departments whose legal department handles not only the advisory work but also litigation and enforcement. It locks to the Treasury Solicitor's Department only for conveyancing work. The advisory and Parliamentary group of the legal department is concerned with horticultural, animal health and land use matters in both the domestic and European context. The litigation and enforcement group is responsible for all legal proceedings involving the Ministry in the UK and in Europe and other parts of the world. The MAFF legal department also services the Intervention Board for Agricultural Produce, the Forestry Commission and the Welsh Office Agriculture Department. Its complement of lawyers is currently 38½ as shown in the table below.

Grade	No	(SIP)
2	1	(1)
3	2	(2)
5	8½	(8½)
6	16	(15)
7	11	(9)
	38½	(35½)

HM Customs & Excise

HM Customs & Excise, like MAFF, has a Solicitor's Office which provides all the Department's legal services except conveyancing. The Solicitor's Office's major role is to advise the Department on matters concerned with the collection of VAT and excise duties and customs duties on behalf of the EC. The Solicitor's Office is also responsible for the enforcement of prohibitions and restrictions on imports and exports. Though responsible to Treasury Ministers, the Commissioners of Customs & Excise are appointed by Letters Patent and derive many of their powers directly from statute, especially the Customs & Excise Management Act 1979 and the VAT Act 1983. The Solicitor's Office has a complement of 83 legal posts of which 68 are currently occupied. The grade breakdown is as follows.

Grade	No	(SIP)
2	1	(1)
3	2	(2)
5	12	(12)
6	26	(26)
SLA/7) LO)	42	(27)
	83	(68)

Inland Revenue

The Inland Revenue is unusual in three respects. Non-lawyers throughout this big Department have in the ordinary course of their duties regularly to interpret and apply the law (not just tax law) and conduct legal proceedings before courts and tribunals - in particular, Inspectors of Taxes and Valuation Officers are highly trained and expert in their own fields of law. Second, although the Department's lawyers are consulted, it is the administrators responsible for policy who instruct Parliamentary Counsel upon the drafting of primary legislation. Third, it has its own separate solicitor in Scotland. The Solicitor of Inland Revenue and his Scottish colleague provide the Department with all legal services (as happens in MAFF and HM C&E). The Department has very little conveyancing work but the small amount of it arising from bankruptcy and winding-up cases is handled within the Solicitor's Office. The functions of the two Solicitors' Offices are numerous: they advise the Department on all legal matters, including European and international matters, arising in respect of the duties and taxes for which Inland Revenue is responsible, and on the preparation of primary legislation. Their members draft secondary legislation. Both Offices have a major litigation role, on the one side establishing liability to tax through proceedings before tribunals and all higher courts (including dealing with applications for judicial review) and on the other taking action in the courts to recover tax which is due. In England and Wales, but not in Scotland, the Department's lawyers advise upon and conduct criminal prosecutions for offences committed in relation to tax; they also give advice to the Department and conduct litigation in relation to the valuation of land for rating and taxes upon capital. The complement of lawyers in London is 58 and in Edinbugh 5. Nine of the posts are currently vacant. The grade breakdown is:

Grade	No	(SIP)
2	1	(1)
3	3	(3)
5	14	(14)
6	24	(20)
SLA/7) LO)	21	(16)
	63	(54)

Department of the Environment

The role of the DOE's legal department is to advise Ministers and officials on the legal aspects of a wide range of subjects, to assist with the preparation of primary legislation and to draft subordinate legislation. The range of subjects embraces policy on housing, local government, town and country planning, water supply and sewerage, environmental conservation and preservation (including ancient monuments), as well as environmental and other aspects of EC legislation. Litigation and conveyancing for the Department is conducted by the Litigation and Property Divisions of the Treasury Solicitor's Department though departmental lawyers are involved closely in cases of high political importance or requiring special knowledge of departmental practice or of the legislation for which the Department is responsible. Similarly, prosecutions on behalf of the Department are handled by the Crown Prosecution Service or directly by inspectors from the Department's Pollution Inspectorate. The legal department currently has a complement of 47 lawyers and a staff-in-post of 40½. The breakdown is shown below from which it will be clear that more than half the Grade 6 posts are currently vacant; but those in the grades below are not yet ready for promotion to Grade 6.

Grade	No	(SIP)
2	1	(1)
3	2	(2)
5	11	(11)
6	20	(9)
SLA/7/LO	13	(17½)
	47	(40½)

Department of Health and Social Security

(The old DHSS was split into two Departments, the Department of Health and the Department of Social Security, during the course of the review and the arrangements for the provision of legal services had not been finally settled when this report went to print. What follows therefore describes the legal services in the DHSS in its single form).

The DHSS has two distinct major functions: the administration of the National Health Service and the provision of personal social services on the one hand; and the administration of the National Insurance and Social Security benefit schemes on the other. The Solicitor's Office services the Department in both these major functions. On health and personal social services it provides advice to Ministers and officials, assists in the preparation of primary legislation and drafts subordinate legislation. The subject matter includes international (especially European) aspects of the Department's activities, medicines, licensing etc. Litigation work on this side of the Department is conducted by the Litigation Divisions of the Treasury Solicitor's Department but lawyers from the Solicitor's Office handle appeals and prosecutions under the Medicines Act.

On the Social Security side, in addition to providing advice to Ministers and the Chief Adjudication Officer and assisting in the preparation of legislation on questions of occupational and personal pensions, the Solicitor's Office

also conducts legal proceedings in the courts for the recovery of overpaid benefit and handles other litigation matters relating to Social Security.

The Solicitor's Office has a current complement of 71 lawyers including three in each of the four regional centres, Birmingham, Bootle, Cardiff and Leeds. There are 62 staff-in-post. The grade breakdown is as follows.

Grade	No	(SIP)
2	1	(1)
3	2	(2)
4	1	(1)
5	11	(11)
6	22	(22)
SLA/7/LO	34	(25)
	71	(62)

Home Office

The Legal Adviser's Branch at the Home Office advises the Home Secretary on the subjects for which he is responsible, drafts instructions to Counsel for primary legislation and drafts subordinate legislation. The range of subjects is very wide but the main ones are: the criminal law and the administration of criminal justice, the treatment of offenders (including the probation and prison services), the police, immigration and nationality (including extradition), community relations, public safety (including fire and civil defence services), questions of national broadcasting policy and a number of licensing matters ranging from theatres to firearms. The Branch also provides legal advisory services to the Northern Ireland Office. Litigation on judicial review and other cases is conducted on behalf of the Home Office by the litigation divisions of the Treasury Solicitor's Department and similiarly conveyancing, eg of prison officer quarters, is done by the property division of the TSD. The Legal Adviser's Branch has a complement of 16 lawyers. The grade breakdown is as follows:

Grade	No	(SIP)
2	1	(1)
3	2	(2)
5	5	(5)
6	4	(3)
7	4	(2½)
	16	(13½)

Criminal Injuries Compensation Board

The Board is at present an extra-statutory body charged with the responsibility to make payments from public funds on an ex gratia basis to the innocent victims of violent crime. The Home Secretary and Secretary of State for Scotland exercise general oversight of the Board but it and its Chairman are independent in day-to-day operations. The Board's staff includes 13 lawyers, 11 in London and 2 in Glasgow. They are employed by the Home Office but are not part of that Department's Legal Adviser's Branch. Their grade breakdown is as follows:

Grade	No	(SIP)
5	1	(1)
6	1	(1)
7	12	(11)
	14	(13)

Department of Trade and Industry

The DTI Solicitor's Office provides legal services to all parts of the Department including ECGD, the Companies Registration Office and the Patent Office. The work is mainly legislative, advisory and enforcement work. The Treasury Solicitor's Department provides civil litigation and conveyancing services as required and leading firms of private solicitors are engaged to act as agent in cases requiring specialist expertise such as the privatisation programme. The DTI requires legislative and advisory services in a varied range of subjects. On the trade side there are matters of international, including European, commercial law; the law, both national and international, on competition, consumer credit, consumer protection and trading standards; company law including insurance, bankruptcy and insider dealing. The Department's investigation, prosecution and enforcement functions under various regulatory Acts such as the Companies Act and the Financial Services Act are also the responsibility of lawyers in the Solicitor's Office. On the industry side the subjects include selective financial assistance to industry, matters arising from various Industry Acts and in the broad fields of science and technology, space, posts and telecommunications.

The Solicitor's Office has a current complement of 69½ lawyers but 6 of the posts are vacant. The breakdown is as follows.

Grade	No	(SIP)
2	1	(1)
3	3	(3)
4	1	(1)
5	18	(18)
6	29	(24)
7/SLA/LO	17½	(16½)
	69½	(63½)

The Welsh Office

The Legal Division of the Welsh Office provides legal advice to Ministers and administrators on an unusually wide range of subjects covering Welsh aspects of the functions of many of the main Whitehall Departments, notably DOE, MAFF, the Department of Health, the DTI and the DES. Welsh Office lawyers form part of Bill teams for most major primary legislation in order to protect the special interests of Wales. The legal division also provides legal, including litigation, services to the nine District Health Authorities in Wales. It is a small division with a current complement of 15 lawyers and a staff-in-post figure of 12½. The grade distribution is as follows.

Grade	No	(SIP)
3	1	(1)
5	2	(2)
6	8	(6½)
7/SLA/LO	4	(3)
	15	(12½)

Departments providing services to the public

The functions of the six bodies in this category are given in Paragraphs 3.11-3.17 of the report. Their staffing profiles are shown below (except for the Criminal Injuries Compensation Board which has been dealt with above). The majority of the Land Registry staff are based out of London in District Offices. In the Charity Commission 15 of the legal posts are in London and 8 in the Liverpool Office. All the lawyers in the Office of Fair Trading, the Public Trust Office and the Office of the Official Solicitor are in London. It should also be noted that the Public Trust Office and Official Solicitor's Office staff are included in the figures for the Lord Chancellor's Department given above.

Land Registry

Grade	No	(SIP)
2	1	(1)
5	18	(18)
6	18	(16)
SLA/7/LO	73	(66)
	110	(101)

Charity Commission

Grade	No	(SIP)
3	1	(1)
4	1	(1)
5	5	(5)
6	7	(7)
SLA/7/LO	9	(8)
	23	(22)

Office of Fair Trading

Grade	No	(SIP)
3	1	(1)
5	2	(2)
6	5	(5)
SLA/7/LO	3	(1½)
	11	(9½)

Public Trust Office

Grade	No	(SIP)
3	1	(1)
5	1	(1)
6	2	(2)
SLA/7/LO	3	(3)
	7	(7)

Official Solicitor's Office

Grade	No	(SIP)
3	1	(1)
5	2	(2)
6	4	(4)
SLA/7	3	(3)
	10	(10)

CHAPTER IV

IN GOVERNMENT OR OUTSIDE?

4.1. Given that the Government needs a wide variety of legal services and that it is finding difficulty in recruiting enough in-house lawyers to provide them, it may be tempting to conclude that a simple answer lies in putting more work out to the private sector. My terms of reference require me to consider how the services needed can be most effectively provided and organised, and in this connection I am expressly enjoined to take account of the Government's policies of privatisation and contracting out. I have considered the various functions listed in paragraph 2.4 with this in mind.

4.2. My general conclusion is that there is a continuing need for a substantial in-house government legal service. Some of the Government's requirements can undoubtedly be met by the private sector, particularly in those areas where the services in question are similar to those regularly provided for their clients by private solicitors. But there are others where, because of the nature of the work, the skills and experience required and the need for close contact with Ministers and administrators, the service can only sensibly be provided by lawyers located in Government Departments and directly responsible to the Ministers in charge of them. Even where work is put out to the private sector a degree of internal supervision is likely to be required. Moreover, from the comparative figures I have been able to obtain it is clear that as a general rule work is more cheaply performed in government than outside, especially in London. I am confirmed in my general conclusion by the fact that, with the exception of one bank, all the commercial and industrial companies and local authorities which I visited during my review employ their own in-house lawyers, although most of them also put work out to private solicitors to a greater or lesser degree. They justify their use of in-house lawyers on the grounds that they provide a more responsive service at lower cost. (A survey of Company Legal Departments published in July 1988 by Chambers and Partners estimates that the fees charged by outside firms of solicitors are between three and four times the cost of in-house lawyers.) I also understand that it is the general practice of other governments to employ their own lawyers, sometimes (as in the USA) on a very much larger scale than in this country. The balance to be struck between work done in-house and that put out to private practice must remain a matter of judgement. If the Government cannot attract enough lawyers, the work done in-house may have to be restricted and more put to the private sector; but this will carry penalties, not least in terms of cost.

4.3. In so far as work is to be done outside government, I see little scope for "privatisation" in the sense of transferring the work and those who perform it from the public to the private sector, as has been done in the case of the Royal Ordnance Factories

for example. It would be inappropriate for work such as decisions on prosecution, the investigation of serious fraud, advice on judicial appointments or the administration of the courts to be handled other than in government. Departmental legal advisers and the staff of the Treasury Solicitor's Department could I suppose be formed into a large private law firm to provide the Government with advice and to undertake litigation and conveyancing, in the same way as a firm of solicitors does for private clients. Similarly, Parliamentary Counsel's Office could in theory be converted into a private firm to draft legislation for the Government in the same way as Parliamentary Agents now draft private Bills. But even if financial backing was forthcoming for such firms, I would see no advantage in the change, except possibly for the staff concerned who would expect to be paid the higher salaries prevailing in the private sector in London. If the new firms had the Government as their sole client (which would probably be necessary to ensure the required priority) there could be difficulties over the Law Society's rules for partnerships. Even if these were overcome there would be likely to be a deterioration in the standard of service, particularly in the advisory area, if staff were no longer located in the Department and in day-to-day contact with Ministers and administrative colleagues. Higher salaries and the inclusion of a profit element would be likely to make the service more expensive than at present. None of those from whom I took evidence advocated privatisation in this sense.

4.4. "Contracting out" seems a more promising method to pursue. Provided that certain conditions are met, I see no reason why specific transactions, and indeed blocks of work, should not be handed over to the private sector, particularly outside London where even large firms charge fees which are only about half those prevailing in the capital. In some areas this is already happening, either because government does not have the expertise or resources to do the work, or because the private sector is judged to provide a cheaper or more effective service. In the following paragraphs I consider the scope for contracting out the main legal services needed by government. I also deal with some services to the public which are of a quasi-commercial nature and which, though not in my view suitable for privatisation, may be appropriate for executive agency status.

Legal advice

4.5. Generally speaking, I do not believe that the function of providing day-to-day legal advice is one which lends itself readily to contracting out. On some subjects - for example constitutional matters and European Community Law - the main source of expertise lies in government and it would not be easy to get advice elsewhere. If there were a demand, no doubt the big City firms who have staff of the highest quality could build up the necessary expertise; but the price would be high. Much government work is confidential and although outside solicitors are of course accustomed to dealing with their clients' affairs

on a strictly confidential basis, there are matters in the security field, for example, which I believe Ministers would prefer to retain within government. There is also at least a potential risk of conflict between the interests of government and other clients, although I am assured that this can be minimised by the construction of "Chinese walls". But the most important reason for maintaining the advisory function in government is that this enables Ministers to call on legal advisers who are immediately at hand; who are familiar not only with the issue in question but with the Government's general policies and with the procedures of Whitehall and Westminster; and who are used to working on a daily basis with their administrative colleagues so that they are consulted by them at an early stage. The advisers need to be people whom the Minister knows and has confidence in, who can provide continuity and consistency in their advice and who can be relied on to take a broad and objective view of the public interest. It seems to me that for most day-to-day legal business this sort of service can best be provided by in-house lawyers who have made a career in government, dealing with public as well as private law.

4.6. That is not to say that on specific topics it may not be desirable, and indeed necessary, from time to time to look outside for advice. This is already done as a matter of routine when it is judged desirable to seek Counsel's opinion - usually that of Treasury Counsel - on a difficult issue. It has also been done in the case of schemes for the privatisation of public assets, where government lawyers have neither the commercial expertise nor the resources to undertake the very large amount of work involved. City firms of solicitors have therefore been engaged, although the preparation of the legislation has been undertaken in government. These have been essentially one-off operations and it would not have been sensible to build up the necessary skills in government, even if it were possible to do so. There may be other specialist areas in future - for example, questions of intellectual property - on which it will be better to rely on outside advice rather than to try to build up expertise within government. But it has to be recognised that the cost of such advice is high. It is not easy to produce reliable comparative figures, but I understand that a large City firm charges something like £150-£160 an hour for a partner's time. This compares with some £45 an hour for a Grade 5 lawyer in government (including accommodation and other overheads).

4.7. If there were widespread dissatisfaction with the quality of in-house advice, then clearly it would be necessary to reconsider the general policy and to be prepared over a wider field to pay a higher price in order to secure better advice. But this is not the case. One Minister to whom I spoke was critical of the quality of legal advice in some of the smaller Departments; but in general Ministers expressed themselves well pleased with the service they receive from their present advisers and were concerned only that pressure of work and the loss of staff might lead to a deterioration. Except for certain specialist subjects of the sort mentioned above, I conclude that the provision of

advice on an in-house basis is both more effective and more economical than contracting out, provided that the quality of the in-house lawyers can be maintained. In this connection it is worth pointing out that if too much high-grade work were to be contracted out it would create the impression that the Government Legal Service could only be trusted with the lower grade work and this would inevitably have an adverse effect on morale and make it more difficult to recruit lawyers of ability to do the higher grade work which had to remain in government.

Drafting of legislation

4.8. The drafting of Parliamentary legislation is another area of work which I believe is best retained in government. The preparation of a major Bill in such a way that the desired policy on complex matters is conveyed in terms which are both precise and intelligible, as well as being consistent with other legislation, is a highly skilled task. Expertise in this field is acquired only by years of experience, much of it spent assisting a more senior colleague before the draftsman can be put in charge of an important Bill. The work requires not only specialist drafting skill but a knowledge of Parliamentary procedure and continuous contact during the preparation and passage of the legislation with officials both of the instructing Department and of the Houses of Parliament. This sort of expertise simply does not exist outside Parliamentary Counsel's Office; and, although in theory it could be acquired by members of the Bar or by City solicitors, the work is not likely to be very attractive to them. A major Bill can tie up two draftsmen for the best part of a year in its preparation and Parliamentary passage, and over this period requires the continual meeting of tight deadlines. It is difficult to see how a lawyer in private practice could give the work the sort of attention required. Such attempts as have been made in recent years to draft Bills elsewhere have not been encouraging: the drafting has either not been completed in time or has had to be extensively recast in Parliamentary Counsel's Office. Drafting by highly qualified private lawyers is expensive; and even if it can be done successfully, there remains the task of taking the measure through its Parliamentary stages, which is likely to place additional burdens on Parliamentary Counsel.

4.9. There is, of course, no reason why the drafting of some Private Bills should not continue to be done by Parliamentary Agents; but those Agents who gave evidence to me were quite clear that they were not able to take on the Government's major programme Bills.

4.10. The Renton Committee on the Preparation of Legislation in 1975 commented that "we think that the scope for the employment of draftsmen outside the public service on Bills in the government legislative programme must remain limited by such factors as the need for the draftsman to be in a position to nurse his Bill through Parliament", and concluded: "there should be no large scale transfer of drafting work away from the government draftsmen". I see no reason to dissent from that view, which

is endorsed by foreign practice. Most Commonwealth countries have the equivalent of a Parliamentary Counsel Office, no doubt modelled on our own. In the Federal Republic of Germany legislation is drafted in-house by Departmental lawyers, as it is in France, although there it is subject to scrutiny by the Conseil d'Etat. In the USA by contrast Bills are drafted by a wide variety of bodies, including government agencies, pressure groups and academic lawyers. The arrangements have been described to me by an American lawyer as "pluralist and chaotic" and I do not think they offer an example to be followed.

4.11. The fact that major Bills are drafted within government does not mean that outside interests cannot usefully be consulted in the process. Parliamentary Counsel of necessity have to draft measures on a wide variety of subjects, some of them highly technical, and they cannot be experts on them all. Although they receive their instructions from departmental lawyers who should be more knowledgeable, I believe that there would be advantage in the case of some highly technical Bills in consulting outside experts, whether the specialist Bar or firms of solicitors expert in the subject. This could be done, in confidence, either at the stage when instructions are being prepared or when Parliamentary Counsel has prepared a first draft of the Bill. I understand that outside consultation of this sort has taken place on occasion in the past and I see no reason why the practice should not be extended, provided that the necessary policy decisions on the legislation in question are taken in time. (Some other aspects of the process of legislative drafting are dealt with in Chapter VII).

Litigation and Conveyancing

4.12. By contrast there seems no reason why a good deal of the Government's litigation and conveyancing work should not be done by the private sector. There are some areas of litigation, for example, cases concerned with intelligence matters or members of the security forces, which government is likely to want to keep in its own hands; although this does not prevent the employment of private barristers, usually Treasury Counsel. Judicial review is another area which is likely to have to remain in-house, partly because of the close relationship with government policy and partly because of the unrivalled expertise which has now been built up in the Treasury Solicitor's Department. But there are other matters which can well be contracted out, particularly in the field of private law liabilities: for example, small contract and tort cases, damage to property, personal injury cases and the collection of small debts. In the conveyancing field there may be a case for retaining in-house large scale commercial transactions, which raise difficult issues on which it is desirable to preserve expertise; but much of the more routine conveyancing, for example that relating to the disposal of army married quarters or prison officers' houses, could well be contracted out. Indeed, a good deal of such work is already put out. If a large number of prison officers' houses has to be disposed of in a short time, it clearly makes much more sense

to give the work to private solicitors in different parts of the country than to attempt to recruit additional staff in the Treasury Solicitor's Department in London to deal with a temporary workload. Similarly if litigation arises in the North of England it will usually be cheaper to engage a local solicitor as agent rather than to send a government lawyer up from London.

4.13. The extent to which it is sensible to contract out the more routine work more generally depends crucially on cost. It is not easy to produce reliable comparisons without testing the market with specific cases; but the figures I have studied suggest that it will usually be a great deal cheaper to get the work done in-house, particularly in London. For arranging a 25-year lease on a London property with a value of £4.68m, a private solicitor in the City quoted £90,000. The Treasury Solicitor's Department estimated its cost for doing the same work at £4,750-£5,350. For arranging a 25-year lease on a £75,000 property in Exeter, a provincial private solicitor charged £4,520. The Treasury Solicitor's Department estimated that the same work done in-house would have cost £1,172. Only in the case of the most straightforward conveyancing of houses have I seen figures in which private sector charges were in any way comparable to public sector costs.

4.14. Of course, cost is not the only consideration. Quality of service is important. The Navy and Army Departments of the Ministry of Defence choose to get their conveyancing work in Scotland done by private solicitors, when it could almost certainly be done more cheaply in government, apparently because they feel they get a more personal service. Time is also important. It is of little comfort to a Department to know that it is getting the cheapest service if it has to wait an inordinately long time for it. In this connection I was told of litigation cases for the Office of Fair Trading which had been subject to quite unacceptable delay because staff in the Treasury Solicitor's Department had been engaged on other work which had been given higher priority. It seems to me that Departments should have a choice here. They can use the service provided by the Treasury Solicitor (who is in process of introducing a time recording system which will in future provide a much more accurate means of assessing the costs to be charged to Departments and make it possible to operate on a repayment basis) or they can use a private solicitor if they think they can obtain in that way a better or quicker service. If the private solicitor is more expensive it will be for the Accounting Officer of the Department concerned to satisfy himself that the extra cost is justified. Where long-term arrangements are entered into with private solicitors I suggest that they should be reviewed at least every five years to ensure that they remain competitive.

4.15. Even if more competition is introduced I would expect the Treasury Solicitor's Department to continue to be able in most cases to offer a cheaper service. It is, I think, desirable that a substantial in-house capability should be maintained

in both litigation and conveyancing to preserve expertise, to provide a reservoir of legal manpower which can be drawn on to meet urgent demands elsewhere, and to serve as a training ground for young lawyers who may in due course move on to advisory posts. But not all the work needs to be done in London. Public law litigation and some private law litigation probably have to stay in London because of the need to be close to the Royal Courts of Justice and to facilitate conferences with Counsel. The same does not apply to conveyancing where the work arises across the country and could in theory be done anywhere. At present the Property Division of the Treasury Solicitor's Department employs a total of 98 staff (of whom 45 are qualified lawyers) in London where accommodation costs are high, both lawyers and supporting staff are difficult to recruit, and various London allowances have to be paid. Because of the difficulty of recruiting typists in London, the typing work of the Division has to be sent to Worthing, which is hardly the most efficient arrangement. I recommend that the whole Division should be re-located outside London. I recognise that such a move would be unpopular with existing staff, some of whom would not wish to leave the London area. The advantage of a move just outside London or further afield would have to be assessed. The whole exercise would need careful planning over a period of years and sensitive handling.

Other legal services

4.16. I deal more briefly with the other services listed in paragraph 2.4. The administration of justice and the taking of decisions on criminal prosecutions must I believe by their nature be reserved for government. This does not mean that part of the work of prosecution cannot be contracted out. Because of staff shortages the Crown Prosecution Service is obliged to employ agents for much of its court work. This has unfortunate consequences. In the first place it is very expensive. The Crown Prosecution Service calculate that during the present financial year they will incur additional costs of £2.3m for every 100 CPS lawyer posts which remain unfilled. Secondly, it has a bad effect on the Crown Prosecutors themselves, who find that they are increasingly employed on the preparation of cases and the supervision of agents rather than on the task of advocacy for which they joined. This was quoted to me as one of the reasons for the continuing high rate of resignations.

4.17. It seems to me that the legal aspects of international affairs must also be handled in government and I deal with this subject in more detail in Chapter X. Law Reform is an area in which independence of mind is of particular importance; but that element is provided by the appointment by the Lord Chancellor of independent members of the Law Commission. The Commission's work is so closely linked with government policy, and the implementation of its recommendations depends so much on the programmes of Government Departments, that it seems to me appropriate that it should remain in government as part of the Department of the Lord Chancellor who has Ministerial responsibility for the reform of the civil law.

4.18. There remain the Departments which provide services of a legal nature direct to the public. Of these, by far the largest is the Land Registry which employs some 10,000 staff, of whom more than 100 are qualified lawyers. The service which it provides for the registration and transfer of title to land is of a quasi-commercial nature and is paid for by the charging of fees. Given the importance of land as a national asset I doubt whether it would be appropriate to move this function entirely outside government; but the Land Registry seems to me an ideal candidate for conversion into an executive agency. If this enabled it to operate in a more commercial way and use its fee income to recruit more staff it would make it easier to work off the present backlog of cases. A good deal of the work is already done on a regional basis, but there is a headquarters staff of some 220 (including 8 lawyers) in London. I believe that the greater part of the headquarters work could also be done outside London and that this would ease recruiting problems for both lawyers and supporting staff. (These conclusions are in line with the recommendations in the Public Accounts Committee's "Review of the Operations of the Land Registry", July 1988.)

4.19. It may be that the Public Trust Office and The Official Solicitor's Office could also qualify for agency status, but I understand that their position is at present being considered in relation to posssible new arrangements for dealing with child protection and I make no immediate recommendations. I noted with approval that the Charity Commission (which has recently lost several lawyers in mid-career - some since the statistics in Chapter III were compiled) is planning to establish an office in the South West and move part of its work out of London. It is important that bodies like the Charity Commission, the Office of Fair Trading, the Public Trust Office and the Official Solicitor's Office, which can offer only limited career prospects, should be linked with the rest of the Government Legal Service and I return to this point in discussion of central management in Chapter V. None of these bodies seems to be a likely candidate for either privatisation or contracting out.

CHAPTER V

FUTURE ORGANISATION

5.1. If the great bulk of the Government's legal work is to continue to be done in-house, how can it best be organised to make the most effective and economical use of the resources available? As explained in Chapter I, I have not addressed the question of the desirability of setting up a single Ministry of Justice. This would require major changes in the machinery of government, involving the Home Office and the Lord Chancellor's Department as well as the Law Officers' Department and the Treasury Solicitor's Department. It would have been a large study in itself and would have diverted me from what I perceive to be my main task of recommending steps which will help to ensure that the government has an adequate supply of lawyers of the necessary quality to perform the work required. Organisational changes may, however, contribute to the effective use of resources and I have therefore considered what lesser changes might be desirable.

Law Officers' Department

5.2. I have been struck by two features of the present organisation. On the one hand, the Law Officers do not really have a Department - only a Legal Secretariat which is less than a dozen strong. If the Attorney General, assisted by the Solicitor General, is to perform the important and onerous task of acting as Legal Adviser to the Government on a wide range of increasingly complex issues, as well as carrying out his other duties in the fields of litigation and prosecution, it seems to me that he requires more substantial support. On the other hand, the Treasury Solicitor's Department is a Department without a Ministerial head in the usual sense. It would be helpful to the Treasury Solicitor to have a Minister in day-to-day charge of the Department. This would give him a Ministerial voice and ensure that he saw copies of Ministerial correspondence, which at present he does not, thus facilitating an early legal input on policy issues. It would also give him additional "clout", for example in disputes over resources. I recommend that the two Departments should be merged to form a single Law Officers' Department, presided over by the Attorney General. The Treasury Solicitor would retain his historic title and statutory duties (including those of Queen's Proctor) but would become the Permanent Secretary of the new Department. As such he would have wider responsibilities than the present Treasury Solicitor. He would be the Attorney General's principal adviser as well as supervising the work of the Department, including its litigation and conveyancing. I envisage that he should also become Head of the Government Legal Service, embracing all lawyers employed as such in the Home Civil Service in England and Wales, and should have responsibility for the central management of the Service. (I return in later paragraphs to what that central management would entail.) The Attorney General and Solicitor General would need to be accommodated with the Permanent Secretary and the main part of the Department, although the Attorney General might also wish to retain his Chambers at the Law Courts.

5.3. An outline organisation of the new Department is annexed to this Chapter. The Permanent Secretary would be assisted by two Grade 2 officers dealing respectively with policy and administration. The policy post would effectively be that of the present Legal Secretary. He would remain in charge of a Secretariat consisting of seconded lawyers who from wide experience can bring to bear an independent view on matters referred to the Law Officers from Departments, including the DPP and DPP (Northern Ireland). He would need to retain direct access to the Attorney General. The other Grade 2 officer, who might be designated as deputy to the Permanent Secretary, would be responsible for finance and personnel work relating to both the Law Officers' Department and the Government Legal Service generally. I have shown the existing Departmental Advisory Divisions, the European Division, the Litigation Divisions and the Property Division all answering direct to the Permanent Secretary, as they do at present to the Treasury Solicitor. I understand that these Divisions, which are headed by Grade 3 officers, do not produce a great deal of policy work which needs to be raised above that level, but that when they do the matter probably needs to go to the highest level. This arrangement would need to be kept under review in the light of experience. It would be important that the Permanent Secretary did not become over-burdened and unable to devote sufficient time to his responsibilities as Head of the Government Legal Service. The precise relationship between the Permanent Secretary and the Legal Secretary would also need to be worked out in the light of experience and the wishes of the Attorney General himself. The post of Legal Secretary is sometimes filled by a Grade 2 and sometimes by a Grade 3 officer. If it was filled at Grade 3 level the Grade 2 post might be used to supervise the policy divisions and thus lighten the load of the Permanent Secretary.

5.4. The Departmental Advisory Divisions shown on the organisation chart include the legal staff outposted in the Ministry of Defence, Department of Education and Science, Department of Employment, Department of Energy and Department of Transport. These staff would form part of the complement of the new Law Officers' Department, as they do of the present Treasury Solicitor's Department; but I attach importance to their continuing to be located in the Departments they serve, along with their administrative colleagues with whom they need to work closely. I propose no change in the present working arrangements under which they answer directly to their Departmental Ministers, without involving the Attorney General (or his Permanent Secretary) in day-to-day advisory business. The Central Advisory Division, which serves the Treasury, Cabinet Office (including the Office of the Minister for the Civil Service) and a number of other bodies, is also included with the Departmental Advisory Divisions. I have considered whether these staff should be physically located with the Departments they serve; but the Division could not readily be split and it would be invidious to place it in one Department (for example, the Treasury); so I recommend that it should remain in the Law Officers' Department.

5.5. The Director of Public Prosecutions (and with him the Crown Prosecution Service) is already responsible to the Attorney General, as is the Head of the Serious Fraud Office, and I recommend no change here. The Director of Public Prosecutions (Northern Ireland) acts under the superintendence of the Attorney General on policy matters, but for pay and administration comes under the Secretary of State for Northern Ireland. This division of responsibility seems to me undesirable and I believe that it would be preferable for the DPP (NI) to come wholly under the Attorney General, in the same way as his counterpart for England and Wales. This would be facilitated by the merger between the Law Officers' and Treasury Solicitor's Departments, since the financial and managerial responsibility hitherto undertaken by the Northern Ireland Office could be absorbed in the enlarged Department.

5.6. I believe that there would also be advantage in bringing Parliamentary Counsel's Office within the new Department. First Parliamentary Counsel already has a link with the Attorney General, sending copies of Bills to him and if necessary seeking his assistance on professional matters; but otherwise he is not directly responsible to any Minister, although on questions of the Parliamentary legislative programme and the priority of Bills he deals with the Lord President of the Council. Because Parliamentary Counsel must serve the Government as a whole, it would be wrong for him to be subordinated to any one departmental Minister; but this objection does not seem to me to apply to the Attorney General, who himself serves the whole government. I believe that there would be advantage in Parliamentary Counsel's Office being administered from the Law Officers' Department and having the support of the Attorney General in such matters as arguments over resources. The present arrangement whereby Accounting Officer responsibility lies in the Office of the Minister for the Civil Service does not seem to me appropriate and I propose that it should be transferred to the Law Officers' Department. Giving the Attorney General a more direct responsibility for Parliamentary Counsel's Office would not alter the position of the Lord President, nor the relationship between individual draftsmen and the Ministers for whom they prepare Bills. It would not mean that he became an extra link in the drafting process; but it should help to meet the criticism put to me by several Ministers that there is no-one to whom they can turn if they are dissatisfied with the way in which the drafting of a Bill is being handled.

5.7. First Parliamentary Counsel, the DPP, the DPP (NI) and the Head of the Serious Fraud Office all have distinct functions and need direct access to the Attorney General. It would not be appropriate to place them under the Permanent Secretary of the Law Officers' Department; but I believe that arrangements for handling finance and personnel management could be centralised. In the early stages of the new Department there will be a great deal of work to be done on the management of the Government Legal Service including arrangements for recruitment, pay and personnel management. If the new arrangements are to get off to a good start they will need considerable attention at senior level and in the initial period I believe that the Grade 2 (Administration) post is justified to supervise this work and the finance and personnel work arising from

the central part of the Law Officers' Department under the Permanent Secretary, together with the small amount of work which would arise from Parliamentary Counsel's Office and the DPP (Northern Ireland). In due course, however, I would see advantage in bringing together under the Grade 2 (Administration) post the finance and personnel work for the Crown Prosecution Service and the Serious Fraud Office. The work on which these staffs are engaged is of a similar nature and even if they remain on separate Votes (as I think they probably should) they could benefit from closer links on personnel matters. The Treasury would no doubt wish to consider the most appropriate Accounting Officer arrangements for the enlarged Department.

Lord Chancellor's Department

5.8. The Lord Chancellor's Department stands somewhat apart from the other legal Departments. Although it has some advisory functions, its main responsibilities are concerned with the administration of justice: with judicial appointments, with the management of the courts and with tribunals. To that extent its functions are to support the Judiciary rather than to provide services to the Executive. Moreover, it is presided over by a senior Cabinet Minister with other important duties. In these circumstances it would not be appropriate to seek to link the Lord Chancellor's Department in organisational terms to the enlarged Law Officers' Department; but I believe that it should participate in some of the arrangements for central management outlined in later paragraphs.

5.9. A number of associated bodies either form part of the Lord Chancellor's Department or answer direct to the Lord Chancellor (see paras 3.11-3.17). I would propose to add to this list the Statutory Publications Office which, although it has been located for the past 30 years in the Treasury Solicitor's Department, seems more nearly related by the nature of its work to the Lord Chancellor's Department. I understand that the possibility of moving it has been considered in the past but that the time for change has not been judged opportune. If an enlarged Law Officers' Department were to be established on the lines I have recommended it would have extensive responsibilities and should shed extraneous functions. I therefore recommend that the Statutory Publications Office be transferred to the Lord Chancellor's Department.

Central Management

5.10. The proposed Law Officers' Department outlined above does not include the lawyers employed in the "large" Departments - ie the Home Office, Customs and Excise, Inland Revenue, Ministry of Agriculture Fisheries and Food, Department of Trade and Industry, Department of the Environment and Welsh Office - who form part of the Departments in which they work. It has been represented strongly to me that this arrangement is not satisfactory and that what is needed is a unified legal service whose members are paid from a single Vote and can be deployed by a central authority to the areas of greatest need. Only in this way, it is argued, can parochial barriers be broken down and the most effective use made of scarce resources. Complete centralisation of the government legal service

would be the culmination of a process begun in the 19th century and would make possible the effective management of the service, which the various co-ordinating committees proposed in the past have signally failed to do. It would also reinforce the independence of government lawyers by detaching them slightly from the Departments they advise.

5.11. I see force in these arguments, particularly in a situation in which lawyers continue to be in short supply. But I believe that there are equally cogent arguments against this course. The large Departments (in terms of legal activity) are equally strong in defence of their autonomy. They argue that the Minister in charge of the Department and the Permanent Secretary should be responsible for their lawyers in the same way as for other departmental resources, that this accords with the principles of accountable management enshrined in the Government's Financial Management Initiative and that it is in line with the current trend towards the decentralisation of authority. To have the lawyers integrated in the Department with their administrative colleagues encourages a team approach and develops departmental loyalty. They also argue that the work of their Departments is often highly specialised, that an Inland Revenue lawyer for example is essentially a tax law expert who becomes more valuable the longer he is engaged on this work, and that it would make no sense for some central authority to have the power to take him away to fill a vacancy in another Department engaged on quite different work. Moreover, these Departments are usually large enough to provide reasonable career progression for their own lawyers.

5.12. Clearly there is no way of meeting both these viewpoints. The problem of centralisation versus departmental autonomy has been at the heart of previous inquiries into the government legal service and has always been resolved by compromise. There are very wide differences among Departments in their requirements for and use of legal services, and Compton concluded 17 years ago that these differences needed to be reflected in the way in which the services were organised (See Chapter I). I have considered these arrangements afresh: they seem to me to accord with the realities of the situation and generally speaking I recommend that they should continue under the new organisation I have proposed.

5.13. But that does not mean that there is not a case for more central management of the Government Legal Service as a whole. I believe that there is. What is at issue here is not the day-to-day management of staff in terms of the work they are employed on, the accommodation they occupy, the support they receive, and so on. That cannot be controlled centrally and must be left to the individual Departments where they work. What we are concerned with is personnel management and in particular the movement of staff: both to ensure that resources are used to the best effect in the interest of the service as a whole; and to provide for the proper career development of individuals, including those in small Departments. There are numerous reasons for wanting to move staff. One is to foster new ideas and creative thinking. Another is to deal with changing priorities and fluctuations in workload: some

Departments with large legal branches may be able to cope with such changes within their own resources; but others may require reinforcement to deal with, say, a major legislative commitment. A sudden resignation may create a gap which cannot be filled from within the Department. A candidate for future promotion may need to broaden his experience or to be tested on a different type of work. Promotion in a small Department may be slow and the prospect of waiting for dead men's shoes demoralising. An individual may prove to be a misfit, or may need a change from routine work in the interest of providing job satisfaction. For example, the Office of Fair Trading and the Criminal Injuries Compensation Board offer a limited range of legal work and staff need to be able to move elsewhere after a few years.

5.14. At present government lawyers are highly compartmentalised and the introduction of greater mobility will require something of a change of culture, in which identification with an individual Department is supplemented by a wider loyalty. Lawyers should see themselves as part of a larger Government Legal Service from which they are, as it were, seconded to a particular Department in which they will not necessarily spend the whole of their careers. The fact that they are not tied for life to a single Department could make it easier for them to be wholly independent in the advice they offer. In most Departments an occasional posting to the Law Officers' Legal Secretariat has been accepted as a desirable career move. I would like to see this extended so that, for example, a move from the Home Office to the Law Commission or from the Ministry of Agriculture to the European Division of the Law Officers' Department, becomes accepted as part of a normal career pattern, particularly at an early stage of an individual's career when it can usually be effected more easily. I do not believe that to achieve this it is necessary for all government lawyers to be on a single Vote and posted at the direction of a central authority. Indeed, any system of that sort based on compulsion would be strongly resisted by the large Departments, would be unwelcome to individuals, and therefore would be unlikely to work. The system has to be based on consultation and consent; but I believe that a considerable measure of central co-ordination and management is required.

5.15. Past attempts at management by committee in the government legal service have not been very successful. The Standing Committee recommended by Barlow to deal with promotions on an interdepartmental basis never became operational. The Legal Groups Management Committee under the Treasury Solicitor's chairmanship, which has existed since before the Compton review, is supposed to determine management policy for government lawyers in England, Wales and Scotland but does not meet more than once a year. An informal group of senior lawyers, including the Permanent Secretary of the Lord Chancellor's Department, the Director of Public Prosecutions and the senior legal advisers from other Departments under the chairmanship of the Treasury Solicitor meets more frequently, but can hardly be said to be managing the government legal service. Except when vacancies occur at the highest level and the machinery for dealing with senior civil service appointments generally comes into play, management is largely left to the departmental level and in practice little movement takes

place. In some Departments which are short of staff, information about vacancies in other Departments is actually suppressed. Nevertheless, given a clearly understood purpose, Ministerial support and the backing of a management unit in the new Law Officers' Department, I believe that a system of collective management run by the Head of the Government Legal Service could be made to work.

5.16. The Central Management Unit shown in the organisational chart would have a key role to play in this process. This unit, which would be separate from the branch dealing with internal establishment matters for the Law Officers' Department, would hold personal particulars of all members of the Government Legal Service and receive copies of annual reports, so that it could provide information about candidates being considered for moves or promotions and could suggest alternatives where necessary. I envisage that it would be headed at Grade 5 level by a non-lawyer with appropriate experience. Most of the other professional groups within the civil service - accountants, economists, statisticians - have some form of central management unit; and I believe that the lack of adequate support of this sort is one of the reasons why the central management of lawyers has in the past been less effective than it might have been.

5.17. I recommend the establishment of a Legal Management Board under the chairmanship of the Head of the Government Legal Service and reporting to the Attorney General. This would be small: one of the reasons why committees have not worked is that they have been too large and cumbersome. The Head of Service might select say three senior lawyers on a personal basis, who could be supplemented by representatives of the Departments whose affairs were under discussion, with a secretary from the Central Management Unit. The Board would be concerned with the central management of the Government Legal Service, defined for this purpose as all lawyers employed in the Home Civil Service in England and Wales, including the Lord Chancellor's Department and the Crown Prosecution Service. It would consider promotions to posts at Grades 3 to 5, requests for transfers at any level and proposals from the Central Management Unit for career development moves. It would be for the Board to reach conclusions on the best candidate for promotion (whether from the parent Department or outside) and on whether particular moves were desirable. If the staff involved came under the direct control of the Head of the Government Legal Service, there would be no problem. If they were on the books of one of the large Departments it would be necessary to secure the agreement of that Department. In some cases there would no doubt be reluctance on the part of Departments to release valued and experienced staff and to accept imports, however able, without comparable experience; but I would hope that if the purposes of the move were clearly understood, changes would be accepted in the interest of the Service as a whole or of the individual concerned. Certainly it would be unusual for a Head of Department to stand in the way of an individual's promotion. In the event of what the Head of the Government Legal Service regarded as unreasonable opposition to a proposed change it would be open to him to ask the Attorney General to intervene; but I would hope that this would be very rare.

5.18. The extent to which these arrangements encroached on departmental autonomy would vary from Department to Department. In some cases, such as Customs and Excise and Inland Revenue, where the number of staff is large and the work highly specialised, it is probable that movement to or from another Department would be the exception rather than the rule. But even here there might be occasions when someone engaged in prosecution work transferred for a period to the Crown Prosecution Service, or vice versa; it might be necessary to move a misfit; or someone might move to broaden his experience. In other less specialised Departments, where advisory work often consists of the application of common law principles against a background of a statutory framework peculiar to the Department, moves would be easier. There must be a case for specialists in the Goverment Legal Service, as there is outside; but I believe that there is also a place for the generalist lawyer and that the opportunity for varied work should be one of the attractions of the Service.

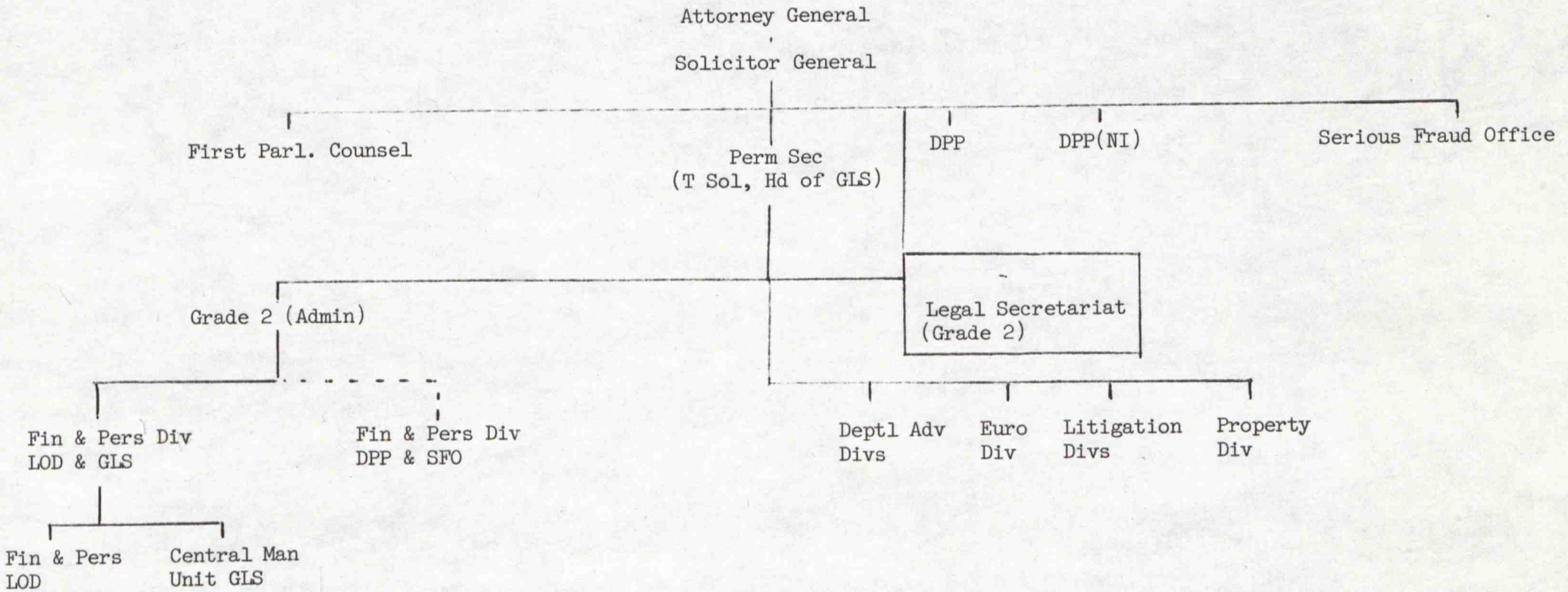
5.19. The Management Board might also deal with other managerial issues, such as recruitment, publicity, terms and conditions of service and training. For this purpose it might be desirable to establish a lower level management committee, probably consisting of Establishment Officers under the chairmanship of the Grade 2 (Administration) in the Law Officers' Department. Only major issues need then be referred to the Board. Both the Board and the Committee would be supported by the Central Management Unit, which would have a major role to play in all these areas, some of which are explored at greater length in Chapter IX. The Management Board, reinforced as necessary, could also provide a forum for the discussion of policy issues (eg judicial review) of concern to the Government Legal Service as a whole.

Departments of Health and Social Security

5.20. During the course of my review the Department of Health and Social Security was split into two separate Departments. Arrangements for the provision of supporting services, including legal services, have not yet been finalised. There may be advantage in preserving a link between the legal staff employed in the new Departments in order to facilitate movement between different types of work. Whatever pattern eventually emerges, I would not expect as a result of the split any diminution in the overall demand for legal services, including advice at a senior level.

ANNEX TO CHAPTER V

OUTLINE ORGANISATION OF PROPOSED LAW OFFICER'S DEPARTMENT



CHAPTER VI

RECRUITMENT AND RETENTION

Lawyers: demand and supply

6.1. The Law is a growth industry. In paragraph 2.5 I have listed some of the reasons why the Government's need for legal services has increased and seems likely to go on increasing. The picture outside government is the same. The general reasons for the growing demand for legal services have been well documented by the Law Society and the Marre Committee and need not be rehearsed in detail here: they include the increase in home ownership and divorce, the growth in crime, the widespread availability of legal aid, and the increase in commercial activity and financial services. A number of these concern policy areas to which the Government attaches particular importance.

6.2. To meet these demands the legal profession expanded rapidly in the 1970s and early 1980s. The number of qualified solicitors has nearly doubled since 1970 and is now something like 48,000. The number of practising barristers has risen from about 2,500 in 1970 to about 5,600. But in the last few years the increase has not been sustained. Law Society figures for the admission of solicitors are:

1981	3,223
1982	2,241
1983	2,596
1984	2,728
1985	2,687
1986	2,725
1987	2,954

The number of men admitted has actually been declining since 1978, the balance being made up of women who now account for half the admissions but in many cases leave the profession after a few years. In the case of barristers, the Council for Legal Education figures show a downward trend in numbers called to the Bar, from 1,052 in 1982/83 to 887 in 1986/87. This is mainly accounted for by a decline in the number of men called; the number of women has increased slightly.

6.3. As a result, there is now an overall shortage of qualified lawyers in England and Wales. The Law Society in a report dated May 1988 and significantly entitled "The Recruitment Crisis" says "Throughout the country difficulties are being experienced in the recruitment of qualified solicitors". Those difficulties are particularly acute in London, which accounts for the very high salaries being offered there by City firms of solicitors and commercial organisations to attract good candidates.

6.4. It is always difficult to predict the future (and it is not many years ago that concern was being expressed about a possible surplus of solicitors) but it seems unlikely that the supply of

graduates entering the profession will keep pace with the expansion of demand which shows no sign of diminishing. The demographic trend is unfavourable: the Government Actuary's projections show a fall in the 20-24 years age group of 30% between 1987 and 1999. The Department of Education and Science believe that there will be an increase in graduate output over the next five years because the birth rate among those socio-economic groups which produce most of the university and polytechnic populations did not fall in the same way as that of other groups; but after 1993 the figure is expected to drop and reach its present level again by the end of the century. Over the next few years there may be an increase in the "Business and Social Studies" group of subjects (which includes law); but on the other hand it has to be remembered that by no means all law graduates enter the profession - something like 40% are currently going into accountancy and related careers.

6.5. All this suggests that, if there is an increase in the number of qualified lawyers emerging over the next five or so years, it will be a small one. The Law Society intends to make representations to the Universities Funding Council and the Polytechnic and Colleges Funding Council to press for higher priority to be accorded to the provision of places on law degree courses, and in their evidence to me the Committee of Heads of University Law Departments identified the shortage of such places as the underlying cause of the current shortage of lawyers. Any action to improve the situation in the 1990s clearly needs to be taken without delay. As to grants for students, the Law Society and the Bar have unsuccessfully made joint representations to the Department of Education and Science (DES) that awards for the professional law courses should be treated as mandatory by local authorities. The Law Society Training Committee have therefore proposed that an approach should be made to the Lord Chancellor's Department and the DES to press for centrally funded bursaries to be made available for students studying for the final examinations. These issues go wider than my terms of reference, but I am bound to say that I think some action is called for to increase the flow of lawyers and that if it is to have any effect in the early 1990s it needs to be taken without delay.

Recruitment for the GLS

6.6. The Government has taken a share of the increased number of lawyers, mainly to staff the Crown Prosecution Service after its establishment in 1986. If we leave aside the Crown Prosecution Service (and with it the DPP's Office) the complement of the Government Legal Service has increased only marginally from 1,140 in 1979 to 1,167 today, in spite of the increased workload. But if we include the Prosecution Service, which created a need for 1,788 lawyers many of whom transferred from local authorities, the total complement of the Government Legal Service now stands at just over 3,000. In recent years it has proved difficult to attract sufficient recruits. This difficulty has been exacerbated by the advent of the Crown Prosecution Service, but existed before 1986, as the following figures (which exclude the CPS) show:

	VACANCIES	APPLICATIONS	APPOINTMENTS	PERCENTAGE OF VACANCIES FILLED
1978	104	453	75	72
1979	75	491	46	61
1980	51	580	36	71
1981	31	717	24	77
1982	47	700	38	81
1983	60	770	49	82
1984	93	677	47	51
1985	117	549	51	44
1986	125	504	66	53
1987	91	280	50	55

The 1988 applications so far have been 25% up on the very low figures for 1987 but are still lower than for previous years. One general competition held after the new pay rates* had been announced showed little improvement in the number of successful candidates; but two recent small competitions directed specifically to posts in Inland Revenue and the Land Registry, produced a better response and resulted in all the vacancies being filled. To put the above figures into perspective it is worth noting that one large City firm of solicitors told me that for 60 posts they had last year received 600 applicants, half of whom were judged good enough to interview.

6.7. In the case of the Crown Prosecution Service the statistics are:

	VACANCIES	APPLICATIONS	APPOINTMENTS	PERCENTAGE OF VACANCIES FILLED
1986 (10 rounds)	475	813	200	42
1987 (10 rounds)	450	626	198	45
1988 (11 rounds so far)	450	417	154 (+35 successful candidates not yet appointed)	-

6.8. The Civil Service Commission in their evidence to me said that during the last two years "there has been a consistent lack of success, by varying degrees, in meeting Departments' vacancy bids" (for lawyers). In their report for 1987 the Commissioners said of legal recruitment: "Despite a reduction in vacancies .... we were again only able to fill just over half the advertised posts. A significant proportion of successful candidates declined the offer of appointment in favour of private sector posts at a higher salary". On recruitment for the Crown Prosecution Service the report said: "As in 1986 fewer than half the vacancies were filled..... A disturbingly high number of candidates declared successful declined the offer of appointment, the most frequently reported reason being

*See Chapter VIII

the uncompetitive salary on offer". Quality is more difficult to assess, but several witnesses claimed to detect a reduction in the number of first class lawyers now joining the government service.

6.9. It should be noted that the recruitment of lawyers is proving more difficult than the recruitment of administrators. The Civil Service Commissioners report that in 1987 the open competition for Administration Trainees, when there were 88 vacancies, produced 3,066 applications from which 70 appointments were made. The Principal (Grade 7) competition, when there were 70 vacancies, produced 1,565 applications from which 68 were recommended for appointment.

Resignations

6.10. A situation in which there are persistent recruiting difficulties is aggravated if at the same time there is substantial wastage from resignations in addition to normal retirements. Some degree of turnover must be expected, and may even be helpful in improving promotion prospects; but the losses from the Government Legal Service in recent years have gone beyond this level. The loss of experienced individuals who can only be replaced, if at all, by less experienced staff is particularly serious.

6.11. During 1987 there were 47 resignations from the Government Legal Service other than the CPS. 34 of these were from the lower grades of Legal Officer/Grade 7/Senior Legal Assistant (now obsolescent); seven were from Grade 6 and one each from Grades 2-5. In 1988 up to 31 July there had been a further 30 resignations, of which 23 were from the lower grades, six from Grade 6 and one from Grade 3. Since that date I have been told of several more actual or impending resignations. The numbers involved may not seem large; but two lawyers each from Customs and Excise and Inland Revenue represents 4.8% of complement; one from the Welsh Office represents 6.6%; and two from the Office of Fair Trading 18.2%. For the Crown Prosecution Service the numbers were much higher: 116 resignations in 1987 and 53 in the first seven months of 1988 - a total of about 9% of the complement.

6.12. As in the case of the recruitment figures, the wastage of lawyers is worse than that for the civil service generally. For example, out of nine resignations at Grades 2-3 for the whole civil service in the past two years, three have been lawyers. In 1987 the 163 resignations from the Government Legal Service (including CPS) constituted 5½% of the total complement, compared with 1.2% for Grades 5-7 in the civil service generally. In the Crown Prosecution Service the wastage at both the Crown Prosecutor and Senior Crown Prosecutor (Grade 7) was over 7%. Outside the Crown Prosecution Service almost all the wastage took place in London.

6.13. Although there has been a small increase in the total staff-in-post during 1987/88, very serious deficiencies remain. For example:

	Complement	Staff in Post	Deficiency
Crown Prosecution Service	1,778	1,335	24.9%
Customs & Excise	83	68	18.0%
Inland Revenue	63	54	14.3%
Dept of the Environment	47	40½	13.8%
DHSS	71	62	12.7%
Treasury Solicitor	175	163	6.9%

In several Departments the point was made to me that the existing complement is not sufficient to deal with the growing volume of work, but that no attempt had been made to increase it since it was known that the extra staff would not be forthcoming. To the extent that this is true the figures shown above may understate the problem.

What is to be done?

6.14. A situation in which serious deficiencies exist in a wide variety of Departments and in which recruiting competitions persistently fill only half the vacancies clearly calls for remedial action. In considering the problem of attracting recruits into the Government Legal Service, I was struck by two facts. First, although there is a general impression that government lawyers are poorly paid, there is very little knowledge outside the civil service about the sort of work on which they are employed. In talking to undergraduates studying law I found almost total ignorance on the subject: their sights are set on the Bar and the City. There is a Civil Service Commission pamphlet on careers in the Government Legal Service, which is informative under a rather dull cover; but it does not seem to be widely available. The College of Law kindly undertook for me a survey of students at its London and Chester centres which tended to confirm my own impression. Out of 814 respondents only 97 (12%) indicated that they had ever considered applying for a legal post in the civil service. Of the 88% who said that they had not, more than half declared that they had been unaware of career opportunities for lawyers in government service and 43% indicated that they believed the remuneration available to government lawyers was relatively poor. Most of the young lawyers I have spoken to in the government service joined either by chance or through personal contact.

6.15. This level of knowledge about the work of the Government Legal Service is particularly unfortunate because I believe that the interest of the work is the main selling point which the government service has to set against the greater material rewards offered by the private sector. There will be many young lawyers who opt for private practice, whether as barristers or solicitors, either because of the greater independence it offers or because of the prospects of high financial rewards. But from conversations with some of those who have joined the government service it is clear that there is considerable job satisfaction to be found in the interest and variety of work they do. There is an extra dimension in public law which brings them into contact with Ministers and Parliament. Some of them at least feel that they are doing

responsible work, close to the centres of political power, on issues which are seen to be important and sometimes exciting. Nor is the concept of public service dead, although its attraction may have diminished. One young government lawyer told me that he had been employed in quick succession, first in the Department of Energy and then in the Treasury Solicitor's Department, on the privatisation of British Gas, the Sizewell nuclear power station inquiry, the Cleveland child abuse inquiry and the Gibraltar IRA inquest. It would be difficult to match this list in the private sector; but unless the work of the Government Legal Service becomes more widely known this feature cannot be exploited.

6.16. The second point which struck me was that while others who are looking for high quality lawyers - most notably the Bar and the big City law firms - target their recruiting effort on university undergraduates, the Government Legal Service does not, preferring to recruit by advertisement lawyers who are already qualified and preferably with a couple of years experience. I can see the advantage of taking in people who are qualified and experienced; and I am sure that the practice should continue. But by concentrating too much on this source in a highly competitive market I believe that the Government is putting itself at a disadvantage and losing much of the most able talent. The City law firms invest considerable resources in the University "milk round" and some of them recruit as many as 50 or 60 undergraduates a year, assisting them to complete their professional studies where necessary and then taking them on as articled clerks. The great majority become assistant solicitors in the firm and the best are offered partnerships at an early age with very high financial rewards. The Bar also recruits at this stage through more discreet contacts. Thus, by the time they graduate many of the best students are already committed to a career and they are unlikely to be attracted away to join the government service in a few years time unless they judge that they are not going to get a partnership in their solicitors' firm or cannot find a place in Chambers to practise at the Bar.

6.17. Solicitors who have not been offered partnerships and barristers who have been unable to find Chambers may prove to be very good lawyers in the government service, where the qualities required are rather different, and I certainly do not want to decry these sources of entry, which should be fully exploited. In particular, securing a place in Chambers seems to involve an element of luck and there are many good candidates who are unsuccessful. I believe that the Government should make greater efforts to attract these people, who often go into industry or re-qualify as solicitors. The Chairman of the Bar Council was receptive to the idea of mounting a campaign (which might include the circulation of literature and talks by the Attorney General and government lawyers) to make sure that they are aware of the opportunities offered by the Government Legal Service and I recommend that the proposed Central Management Unit should approach the Council for Legal Education to make the necessary arrangements. Similar liaison arrangements for solicitors could be established with the College of Law and the polytechnics. But this would be subsidiary to my main recommendation that the Government should compete in both universities and polytechnics to attract undergraduates.

6.18. This would involve a major publicity campaign to "sell" the Government Legal Service, including the preparation of literature and video films. It would also be necessary for government lawyers (both the more senior and some recently joined) to spend time visiting the universities and polytechnics to a much greater extent than is done at present. This will not be easy, given existing staff shortages, but I believe that it has got to be done. Funds will also have to be found for the publicity material since the Civil Service Commission's reduced recruiting budget has insufficient resources. The campaign might be planned by the Central Management Unit, in consultation with the Civil Service Commission, using as a model the considerable work which has been done by the Ministry of Defence on the recruitment of fast-stream scientists and engineers and employing specialist consultants. Visits by undergraduates to Government Departments to see something of the work done by government lawyers would be an important feature of the campaign. I would also like consideration to be given to providing opportunities for vacation employment for law students in Government Departments, which I understand is common practice with the big City firms and in the USA, and possibly also for school leavers waiting to go to university to study law.

6.19. If the Government is going to recruit lawyers at undergraduate level I believe that it will have to offer assistance in the form of bursaries with the costs of Law Society and Bar Finals, as do the City law firms and the Inns of Court in some cases. This could be a valuable incentive at a time when discretionary grants from local authorities have become difficult to obtain. It will then be necessary to offer articled clerkships and pupillage within government. This has been done in the past in a very small number of cases. The Government Legal Service is sufficiently large to offer most of the experience required by an articled clerk and I believe that private firms would co-operate in supplementing this as necessary, as would the Bar in providing for that part of pupillage which needs to be undertaken in Chambers. The trainees would of course have to be paid, but at a lower rate than qualified lawyers; and although the primary purpose would be to train them they might also be able to contribute to the work of Departments.

6.20. I understand that the main reason why articled clerkships and pupillage have not previously been offered in government on any significant scale is that it is feared that those who are trained at public expense in this way would leave on qualification for better paid jobs in the private sector. I believe that this is a risk which has to be taken. Some will no doubt leave; but I would hope that others would be sufficiently attracted by what they had seen of the work in government to stay on. If public money had been spent on their training it might be possible to seek an undertaking that they would stay for, say, five years, though the advantages and disadvantages of this would need to be carefully weighed. In any event, it seems reasonable that the Government should play a part in producing the national stock of trained lawyers, rather than looking to others to do so. I suspect that it is likely to be easier to keep "home grown" lawyers in the government service than to persuade able and experienced lawyers to leave the private sector for less well-paid work in government.

6.21. I have considered whether there is a case for introducing a special cadre of government lawyers with different qualifications. Much of the legal advisory work in government, like the drafting of legislation, depends more on skills and experience acquired in Whitehall than on formal qualification as a barrister or solicitor. Not all the material in the syllabus of the existing professional examinations is relevant to the work to be done in government; and it would be possible to recruit law graduates and train them to become government lawyers without the need to qualify as barristers or solicitors. This would have the incidental advantage that the specialist qualification in public law would not be readily transferable into the private sector. I have doubts about this solution because I believe that it would be a mistake to cut off government lawyers from the mainstream of the profession. I fear that it would lead to their being regarded as second-class lawyers, at a time when I believe that what is needed is rather to enhance the reputation of the Government Legal Service.

6.22. In present circumstances all sources of recruitment need to be tapped. One group to which I believe the Government as an equal opportunity employer should pay particular attention is married women. Many women who have qualified as lawyers leave the profession on marriage or when they have children and I understand that they often find it difficult to return to worthwhile jobs in the private sector. The Government already provides maternity leave arrangements which compare favourably with the private sector and as a large organisation, where the relationship with the client is less personal than in the private sector, I believe it is in a better position to offer flexible working arrangements to suit married women. It should also be able to offer part-time work to those who want it. This is already done in a few cases: I believe that it should be more widespread and that some recruiting publicity should be directed specifically at married women. In some cases it might be necessary to assist with child-care arrangements; in others modern technology might permit work to be done at home. I believe that there is a resource here which government is peculiarly well placed to develop; but a flexible approach will be needed.

6.23. Another area to which I think more attention needs to be given is short-term appointments and secondments. It may be that the public service generally will need to rely increasingly in future on a core of career civil servants supplemented by others on shorter appointments. I see no reason why the Government Legal Service should not offer short-term appointments, provided that in settling the terms and conditions regard is had to the interests of the career staff. During the course of my inquiry I noted that it is common practice in the USA for lawyers to serve for a few years in a Government Department before moving on to private practice or a career in politics. In this country it seems to me that there would be mutual benefit in exchanges between the public and private legal sectors of the sort which now commonly happen in other areas. While the Government Legal Service is short-staffed there may be difficulties about outward movement, and obviously there will be a risk that some of those who go would not return; but several of the firms of solicitors to whom I spoke expressed interest in the possibility of secondments and I believe that this should be explored by the Central Management Unit.

6.24. Another source of recruitment lies in the older lawyers in private practice who in their fifties may be looking for a change of work and who might welcome the more regular hours of the government service compared with the (in some respects) harsher world of private practice. The Property Division of the Treasury Solicitor's Department has had considerable success in recruiting in this way and I believe that other parts of the Government Legal Service where the work lends itself to this sort of approach - eg the Land Registry - might do the same. Such recruits should be brought in at a grade appropriate to their quality and experience and might be permitted to serve until 65 in appropriate cases.

6.25. At the other end of the scale I believe that more should be done to encourage younger people who are already serving in the civil service to acquire legal qualifications. A considerable number of supporting staff at HEO, Executive Officer or Administrative Officer level are employed on legal work in support of qualified lawyers and show an aptitude for it. They are frequently able to undertake work like conveyancing which would otherwise require qualified lawyers. At present they lack career outlets and if they want promotion must move away from legal work. It is a pity to lose their expertise and in suitable cases I believe they should be encouraged to qualify as lawyers, with the Government providing the necessary financial assistance. This could provide a small but useful addition to the strength of the Government Legal Service.

6.26. One aspect of recruiting arrangements on which I found differing views was whether the effort should be directed towards recruitment for individual Departments or for the Government Legal Service as a whole. I believe that there is room for both approaches. In the case of undergraduates, who may at that stage have no very clear idea of whether they want to be specialists or generalists, I suggest that recruitment should be mainly for the GLS, with emphasis on the variety of the opportunities offered. For qualified lawyers, who may already have developed aptitudes or acquired experience in a particular field, it may be more appropriate for advertising to be done on a Departmental basis, possibly directed towards specific posts. There is some recent evidence which suggests that Departmental competitions of this sort are more effective, although I do not think that the attraction of the government service for the non-specialist should be ignored. The Central Management Unit should play a part, in consultation with Departments and the Civil Service Commission, in preparing a co-ordinated recruitment campaign to meet all requirements.

6.27. A repeated criticism of the present recruiting arrangements was the long delay between advertisement and appointment. The Civil Service Commission has made considerable efforts to streamline the procedure; but inevitably the process of open competition, selection and checking of references etc before a formal offer of appointment can be made takes time, during which some candidates lose interest and accept other offers. I attach importance to the principle of open competition and to the Civil Service Commission's certificate of qualification as a means of maintaining standards; but clearly something must be done to reduce delays. The best solution seems

to lie in extending the use of provisional and conditional appointments, which are made subject to confirmation when the formalities have been completed. I understand that it is very rare indeed for anyone who has been given such an interim appointment not to be confirmed.

6.28. In some respects the problem of retention is more difficult than that of recruitment. It may be that if the work of the Government Legal Service is better publicised and the recruitment net spread wider more candidates will be attracted to join. But what is to be done about those lawyers who have joined and are well aware of the interest of the work etc, but who still leave in mid-career? I believe that the answer must be sought in terms of better pay and career prospects and better management and I deal with these issues in Chapters VII, VIII and IX.

CHAPTER VII

MAKING THE BEST USE OF LAWYERS

7.1. Given the overall shortage of government lawyers, which seems likely to persist, it is clearly desirable to make the best possible use of those available. In this chapter I consider a number of suggestions for making better use of existing resources and enhancing performance.

Lawyers and non-lawyers

7.2. The quality of legal services varies from Department to Department: it seems to be best in Departments where lawyers and administrators work closely together, with the lawyers being regarded as part of the team, to be brought into policy discussions at an early stage, rather than as a separate group, to be consulted only when things go wrong. This close working relationship may lead to some blurring of lines of responsibility; but provided that the lawyers retain their objectivity on matters of law, I see no objection to that. Indeed, I would welcome a breaking down of the separate legal "culture" which exists in some Departments. Much work of a legal nature can in fact be done by administrators, who should be familiar with the law as it affects their Departments. Conversely, lawyers can contribute to the general policy-making work of the Department. I would like to see more opportunities for lawyers to transfer to administration work if they show an aptitude for it, and to see more law graduates recruited as Administration Trainees, bearing in mind the widespread use made of lawyers in continental civil services. In present circumstances, however, when there is an acute shortage of lawyers, priority must be given to employing them on tasks in which legal qualifications are essential. In my visits to Departments I therefore made enquiries on this point.

7.3. In general I was impressed by the amount of legal work being done by non-lawyers. In Inland Revenue, for example, the preparation of instructions to Parliamentary Counsel for drafting legislation is handled by non-lawyers and I see no reason why administrators in other Departments, who often have highly-developed drafting skills, should not participate in this process. In the Home Office, where in spite of the large amount of legal work the Legal Branch has a complement of only 16 lawyers, administrators frequently deal direct with the Treasury Solicitor's Department on judicial review cases, consulting the Legal Branch only on points of particular difficulty. Much of the work in connection with conveyancing in the Treasury Solicitor's Department and registration in the Land Registry is handled by staff who are not qualified lawyers. Non-lawyers also undertake much of the prosecution work in the magistrates courts for Customs and Excise and the Department of Transport. All this seems to be sensible and I suspect that the shortage of lawyers has compelled Departments to look critically at the work on which they are employed.

7.4. The Lord Chancellor's Department presents special problems in respect of the balance to be struck between lawyers and non-lawyers. The Department employs 103 qualified lawyers, in addition to four administrators who have legal qualifications but have never been employed as lawyers. Many of the lawyers are employed on legal policy work and the handling of criminal appeals, or in the Law Commission and the associated Departments which come under the Lord Chancellor, like the Office of the Official Solicitor and the Public Trust Office, where I accept that qualified lawyers are required. But much of the work of the Lord Chancellor's Department is administrative rather than legal in character, although it is conducted within a legal environment. It is a nice question whether this work should be done by administrators with legal experience, or whether it needs lawyers with administrative ability. At present one Grade 3 lawyer, two at Grade 5 and one at Grade 6 are employed to advise on judicial appointments and four (including three at Grade 3) in the administration of the courts. When lawyers are in short supply this seems to me something of a luxury.

7.5. It was represented to me that in handling judicial appointments a professional qualification is necessary to provide credibility and to maintain the confidence of the judiciary and the legal profession. I am not persuaded that this need be so. Officials in other Departments advise Ministers on a wide range of professional appointments without themselves being qualified in the professions concerned. The argument that only lawyers can talk to lawyers is one which I think needs to be questioned; and in any case it is hardly convincing when it comes to the appointment of lay magistrates. Nor am I persuaded that qualified lawyers are needed to administer the courts. This seems to be essentially an administrative task, requiring organisational skills and an understanding of the legal system rather than legal qualifications. Again I am assured that lawyers are needed to retain the confidence of the judiciary; but I do not see why this should be the case, and I note that in Scotland and Northern Ireland administrators seem to do the work satisfactorily. I have not attempted to carry out a detailed examination of individual posts, but I recommend that the Lord Chancellor's Department, with the assistance of the Central Management Unit and the Treasury, should undertake an inspection of the posts dealing with judicial appointments and court administration to determine how many of them need in future to be filled by qualified lawyers.

Drafting of legislation.

7.6. I heard many tributes to the intellectual calibre and the drafting skills of the staff of Parliamentary Counsel's Office; but there was also some criticism from senior members of the legal profession of the style in which Bills are drafted and from a number of Ministers of the process of preparing legislation. On the first point, the criticism is that there is too much detail on the face of the Bill; that the language is over-elaborate, with lengthy sentences and a profusion of subordinate clauses; and that as a result the meaning is frequently obscure and the

sense lost. It is argued that Bills should be drafted in a simpler style, concentrating on general principles which can then be interpreted by the courts in particular cases. It is clearly important that legislation should be intelligible to those who may be affected by it; and it must be admitted that a number of recent measures - for example, the Local Government Finance Act, 1988 - have been so lengthy and complicated that they are extremely difficult for any but the experts to understand. It is not easy, however, to express in simple language intended changes in highly complex and technical areas of administration; and the search for simplicity may lead to a lack of precision and certainty, which could lay the legislation open to challenge in the courts. Parliamentary Counsel's Office draft under instructions and I suspect that the desire to avoid judicial review has led to more complex drafting. There is evidently a good deal of concern on this subject, particularly in the House of Lords; but it is somewhat tangential to my own review, which is primarily about the organisation and management of government lawyers. I suspect that there are no easy answers; but it may be that the Government should take another look at the recommendations of the Renton Committee on The Preparation of Legislation which examined the matter in depth in 1973-75.

7.7. The second criticism relates not to the language in which legislation is couched but to the way in which it is prepared and the resources available for the task. In an ideal world the system would no doubt work smoothly: Ministers would reach policy decisions on the content of a Bill at an early stage; the Department would send clear and precise instructions to the draftsman in good time; a polished Bill would be prepared for presentation to Parliament on the due date; and it would pass into law with little amendment. In practice, of course, things do not work out like that. Policy decisions are delayed, instructions are delivered late, the draftsman has to prepare the Bill in a hurry and large numbers of amendments are subsequently made. The draftsman is the last link in the chain and tends to receive the criticism which should properly be directed elsewhere. In fact, once the instructions are received the first draft of a Bill is usually produced with remarkable speed - often within ten days. For example, in the case of the current Official Secrets Bill the interval between the receipt of instructions in Parliamentary Counsel's Office and the despatch of the first draft of the Bill was four working days. In the case of the Prevention of Terrorism Bill the interval was seven working days. As for amendments, these are usually the result of policy changes or concessions made during the Parliamentary process rather than of defective drafting. I understand that some 1,000 amendments were made to the recent Education Reform Bill but that there was no criticism of the drafting, which seems a considerable achievement in a measure of this length and complexity.

7.8. Nevertheless, in view of the evident Ministerial concern on this point I have considered whether any improvements can be made. Although the present process involves a degree of "double-lawyering", I do not think that there would be any merit in trying

to draft Bills in the individual Departments. This is highly specialised work and it is more effective to concentrate the available resources in one place, both to make possible the establishment of priorities and to ensure consistency. Parliamentary Counsel's Office was created in 1869 because the existing arrangement of getting the work done in individual Departments or contracting it out to members of the Bar had proved costly and inefficient. But even if Bills are drafted centrally, could there be closer liaison with Departments? It was suggested to me that it would be helpful if the draftsman who was to prepare the Bill sat in on departmental discussions, so that he was aware of Ministerial thinking without having to wait for written instructions. I have discussed this suggestion with First Parliamentary Counsel who takes the view that participation in generalised discussion while policy is being developed would be time-consuming and no substitute for precise instructions from departmental lawyers. I accept this; but even if written instructions must provide the basis for drafting there could be advantage in the draftsman having at least one meeting with the responsible Minister so that he is fully aware of the latter's intentions. I suggest that this should be tried as an experiment. Anything which can be done to bring the Bill Team and the draftsman closer together and to break down the tendency towards remoteness on the part of Parliamentary Counsel's Office would be welcome. But the main bottle neck seems to be the preparation of instructions, which depends on the skill of the Departmental lawyers (as well as on Ministers making policy decisions on time). I understand that the standard of instructions varies considerably from Department to Department, depending both on the quality of the individual lawyers and the volume of demand placed on them. This emphasises the importance of the Government's being able to attract more really good lawyers, so that the standard in the weaker Departments can be raised to that of the best. In paragraph 7.3 I have also suggested that more use might be made of administrators, who will have taken part in the policy discussions, to assist in the preparation of instructions to Counsel.

7.9. It was suggested to me that methods of work in Parliamentary Counsel's Office were old-fashioned and that the individual draftsman adopted a prima donna-like attitude and failed to delegate with the result that the work took longer to complete. I do not think this criticism is justified by the facts. I understand that draftsmen work in teams, a senior with a junior. The method of working depends on the style of the draftsmen and the nature of the task. Some work as individuals, some together. Sometimes one does the draft and the other criticises it; sometimes rival drafts are produced; sometimes the work is shared and parts of a Bill delegated to the junior. Where necessary teams are reinforced; or a large Bill may be worked on by more than one team. Full use is made of computers and word processors and draft Bills can now be produced in an acceptable form without having to be sent to the printers (which saves both time and money). Given the speed with which they work I do not think that that the methods of the draftsmen should be criticised. But I am concerned at the tightness with which the present complement is stretched to deal with the current burden of legislation. It cannot be right that the Government's

legislative programme should be held up by lack of resources in Parliamentary Counsel's Office; but that is now in danger of happening. I believe that there is a need for the creation of another team of two draftsmen and I recommend that the complement should be increased accordingly. In the unlikely event of the flow of legislation diminishing, the additional resources could readily be diverted to assist with the Law Commission's work on consolidation.

Rights of Audience

7.10. If the best use is to be made of the available lawyers they should not be subject to unnecessary restrictions. In my visits to the Crown Prosecution Service a number of members urged on me the desirability of their being allowed to act as advocates in the Crown Court. I believe that the restriction of Crown Prosecutors to the magistrates courts is bad for morale within the Service and deters able lawyers from joining, especially if they are qualified barristers and would have to surrender their rights of audience if they joined. It is also inefficient. At present, if a case proceeds to the Crown Court the prosecutor who has been handling it in the magistrates court has to hand it over to a private barrister, who must go over all the material again to work up the case, at a fee which will almost certainly exceed the cost of employing the Crown Prosecutor to conduct the prosecution. In Scotland the more serious cases in the Sheriff court sitting with jury are handled by Grade 5 Procurators Fiscal; and if this practice were followed in the Crown Prosecution Service it would justify the creation of a number of more senior posts, thereby improving the present poor promotion prospects which I have repeatedly been told is one of the main causes of wastage. The additional cost would be offset by savings in Counsel's fees.

7.11. I am of course aware of the arguments on the other side. The majority of the Marre Committee recommended an extension of rights of audience for solicitors in the Crown Court, but concluded that such rights should not at present be extended to lawyers employed by the Crown Prosecution Service. Some members evidently thought that any extension would be inappropriate for a relatively new service which was having difficulty in coping with the demands made for its services in the magistrates courts. Others thought that it was wrong in principle for rights of audience in the Crown Court to be extended to lawyers employed by the Crown Prosecution Service, on the ground that the advocate who appears for the prosecution must be and should be seen to be independent of the authority which instructs him, such independence being one of the constitutional safeguards provided against the risk of a wrongful conviction.

7.12. Similar arguments have been put to me by distinguished members of the Bar during my own review. In addition to the general arguments for retaining the exclusivity of an independent Bar, which are set out in the Note of Dissent to the Marre Report, it has been represented to me that an advocate who only did prosecution work would become bent on securing convictions at any cost. With respect, I do not find these arguments of principle convincing. It seems to me that the points being made are more theoretical

than real. The only justification for restrictions is to maintain standards and I am not persuaded that a relaxation of this particular restriction would lead to a decline in standards. I do not believe that lawyers lose their independence simply because they are employed by the Government (it would be a serious matter if they did); nor that because they are engaged solely on prosecution advocates will become over-zealous in seeking convictions. If the arguments really are ones of principle, they should surely apply also to the magistrates courts, in which case the whole basis of the Crown Prosecution Service would be destroyed. If it is held that the principle applies only in the higher courts where the more important cases are heard, I would respond that I have not heard any suggestion that Treasury Counsel lose their independence by working exclusively for the Government. Moreover, during my visit to Northern Ireland I found that the staff of the Director of Public Prosecutions (Northern Ireland) have rights of audience in the Crown Court, which they exercise from time to time. And during my visit to Scotland I found that the Procurators Fiscal regularly act as advocates in the Sheriff court sitting with jury, which is the nearest equivalent to the Crown Court and deals with offences carrying a maximum penalty of three years imprisonment. In neither case is any adverse effect perceived.

7.13. I accept that while the Crown Prosecution Service is so short-staffed that it cannot cope with the work in the magistrates courts there is little prospect of its being able to take on work in the Crown Court. The first priority must be to build up numbers and reduce the reliance on agents. Any move into the Crown Court would probably have to start in a modest way with the re-hearing of appeals from the magistrates courts before going on to the more difficult cases. But I believe that if it were accepted in principle now that suitably qualified members of the Crown Prosecution Service could practise in the Crown Court this would give a much needed fillip to the morale of those now serving and make the work more attractive to the high-quality recruits who are badly needed.

7.14. A somewhat similar case arises in respect of lawyers employed by HM Customs and Excise. Under the Customs and Excise Management Act 1979, lawyers of the Department are given the right of audience in magistrates courts in England and Wales; but they are not permitted to appear in the Crown Court. I am assured by the Department that if their lawyers (most of whom are barristers) were permitted to appear in the Crown Court on the limited basis of handling single defendant cases in which it is known that a plea of guilty is to be tendered, a financial saving of some £100,000 a year could be made, including the extra cost of returned briefs which I was told runs at over 50% in London and the South East. In addition, it is argued that the change would improve the morale of departmental lawyers and aid recruitment. I find these arguments persuasive.

7.15. Accordingly, I recommend an extension of rights of audience to permit suitably qualified lawyers from Customs and Excise to appear forthwith in a limited number of cases in the Crown Court, and suitably qualified members of the Crown Prosecution Service

to appear in the Crown Court when circumstances permit. I appreciate that these recommendations, which are made from the narrow perspective of my inquiry, will need to be considered by the Government as part of its wider review of the legal profession which is now in progress following the report of the Marre Committee and on which a Green Paper is shortly to be published.

Supporting staff and services

7.16. I believe that several other and less controversial steps need to be taken if the Government is to make the best use of lawyers. The first is to provide them with better support in the way of secretarial assistance. It really is a misuse of the time of qualified lawyers when they have to do their own photo-copying or to write minutes in manuscript because to get typing done involves a delay of several days. During my discussions with government lawyers I heard repeated complaints of this sort. In private practice competent and experienced secretaries can relieve lawyers of many routine tasks and the lack of this sort of service in government is a significant factor when career choices are being made. I appreciate the difficulty the civil service has in attracting good secretaries in London; but unless steps can be taken to overcome this it will have an adverse effect on the recruitment and retention of lawyers and will mean that existing lawyers are not used to the best effect.

7.17. Similarly I believe that more use needs to be made of technical aids. Information Technology provides an opportunity to handle greater workloads without more staff, to give a speedier service and to relieve staff from routine tasks to concentrate on more creative and interesting work. Word processors are an ideal tool for the preparation and amendment of legal documents and standard forms; but there are not enough of them in use in the Government Legal Service. The computer too has great potential in the legal field which has not yet been realised. To have the whole of the statute book available for up-to-date reference on the touch of a button would be a great boon to large numbers of government lawyers and save much work in libraries. The LEXIS system provides a partial solution, but it is not comprehensive and there are not enough terminals. A good deal of work has been done (notably in the Lord Advocate's Office) on a better system and the matter is now being studied by a committee chaired by the Lord Chancellor's Department. I understand that a considerable capital outlay would be involved (possibly £250,000); but I believe that this would be a worthwhile investment, making for a better and speedier service, and I recommend that the work should be pushed ahead as a matter of urgency. There are other areas where supporting facilities are inadequate. I was told of instances in which work was hampered by a shortage of standard reference books, and of one case in which a government lawyer had been obliged to bring his own computer into the office because none was available. Again, I believe that it would be worthwhile to spend a little more money to provide a better service; and I recommend that the Central Management Unit be given the task of assessing the needs of lawyers throughout the Government Legal Service for technical aids and pressing

Departments to make the necessary provision. In discussion with the Deputy Secretary in charge of Federal Government lawyers in Australia I was impressed by the work which has been done there on the application of Information Technology to legal work and I believe that it would be helpful for the Central Management Unit to get in touch with the authorities in Canberra to see whether lessons can be learned from the Australian experience.

7.18. Accommodation was another subject on which I heard a good deal of criticism. Standards in government offices vary; but in most cases they compare unfavourably with what is available in private firms of solicitors (though not it seemed to me with barristers' chambers). Overcrowded and dingy office accommodation can have a depressing effect on morale and is likely to be a deterrent to both recruiting and retention. There are obvious difficulties about spending large sums on refurbishment when Departmental running costs are tightly controlled; and it would be difficult to justify to other staff giving preferential treatment to lawyers. But I hope that Departments will review the state of their accommodation and take steps to improve the worst areas. If it wants to get the best from its staff the Government cannot afford to underestimate the importance of working conditions.

Age of retirement

7.19. The normal retiring age for the more senior grades in the civil service is at present 60. Some flexibility is already allowed in the case of lawyers, who usually join the service later than their administrator counterparts and cannot qualify for full pensions by the time they are 60. In many cases government lawyers will still be capable of performing effectively after the age of 60 and it seems wasteful to dispense with their experience at an arbitrary date. While the present shortage of lawyers continues, I recommend that there should be a flexible retiring age of 60-65, depending on performance, the wishes of the individual and the needs of the Department, which would include taking account of the need to provide promotion opportunities for younger lawyers.

CHAPTER VIII

PAY

8.1. Although remuneration is only one of the managerial issues mentioned in the third of my terms of reference it is among the most important aspects of the review. During the course of my inquiry the single reason most frequently given to me for the difficulty of recruiting and retaining government lawyers was "inadequate pay". This is borne out by the replies to the questionnaire which the Law College circulated to its students (para 6.14) and by the explanations given to the Civil Service Commission by successful candidates who turned down appointments (para 6.8). Most of those who have left the Government Legal Service in recent years appear to have done so to take up better paid jobs outside - sometimes at twice the salary. In these circumstances I have thought it right to deal with the issue of pay in some detail.

Civil Service rates of pay

8.2. Several steps have been taken in the last two years to improve the pay of government lawyers. In 1987 a special London allowance was introduced for lawyers in recognition of recruitment problems in the capital. The payments were £1,000 a year for Legal Officers and Crown Prosecutors, £1,500 for Grade 7 and £2,000 for Grade 6 (though in the last case payment was subject to the scale maximum not being exceeded). Shortly after I had begun my review, new pay arrangements were announced for civil servants generally in Grades 5-7 based on the "spine" system already agreed for grades represented by the Institution of Professional Civil Servants. These arrangements had two main effects: first, they substantially increased the maxima available to high performers in each grade by adding four performance points above the scale maxima; secondly they enabled high performers to reach these maxima more quickly than hitherto. The new arrangements were announced as part of the 1988 pay award for Grades 5-7 but civil service lawyers were given the additional advantage that the full 1988 award was made payable from 1 April 1988, whereas other staff in these grades had to wait until 1 October for a proportion of the 1988 award. Also as part of the new arrangements, the lawyers' London allowances were incorporated into new London lawyer scales; the level of the Grade 7 allowance was increased and the scale maximum ceiling was removed for the Grade 6 allowance. The total increases in London ranged from about £1,800 a year for Legal Officers to about £2,300 for Grade 5s and £3,500 for Grade 7s. (Further increases, worth about 4%, for Grades 5-7 are due on 1 April 1989.)

8.3. The present rates of pay for government lawyers in London (where most of those outside the Crown Prosecution Service are employed) are:

	Pay Scale	With Maximum Performance Point
Legal Officer	£14,692-£18,358	(no performance points)
Crown Prosecutor	£15,875-£20,486	£23,282
Grade 7	£19,998-£25,487	£29,904
Grade 6	£23,976-£29,004	£34,534
Grade 5	£28,837-£32,137	£37,121
Grade 4	£33,969-£35,569	£37,207 (only one performance point)
Grade 3	£35,800-£39,000	£45,300
Grade 2	£45,800-£48,000	£57,000
Grade 1	£68,500	(no performance points)

8.4. These rates of pay include the London Allowance referred to above which is paid up to and including Grade 6 in recognition of recruiting difficulties, and a London Weighting with a maximum of £1,750 a year in Inner London, which is paid up to and including Grade 4 in the civil service generally and was originally intended to compensate for the high cost of living in the London area. Rates of pay for lawyers employed outside London are correspondingly reduced.

8.5. It should be noted that the performance points shown in the final column are far from automatic. Most are not awarded until the top of the salary scale has been reached and only the individual whose performance has been outstanding over a number of years can receive the maximum number of points.

Outside comparisons

8.6. It is not easy to compare these figures with the remuneration offered outside government. It is difficult to obtain reliable figures for salaries in the private sector, particularly at senior levels; and there is often a package which includes, in addition to a pension scheme, a car, medical insurance, lunches, bonuses, share options etc. Moreover, because barristers and solicitors in the private sector are not organised in the same sort of hierarchy as the civil service, it is not easy to be sure that one is comparing like with like.

8.7. During the course of my review I questioned a number of witnesses about rates of pay. The large City law firms expect to pay a newly qualified lawyer about £20,000 a year; and by the time he is thirty he may well be earning £50,000. Because of the highly competitive state of the market salaries are reviewed every six months; and in some cases are increasing by as much as 20% a year. In his 30s the successful solicitor can expect a partnership and a substantially increased income. Figures for partners are less easy to come by, but an advertisement in "The Times" of 13 September 1988 for a Construction Law Partner offered remuneration "to £150,000". Some of the large City firms have as many as 50 partners, so presumably earnings of this order are not uncommon, with senior partners receiving a good deal more. The most successful barristers are reputed to enjoy similar incomes. In the commercial and industrial organisations which I visited levels of salaries for lawyers are somewhat lower; but nearly all receive cars (as do some salaried partners in firms of solicitors) and other perquisites. Of course, not all lawyers in London receive

these very high salaries: in general those who work in the commercial sector, whether barristers or solicitors, are better paid than those in other branches of the law. And it is clear from my visits to provincial centres that levels of pay outside London are substantially lower, particularly in the case of small firms.

8.8. In an attempt to obtain some meaningful figures on a systematic basis I commissioned from Incomes Data Services (IDS) a comparative study of the remuneration of lawyers. This was based on the review and updating of published survey material and on a series of case studies of legal firms, manufacturing and financial organisations and public sector bodies. The main findings are reproduced in the annex to this Chapter. They confirm the anecdotal evidence of my own inquiries and indicate that the figures quoted in the previous paragraph are not exceptional. For example, a newly qualified solicitor in a commercial legal firm in the City of London earns £19,000-£21,000; by his early 30s as an assistant solicitor he may get anything from £37,300 to £61,800; while the earnings of equity partners are described as being in six figures. A solicitor below partner level in domestic and criminal practice in London can expect to earn between £19,500 and £41,000; in the lowest paid region between £9,400 and £15,000; with an average for England and Wales of between £13,400 and £19,400. Earnings of barristers with 15-35 years experience range from an upper quartile figure for QCs of £151,100 to a lower quartile figure for junior counsel of £32,800. These figures are for England and Wales; in Scotland the range is from £69,000 to £25,000. For lawyers employed in industrial and financial organisations the upper quartile (in London) ranges from £28,800 to £78,100 and the lower quartile from £18,500 to £34,700, according to age. In nearly all these organisations there are (in addition to pensions) company cars and frequently bonuses, share option schemes etc. A separate survey by Chambers and Partners dated September 1988 indicates that the average remuneration of lawyers in industry rose by 16.5% in 1987/88.

8.9. The figures which emerge from the IDS study are complex and reveal some wide variations. In making comparisons it is necessary to take account of the civil service non-contributory pension scheme which I am told by the Treasury is currently worth the equivalent of about 18% of salary. But it should be noted that pension schemes are now widely available to lawyers employed outside the civil service, and although benefits are difficult to quantify many appear to be better than the civil service scheme. As a broad generalisation I believe it to be true that a good lawyer working in the private sector in London (especially if he is engaged in commercial business) can earn up to twice as much as his counterparts in the government service in London or in private practice outside London. The gap in starting salaries is less pronounced, but it widens rapidly in mid-career.

8.10. Those who join the Government Legal Service do not expect to match the highest financial rewards attainable in the City or at the Bar. They have probably been attracted by other features, such as the interest and variety of the work; and they recognise that some allowance must be made for the greater stability and security of the public service. But if the gap between the private and public sectors becomes too wide, sufficient good quality recruits will not come forward

to join the Government Legal Service and an increasing number of those who have joined will leave in mid-career. The recruitment and wastage figures quoted in Chapter VI suggest that this is what has been happening.

8.11. It is possible to interpret the recruitment and wastage figures in Chapter VI to indicate that the problem is confined to the lower grades and that it will be resolved by the pay increases already announced for the civil service as a whole. I believe that this view is too complacent; that it underestimates the strength of the competition (which is greater for lawyers than for civil servants generally) and that it misunderstands the nature of the pay problem. We are concerned with quality as well as numbers and I believe that ambitious young lawyers considering a career look beyond starting salaries. Certainly, most of the young lawyers I met in the Government Legal Service were more worried about future prospects and rewards than about present rates of pay. The able lawyer who resigns from Grade 6 or Grade 7 does not do so simply because he is dissatisfied with his present salary, but because he knows that even if he is promoted the salaries of the higher grades will still compare very unfavourably with what is on offer elsewhere. Moreover, although the losses from the senior grades have so far been small in number, they are proportionately higher than in the civil service generally and are of critical importance. The level of experience of those from whom the most senior posts must be filled has already fallen and the loss of even a few more lawyers from key positions could create a situation in which it became very difficult for the Government to carry on its business. Consequently I believe that the pay problem must be looked at across the board, in the knowledge that the rapid increase in private sector salaries in London means that the gap is widening. It is not yet clear what effect this year's pay increases will have on recruitment; but it seems most unlikely that they will check mid-career wastage. It would be dangerous to delay remedial action until the situation has deteriorated further.

Underlying principles

8.12. The first element to be considered in any pay structure is starting pay. Unless it can offer starting salaries which are not too far out of line with what is available elsewhere, the government service will be ruled out from the start by many of those considering a choice of career and will tend to attract only those who cannot secure other employment. Starting pay needs to reflect both qualifications and experience gained before joining the service.

8.13. Equally important, there must be a prospect of career progression. This was emphasised to me repeatedly during my review: indeed, many witnesses argued that promotion prospects are more important than starting pay. This is particularly important when it comes to retention. The lack of senior posts and therefore of promotion prospects is a major source of discontent - and hence of wastage - in some areas, such as the Crown Prosecution Service. If people are to be motivated to work well they need to have something to look forward to in the way of moving up to more responsible and better-paid posts. This is not just a question of extra money, important though that is: it is a matter of status and self-esteem.

8.14. Not every government lawyer in the same grade needs to be paid the same. There are differences both in the performance of individuals and in the work they do. Performance related pay is now an accepted and important feature of the civil service pay structure. I believe that there is a need to recognise a similar differentiation in respect of job value. Not all posts carry an equal weight of responsibility and not all require the same skills of those who occupy them. There is much legal work to be done which is of a comparatively routine nature. It is nevertheless important and needs to be done well; and those who perform it in London, if they feel they are not adequately rewarded, will have little difficulty in finding better paid jobs in the private sector. But it is not as intellectually demanding as, say, drafting legislation or advising Ministers on difficult issues. There are some areas where the cost of "getting it wrong" - whether in offering advice on a controversial case, drafting a complex Bill or drawing up a multi-million pound defence contract - can be very serious indeed in terms of political damage or cost to public funds. These seem to me posts which are of high value to government and should be rewarded accordingly. To some extent this can be done through the grading system; but that is not always sufficiently flexible and, in any case, is based on levels of responsibility which in practice are measured largely in terms of staff or budgets which are not readily applicable to lawyers. Nor does the grading system differentiate between those skills which are in demand elsewhere and those which are not. There are lawyers in the economic Departments, for example, whose expertise in tax or commercial law is a very saleable commodity; other colleagues may have more arcane skills which although valuable to government are less likely to bring them attractive offers. The pay system needs to recognise job weight and valuable skills, particularly those which are readily marketable elsewhere.

8.15. Finally, there is the London factor. The shortage of lawyers is essentially a London problem: I found no serious lack of candidates willing to join the government service in either Edinburgh or Belfast. There is clear advantage in moving as much work as possible outside London where costs are lower and staff easier to recruit, and I have made recommendations to this effect in Chapter IV; but a high proportion of government lawyers must continue to work in London, close to Ministers, Parliament and the Courts. This has two consequences. First, they are faced with the high cost of living and particularly of house purchase within commuting distance of London. Secondly, it is in London where most of the highly-paid competition is located in the form of the big City firms of solicitors, the Bar and the financial and commercial institutions. These two features inter-react: it is because of the high cost of living in London that government lawyers, even though they may find their work satisfying, are attracted by better paid posts in the private sector. I believe that the salaries paid to government lawyers at all levels working in London must take account of these special circumstances.

8.16. Accordingly I see a need for a pay system which is both flexible and selective. The starting levels must not be too far out of line with those paid elsewhere and there must be reasonable prospects of career progression. Training, experience, good performance, job weight and special skills must all be recognised; and in a situation in which lawyers are in short supply significantly higher rates will have to be paid to those who work in London where the competition is greatest.

Options for a pay system

8.17. I have considered how these principles can best be translated into a pay system for government lawyers. It is arguable that the hierarchical system used for the civil service generally is not appropriate to lawyers whose skills lie in advisory work, drafting or advocacy rather than in managing resources, and that they should be grouped in some simpler way, more akin to those in the private sector, with pay determined on an individual basis. I see the force of this argument, particularly in relation to groups like Parliamentary draftsmen. On the other hand, most government lawyers work in Departments which are not like a firm of solicitors or barristers' chambers. The lawyers are not a series of individuals serving separate clients: they are part of a team serving a single Minister and they work alongside colleagues who are organised in a hierarchy. The more senior advisers have to cover a wider range of activities than their subordinates, who are only concerned with parts of the field, and therefore carry more responsibility. I would be reluctant to set lawyers further apart from their administrative colleagues when there is a need to bring them closer together. The introduction of wholly new pay scales for government lawyers would be bound to lead to pressure for other professional groups to be similarly treated. Moreover, I fear that the re-grading of individuals which would be required would itself give rise to problems. During the course of my inquiry I have heard frequent references to the re-grading exercise of 1987 in which a number of lawyers felt that they had been unfairly treated. This caused widespread resentment and in several cases was quoted as a reason for lawyers leaving the government service. Even at this late stage I consider that means should be found to remove the anomalies which were created.

8.18. I believe that the principles I have outlined above can be implemented by adapting the present Civil Service pay system, which already contains considerable flexibility. The system is based on pay ranges which include increments for length of service. Provided that it is accompanied by a performance test, this seems to me an appropriate arrangement for lawyers whose value (perhaps more than that of others) is likely to increase with experience of the work on which they are employed. Recent developments have introduced discretionary extra payments for high performance, and it is right that these should be available to lawyers as well as to others, although the difficulty of operating within artificial quotas which are perceived mainly as a means of containing cost was frequently emphasised to me. The "spine" system introduced for Grades 5-7 earlier this year contains provision for incremental points to be used not only to reward performance but to deal with problems such as recruitment and retention. I believe that this flexibility can be adapted and extended to incorporate the concept of job value described above. In paragraphs 8.21-35 I suggest how this might be done. I also make a number of other proposals to introduce greater flexibility into the present arrangements.

8.19. I have considered carefully how to deal with the London factor. It has been suggested to me that because of the high cost of living, and particularly of buying houses, in the ever-widening London commuter zone those lawyers who are obliged by their work to live in that area

should be paid substantially more than those who live in less expensive parts. Two points are made here. First, the present Civil Service London Weighting with its maximum of £1,750 a year is quite insufficient to compensate for the very much higher cost of housing in London. (A number of the commercial organisations I visited pay a London Weighting of £3,000 a year.) Secondly, London Weighting stops at Grade 4, and it is unreasonable that Grade 3 lawyers working in London should receive no more than Grade 3 lawyers working outside (of whom there are considerable numbers in Scotland, Northern Ireland and the Crown Prosecution Service). I see force in these arguments; but to recommend a substantial increase in London Weighting and its extension to higher grades would have wide repercussions outside the Government Legal Service with which my review is concerned. I believe that this is a matter which deserves separate study. Meanwhile, I have adopted an alternative approach.

8.20. A glance at the advertisements in the daily press reveals that large numbers of posts are on offer in London in all areas of the law at salaries substantially higher than those available in the Government Legal Service. The losses to the private sector which have occurred cover a wide range of Departments and I believe that nearly all government lawyers in London could, if they wished, obtain better paid jobs outside. The temptation to do so certainly does not stop at Grade 6. Some of the most serious losses have been at more senior grades and, as I have argued in paragraph 8.11, I believe that many of those who leave from lower grades are influenced by the fact that the salaries which they could expect if they remained and were promoted compare unfavourably with those available in the private sector. I recommend that the London problem should be dealt with in two ways: first, by an extension to the higher grades of the Lawyers' London Allowance; and secondly through the concept of job value outlined above, which will tend to reward mainly those working in London since that is where most of the jobs which are highly rated in terms of weight of responsibility, special skills and marketability are.

Detailed proposals

8.21. Since the pay increases agreed in April 1988 I believe that the starting salaries of the more junior government lawyers are generally at a reasonable level. The fully qualified solicitor or barrister with a couple of years experience now joins the government service at Grade 7, with a starting salary of at least £19,998 in London, or £16,692 outside. This is not too far out of line with what is on offer elsewhere and I recommend no change. It seems right that the extra training and experience of lawyers should be recognised by their joining the Civil Service at the same level as their administrative contemporaries will have reached in their late 20s. Those who are qualified but have no experience join as Legal Officers at a starting salary of at least £14,692 in London or £11,942 outside. Those who are particularly well qualified should continue to start a point or two up the scale. Once they have gained one or two years experience, Legal Officers should as now progress automatically to the Grade 7 scale, subject to satisfactory performance.

8.22. I have recommended in Chapter VI that the Government should take on articled clerks and pupils. These are in effect training grades and must expect to be paid as such. In the past articled clerks

have been paid on the Trainee scale, which currently starts at £8,731 in London and £6,981 outside. I understand that this scale is under review and I make no recommendation except to point out that both these figures are substantially below those quoted in the IDS survey and I hope this will be taken into account by those undertaking the review. Once they have qualified trainees would move up to the Legal Officer scale and thence to Grade 7.

8.23. Although the Crown Prosecution Service recruits to Grade 7 (Senior Crown Prosecutor), the grade at which most recruitment takes place is the basic Crown Prosecutor grade with a minimum starting salary of £15,875 in London and £13,125 outside. This seems to be acceptable for those who are newly qualified; but once they have acquired two years experience, whether inside or outside government, I believe that subject to satisfactory performance they should move to Grade 7, as lawyers do in other Government Departments. The work of making decisions on prosecutions and of advocacy in the courts is important and responsible, and this change should help to remove the impression that members of the Crown Prosecution Service are in some way inferior to other government lawyers. I would hope that it would also improve the standard of recruitment. To prevent increased recruitment at the Senior Crown Prosecutor grade prejudicing the promotion of those already serving as Crown Prosecutors, I recommend that there should be straight through-grading to enable management to promote to the higher grade all those with the necessary experience, subject to satisfactory performance. This would entail removing the limitation of a fixed number of Senior Crown Prosecutor posts on the complement.

8.24. I have already emphasised the need for career progression and drawn attention to the growing disparity between the rewards available to lawyers in their 30s in the public and private sectors. The Grade 7 lawyer's pay range, including performance payments extends to a maximum in London of £29,904. I do not regard this figure as unreasonable, but the good lawyer should not have to move through all the 11 points in the range to get there. The existing "spine" system contains provision for accelerated increments for outstanding performance and I recommend that at Grade 7 the concept of job value should be recognised in a similar way. The lawyer filling a highly rated post would be eligible to move up to three steps (worth about £750-£1,000 a year each) up the ladder as soon as he takes up the appointment. A similar number of points would be added to the top of the range, and I understand that the new "spine" arrangement would allow for this; but I would expect the more able Grade 7s to be promoted before reaching their maximum.

8.25. I believe that, as in the case of administrators, the most able Grade 7 lawyers (who will tend to be the ones filling the posts with the highest job value rating) should be promoted direct to Grade 5; but I believe that in order to improve career progression, promotion to Grade 6 should also be made easier for other Grade 7s. In visiting Departments I was told that it is frequently difficult to distinguish clearly between the work appropriate to a Grade 7 and a Grade 6 lawyer. The work is often of mixed quality, with a Grade 7 doing some tasks which might be more appropriate to a Grade 6 and vice versa. I recommend that in suitable cases management should have discretion

to promote a Grade 7 to Grade 6 after five years, provided that he has demonstrated ability to perform work appropriate to the higher grade, regardless of whether there is a Grade 6 vacancy on the complement. I understand that such personal promotions fall within the scope of the flexibility of the new "spine" arrangements for Grades 5-7. To maintain a degree of consistency, decisions on such promotions should be made by Departmental management in consultation with the Central Management Unit. This recommendation would not apply to the Crown Prosecution Service where levels of work are more clearly defined and where I have made other recommendations on the number of Grade 6 posts.

8.26. The Grade 6 lawyer's pay range, including performance points, is from £23,976-£34,534 in London and £19,905-£31,563 outside. In both cases the range omits some of the points on the "spine", thus providing for quicker progress up it. This is a grade from which a good deal of wastage has been taking place in recent years and I believe that some further improvement is required. I recommend that this should be effected selectively, as in the case of Grade 7, by enabling those in posts with a high job value rating to move up to three steps (in this case worth about £1,000-£1,200 a year each) up the ladder on appointment. Again a similar number of points would be added to the top of the range.

8.27. Grade 5 is regarded as the career grade and is therefore of crucial importance, both to those who are in it and to those who aspire to it. Although there has so far been less wastage from this grade than from Grade 6, a number of witnesses expressed disatisfaction with the Grade 5 pay level (which benefitted less than others from the recent improvements) and I fear that unless something more is done to improve it losses will follow. Achieving Grade 5 is probably the nearest equivalent to securing a partnership for a solicitor in private practice. I believe that the good government lawyer (like his administrative counterpart) should have an expectation of reaching this grade by his mid-30s. It is obviously important that that such a key grade should be adequately rewarded, especially as many will not progress beyond it. The pay range (including performance points) for Grade 5 lawyers is £28,837 to £37,121 in London and £27,087 to £35,371 outside. I do not think that the London figures are high enough. At the moment Grade 5 lawyers receive the general Civil Service London Weighting, but not a special Lawyers' London Allowance. This reduces the differential compared with Grade 6 to a point at which it offers little incentive. I believe that this is a factor in the wastage at both Grades 5 and 6. Given that full performance points are only awarded for outstanding performance sustained over a period of years, it is almost impossible for a Grade 5 government lawyer in his mid-40s working in London to earn more than £35,000 a year. This falls so far short of what the good private sector lawyer of similar age can earn in the capital that I believe a substantial increase is needed.

8.28. What the increase should be can only be a matter of judgement. There can be no question of seeking to match the highest outside earnings. On the other hand, it needs to be a significant sum to demonstrate to government lawyers that their work is considered

important and that their pay problem is being taken seriously; and it needs to be carried through to the senior grades if it is to have the effect of persuading staff to stay on in the hope of further advancement. I do not believe that anything less than an increase of £5,000 a year will produce the necessary impact.

8.29. I recommend that an increase of this order should be achieved in two parts: first, by the payment to all Grade 5 lawyers working in the London area of a Lawyers' London Allowance of £2,500 a year; and secondly, on a selective basis, by enabling Grade 5 lawyers (including those outside London) filling posts with a high job value rating to move up to three steps (in this case worth about £1,100-£1,400 a year) up the ladder on appointment. Again, three points would be added at the top of the range.

8.30. I propose that higher grades should be treated in a similar way. At present Grade 4 is something of an anomaly in that the range only includes one performance point, with the result that the theoretical London maximum of £37,207 is only marginally higher than that for Grade 5. I understand that the grade is under review in the Civil Service generally and may be abolished, in which case existing Grade 4s will presumably be assimilated to either Grade 3 or Grade 5. In these circumstances I make no proposal to remedy the anomaly, but recommend that while the Grade continues those in it should be eligible for up to three increments for job value and for a £2,500 London Allowance, as in the case of Grade 5.

8.31. The remaining grades form part of the senior open structure of the Civil Service and their pay is determined in the light of recommendations from the Top Salaries Review Body (TSRB). Nevertheless, it seemed to me appropriate that as part of my review I should consider these grades. They are the ones from which heads of legal departments are chosen and which provide the Government's most senior advisers and most experienced draftsmen. The maintenance of quality at this level is of the utmost importance. There have been several losses of lawyers at Grade 3 level in recent years and at least one at Grade 2 to take up better paid jobs in the private sector. Moreover, the remuneration of the higher posts is, I believe, a major factor in determining the attitude of the more junior grades who aspire to promotion.

8.32. In their last report (Cm 359, April 1988) the TSRB indicated that they believed that the pay arrangements for Grades 2 and 3 would need to evolve in ways which would enable the pay of individuals to be determined more flexibly. They went on to say that "Although performance would still remain the primary criterion for progression through each range, the criteria might be widened to enable greater account to be taken of job weight" and added that "personal pay points could be used to assist with recruitment problems". It seems to me that it would not be inconsistent with this approach to apply to lawyers in Grades 2 and 3 both recognition of the London factor and the concept of job value. The numbers employed in these grades are comparatively small and they do not have long incremental scales, so that in determining rates of pay a more individual approach seems appropriate. I recommend that all lawyers in Grades 2 and 3 should be paid on a basis of personal pay points. In fixing these points regard would

be had not only to performance, but also to the London factor and to the value of the post held, in terms of weight of responsibility, special skills and marketability. Following the recommendation on London Allowance for lower grades, the amount included for the London factor might be of the order of £3,000 for Grades 2 and 3 working in the capital. It is difficult to put a figure to the amounts which might be awarded for job value, which would have to be assessed separately in each case. But as a rough guide I would envisage that a lawyer working in London and occupying a post of the highest value in terms of job weight, skills and marketability, might receive a total increase of up to £10,000 a year. I would see the award of personal pay points in this selective way primarily as a means of dealing with the retention problem; but it might also be useful in the case of secondments from the private sector. At Grade 1, where wastage has not so far been a problem and where there are other non-financial rewards, I make no proposal. The fact that the most senior government lawyers are paid at the same level as high court judges seems to me an appropriate linkage, which should be preserved.

8.33. In making recommendations for lawyers in Grades 2 and 3 I hope that I shall not be thought to be trespassing on the territory of the Top Salaries Review Body. My recommendations are of course made to the Government. If they find favour they could no doubt be introduced into the dialogue between the Government and the TSRB which will precede the preparation of the next TSRB report.

8.34. The extension of the Lawyers' London Allowance, if approved, could be introduced without delay. The introduction of the job value concept on a selective basis would require a mechanism. I have considered whether a comprehensive job evaluation exercise by outside management consultants would be needed to provide a basis for the assessments; but I believe that this would be unnecessary as well as time-consuming. I recommend that, as in the case of performance payments, the assessment should be made by Departmental management, but that the Central Management Unit (and the Head of the Government Legal Service at the higher levels) should be consulted to ensure consistency. The Treasury might also wish to be involved, at least initially. Without examining individual posts, which would have been impossible in a review of this sort, I cannot specify the number of payments to be made: but I hope that the three principles of job weight, skill and marketability will provide some guidance on how the assessments might be made.

8.35. Because the additional payments would be linked to the work done in particular posts it would be necessary to decide what to do when the postholder changed. In many cases the occupant of a highly rated post, because of his particular skills, would move either sideways or on promotion to another post with a similar rating. If for reasons of career development he were moved to a different sort of post with a lower rating I believe that he should carry the extra pay with him on a personal basis. This would not apply if he was moved to different work for other reasons, eg because he wanted a change or because of unsatisfactory performance.

8.36. I recognise that my proposals for pay increases related to job value may cause some resentment on the part of those lawyers who do not receive the additional payments and who may feel that their particular skills are being under-valued. This is an unavoidable risk when increases are awarded on a selective basis; but I would hope that there would be general recognition that some jobs are more demanding than others, just as some skills are more marketable than others, and that it is appropriate for the pay system to recognise these facts. I also appreciate that the proposals (including the London payment) would mean paying some senior government lawyers more than their administrative counterparts and that this too could cause resentment. Earlier inquiries into the Government Legal Service were concerned with whether lawyers should be brought up to the pay scale of administrators. Barlow regarded it as "axiomatic" that they should not exceed the administrators. I do not believe that this view is any longer tenable. Government needs both administrators and lawyers; but if the latter are in shorter supply it will have to pay more to get them. In the course of my review I discussed this point with a number of Permanent Secretaries who would have to deal with any management problems which arose in their Departments as a result of giving preferential treatment to lawyers. The general view was that the shortage of lawyers was well-known and would be accepted as a reason for treating them as a special case, though several Permanent Secretaries pointed out that lawyers were not the only group in short supply in London.

8.37. It will be necessary to keep these proposed changes under review. If the rewards paid in the private sector continue to rise, further selective increases may be necessary. If the London factor spreads to other centres, pay rates there may need to be adjusted. The proposed Central Management Unit will have a role to play in keeping the pay of government lawyers under continuing review and putting forward proposals for change in consultation with the Treasury.

THE REMUNERATION OF LAWYERS
(Extract from IDS Survey)

SECTION 1: INTRODUCTION & MAIN FINDINGS

This report has been produced by the Public Sector Unit of Incomes Data Services Ltd for the Cabinet Office. We were commissioned to prepare a report on the remuneration and benefits open to qualified legal staff outside the Government service.

We were asked to examine the following areas:

o The salaries, benefits and prospects of different categories of legal staff working in the private and public sector. This includes articled clerks, qualified solicitors and barristers.

o The broad salary ranges of partners in legal firms.

o The variation in salaries between London and the provinces.

o Pay movements in the last year.

It was agreed that we would review the published survey material and conduct our own case study visits.

The report is divided into four sections.

o **Section 1** summarises the main findings of the report.

o **Section 2** examines the data and provides the most up-to-date earnings figures possible.

o **Section 3** reviews the available survey material.

o **Section 4** presents our case study reports.

MAIN FINDINGS

There are four distinct areas of employment for qualified legal staff. These are:

o Commercial legal firms.

o Domestic and criminal legal firms.

o Industry and finance.

o Barristers.

These four areas are treated separately throughout the report.

Salaries
The highest level of earnings is found in the commercial legal firms. An aggregate salary of £31,048 pa for those between the ages of 25 and 30 compares with an average salary of £27,350 pa in industry and an aggregate salary of £16,000 pa for solicitors in England and Wales.

The determination of pay on the basis of performance is common for legal staff in industry and finance but much less so in legal firms. In these organisations salaries are generally tied to experience and service.

The largest recent salary increases were reported by the commercial legal firms, with increases of between 15 and 30 per cent. Salary increases in industry and finance were on average between 11 and 12 per cent. Barristers average earnings have increased by similar amounts.

Commercial Legal Firms
These are mainly located in the City of London, salary levels are shown in table 1.1

Table 1.1: Earnings By Age And Position In Commercial Legal Firms

AGE	POSITION	SALARY RANGE £PA	
		MIN	MAX
22-23	Articled Clerk	12,000	12,500
24-25	Newly Qualified	19,000	21,000
25-26	Assistant Solicitor	22,000	28,000
31-32	Assistant Solicitor	37,300	61,800
29-33+	Senior Solicitor	35,000	60,000
29-31+	Salaried Partner	40,000	60,000
30+	Equity Partner	Six Figures	

Graph 1.1 illustrates the earnings differential between the maximum and the minimum up to the age of 31-32.

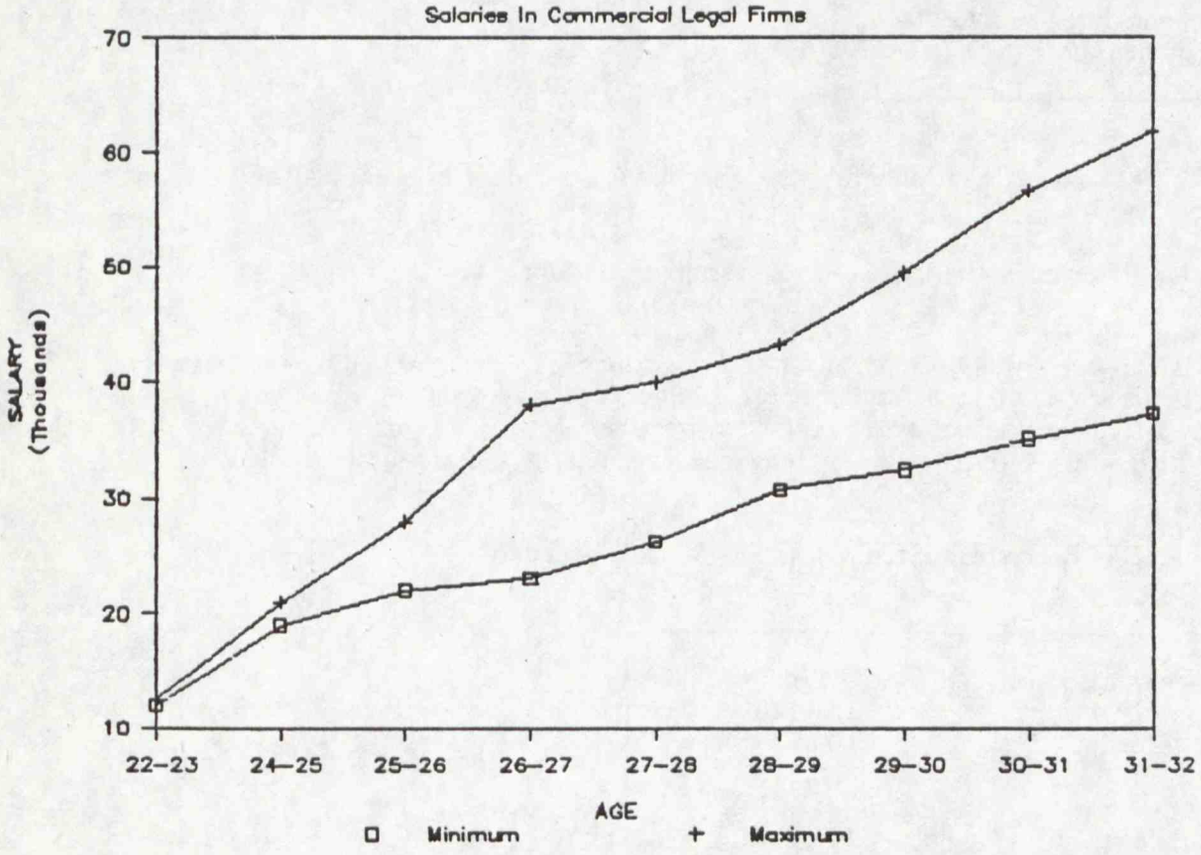
Domestic And Criminal Legal Firms
The latest salary levels for employed solicitors in domestic and criminal practices are given below. Table 1.2 shows average salaries in the highest and lowest earning regions and England and Wales by age. The earnings figures relate to January 1988.

Table 1.2: Earnings By Age & Region

AGE	Highest £pa	Lowest £pa	E & W £pa
24-26	19,522	9,383	13,370
26-27	21,420	12,081	14,547
27-28	23,659	12,643	16,074
28-29	25,392	13,394	17,308
29-30	27,990	16,129	19,183
30-32	36,369	14,758	20,796
32-35	35,262	15,028	19,200
35-45	38,273	-	19,067
45+	40,925	-	19,366

Graph 1.1: Assistant Solicitors

Salaries In Commercial Legal Firms



Starting salaries for articled clerks are given below. The figures relate to 1 May 1988.

Table 1.3: Starting Salaries For Articled Clerks

Location	Range £pa
London	11,500-12,500
Provinces	7,250- 9,000

There are no figures available for the earnings of partners in domestic and criminal practices.

Graph 1.2 illustrates the dispersal of earnings in table 1.2

Barristers

There is no current information on the earnings of barristers. We updated the available survey data to establish approximate earnings levels for April 1988. Table 1.4 shows the earnings of barristers with between 15 and 35 years experience. We assume that this is the maximum range of earnings in the profession.

Table 1.4: Barristers Earnings In England & Wales

Queens Counsel	£pa
UQ	151,126
Median	105,954
LQ	76,326
Mean	119,566
Junior Counsel	
UQ	56,564
Median	39,415
LQ	32,775
Mean	50,252

For those concentrating on criminal cases with less experience, estimated salaries at April 1988 are shown in Table 1.5. We assume that this is the minimum range of earnings in the profession.

Graph 1.2: Dispersal Of Solicitors

Earnings In England & Wales

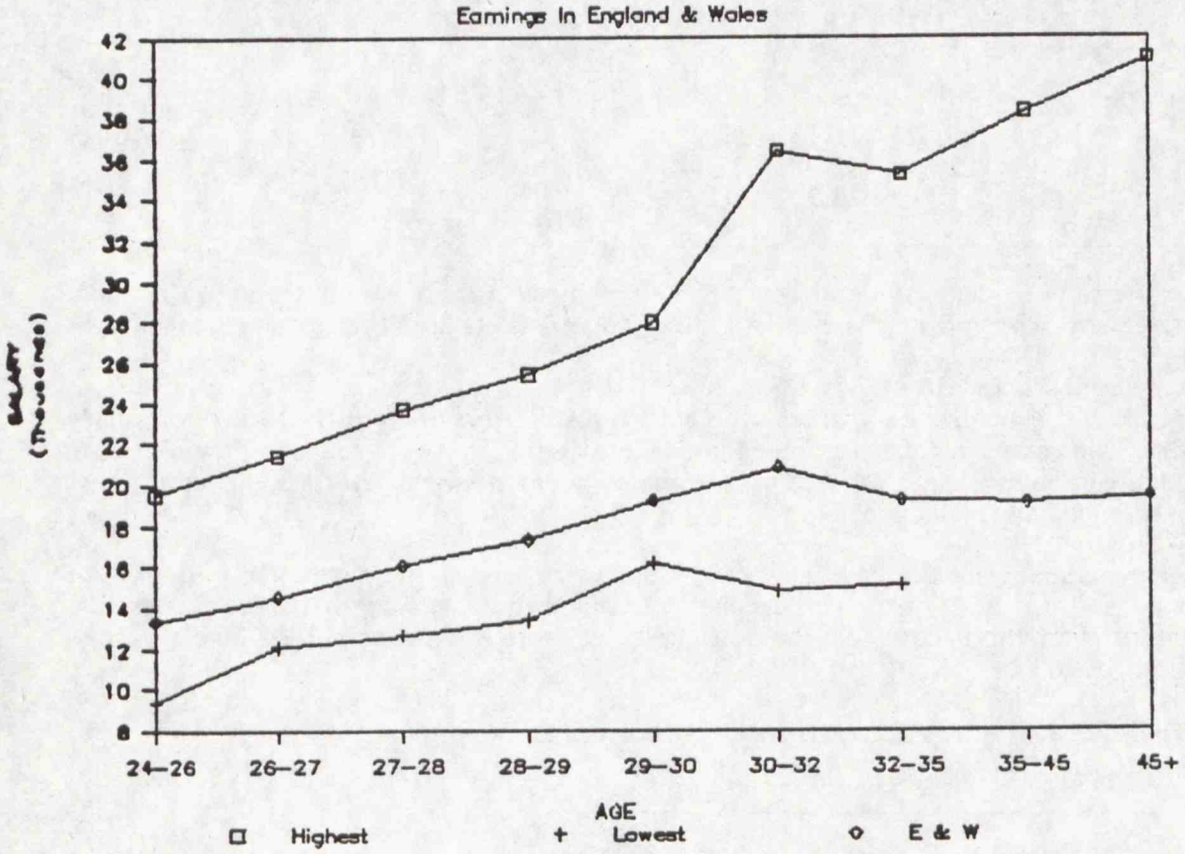


Table 1.5: Earnings of Barrister Specialising In Criminal Law

LONDON			
SPECIALISTS	5-9	10-15	16+
UQ	26,525	19,870	22,328
M	15,782	14,488	21,615
LQ	14,430	11,019	20,341
LONDON MIXED			
UQ	21,709	35,575	
M	13,026	26,388	13,412
LQ	6,304	21,895	
PROVINCIAL			
UQ	29,253	38,184	43,720
M	21,883	32,388	32,976
LQ	18,448	28,931	30,431

The table shows that provincial barristers earn more than those practising in London. Barristers in Scotland earn less than their counterparts in England and Wales.

Industry And Finance

Industrial and financial companies employ more solicitors than barristers. For salary purposes, however, no distinction is made between the two groups. Few Articled Clerks are employed in this sector, the most common entry point requiring at least two years commercial experience.

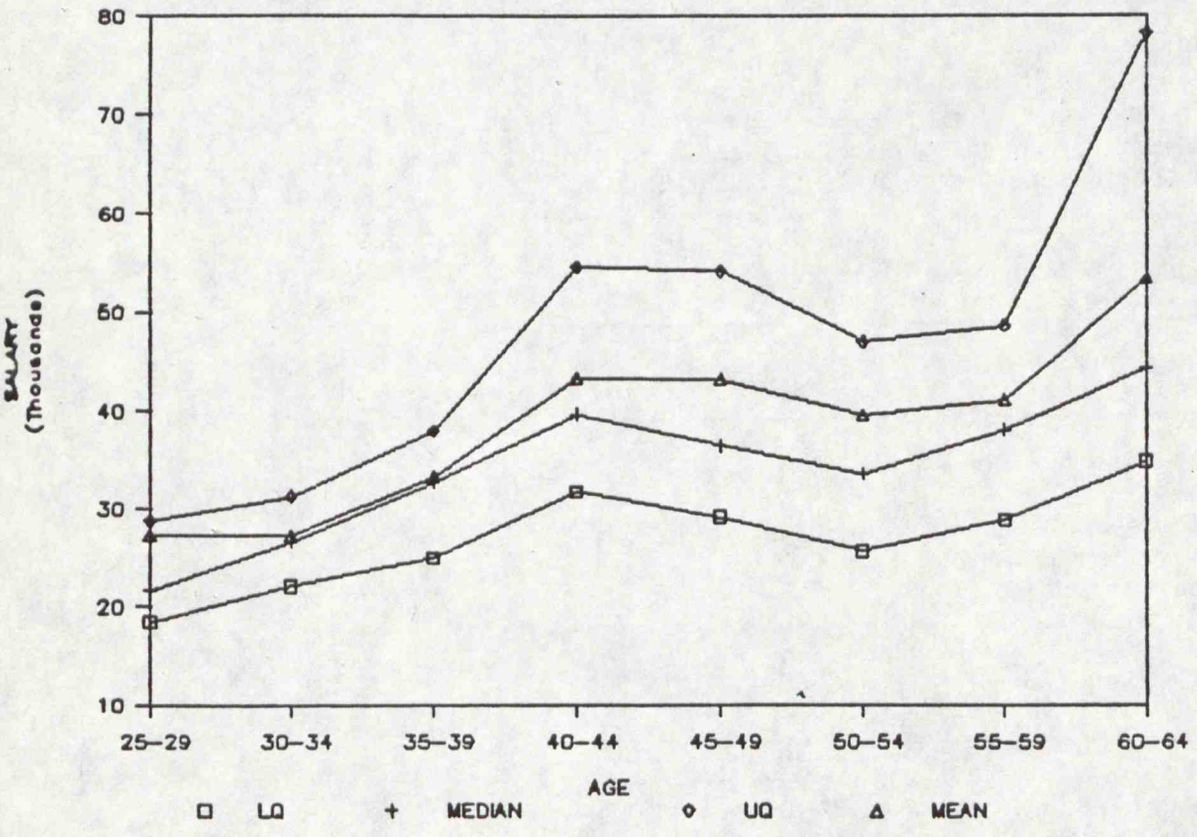
Although salaries in the public sector appear to be slightly less than in private industry and finance, for the purposes of this report, these differences are less important than those between the four areas. Table 1.6 shows salary levels by age at April 1988.

Table 1.6: Earnings In Industry And Finance By Age

AGE GROUP	LQ £pa	Median £pa	UQ £pa	MEAN £pa
25-29	18,480	21,720	28,776	27,350
30-34	22,176	26,717	31,258	27,350
35-39	25,080	32,736	37,910	33,264
40-44	31,764	39,600	54,542	43,296
45-49	29,114	36,432	54,131	43,190
50-54	25,687	33,528	46,992	39,547
55-59	28,776	38,016	48,576	41,078
60-64	34,742	44,352	78,144	53,434

Graph 1.3 illustrates the earnings of qualified legal staff working in industry between the ages of 25-29 and 60-64.

Graph 1.3: Earnings By Age In Industry



Age is not a good guide for those in posts of responsibility. Table 1.7 shows the earnings of those who are in charge of legal departments.

Table 1.7: Earnings By Function

FUNCTION	EARNINGS RANGE £pa
Deputy Head of Legal Department	23,973-50,850
Head of Legal Department	39,035-75,800

BENEFITS

The number and value of benefits are greater in industry and finance than in legal practices. Employed solicitors in legal firms are provided with few benefits. The main benefits in industry are shown in table 1.8.

Table 1.8: Main Benefits In Industry

BENEFIT	% OF SAMPLE
Performance Bonus	40.9
Share Plans	
executive option	23.9
savings related	32.1
profit sharing	17.6
Company Car	73.9
House Purchase Loans	19.8
Pension Sheme	94.0
contributory	60.4

CHAPTER IX

OTHER MANAGERIAL ISSUES

Training

9.1. Once recruits have been attracted to the Government Legal Service they have to be trained and I have discussed present and future training arrangements with a number of witnesses. The importance of training is recognised by the fact that continuing education is now compulsory for all private solicitors during the first three years after qualification. If my recommendation for recruiting at an earlier stage is accepted, it will be necessary for graduates to complete their professional education before joining, either at the Law College or one of the polytechnics which offer the appropriate courses in the case of intending solicitors, or through the Council for Legal Education in the case of intending barristers. The next stage will be articles or pupillage. I believe that the Government Legal Service is sufficiently large to cope with this, although few Departments other than the enlarged Law Officers' Department will be able to offer the necessary range of experience, and articles will therefore have to be arranged by the Central Management Unit across the service. In some cases it may be necessary for part of the articles to be served with a private firm of solicitors and part of the pupillage will in all cases have to be served in barristers' chambers; but my enquiries do not suggest that this is likely to present difficulties. It would probably be helpful to let trainees see something of the work of more than one Department, which would assist in later career choices.

9.2. After qualification, training becomes a mixture of learning on the job and attending courses, conferences, seminars etc. Learning how to avoid legal pitfalls and to find ways round difficulties is largely a matter of aptitude and experience, but training courses can help and are necessary if lawyers are to keep up to date with recent developments. It is an important element of management to see that young lawyers are properly trained and this responsibility will fall mainly on employing Departments (including the Law Officers' Department), with a measure of central supervision from the Head of the Government Legal Service, assisted by the Central Management Unit. My general impression is that the facilities available for training, whether inside government or outside, are adequate but that they are not always used to full advantage, partly because the present shortage of lawyers makes it difficult to spare them to go on courses.

9.3. Induction courses at the Civil Service College are held for lawyers on appointment to explain to them how government works. These are highly regarded by those who attend them who, in addition to finding the content useful, welcome the opportunity to meet colleagues from other Departments. But not all attend, for the reason given above. The course is about to be reduced from two weeks to one, which may make it easier for recruits to attend. I think it important that they should do so.

9.4. Thereafter, much training is organised on a Departmental basis to develop specialist job skills. There are also courses run centrally by the Civil Service College on primary and subordinate legislation

(including practical exercises in drafting); there is a course run jointly with the University of Exeter on the law of the European Community; and there are occasional seminars on administrative law and human rights. The College aims to respond to need and the courses are well regarded, which is demonstrated by the readiness of Departments to make speakers available. Some of the courses bring together lawyers and non-lawyers, which seems sensible. Other forms of professional training include keeping up to date with legal developments by reading law reports and the bulletin of important cases circulated by the Treasury Solicitor's Department, and conferences organised by professional bodies. As far as I can judge, these facilities are adequate, provided that full use is made of them.

9.5. In addition to professional training, it is desirable that the more senior lawyers who will have management responsibilities should receive management training, particularly as they are unlikely to have had the same experience of management at lower levels as their administrative colleagues. Management training is needed to manage staff, to manage the legal workload and also to share in the collegiate responsibility for Departmental management and I was glad to note that lawyers are increasingly attending courses in the Top Management Programme, where I am told that they make a positive contribution, although again there are problems about releasing staff.

9.6. Just as lawyers need training in management, so administrators need training in legal awareness so that they can appreciate the legal implications of their work and ensure that Departmental lawyers are consulted at an early stage. This has become particularly important with the growth of judicial review and the need to ensure that the decisions and actions of government are, as far as possible, proof against being overturned by the courts. Much work has been done on this subject, and Departmental lawyers have been closely involved. The booklet on the judicial review of administrative decisions, "The Judge Over Your Shoulder", produced by the Treasury Solicitor's Department in 1987, was widely circulated and well received. I was glad to note that administrative law now rates with resource control as a major element in civil service top management courses, while various courses and briefings at lower levels are provided by the Civil Service College.

9.7. My only recommendation on training is that it should be accorded the importance it deserves and that every effort should be made by Departmental management to enable government lawyers to take full advantage of the training facilities available. Performance in this respect should be monitored by the Head of the Government Legal Service assisted by the Central Management Unit.

Career development

9.8. The importance of adequate career development was repeatedly emphasised to me during my review by government lawyers both in the Crown Prosecution Service and elsewhere. This is not something which happens of its own accord: it needs to be managed and I am not convinced that sufficient attention has been paid to it in the past, either in Departments or centrally. Dissatisfaction on this score has in some cases been one of the factors which have influenced individuals to leave the Service.

9.9. The Government Legal Service is a large organisation which covers a broad span of work and contains individuals with a wide range of abilities and aptitudes. There are those who are attracted by the idea of spending an entire career as a specialist, eg in tax matters, and will therefore be interested in joining a particular Department like Inland Revenue, rather than the Government Legal Service as a whole. There are others who see themselves more as generalists and are attracted by the possibility of a variety of work which is becoming increasingly difficult to find in private practice where, at least in the big City firms, early specialisation is the order of the day. There are some who want to be "pure" lawyers and others who are attracted by a job with a managerial content. I was told of one individual who had left the Government Legal Service because he felt he was being asked to do too much administration and not enough law, and of another who had left because he wanted more of a managerial role. The Government Legal Service is large and varied enough to be able to make full use of both. Good management in this respect involves identifying which are the round and which the square pegs and fitting them into appropriate holes.

9.10. Good management also includes identifying the high-flyers who show outstanding ability and grooming them for eventual succession to the most senior posts. I attach particular importance to this if the quality of the senior staff is to be maintained. I believe that there is a need for the senior legal advisers in government to be good all-rounders, and this is more likely to be achieved if they are men (or women) of wide experience. Like the fitting of round pegs into round holes, the career management of high-flyers cannot be handled entirely on a Departmental basis. To ensure that likely candidates for promotion are given the necessary experience moves between Departments will sometimes be required. Occasionally a secondment outside the government service may be desirable, although this will not be easy while the shortage of government lawyers persists and while the gap in salaries remains large. Management must also be seen to be taking an interest in those who are not high-flyers and, for example, arranging moves for those who have been employed for a long time on routine work and would welcome a change. In both cases I see a role here for the Central Management Unit, as well as for Departmental management.

The Crown Prosecution Service

9.11. The management of the Crown Prosecution Service, which includes three-fifths of all the lawyers employed in government, is a large task which presents special difficulties. These stem partly from the fact that the staff are spread across the country, but more particularly from the circumstances in which the Service came into being. It had to be set up in a very short timescale, against a background of some opposition, with staff drawn from a number of sources; the resources required seem to have been seriously underestimated; and the grading structure was very tightly drawn with only a small complement of senior posts. The salaries on offer were low and some of the staff appointed in the rapid initial expansion were of indifferent quality. Some found it irksome to work within

a bureaucratic framework in which much time had to be spent on paperwork rather than on advocacy. It was not surprising that the Service got off to a poor start and acquired the reputation of an organisation staffed by second-rate lawyers, overworked, underpaid and with low morale, which is hardly conducive to good recruiting. There is still a good deal of criticism to be heard, but I believe that there are now definitie signs of improvement.

9.12. The Director of Public Prosecutions and his senior staff have made great efforts to improve communications and to enhance both the performance and the morale of the Crown Prosecution Service, and I believe that they are gradually succeeding; but it will be a slow task, requiring great patience. In general I was favourably impressed by what I saw of the CPS on my visits; but it is clear that the organisation is still seriously under-staffed, and that in spite of long hours being worked by some individuals it can only cope with the workload by farming out work to agents on a large scale (see paragraph 4.16). This is demoralising. Crown Prosecutors find themselves confined to "whole lists" consisting largely of remands and guilty pleas, while the more interesting trials are handled by agents. As a result, they get neither experience nor professional satisfaction. This situation will only improve if the number of staff in post can be built up by attracting more competent recruits and checking the present high level of wastage. The Service needs time to prove itself; but if it is to do so it badly needs help with its present staffing problems, which means that it has got to be made more attractive to good lawyers.

9.13. In London at present rates of pay the Crown Prosecution Service can only attract young barristers; but most of its members are outside London, and for them I do not believe that the recruitment and retention problem is primarily a matter of pay. It is much more a question of image, job satisfaction and career prospects. There is a vicious circle here. The image of the CPS will only improve when its performance in court is generally recognised as good; but its performance will only improve when it can attract more good staff, who are at present deterred by the poor image. In paragraph 8.23 I have suggested a change in grading practice which I hope will make the Service more attractive by facilitating promotion from Crown Prosecutor to Senior Crown Prosecutor and avoiding the impression that the CPS is somehow regarded as inferior to the rest of the Government Legal Service. In paragraph 7.10 I have argued that restriction of advocacy to the magistrates courts is a further deterrent, both to attracting able recruits and to retaining experienced lawyers. If an extension of rights of audience could be agreed in principle I believe that it would enhance the staus of the CPS. Accommodation is another area in which improvement is needed. In one busy magistrates court which I visited there was not even a room for the Crown Prosecutors to sit in and study papers (often received at the last minute) before going into court. All these things will take time; but I was repeatedly told that the biggest grievance among existing staff and a substantial deterrent to the recruitment of able candidates was the unsatisfactory career structure within the Service; and I believe that this is an area where early improvement can and should be made.

9.14. The present complement of the CPS contains only 53 posts at Grade 5 and 137 at Grade 6, compared with 515 at Grade 7 and 1,067 at the Crown Prosecutor grade. This organisational pattern cannot provide reasonable prospects of promotion from the lower grades and I believe that there is a need to increase the number of senior posts. In fact, I believe that this could be justified on grounds of responsibility. There is a great deal of high quality, specialist casework being done across the country, eg cases involving drugs, fraud, terrorism and European Community matters, and appeals to the higher courts. Very large sums of public money are often involved. If this work is to be done well, it needs to be handled at a fairly senior level and I believe that it could justify at least one additional Grade 6 post in many of the 31 areas into which the Service is divided, particularly the Metropolitan areas. These posts would deal exclusively with high grade casework, leaving the management of the area to the existing supervisory staff. There may also be a case for a small number of additional Grade 5 posts, both in the regions and at headquarters. This would provide a career outlet for those whose skills lie in legal work rather than management, since the existing senior posts are almost entirely managerial. An exercise on grading guidelines is at present being undertaken by the DPP and as soon as it has been completed I recommend that the possibility of creating additional senior posts should be discussed with the Treasury.

9.15. Even if some more senior posts are created on the lines I have suggested the career structure in the CPS will remain poor by comparison with other parts of the Government Legal Service. More movement between the CPS and the Serious Fraud Office or other Departments (as suggested in Chapter V) could help; but given the present age structure there are likely to be continuing promotion blockages, which makes it desirable to find alternative career outlets. I understand that members of the CPS are at present ruled out of consideration for judicial office; but it seems to me that an experienced member of the Service could be very suitable for appointment as a stipendiary magistrate and I recommend that in future members of the CPS should be considered for such appointments. During my visit to Scotland I noted that Procurators Fiscal are from time to time appointed as Sheriffs.

The image of the GLS

9.16. I have referred to the unflattering image of the Crown Prosecution Service as a deterrent to recruitment. Unfortunately this also applies, though not in the same degree, to the Government Legal Service as a whole. The public service generally has fallen in esteem in recent years for a variety of reasons; and to some extent professional groups like lawyers are still seen as playing second fiddle to the administrators. Among lawyers, working for the Government is seen my many as coming a poor third, after private practice and industry. One senior member of the Bar actually described the Government Legal Service to me as the "refuge of last resort".

9.17. If the Government Legal Service is to be made more attractive it has got to be projected to potential recruits and to those already serving as an élite organisation one should be proud to serve in.

There should be a loyalty to a particular Department, but also to the wider Service and being a "government lawyer" needs to be presented as something important and worthwhile. This is a task to which I believe that senior management - and Ministers - need to devote attention. It has several dimensions. One is publicising the variety and interest of the work, and I have suggested in Chapter VI that a publicity campaign should be directed at undergraduates as well as at qualified lawyers. Another is to ensure that lawyers who have joined believe that they are being fairly (if not generously) paid, that they are being properly trained, that their careers are being sympathetically and intelligently managed and that they are being provided with adequate supporting staff, accomodation and technical aids. I have made recommendations on these points. Titles are also important. To be described as a Grade 5 or a Grade 7 lawyer is not very inspiring and it is for consideration whether some titles like Director of Legal Services, Senior Government Solicitor, Government Solicitor and Assistant Government Solicitor would not be more meaningful and appreciated. More generally, it is necessary for the self-esteem of government lawyers that they should feel that they are valued by those they serve and not relegated to a secondary role; that the work they do is important; and that their efforts are appreciated. The Head of the Government Legal Service has a role to play here; and so have Ministers, not all of whom know their Departmental lawyers personally. Recognition of the skill of a lawyer who has drafted a Bill or won a case, and public tribute to the value and importance of the work of the Government Legal Service could make a significant contribution.

CHAPTER X

FOREIGN AND COMMONWEALTH OFFICE

10.1. As I observed in paragraph 1.10 the Foreign and Commonwealth Office is in a different position from other Government Departments. The lawyers employed there are a distinct group, engaged in a particular type of work. In this chapter I discuss that work briefly and consider the extent to which the conclusions and recommendations in other chapters may be applicable to the Foreign and Commonwealth Office.

Legal services needed by government

10.2. International law, which sets the framework for the conduct of international relations, is to a large extent an unwritten system. Even where it is codified by treaty, the rules tend to be far less precise than national statutory provisions, thus placing a premium on skilful and accurate interpretation and application to particular cases. The rules on international law are in a process of constant renewal and revision through the conclusion of new treaties or more subtly by the processes of change in customary international law. This creates the need for a close and constant involvement of legal advice in the formation and expression of the Government's foreign policies. A substantial part of the United Kingdom's international influence is a product of the British reputation as an upholder of the rule of law and for that reason it is important to ensure that developments in international law pay due regard to British interests.

10.3. In addition to legal advice, the Government also needs other legal services in the international sphere. It needs litigation services where it is engaged in cases before international courts or tribunals such as the International Court of Justice and the European Court of Justice or Court of Human Rights. More generally legal issues of various kinds arise at British missions abroad, whether relating to questions of local law, to matters affecting British relations with the country concerned, or to the interests of British subjects living there. The Government's overseas aid programme also means that it needs special legal services from time to time, including advice on commercial and contractual matters overseas and on conditions of service for specialist staff serving overseas on contract.

Present arrangements

10.4. Legal advice on international matters is provided mainly by the Legal Adviser of the Foreign and Commonwealth Office and his staff, in consultation as appropriate with legal advisers from other Departments (DTI, MAFF, Customs & Excise etc) and from the Treasury Solicitor's Department, in particular the European Division. Each FCO Department, including those in the Overseas Development Administration, has a legal adviser allocated to it (though each legal adviser will have more than one Department) to provide legal advice on matters arising within the Department. The legal advisers are members of the Diplomatic Service and are subject to overseas postings in the same way as other diplomats.

10.5. Legal advice is provided to posts abroad in a number of ways. In some major posts there are resident FCO legal advisers - the UK Mission to the United Nations in New York, the Office of UKREP in Brussels, the British Embassy in Bonn and the British Military Government in Berlin. For the rest, issues of international law affecting British relations with the country concerned or the interests of the British subjects there are normally referred back to London to the Policy Department which consults its legal adviser. In some cases a legal adviser may have to be sent out to the post to deal with the issue on the spot. On questions of local law affecting an overseas post or HMG as party to local proceedings, Heads of Mission normally act on the advice of local legal practitioners and have discretion to appoint such a practitioner as honorary legal adviser to the Mission.

10.6. Where the Government is engaged in litigation before the International Court of Justice or in intergovernmental arbitration before a standing or ad hoc tribunal, the main burden of the conduct of the case falls to the FCO legal adviser appointed to conduct it, though for oral presentation the Government is usually represented by Counsel or by one of the Law Officers. For cases before the European Commission or Court of Human Rights because of the size of the workload an experienced FCO Legal Counsellor is appointed as standing agent to the Government.

10.7. On the Overseas Aid side legal contract work with a large financial or commercial element is normally put out on a fee-paid basis to the Crown Agents. On matters relating to conditions of service and pensions of contract staff serving overseas, the Overseas Development Administration uses the services of the Solicitor of the Scottish Office because its administrative centre for these purposes is located at East Kilbride.

In Government or outside?

10.8. The FCO already puts out a good deal of legal work where this is feasible in less central areas. The FCO's internal legal arrangements are not regarded as fully self-sufficient in themselves. The FCO Legal Advisers do not hold themselves out as experts in areas of private law not directly connected with international relations. The FCO has therefore to rely on outside expertise in some fields, notably for tortious claims and monetary recoveries in the courts. Private-law matters abroad, including property and conveyancing work for the substantial overseas estate, are handled through the system of honorary legal advisers described in paragraph 10.5 and I have referred in paragraph 10.7 above to the putting out to the Crown Agents of commercial contract work on the Overseas Aid side. The Crown Agents' Legal Office charges lower fees than the private sector. On applications for judicial review Counsel are briefed in the usual way; likewise for advisory work of exceptional difficulty on matters likely to come before an international or domestic tribunal. Numerically the greatest incidence is human rights cases in Strasbourg, for which Counsel are appointed through a set procedure on the nomination of the Law Officers, and instructed in detail by FCO Legal Advisers.

10.9. The operations of the FCO as a Government Department do not lend themselves readily to privatisation or contracting out. So far as the specifically legal aspects of the work are concerned, the services provided by the FCO Legal Advisers lie almost without exception close to or within the area of central policy-making or inter-governmental dealings. For this reason the great majority of papers referred to FCO Legal Advisers for advice bear a security classification, often a high one. On this ground alone, contracting out would be a doubtful proposition. The FCO Legal Advisers are specialists in the field of Public International Law, where they almost certainly represent the largest and most concentrated centre of this specialism in the country. As such, they not only serve the Foreign Secretary and FCO but provide international law advice to the Government as a whole. There is nothing remotely comparable to them in private legal practice. Some of the largest City firms of solicitors have established international practices but only as one component of their wider legal practice. Those in this category act in many cases as general advisers on retainer to foreign governments and this in itself, because of the potential conflict of interest, is probably sufficient to rule out any thought of transferring portions of HMG's international work to this part of the private sector, even if it were cost-effective to do so.

Future organisation

10.10. As members of the Diplomatic Service the FCO legal advisers are members of a different service and are employed under a different Order in Council from lawyers in the Home Civil Service. Their commitment to service overseas also distinguishes them from other government lawyers. It would not, therefore, be appropriate for them to be formally included in the centralised career management arrangements I have proposed for the home Departments in Chapter V. There should, however, continue to be close consultation with other Departments, including the European Division of the new Law Officers' Department, on matters of common concern and FCO lawyers should be able to participate in interdepartmental exchanges. (I noted that the present Legal Adviser has himself served in the Law Officers' Department.) I would also expect the Central Management Unit to keep in touch with FCO needs in such matters as recruitment, training and the provision of support services and information technology.

10.11. The Overseas Development Administration has no lawyers of its own and, while it is part of the FCO, its staff are Home civil servants and not members of the Diplomatic Service. I have mentioned in paragraph 10.7 that many of its legal services are provided by Scottish Office and Crown Agents' lawyers. A certain amount of contract and other routine private-law work is, however, handled by FCO legal advisers and I doubt if this is a very satisfactory arrangement. These are not areas of work in which FCO lawyers are expert and I believe that the only legal work for ODA that should be undertaken by FCO lawyers is that which has a clear international content. For the rest, it would be more sensible for the ODA to make an arrangement with the new Law Officers' Department in London similar to that with the Scottish Office for East Kilbride. The

arrangement might also cover some of the work currently put out to the Crown Agents if that were more cost effective. I suggest therefore that, once the enlarged Law Officers' Department proposed in Chapter V has taken shape, the ODA should explore the possibility of making such an arrangement.

Recruitment and retention

10.12. The present complement of FCO lawyers is twenty-four, of whom four are in the senior open structure, eight Legal Counsellors (equivalent to Grade 5 in the Home Service), and twelve Assistant Legal Advisers (eight equivalent to the Home Service Grade 6 and four to Grade 7). Recruitment of FCO lawyers is done separately from that for the Home Civil Service, the main recruitment grade being Assistant Legal Adviser. The position on recruitment has fluctuated. Because of links between the FCO and academic departments specialising in international law, recruitment used to be generally comfortable. There has, however, been some falling off in recent years in both the number and the quality of applicants though the most recent competition saw something of a recovery in both respects. I doubt if many of the recommendations I have made in Chapter VI on recruitment have much relevance to the FCO. Its contacts with the university and polytechnic world are already well developed and I doubt whether any staffing difficulties stem from defects in the recruitment arrangements. Nevertheless, it would seem sensible for the FCO to keep in touch with the Central Management Unit so that it can benefit from any appropriate developments in recruitment practice. I hope also that my proposals on pay in Chapter VIII will be helpful to FCO recruitment.

10.13. As to retention, the FCO's experience is that their legal recruits, once appointed, stay and there has not generally been significant wastage in the early years. The main problem is rather one of mid-career frustration and there has recently been a bad spate of losses: within a space of seven months in 1986 to 1987 three Legal Counsellors and one experienced Assistant Legal Adviser resigned; and during the course of my review the FCO has lost another Legal Counsellor and, unusually, a promising recent recruit. As a result, it is currently well short of its complement. The loss of experienced people has been particularly worrying: while in 1985 the FCO could reckon that their nine Assistant Legal Advisers between them offered cumulative experience of seventy-seven years, eight out of the nine current Assistant Legal Advisers can between them offer cumulative experience of less than ten years. Any further loss in the near future, particularly of experienced lawyers, would have very serious consequences for the FCO's ability to provide the Government with international legal services. As I have said in paragraph 6.28, the answer to retention problems must be sought in terms of better pay and career prospects and better management. Career prospects for young lawyers in the FCO are limited by the size of the organisation: with only four posts in the senior open structure, even the most talented are unlikely to gain promotion to Grade 3 before age 50. I can see no immediate way of improving on this, which means that pay and general management are of crucial importance. If the proposals I have made on pay in Chapter VIII are accepted,

FCO lawyers should also benefit from these. Taken together with the more flexible pay arrangements introduced earlier this year they should provide FCO management with a better system of rewards and incentives to match the acquisition of skill and experience.

Other issues

10.14. Having commented in paragraph 10.13 on the importance to the FCO of my recommendations for a flexible pay system which takes account not only of experience and performance but job value, I need make little reference in this chapter to the remaining issues discussed in Chapters VII and IX. My proposals in Chapter VII in relation to supporting staff and services for goverment lawyers are generally as relevant to the FCO as to any other Department and I hope that the Central Management Unit will involve the FCO in any work it does in this direction. Similarly, some of the points made in Chapter IX may be relevant to the FCO. I have referred in paragraph 10.13 to the special difficulties about the career management of FCO lawyers. Their training requirements also differ from those elsewhere in the Government Legal Service in that FCO lawyers are obliged to undergo the normal training programme for career diplomats. Nevertheless, I hope that the Central Management Unit will here again bear the needs of the FCO in mind and that the FCO will keep in touch with the Unit on such matters as developments in management training.

CHAPTER XI

SCOTLAND AND NORTHERN IRELAND

11.1. The difficulty in recruiting and retaining government lawyers which provided the main impetus for my review is far less evident in Scotland and Northern Ireland than in England and Wales and I therefore focussed my inquiry mainly on the latter. But I visited both Scotland and Northern Ireland to ascertain to what extent the government legal services there were experiencing problems and to see whether their rather different arrangements contained any useful lessons for England and Wales. In the time available I was not able to study the situation in great detail; but in this chapter I describe briefly the existing arrangements, set out the conclusions I reached and discuss the implications for Scotland and Northern Ireland of some of the recommendations contained in earlier chapters of the report.

SCOTLAND

Legal services required by government

11.2. Although there are some differences between the constitutional arrangements in Scotland and those in England and Wales and although Scotland has its own legal system, the Government requires much the same range of legal services in Scotland as in England and Wales. There is inevitably a peculiarly Scottish dimension to some of the headings listed in Chapter II, of which the most striking is the historical difference in criminal prosecution. In England and Wales a centralised Crown Prosecution Service has only existed since 1986. In Scotland, the Crown Office and its Procurator Fiscal Service under the Crown Agent have existed since at least the 18th century.

Present arrangements

11.3. The arrangements for the provision of government legal services in Scotland are generally simpler than those in England and Wales. The Scottish Office Solicitor's Office (SOSO) provides legal advice, civil litigation and conveyancing services for most of the Departments in Scotland. The Solicitor's Office is broadly organised in client blocks (ie all the legal work of a particular Department is done in one block); but there are two specialist divisions, one for litigation and the other for conveyancing. Several Departments do not use the services of the Solicitor's Office in Scotland. The Forestry Commission, which in England and Wales is served partly by the Legal Department of MAFF and partly by the Treasury Solicitor's Department, for historical reasons uses private sector solicitors in Scotland. Secondly, Inland Revenue has its own contingent of lawyers in Scotland. Thirdly, the Army and Navy Departments of the Ministry of Defence use private sector solicitors for conveyancing work in Scotland (though the Air Force Department and the Procurement Executive use the SOSO). A number of Whitehall Departments (including Employment, Energy and Transport) also have a small amount of litigation and conveyancing work in Scotland for which they generally use private solicitors. In addition Scottish legal advice to a number of Whitehall Departments - MOD (Army), MOD (Navy), FCO, Customs and Excise and Employment - is provided by the Legal Secretaries in the Lord Advocate's Department (LAD).

11.4. For the preparation of legislation Scotland has its own Parliamentary Draftsmen whose main task is to draft purely Scottish Bills as well as the Scottish provisions - often substantial - of GB or UK Bills. The Parliamentary Draftsmen are part of the Lord Advocate's Department and the First Parliamentary Draftsman for Scotland is also Legal Secretary to the Lord Advocate. His subordinates are respectively Legal Secretaries and Assistant Legal Secretaries.

11.5. The Lord Advocate is the senior Scottish Law Officer (the Scottish equivalent of the Attorney General) and is assisted by the Solicitor General for Scotland. As well as being responsible for the Lord Advocate's Department and the Parliamentary Draftsmen, they are also responsible for the Crown Office whose senior permanent official, the Crown Agent, is head of the Procurator Fiscal Service (PFS). The PFS is not only responsible for all criminal prosecutions in Scotland but has some important additional functions under Scottish law. For example it covers investigation of crime committed in Scotland and initiates prosecutions. Procurators Fiscal also perform the functions of coroners in England and Wales and are responsible for investigating other suspicious occurrences of the sort which suggest that a crime may have been committed. Regional Procurators Fiscal are also responsible for investigating complaints against the police in Scotland.

11.6. There is no direct Scottish equivalent of the Lord Chancellor. The latter's responsibilities for the administration of justice fall in Scotland to the Secretary of State for Scotland. He is responsible both for appointments to the judiciary and for the administration of the higher courts (ie the Supreme and Sheriff Courts: the district courts are the responsibility of local authorities as in England and Wales). The Secretary of State is assisted by the Scottish Courts Administration (SCA) which provides finance and manpower for the Scottish Court Service - ie the civil servants who work in the higher courts. In making recommendations to The Queen for appointments to the judiciary, the Secretary of State acts by constitutional convention on the nomination of the Lord Advocate.

11.7. For the provision of services to the public, the functions performed in England and Wales by the Land Registry are in Scotland among the functions of the Department of the Registers of Scotland. The latter is staffed by administrators rather than lawyers and it is quite common for its staff at SEO level to be seconded to the Scottish Office for short periods to undertake conveyancing work there on behalf of Scottish Departments. There are no separate Scottish equivalents to the other Departments discussed in paragraphs 3.11-3.17.

11.8. Responsibility for promoting law reform in Scotland belongs to the Lord Advocate. Scotland has its own Law Commission set up under the 1965 Law Commission Act. Its Commissioners are not part of the Government Legal Service but are appointed by the Lord Advocate and the Secretary of State for Scotland. The Commission has the same functions under the Act as the Law Commission for England and Wales. The Scottish Courts Administration advises the Lord Advocate on court procedure and other aspects of law reform.

In government or outside?

11.9. The conclusions I reached in Chapter IV on privatisation and contracting out of government legal work in England and Wales seem valid also in Scotland. There is in fact a greater tendency for government work in Scotland to be put out to the private sector and I have mentioned the main examples in paragraph 11.3. The reason for this is largely historical in that in using outside solicitors the Departments concerned are carrying on a practice that existed before the Scottish Office and its Solicitor's Office were created. The main advantage perceived by the Departments concerned in this arrangement is that they receive continuity of service from the firms they use and, as a consequence, a more personal service than they might receive from the Scottish Office.

11.10. As I indicated in paragraph 4.13 and 4.14, the main determinants of whether work should be done inside government or outside are cost and quality of service. I was, however, struck by what I was told about Ministry of Defence practice in Scotland. As I observed in paragraph 4.14 the RAF Department and the Procurement Executive both use the Scottish Office Solicitor for technical legal services while the Army and Navy Departments for historical reasons use private sector solicitors. The Scottish Office Solicitor has demonstrated to me that his Office could undertake this work for the Army and Navy Departments at well under half the cost charged by the private sector solicitors. Moreover, an independent review undertaken in 1985-1986 by Mr D H Bretherton of Linklaters & Paines included a recommendation that the Scottish Office Solicitor's Office should absorb this work for the Army and Navy Departments. That recommendation was not accepted and I do not think it would be appropriate for me to pursue the matter further. As I said in paragraph 4.14, Departments should have a choice in these matters, and it is for the Ministry of Defence to decide what is the most cost-effective way of obtaining the quality of legal service it requires, whether in Scotland or elsewhere.

Future organisation

11.11. The present organisation of government lawyers in Scotland is much simpler than that in England and Wales both for historical reasons and because the scale is smaller and therefore permits a greater degree of centralisation of advisory and other legal services than is possible in England and Wales. A case could be made out for further centralising legal services by bringing the Scottish Office Solicitor's Office and the Legal Secretariat of the Lord Advocate's Department together by analogy with my proposal in Chapter V for merging the Law Officers' Department and the Treasury Solicitor's Department. There are, however, special features of the Scottish arrangements, not least the position of the Secretary of State for Scotland and the fact that the Legal Secretaries in the Lord Advocate's Department, unlike their equivalents in the Law Officers' Department, are also Parliamentary draftsmen, for which reason they are located in London. I therefore make no recommendation for change in Scotland in this respect. It was, however, put to me by a number of witnesses

in Scotland that there might be scope for greater interchange between the Crown Office and its Procurator Fiscal Service on the one hand and the Scottish Office Solicitor's Office on the other. I suggest that further consideration should be given to this possibility by the Crown Agent and the Solicitor for the Scottish Office. They may conclude that there is room for a small management unit to advise on matters such as staff interchange and recruitment in Scotland similar to but on a smaller scale than that recommended for England and Wales in Chapter V. If such a management unit were set up in Scotland it would of course work in close consultation with the larger Central Management Unit in the proposed Law Officers' Department.

Recruitment and retention

11.12. The Government Legal Service in Scotland has experienced fewer problems over recruitment and retention than in England and Wales. The Scottish Office Solicitor's Office has a current complement of 57½ lawyers and 56 of the posts are occupied (97.4%). The Crown Office has a complement of 265 lawyers of whom 251 are in post (94.4%). The Lord Advocate's Department has a complement of 12 lawyers (9 in London and 3 in the Scottish Law Commission in Edinburgh) and all the posts are currently filled. The Scottish Office has lost by resignation only 7 lawyers in the last four years (about 3.5% per annum) and the Crown Office has lost 31 in the same period (about 3.3% per annum). It seems to me that a marginal turnover of that order is manageable and probably healthy for the Departments concerned. There have been no resignations in recent years from the Lord Advocate's Department.

11.13. In my enquiries about recruitment in Scotland I was given to understand that the growing shortage of lawyers in England and Wales has not yet reached Scotland. The Scottish system of legal education is apparently continuing to produce advocates and solicitors in abundance, some of whom are now being tempted by private sector jobs in London and the South East of England, despite the fact that this entails some retraining in English law. This general situation is reflected in recruitment to government legal posts in Scotland. In their 1987 annual report the Civil Service Commissioners reported a successful year in recruitment for the Crown Office with 158 applications for 20 vacancies. There was no recruitment to the Scottish Office in that year but a competition for three vacancies in the Criminal Injuries Compensation Board and Inland Revenue Offices in Scotland produced 63 applications and an abundance of acceptable candidates. In 1988 so far 125 applications have been received for 41 vacancies, 33 of them in the Crown Office and 8 in the Scottish Office.

11.14. The fact that recruitment of lawyers to Scottish Departments is relatively healthy may be attributed to some degree at least to the fact that the existence and work of the Government Legal Service in Scotland seem to be more widely known than in England and Wales. This is perhaps especially true of the Procurator Fiscal Service with its long and celebrated history; but the Scottish Office too has little difficulty in attracting large numbers of good quality candidates for its legal trainee (articled clerkship) scheme. The

contrast with England and Wales is very marked indeed and underlines the need, discussed in Chapter VI (paragraph 6.14 and following), for a major selling campaign for the Government Legal Service in England and Wales. That is not to say that there is room for complacency in Scotland. I was told that young lawyers in the Scottish Departments are beginning to receive tempting offers outside, including some in Scotland itself; and that some of the best candidates in the recruitment competitions often turn down offers of appointment. And in the most recent competitions for the Crown Office there were fewer acceptable applications than vacancies. I hope that my recommendations on pay will help a little here. Lawyers serving in Scotland would not of course benefit from improvements in London allowances, but these could make it easier to replace staff in the Lord Advocate's Department when that becomes necessary. I suggest also that the Scottish Departments should keep their recruitment activities under review, including the possible enlargement of the legal trainee entry which is currently limited to a maximum of one trainee per year. This could be one of the functions of the kind of management unit I refer to in paragraph 11.11 above, and it would in any case be sensible for the Scottish Departments to keep in close touch with the proposed Central Management Unit in London.

Making the best use of lawyers

11.15. I have no particular recommendations to make under this heading for Scotland. On the contrary, it seems to me that the Whitehall Departments could learn something from Scottish practices. I have already commented in Chapter VII on the main ones: a Scottish Courts Administration and Scottish Court Service manned almost entirely by non-lawyers, and the ability of Grade 5 Procurators Fiscal to appear personally in the Sheriff Court with jury. In paragraph 11.7 above I also comment on the use of Senior Executive Officers on secondment from the Department of the Registers to do conveyancing work in the Scottish Office Solicitor's Office. In Chapter VII I discuss the question of the drafting of legislation and suggest that administrators might do more to assist in the preparation of instructions for Counsel. That suggestion applies with equal force to Scotland as do my recommendations in Chapter VII for the provision of supporting staff and services.

Pay and grading

11.16. The recruitment and retention position discussed in paragraphs 11.12 and 11.13 above suggests that pay is much less of a problem in Scotland than in London and this impression was confirmed by most of those whom I consulted in Edinburgh. There was, however, some concern that the rigidity of the pay system made it difficult to reward special cases and I hope that my recommendations in Chapter VIII on the introduction of the concept of job value may be helpful in this respect. Concern was also expressed about the new grading system for lawyers introduced in 1986. The Crown Office still retains the old system and is currently considering how and when to make the change. The Scottish Office has adopted the new grading system but the Solicitor expressed reservations to me about it. He argued that the new system lacked the flexibility of the previous structure which enabled management to give able officers experience of high

grade work regardless of seniority. He fears that he might lose some of his newer recruits because under the new system they are limited in their early years to conveyancing and litigation work. I am bound to say that I do not understand why the new structure should cause this kind of problem in Scotland but not in England and Wales and I suggest that the Scottish Office Solicitor should have further discussions with the Treasury about it. In the meantime, I hope the greater flexibility contained in my recommendations on pay will help to minimise any rigidity in the grading system. To that extent, the sooner the Crown Office also adopts the new grading system the sooner it will be able to benefit from those recommendations.

Other managerial issues

11.17. Much of what I have said in Chapter IX applies as much to Scotland as to England and Wales. In some respects the Government Legal Service in Scotland is again better placed than in England and Wales. Training facilities, both inside and outside government, appear to be widely available and comprehensive. More striking perhaps are the advances that have been made in the Crown Office in the application of new technology. I was very impressed with the demonstration I was given during my visit of the computerisation of statute and case law and also of prosecution cases themselves. I hope the Scottish Office will also benefit from some aspects of this work and there may be useful lessons to be learned by Departments in England and Wales, especially the Crown Prosecution Service.

NORTHERN IRELAND

Legal services required by government

11.18. Northern Ireland has been governed from Westminster since the Northern Ireland Constitution Act of 1973 and to that extent the Government requires similar legal services in Northern Ireland to those in Great Britain. The picture is, however, inevitably more complex than that of Scotland since the Crown operates in two capacities in Northern Ireland: in right of Her Majesty's Government in the UK and in right of Her Majesty's Government in Northern Ireland.

Present arrangements

11.19. The Northern Ireland Office (NIO) itself for historical reasons receives legal advice from the Legal Department of the Home Office and this arrangement works quite satisfactorily. For the Northern Ireland Civil Service (NICS) the main source of legal advisory services is the "Departmental Legal Service" (DLS) of the Department of Finance and Personnel (DFP), which provides legal advice both to the DFP and to the other NICS Departments. At the time of my review, the Departments of the Environment and of Health and Social Services in Northern Ireland had outstations of the DLS located with them. The Head of the DLS is responsible to the Head of the NICS and ultimately to the Secretary of State for Northern Ireland. The Crown Solicitor for Northern Ireland also provides legal advice in certain contexts. In addition to Bona Vacantia and Queen's Proctor functions discharged by the Treasury Solicitor in England and Wales, the Crown Solicitor advises the NIO on certain subjects such as extradition. He also advises the Police Authority for Northern Ireland, the Probation Board and the Chief Electoral Officer. The Crown Solicitor for Northern Ireland is appointed by and responsible to the Attorney General.

11.20. Work on the preparation of legislation in Northern Ireland falls to the Office of Legislative Draftsmen (OLD), and its Head, the First Legislative Draftsman, is responsible to the Secretary of State. The main functions of the Office under direct rule are to draft Northern Ireland Orders in Council dealing with "transferred" and "reserved" matters (as defined in the 1973 Act), to adapt UK Bills in their application to Northern Ireland, and to advise Departments and Ministers on constitutional and other legal matters. The preparation of instructions for the Legislative Draftsmen is normally done in the Northern Ireland Departments by administrators with the advice of the advisory lawyers rather than by the lawyers themselves.

11.21. The main responsibility for government civil litigation in Northern Ireland lies with the Crown Solicitor for Northern Ireland. His Department handles the litigation aspects of cases involving the Government, including judicial review cases, for all the NICS Departments as well as for the Northern Ireland Office. There are, however, occasions when lawyers in the DLS brief Counsel direct for litigation purposes, eg on major judicial review cases where detailed

knowledge of the subject matter is essential for the briefing lawyer and where transferring the case to the Crown Solicitor would entail the movement of large quantities of documentation.

11.22. Most government conveyancing work in Northern Ireland is done in the DLS. The exceptions are conveyancing work for the Northern Ireland Office, the Police Authority, the Probation Board and the Chief Electoral Officer for all of whom conveyancing work is done in the Crown Solicitor's Office.

11.23. Arrangements for the conduct of criminal prosecutions in Northern Ireland differ somewhat from those in England and Wales and Scotland. Northern Ireland has its own Director of Public Prosecutions, appointed under the Prosecution of Offences (Northern Ireland) Order 1972 and responsible to the Attorney General for the prosecution of all offences tried on indictment. He also has a discretion as to the summary offences and classes of summary offences to be dealt with by his Office; but most summary offences are in fact dealt with by the Royal Ulster Constabulary or other Government Departments in Northern Ireland. The DPP's Office, whose lawyers have rights of audience in the Crown Court, conducts prosecutions in serious cases on behalf of other Government Departments, including some Whitehall Departments. Prosecutions for serious fraud are dealt with in Northern Ireland by the Serious Fraud Office as in England and Wales.

11.24. The functions performed by the Lord Chancellor's Department in England and Wales in respect of the administration of justice are performed in Northern Ireland by the Northern Ireland Court Service of the Lord Chancellor's Department. Although the formal remit of the Court Service is "to facilitate the conduct of the business of the ..... Courts" (Judicature (Northern Ireland) Act 1978), it also discharges a wide range of additional functions on behalf of the Lord Chancellor, including consultations in connection with his responsibility for legal appointments. None of the senior management of the Court Service nor the circuit administrators are lawyers; but there are four lawyers on the headquarters staff whose functions are to give legal advice on matters touching on the work of the Court Service, including the drafting of subordinate legislation and assisting in the preparation of primary legislation on such matters.

11.25. Except for the Land Registry, Northern Ireland has no separate counterparts to the Departments described in paragraphs 3.11-3.17 as providing services to the public. The Northern Ireland Land Registry used to be part of the Lord Chancellor's Department but is now for administrative purposes part of the Northern Ireland Department of the Environment. It is headed by the Registrar of Titles and its functions are basically the same as those of the Land Registry in England and Wales. Of a total staff of over 200 only six, including the Registrar himself, are lawyers.

11.26. Responsibility for promoting law reform in Northern Ireland rests with the Secretary of State. He is advised in this respect by the Office of Law Reform which is a branch of the DFP. There are no Law Commissioners in Northern Ireland, but the Office of Law

Reform maintains close contact with the legal community, including the Judiciary, the Bar, the Law Society and the Faculty of Law at Queen's University, Belfast.

In government or outside?

11.27. I see no reason to come to any different conclusion about privatising or contracting out legal services in Northern Ireland from those in Chapter IV. A good deal of contracting out of legal work occurs already and private sector expertise is brought in on major commercial issues such as the exploitation of lignite and the handling of the de Lorean affair. There are of course special security considerations in Northern Ireland which inhibit much wider use of the private sector on legal advisory and legislative work, and the importance of having a highly regarded and impartial Prosecution Service limits the amount of contracting out that can be done by the Director of Public Prosecutions. As in England and Wales, there is certainly scope for contracting out litigation and conveyancing work, provided that it is cost effective to do so. Such evidence as I was able to gather in Northern Ireland indicated that legal work was more expensive when done outside than in government. For example, I heard of a private solicitor who charged £35,000 for a five week conveyancing job which the DLS estimated it could have done in-house for about £3,000. The Crown Solicitor told me that if his litigation work were contracted out to private solicitors, the Crown would be faced with considerable additional costs, both in terms of fees for Counsel (private solicitors invariably engage expensive Senior Counsel, whereas the Crown Solicitor's Office does so only in cases of appropriate magnitude) and in terms of amounts of settlements in cases of damages (the Crown Solicitor's Office keeps a tight control on cases and will not permit settlement by Counsel until it is satisfied that it is the Crown's interest to settle). These examples may or may not be typical but, as in other parts of the United Kingdom, the main determinants of whether work should be done inside government or outside are cost and quality of service.

Future organisation

11.28. Since 1984 the professional legal posts within the Northern Ireland Civil Service have been subjected to a programme of detailed reviews by the Management and Manpower Review Division (MMRD) of the Northern Ireland Department of Finance and Personnel, and a review of the Departmental Legal Service was in progress at the time of my visit. In these circumstances I did not think it necessary to examine the position in the Northern Ireland Departments in detail, nor to make specific recommendations on organisation except for the proposal discussed in Chapter V for incorporating the DPP (Northern Ireland) within the enlarged Law Officers' Department. The MMRD has already recomended the centralisation of the various components of the DLS under one roof and I welcome this recommendation. The present outstation arrangements are too complicated for such a small organisation and I suspect that they militate against efficiency and optimum career management of legal staff.

11.29. I was told that the possibility of merging the Crown Solicitor's Office with the Departmental Legal Service had been considered in the past but had been rejected for the time being. This was partly because the re-organisation of the DLS needed time to settle down first and partly because of the constitutional difficulty that the DLS acts only for Northern Ireland Departments, whereas the Crown Solicitor's Office acts also for the Northern Ireland Office. It is necessary to keep open the possibility of a return to devolved government, which would reinforce the division. There would, however, be advantages in terms of the career management and the cost effective use of legal staff in Northern Ireland in merging these two Departments and I hope that the possibility will be kept under review. A first step might be to locate the two Departments together, including the outposts of the Crown Solicitor's staff, though I recognise that there are difficulties about finding suitable accommodation in Belfast, bearing in mind that the Crown Solicitor's staff need to be located close to the Law Courts. If a merger of the two Departments were ultimately decided upon, I believe this single office should also absorb the DFP's Office of Law Reform whose three lawyers seem curiously isolated from other government lawyers. I believe that a joint organisation would justify a Grade 2 appointment at its head. A number of witnesses suggested to me that the post of Crown Solicitor even in its present form was under-graded in view of its growing additional responsibility for extradition cases.

11.30. The Northern Ireland Land Registry, unlike its counterpart for England and Wales, is running at a loss even though its charges are relatively higher. The main reason for this is that most of the registration work concerns low value farming land bought by tenants from landowners rather than high value housing land. However, the Registrar of Titles also argued that he was hampered by a shortage of legal staff and that with more staff he could clear the existing backlog of work, reduce fees and become self-financing. In the time available to me I was not able to make a judgement of my own on this argument. I believe, however, that it should be looked at carefully again. It seems to me that the Northern Ireland Land Registry is very much the kind of organisation for which agency status would ultimately be appropriate, but that it would be wise not to change its status in that way until it has become self-financing.

Recruitment and retention

11.31. In the course of my enquiries in Northern Ireland I was not told of any major recruitment and retention problems. I did not record detailed statistics, but I understand that most of the 150 or so legal posts are filled: about 60 are in the Crown Solicitor's Office, 33 in the DLS and about 50 in the DPP's Office. Wastage is at a relatively low level and there have been very few resignations in recent years. Recruitment has fluctuated over the last 10 years or so but has been generally satisfactory in recent years. It seems that on the one hand there is a surplus of barristers in Northern Ireland and that solicitors in private practice are relatively poorly paid, while on the other hand it is widely recognised in legal circles that government legal work is interesting and demanding as well as reasonably remunerated by local standards. As with Scotland, however,

I doubt if there is room for complacency. Some recent recruitment competitions for the DLS have been markedly less successful than previously and the Crown Solicitor anticipates some recruitment difficulties in the near future. I believe that the Northern Ireland Civil Service could well benefit from following some of the recommendations in Chapter VI, notably those about improved recruitment activities, especially with university law departments, the wider use of articled clerkships and special efforts to attract married women. On this last point, I think some Departments in Northern Ireland have already discovered that there is a pool of high quality female lawyers for whom there are fewer interesting employment opportunities outside government in Northern Ireland than elsewhere in the UK.

Making the best use of lawyers

11.32. I have no specific recommendations to make under this heading in relation to Northern Ireland. I note in paragraph 11.24 that administrators rather than lawyers perform most of the administrative work of the Northern Ireland Court Service and that administrators in the DLS rather than lawyers prepare instructions for the Legislative Draftsmen for primary legislation (paragraph 11.20). I have noted the fact that lawyers in the Office of the DPP (Northern Ireland) have rights of audience in the Crown Court and have referred to this in the recommendations I make in Chapter VII for England and Wales. Much of what I have said about support services in that Chapter applies with at least equal force to Northern Ireland, although there is not the same shortage of secretarial staff as in London. I believe that there is much to be gained by the sharing of practice and expertise in the use of new technology for legal work, between all parts of the Government Legal Service in the United Kingdom.

Pay

11.33. Except for the Northern Ireland Court Service the Northern Ireland Civil Service has not yet implemented the new legal grading structure introduced for Great Britain in 1987. To that extent it may not be possible for the benefit of some of my proposals on pay in Chapter VIII to be extended to Northern Ireland lawyers. As I have indicated in paragraph 11.31, the pay of government lawyers in the Province is reasonably competitive and in that sense there is no major requirement for overall improvements in pay. However, many of those I consulted in Northern Ireland said that they would like to see more flexibility in the pay system to enable management to give greater rewards to high performers with valuable skills. The new performance pay system introduced this year will provide considerably more flexibility than has been available previously and my own proposals in Chapter VIII for introducing the concept of job value into the pay determination system would add further flexibility. (The case of the Crown Solicitor - see paragraph 11.29 above - might be borne in mind here.) If in order to benefit from these changes it is necessary for the NICS to adopt the new grading structure, I hope it will do so as soon as practicable. I recognise that there were some unfavourable features about the regrading system in Great Britain which will need to be considered carefully in the context of Northern Ireland but I hope that Northern Ireland could learn from the experience of Great Britain.

Other managerial issues

11.34. Many of the points on training and career development discussed in Chapter IX apply mutatis mutandis also to Northern Ireland and I have no particular recommendations to make in this chapter. The Management and Manpower Review Division covered training in its programme of reviews of professional legal posts in Northern Ireland and I welcome the recommendations they make about training, both technical and managerial. As to career development, I have not thought it necessary to propose the setting up of a management unit on the model of that proposed for England and Wales. Nevertheless, I believe that there is scope for greater interchange of staff between the various Departments in Northern Ireland, including the Office of the DPP. Though that Office does not have the structural problems of the larger Crown Prosecution Service in England and Wales there is a worrying promotion blockage problem for the abler Senior Legal Assistants which could be alleviated by outlets into other Departments. The DPP told me that he would also welcome the appointment of his Prosecutors as resident magistrates by analogy with the elevation of Procurators Fiscal in Scotland to Sheriff. I should add that I suspect that the new grading system could well alleviate the promotion blockage in the DPP's Office by enabling some of the more experienced SLAs to be regraded as Grade 6. Otherwise the numerical balance of 13 legal posts at Grade 5 and above with 27 at grades below that level seems not unreasonable.

CHAPTER XII

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

12.1. The Government makes use of a wide range of legal services, including advice, litigation and conveyancing, the drafting of legislation, the administration of justice, international relations and law reform. All these are necessary and because of the important role which the law plays in the activities of government they need to be provided to a high standard. The costs of "getting it wrong" can be very serious. For a variety of reasons, including increases in crime and commercial activity, the development of the process of judicial review, and the addition of the European dimension, the Government's need for legal services has increased in recent years and seems likely to go on doing so.

12.2. In the interests of both effectiveness and economy the bulk of these services should continue to be provided on an in-house basis by members of the Government Legal Service. Nevertheless, there are occasions when work should be contracted out to the private sector, notably if the necessary expertise does not exist in government, if the resources are not available, or if it is judged that contracting out would provide a speedier or more cost-effective service (cost-effective being interpreted to cover quality as well as economy). Departments should be given more choice on whether to meet their requirements in government or outside, but the former will usually be substantially cheaper. Wherever possible work should be transferred out of London, where costs are lower and staff easier to obtain; but because of the need to be near Ministers, Parliament and the Law Courts, most of the Government's legal work will have to remain in London. Some of the bodies providing services to the public could usefully be transformed into executive agencies.

12.3. Certain organisational changes should be made to improve the effectiveness of the services which continue to be provided in-house. The Law Officers' Department and the bulk of the Treasury Solicitor's Department should be merged to form an enlarged Law Officers' Department under the Attorney General, who would also be responsible for Parliamentary Counsel's Office, the Directors of Public Prosecutions in both England and Wales and Northern Ireland, and the Serious Fraud Office. The Treasury Solicitor would become Permanent Secretary of the new Department and Head of the Government Legal Service, including all lawyers employed in the Home Civil Service in England and Wales. After careful consideration I have concluded that the lawyers employed in the Departments where the law plays a major role (Agriculture, Home Office, Trade and Industry, Environment, Inland Revenue, Customs & Excise, Health, Social Security and Wales) should remain part of those Departments, rather than being transferred to a single Vote controlled by the Law Officers' Department. But the Head of the Government Legal Service, supported by a Central Management Unit, should play a more positive role in the central management of the Service. The Lord Chancellor's Department would not be affected by the organisational change (except

for the transfer from the Treasury Solicitor's Department of the Statutory Publications Office), but would participate in the machinery for central management.

12.4. I heard much praise for the quality of service provided by government lawyers and comparatively little criticism. I conclude that for the most part they provide a very good service at low cost. But there are not enough of them to cope with the increasing workload and there are worries about whether quality can be maintained in future. There are serious problems of recruitment and retention, particularly in the recently established Crown Prosecution Service, which is still 25% under strength. Several other Departments have significant shortages and in recent years entry competitions have succeeded in filling only about half of the existing vacancies. The wastage of experienced staff to better-paid jobs in the private sector is particularly serious and can only be made good over a long period. The difficulty in recruiting and retaining lawyers is significantly greater than for the civil service as a whole. There is a national shortage of qualified lawyers, and in a highly competitive market the Government Legal Service is losing out, particularly in London, to private practice and to industry and commerce. The position could become more difficult in future if the demand for lawyers continues to grow, especially as the demographic trend is unfavourable.

12.5. In this situation I believe that the Government must make greater efforts to attract a share of the available talent, including a proportion of the very best. Remedial action needs to be taken promptly before the situation deteriorates further and should take three forms. First, the system of recruiting needs to be widened to target not only qualified and experienced lawyers, but also undergraduates who at present are snapped up by the big City law firms and the Bar, and in most cases are then lost to the government service. As a corollary it will be necessary to provide financial assistance to candidates to complete their professional education and then to offer facilities for articled clerkships and pupillage. A special effort should also be made to attract married women, including those with children who may want part-time work, which should be easier to provide in government than in the private sector. More use should be made of short-term appointments and of the recruitment of older lawyers. Greater use should be made of provisional appointments to speed up the process of recruitment. A major publicity campaign will be needed to draw attention to the opportunities offered by the Government Legal Service, including the interest and variety of the work, which are not widely appreciated.

12.6. Secondly, selective pay increases are needed. Although lawyers do not join the government service primarily for financial reward, pay is an important factor in the present staffing difficulties. The Government cannot match the very high rewards offered by the private sector, especially in London; but if the gap becomes too wide it will be unable to recruit and retain enough lawyers of the right quality, which is what is now happening. It is a question of market forces. Following pay increases agreed earlier this year, starting salaries for government lawyers compare

reasonably well with the private sector; but in mid-career there is a wide divergence. The difficulty of recruitment and retention is almost entirely a London problem, caused by the high cost of living in the London area and the fact that this is where the high-priced competition is located. There is a need to recognise this by paying to more senior lawyers a London allowance of the sort already paid to junior grades. There is also a need to recognise differences in job weight, skills and marketability, and for this purpose I propose selective pay increases related to job value. Together these two measures would allow government lawyers in the most highly rated jobs in London to earn some £5,000-£10,000 a year more than at present.

12.7. Thirdly, I believe that a number of managerial changes are needed if the scarce resource of qualified lawyers is to be used to the best effect. These include a more positive role for central management in the deployment of staff to meet the needs of the service and of career progression for individuals; steps to enhance job satisfaction (including a modest extension of rights of audience in the Crown Court); a number of grading changes to recognise job weight and improve promotion prospects, particularly in the Crown Prosecution Service; and the provision of better support arrangements in terms of staff and information technology. While the present shortage persists, qualified lawyers should be employed only on work for which their qualifications are needed, and there should be a more flexible attitude to age of retirement. Finally, efforts should be made to improve the status and "image" of government lawyers.

12.8. The lawyers in the Foreign and Commonwealth Office are employed on work which needs to be done in government. They are members of the Diplomatic Service and it would not be appropriate to include them in the recommended organisational changes, although they should maintain liaison with the proposed central management machinery. Wastage among Foreign Office lawyers is becoming a serious problem and they should benefit from the proposed pay improvements.

12.9. In Scotland and Northern Ireland there are as yet no serious problems of recruiting or retention, although there have been some worrying signs recently that the position may be deteriorating. These areas should benefit from the added flexibility in pay and grading arrangements which has been suggested. Some minor changes in organisation and management are also proposed.

Recommendations

12.10. Following is a list of my main recommendations. These are presented in summary form and should be read in conjunction with the sections of the report to which they refer.

(1) The greater part of the Government's legal work should continue to be done on an in-house basis; but Departments should be ready to contract work out if:

(a) the necessary expertise does not exist in government;

(b) government does not have the resources to do the work without undue delay; or

(c) it is more cost-effective for the work to be done in the private sector.

(Chapter IV)

(2) The present arrangements whereby advice is given by Departmental lawyers, primary legislation is drafted by Parliamentary Counsel's Office and litigation and conveyancing are (for the most part) handled by a central Department, should continue.

(paras 4.5, 4.8-11, 4.12-15)

(3) The Law Officers' Department and the Treasury Solicitor's Department should be merged to form an enlarged Law Officers' Department under the Attorney General, which would also include the Office of Parliamentary Counsel, the Director of Public Prosecutions (and the Crown Prosecution Service), the Director of Public Prosecutions (Northern Ireland) and the Serious Fraud Office.

(paras 5.2-5.7)

(4) The Treasury Solicitor should become Permanent Secretary of the new Law Officers' Department. In addition to acting as principal adviser to the Law Officers and supervising work on litigation and conveyancing, he should be Head of the Government Legal Service, embracing all Home Civil Service lawyers employed in England and Wales, with responsibility for the central management of the Service. He should be assisted by a Management Board and a Central Management Unit concerned, in consultation with Departments, with the recruitment, training, career development and deployment of legal staff.

(paras 5.3, 5.10-19)

(5) The Lord Chancellor's Department would not be affected by this organisational change, but should participate in the recommended arrangements for central management. When the new Law Officers' Department is established the opportunity should be taken to transfer to the Lord Chancellor's Department the Statutory Publications Office.

(paras 5.8-9)

(6) The Property Division of the present Treasury Solicitor's Department (which would form part of the new Law Officers' Department) should be re-located outside London.

(para 4.15)

(7) The Land Registry should be constituted as an executive agency, while remaining responsible to the Lord Chancellor. The agency should be free to use receipts from registration fees to engage additional staff so that the present backlog of work can be reduced. The headquarters of the Registry (or at least the greater part of it) should be re-located outside London.

(para 4.18)

(8) There should be a broader approach to the recruitment of government lawyers, designed to attract not only qualified and experienced lawyers but also undergraduates, who should be offered financial assistance to study for their professional examinations and should then undertake articles or pupillage within the Government Legal Service.

(paras 6.16, 6.19)

(9) Special efforts should also be made to attract married women into the Government Legal Service, including offers of part-time employment; and more use should be made of period appointments, secondments and the employment of older lawyers.

(paras 6.22, 6.23, 6.24)

(10) To facilitate recruitment a much greater effort should be made to publicise the opportunities offered by the Government Legal Service, including the variety and interest of the work. This should be one of the tasks of the Central Management Unit, in consultation with Departments and the Civil Service Commission, using as a model work done by the Ministry of Defence in recruiting fast-stream engineers and scientists, and employing specialist consultants as required.

(para 6.18)

(11) Departmental lawyers should be integrated into the work of the Departments they serve and involved at an early stage in all policy discussions with legal implications.

(para 7.2)

(12) While the present shortage of lawyers persists, fully qualified lawyers should only be employed in posts which require legal qualifications. There should be a review of posts in the Lord Chancellor's Department dealing with the administration of the courts and with judicial appointments to determine which posts need in future to be filled by qualified lawyers.

(paras 7.4, 7.5)

(13) There should be a more flexible attitude to retirement, permitting lawyers to serve up to age 65, subject to satisfactory performance, individual wishes and departmental needs.

(para 7.19)

(14) The complement of Parliamentary Counsel's Office should be increased to allow for the creation of an additional drafting team, so that the preparation of legislation is not held up by lack of resources.

(para 7.9)

(15) More senior posts should be created in the Crown Prosecution Service to deal with specialist casework; this would help to improve the present inadequate career prospects.

(para 9.14)

(16) To recognise experience and workload there should be more use of straight through-grading from Crown Prosecutor to Senior Crown Prosecutor in the CPS and personal promotions from Grade 7 to Grade 6 in other Departments.

(paras 8.23, 8.25)

(17) More use should be made of existing training facilities, both in government and outside, including managerial as well as professional training.

(para 9.7)

(18) More effort should be devoted by Departments, in consultation with the Central Management Unit, to enhancing the performance of lawyers by the provision of better secretarial support and the exploitation of information technology. The comprehensive computerised legal data base at present being studied by a committee should be introduced as soon as possible.

(paras 7.16-17)

(19) Greater effort should be devoted to the central management of the Government Legal Service to ensure that scarce resources are deployed where they are needed most and the careers of individuals (including high-flyers) are properly planned. This should be the responsibility of the Head of the Government Legal Service, assisted by a Management Board and a Central Management Unit.

(paras 5.13-19, 9.10)

(20) As a means of enhancing job satisfaction (and thereby improving recruitment and retention) as well as for reasons of efficiency, there should be a limited extension of rights of audience in the Crown Court to qualified lawyers in Customs and Excise and, when circumstances permit, to the Crown Prosecution Service. (This recommendation will need to be considered as part of the Government's general review of the legal profession.)

(paras 7.10-15)

(21) Members of the Crown Prosecution Service should be eligible for appointment as stipendiary magistrates.

(para 9.15)

(22) Against the background of continuing recruiting difficulties and the loss of experienced staff to better-paid jobs in the private sector, especially in London, there should be selective pay increases for government lawyers as follows:

(a) a London Allowance of £2,500 a year should be incorporated in the pay of all lawyers in Grades 4 and 5 working in the London area;

(para 8.29-30)

(b) selective increases in the form of up to three steps on the incremental ladder should be paid to lawyers in Grades 4-7, whether in London or elsewhere, who occupy posts of special value, defined in terms of job weight, skills and marketability;

(paras 8.24-30)

(c) lawyers in Grades 2-3 should be paid on the basis of personal pay points which would take account of both the London factor (where applicable) and the concept of job value.

(para 8.32)

(23) Ministers and the Head of the Government Legal Service should seek opportunities to emphasise the importance of the Service and to improve its status and "image".

(para 9.17)

(24) The Foreign and Commonwealth Office, which is also experiencing losses to the private sector, should apply to lawyers in the Diplomatic Service pay improvements similar to those recommended for the Home Civil Service. Close liaison on management issues should be maintained with the Central Management Unit in the Law Officers' Department.

(para 10.13)

(25) The Overseas Development Administration should discuss with the Law Officers' Department the possibility of the latter's taking on work now done by FCO and Crown Agents' lawyers.

(para 10.11)

(26) Government lawyers employed in Scotland and Northern Ireland should be eligible for the selective pay increases recommended above. The Departments concerned should consider to what extent they would benefit from more flexible grading arrangements and the various managerial measures recommended for England and Wales.

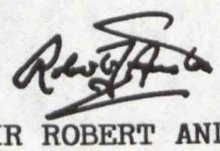
(paras 11.16, 11.33)

(27) The possibility of combining the Crown Solicitor's Office and the Northern Ireland Departmental Legal Service (or at least co-locating them) should be kept open.

(para 11.29)

(28) Consideration should be given by the Scottish Office and the Crown Office to establishing a small management unit to facilitate exchanges of staff and the development of information technology etc.

(paras 11.11, 11.17)



(SIR ROBERT ANDREW)

31 October 1988

APPENDIX

LIST OF WITNESSES
(The appointments shown are those held at the time of interview)

Sir Donald Acheson KBE	Chief Medical Officer, Department of Health
Mr N J Adamson CB QC	Legal Secretary and First Parliamentary Draftsman, Lord Advocate's Department
Mr J D Allan	Crown Office, Scotland
Mr D H Andrews CB CBE	Permanent Secretary, Ministry of Agriculture, Fisheries and Food
Mr J Anson CB	Second Permanent Secretary, HM Treasury
Lord Alexander QC	Chairman, Panel on Takeovers and Mergers
Sir Alan Bailey KCB	Permanent Secretary, Department of Transport
Sir John Bailey KCB	Treasury Solicitor
Mr J A Barker	HM Treasury
Mr K Baublys	Department of Health and Social Security
Mr A M W Battishill	Chairman, Inland Revenue
Mr A J Beale	Legal Adviser, Welsh Office
Mr G H Beetham	Legal Adviser, Department of Transport
Mr L J H Beighton	Inland Revenue
The Hon Mr Justice Beldam	Chairman of the Law Commission
Mr C B Bell	HM Treasury
Rt Hon The Lord Belstead	Lord Privy Seal
Mr F D Berman	Legal Counsellor, Foreign and Commonwealth Office
Mr M Blair	Director of Legal Services, Securities and Investment Board
Mr C G Blake	Department of Health and Social Security
Mr R A D Blanche	Civil Service College
Sir Kenneth Bloomfield KCB	Head of the Northern Ireland Civil Service
Mr J Boland	Public Trustee
Ms S A Booth	Department of the Environment
Sir Gordon Borrie KCB QC	Director General of Fair Trading
Mr D C Bourne	Head of Law Section, Barclays Bank
Mr J Bowen	Morgan Bruce and Hardwickes, Solicitors, Cardiff
Mr P A Boynton	Reuter Simkin, Recruitment Consultants
Sir Derek Bradbeer OBE TD	President, The Law Society
Mr S Bramley	Home Office
Mrs A Brett-Holt	Association of First Division Civil Servants
Mr J St.L Brockman	Solicitor to Department of Health and Social Security
Mr R Brodie	Solicitor to the Scottish Office
Mr R G Brooke	Chief Executive, City of Westminster
Mr F J M Brown	Crown Office, Scotland
The Hon Mr Justice Simon Brown	Judge of the High Court (Queen's Bench Division)
Sir Terence Burns KCB	Head of the Government Economic Service

Mr J Caines CB	Permanent Secretary, Overseas Development Administration
Mr R J Calder	Crown Prosecution Service Headquarters
Mr D C Calcutt QC	Master of Magdalene College, Cambridge
Mr B L A Cameron	Civil Service Commission
Rt Hon The Lord Cameron of Lochbroom QC	Lord Advocate
Sir Antony Campbell QC	Northern Ireland Crown Counsel
Professor R I E Card	Department of Legal Studies, Trent Polytechnic
Mr R W Chalk	Civil Service Commission
Mr M S Chance	Deputy Director, Serious Fraud Office
Mr M J W Churchouse	Senior Partner, Daynes Hill and Perks, Solicitors, Norwich
Mr G T H de C Clarke	Linklaters and Paines, Solicitors
Mr P J Clarke	Secretary, Forestry Commission
Mr G B Claydon	Legal Adviser, Department of Energy
Mr M Coates	Institution of Professional Civil Servants
Mr A Cole	Morgan Bruce and Hardwickes, Solicitors, Cardiff
Mr R F Cole	Head of Legal Services, Department of Finance and Personnel,Northern Ireland
Mr J Coleman	Legal Adviser, Department of Education and Science
Mr R Collier	Daynes Hill and Perks, Solicitors, Norwich
Mr M H Collon	Secretary to the Law Commission
Mr B Cookson	Legal Adviser, British Aerospace
Mr D A Cooper	Institution of Professional Civil Servants
Ms S Corby	Association of First Division Civil Servants
Professor S M Cretney FBA	Chairman, Committee of Heads of University Law Schools
Sir Brian Cubbon GCB	Permanent Secretary, Home Office
Professor T C Daintith	Director, Institute of Advanced Legal Studies, University of London
Ms R Dasey	Association of First Division Civil Servants
Mr C Davenport	Ministry of Defence
Miss Z I Davies	Department of Health and Social Services, Northern Ireland
Mr I Dean CB	Crown Agent (Scotland)
Mr A Denney	Institution of Professional Civil Servants
Mr C H de Waal CB QC	First Parliamentary Counsel
Mr R Donaldson	Crown Office, Scotland
Mr R A Donell	Chairman of the Board of Management, College of Law
Mr G Drewry	Royal Holloway and Bedford New College
Mr R Denoon Duncan	Senior Partner, Cameron Markby, Solicitors
Mr J A Durkin	Rees and Freres, Parliamentary Agents

Professor R Dussault	University of Quebec
Mr M J M Erritt	Central Statistical Office
Mr T R Erskine CB	First Legislative Draftsman, Northern Ireland
Mr L A Evans	Secretary General, Institute of Legal Executives
Ms S Evans	Cabinet Office, (Office of the Minister for the Civil Service)
Mr D E R Faulkner CB	Deputy Secretary, Home Office
Mr C W France CB	Permanent Secretary, Department of Health and Social Security
Mr G J Francis	Director General, Forestry Commission
Mr Peter Fraser QC	Solicitor-General for Scotland
Mr J D Friel	Crown Office, Scotland
Mr H W Gamon CBE MC	Sherwood and Co, Parliamentary Agents
Mr G E Gammie CB	Counsel to the Speaker of the House of Commons (European Legislation)
Mr D S Gandy OBE	Deputy Director of Public Prosecutions
Mr B K H Gaskell	President of the Law Society
Mr B T Gilmore	Deputy Secretary, Cabinet Office (Office of the Minister for the Civil Service)
Mr C N Gorman	Linklaters and Paines, Solicitors
Mr J G Graham	HM Treasury
Mr A D Green QC	Director of Public Prosecutions
Mr C F Green	Director and Deputy Chief Executive, National Westminster Bank
Mr C Greenwood	Director of Studies in Law, Magdalene College Cambridge
Mr C Gregory	Treasury Solicitor's Department
Sir Peter Gregson KCB	Permanent Secretary, Department of Energy
Mr R I L Guthrie	Chief Charity Commissioner
Mr C Hall	Crown Prosecution Service, Merseyside
Mr G S Hamilton	Metropolitan Police Office
Mr I C M Hamilton	Retired Government Lawyer
Sir David Hancock KCB	Permanent Secretary, Department of Education and Science
Mr C Harman	Crown Prosecution Service, Merseyside
Sir Brian Hayes KCB	Permanent Secretary, Department of Trade and Industry
Mr J Hayes	Secretary General of the Law Society
Sir Terence Heiser KCB	Permanent Secretary, Department of the Environment
Mr D H Henderson	Chairman of ICI
Mr J Hibbert	Director of the Central Statistical Office and Head of the Government Statistical Service
Mr R R Hillhouse	Permanent Secretary, Scottish Office
Mr G Holland CB	Permanent Secretary, Department of Employment
Mr K Hopley	Cabinet Office (Office of the Minister for the Civil Service)

Mr G A Hosker CB	Solicitor to the Department of Trade and Industry
Mr Michael Howard QC MP	Minister for Local Government
Rt Hon Sir Geoffrey Howe QC MP	Secretary of State for Foreign and Commonwealth Affairs
Rt Hon Douglas Hurd CBE MP	Secretary of State for the Home Department
Mr W N Hyde	Deputy Secretary, Home Office
Mr R P Illingworth	Chief Land Agent, Forestry Commission
Mr G B Inglis	Senior Partner, Slaughter and May, Solicitors
Dr W H Jack CB	Permanent Secretary, Department of Agriculture for Northern Ireland
Mr R A D Jackson	Treasury Solicitor's Department
Mr D K M James	Phillips and Buck, Solicitors, Cardiff
Mr R W James	Morgan Bruce and Hardwickes, Solicitors, Cardiff
Mr J C Jaqua	Sullivan and Cromwell, Solicitors
Mr G J Jenkins CB	Legal Adviser and Solicitor, Ministry of Agriculture, Fisheries and Food
Mr A S Jessop	Crown Office, Scotland
Mr Robert Johnson QC	Chairman of the Bar Council
Mr A L Jones	Head of Law Department, Manchester Polytechnic
Mrs S Jones	Home Office
Mr C W Kelly	HM Treasury
Mr E P Kemp CB	Second Permanent Secretary, Cabinet Office (Office of the Minister for the Civil Service)
Mr P Kilgareth	Department of Employment
Mr R Kitson	Office of the Director of Public Prosecutions, Northern Ireland
Mr W M Knighton CB	Principal Establishment and Finance Officer, Department of Trade and Industry
Mr P R Lane	Rees and Freres, Parliamentary Agents
Mr J G M Laws	Junior Treasury Counsel (Common Law)
Ms R Lester	Association of First Division Civil Servants
Mr P K Levene	Chief of Defence Procurement, Ministry of Defence
Dr C Lewis	Department of Trade and Industry
Mr I T Lewis	Treasury Solicitor's Department
Mr D G Lloyd	Linklaters and Paines, Solicitors
Sir Richard Lloyd Jones KCB	Permanent Secretary, Welsh Office
Mr J D Lowe	Deputy Crown Agent, Scotland
Sir Nicholas Lyell QC MP	Solicitor-General
Mr B T McArdle	Chief Crown Prosecutor, Inner London
Mr W McBride	Official Solicitor's Office
Mr M M MacCabe	Freshfields, Solicitors
Mr D J McCartney	Department of Finance and Personnel, Northern Ireland
Rt Hon The Lord Mackay of Clashfern QC	Lord Chancellor

Mr D O McCreadie	Property Services Agency
Mr R MacDonald	Reuter Simkin, Recruitment Consultants
Mr J McElheran	Ministry of Agriculture, Fisheries and Food
Sir Gordon Manzie KCB	Chief Executive, Property Services Agency
Lady Marre CBE	Chairman, Committee on the Future of the Legal Profession
Mr L C W Martin	Registrar of Titles, Northern Ireland Land Registry
Mr D P E Mason	Government Accountancy Service Management Unit
Mr G Mather	Director General, Institute of Economic Affairs
Rt Hon Sir Patrick Mayhew QC MP	Attorney General
Mr J Meldrum	Scottish Courts Administration
Mrs E Mellor	Department of Education and Science
Mr J R Merchant	Crown Prosecution Service Headquarters
Sir Peter Middleton KCB	Permanent Secretary, HM Treasury
Mr R K Miller	Solicitor to Inland Revenue
Mr R J Morrison	Chief Inspector, Barclays Bank
Mr W L Morrison	Department of Finance and Personnel, Northern Ireland
Mr K Mountain	Crown Prosecution Service, Merseyside
Dame Anne Mueller DCB	Second Permanent Secretary, HM Treasury
Mr J F Mummery	Junior Treasury Counsel (Chancery)
Mr J Murray	Permanent Secretary, Northern Ireland Department of the Environment
Mr C Muttukumaru	Treasury Solicitor's Department
Ms F Nash	Ministry of Agriculture, Fisheries and Food
Mr H A Nelson	Crown Solicitor for Northern Ireland
Mr T Neville	Director and Legal Adviser, John Lewis Partnership
Mr J Newbegin	Cameron Markby, Solicitors
Mr J Noble	Crown Prosecution Service, Merseyside
Mr A C Normand	Crown Office, Scotland
Mr J Nursaw CB QC	Legal Adviser, Home Office
Mr M Ogden QC	Chairman, Criminal Injuries Compensation Board
Mrs N A Oppenheimer	Lord Chancellor's Department
Mr C Osborne	Department of Law, Manchester Polytechnic
Sir Derek Oulton KCB QC	Permanent Secretary, Lord Chancellor's Department
Mr E Pakenham	Department of Finance and Personnel, Northern Ireland
Mr J H Parkes CB	Permanent Secretary, Department of Education for Northern Ireland
Mr C A H Parsons	Head of Legal Staff, Charity Commission
Mr P C Peddie	Freshfields, Solicitors
Mr R Pensam	Head of Administration and Legal Department, City of Sheffield

Mr H S K Peppiatt	Senior Partner, Freshfields, Solicitors
Mr J E Pestell	Ministry of Defence
Mrs Mary Phillips	Dean, Council for Legal Education
Mr B Pickerill	Lloyds Bank
Mr D F W Pickup	Treasury Solicitor's Department
Mr W A Plapinger	Sullivan and Cromwell, Solicitors
Mr I L Podmore	Chief Executive, City of Sheffield
Mr B Pomeroy	Touche, Ross and Co
Mr C S Porteous	Solicitor, Metropolitan Police Office
Mr E J Pryer CB	Chief Land Registrar
Sir Michael Quinlan KCB	Permanent Secretary, Ministry of Defence
Mrs J R Radice	Cabinet Office (Office of the Minister for the Civil Service)
Mr N Ram	Lloyds Bank
Mr J Randall	Director of Professional Standards and Development, The Law Society
Mr M E Rawlins	Treasury Solicitor's Department
Rt Hon The Lord Renton of Huntingdon QC	House of Lords
Mr D C W Revolta	HM Treasury
Mr H G Reynolds	Head of Legal Services, National Westminster Bank
Mr J B K Rickford	Solicitor and Chief Legal Adviser, British Telecommunications
Mr R N Ricks	Treasury Solicitor's Department
Rt Hon Nicholas Ridley MP	Secretary of State for the Environment
Mr P Riley	Head of Legal Department, British Aerospace
Mr L J Robb	Crown Office, Scotland
Mr G Roberts	Treasury Solicitor's Department
Dr A S Rodger QC	Home Advocate-Depute, Scotland
Mr M J Rose	Chief Crown Prosecutor, South Yorkshire
Mr M Rowley	Lloyds Bank
Miss L Ruxton	Crown Office, Scotland
Mr M Saunders	Legal Secretary, Law Officers' Department
Mr P Scott QC	Former Chairman of the Bar Council
Mr J L Semple	Permanent Secretary, Department of Finance and Personnel, Northern Ireland
Sir Barry Shaw CB QC	Director of Public Prosecutions for Northern Ireland
Mr J A Shaw	Ex-Treasury Solicitor's Department
Mr M H Sheldon	Senior Partner, Linklaters and Paines, Solicitors
Mr W Shelford	Cameron Markby, Solicitors
Mr T A Sherman	Deputy Secretary, Attorney General's Department, Federal Government of Australia
Mr B A Shillito	Office of Parliamentary Counsel
Rt Hon Lord Simon of Glaisdale	House of Lords
Mr E A Simpson	Director of the Northern Ireland Court Service

Mr P V H Smith	Solicitor to HM Customs and Excise
Mr J P Spencer	Cabinet Office (Office of the Minister for the Civil Service)
Mr B L J Spratt	Crown Prosecution Service Headquarters
Mr J M Stewart	Deputy Secretary, Ministry of Defence
Mr P Stickland	Government Accountancy Service Management Unit
His Honour Judge Eric Stockdale	Circuit Judge
Mr J M L Stone	Legal Consultant
Mr J Strachan	Director of Legal Services, Glaxo Holdings
Dr T K Sweeney	Department of Health and Social Security
Mr R G Thomas	Senior Partner, Phillips and Bucks, Solicitors, Cardiff
Mr N E D Thomson	Sheriff of Lothian and Borders
Mr S Totton	Incomes Data Services Ltd
Mrs J G Totty	Land Registry
Mr D J Trevelyan CB	First Civil Service Commissioner
Mr G Turnbull	Institution of Professional Civil Servants
Ms S E Unsworth	Overseas Development Administration
Mr J B Unwin CB	Chairman, HM Customs and Excise
Mr K Valentine	Crown Office, Scotland
Mr A C Vannet	Crown Office, Scotland
Mr N R Varney	Home Office
Mr H D S Venables	Official Solicitor
Mr R M C Venables	Treasury Solicitor's Department
Rt Hon John Wakeham MP	Lord President of the Council
Mr J F Walker	Department of Finance and Personnel, Northern Ireland
Rt Hon Peter Walker MBE MP	Secretary of State for Wales
Mr P Ward	Lloyds Bank
Mr S R Ward	Slaughter and May, Solicitors
Mr M J Ware CB	Solicitor to the Department of the Environment
Rt Hon Lord Justice Watkins VC	Lord Justice of Appeal
Mr A D Watts CMG	Legal Adviser, Foreign and Commonwealth Office
Mr R W G Weir WS	Messrs Pearsons WS, Edinburgh
Mr D P F Wheatley QC	Chief Legal Adviser, Lloyds Bank
Miss J L Wheldon	Treasury Solicitor's Department
Mr D White	Scottish Court Service
Mr V O White	Group Solicitor, ICI
Mr D J Wiblin	Lord Chancellor's Department and later Crown Prosecution Service
Mr J H Wilkinson	Treasury Solicitor's Department
Mr S J Williams	Head of UK Legal Department, Unilever
Sir Anthony Wilson	Head of Government Accountancy Service
Mr C Winslade	HM Treasury
Mr J Wood	Director of the Serious Fraud Office
Mr E C Woodcock	Chief Crown Prosecutor, Merseyside
Rt Hon Lord Justice Woolf	Lord Justice of Appeal

Mr R Woolman	Director of Legal Services, Office of Fair Trading
Sir Patrick Wright KCMG	Permanent Secretary, Foreign and Commonwealth Office
Mr J Young	Cameron Markby, Solicitors
Rt Hon The Lord Young of Graffham	Secretary of State for Trade and Industry
Mr H Youngerwood	Crown Prosecution Service, Inner London

CONFIDENTIAL

SUBJECT CC MASTER.

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

20 December 1988

Dear Alex,

ANDREW REPORT: GOVERNMENT LEGAL SERVICES

The Prime Minister held a meeting today to discuss the Andrew Report. Present were the Lord Chancellor, the Foreign and Commonwealth Secretary, Chancellor of the Exchequer, Secretary of State for Northern Ireland, the Attorney General, the Lord Advocate, Paymaster General and Sir Robin Butler. The meeting had before it the Chancellor of the Exchequer's minutes of 16 and 19 December and minutes by the Attorney General, the Home Secretary and the Secretary of State for Trade and Industry.

Prior to the meeting the Head of the Home Civil Service had circulated a note setting out the Prime Minister's proposals on the response to the Machinery of Government recommendations in the Andrew Report. These were agreed. Also agreed were the various measures for improving management of the legal service.

The Attorney General said the Andrew Report had identified pay and career prospects as the most important problem facing the legal service. He recognised that the public service should not attempt to match salaries in the private sector but the gap had become too large even after taking account of the advantages of working in the public sector. He had reached agreement with the Treasury on the implementation of most of the pay recommendations of the Report but at Grade 5, which was the key career grade, he felt it necessary to go beyond the Andrew Report. Specifically, he considered it essential to add three spine points which would be paid automatically as a London allowance rather than the two which had been recommended. This would produce a London allowance of £3,700 a year rather than £2,500. The cost would be only £$^1/_4$ million.

In discussion of this point, it was argued that it would be wrong to provide a London allowance for this grade which was both much higher than for other grades in the legal service and higher than for other pay groups in the Civil Service. While the immediate cost was small, it was likely to prove repercussive in negotiations with other pay groups. There was also a danger of circularity, with higher pay for Government lawyers feeding back into negotiations over the remuneration of lawyers carrying out publicly-funded work.

After discussion, it was agreed that instead of the three selective performance points recommended by Andrew, only two performance points would be paid where the full selective increases had been granted. This would benefit the relative position of those lawyers working in less commercial areas of Government. The Chancellor of the Exchequer also agreed that the selective points would be operated flexibly, without imposition of a quota on the number of lawyers who would be eligible. On Grade 6 it was agreed that there should be one automatic point, paid as an additional step on the spine for all London lawyers. It was also agreed that for Grade 7s the Andrew recommendation for selective increases should not be accepted though the Attorney General was prepared to agree to this only on condition that there was flexible promotion to Grade 6. It was agreed that further discussions should take place between the Attorney General and the Paymaster General on how flexible promotion should be operated.

For Grades 2 and 3, Andrew had recommended a London allowance of £3,000 per year. It was argued that this was at variance with the London-related payments for these grades elsewhere in the Civil Service. Currently, there was no London weighting for either Grade 2 or Grade 3 though the TSRB was likely to recommend introduction of a London weighting of £2,000 for Grade 3.

Summing up the discussion, the Prime Minister said there was agreement on the recommendations for management changes and on the Machinery of Government changes. For Grades 6 and 7 it was agreed that there would be no selective increases though for Grade 6 there would be one spine point. There should be further discussion between the Attorney General and the Paymaster General on the way flexible promotion to Grade 6 should be operated. For Grade 5, it was agreed that where full selective increases were paid there would be only two performance points. In the light of the Chancellor of the Exchequer's assurances about the way selective points would be administered the majority of those present felt that the Government should not go beyond the increases in London Allowance recommended in the Andrew Report. The Attorney General should consider further his proposal for a third spine point for London allowance and discuss it with the Treasury. For Grades 2 and 3 the Attorney General and the Treasury should consider further whether the increases recommended needed to be revised so that the total increases recommended by Andrew were broadly the same but that the specific London element would be compatible with that which would be in operation elsewhere in the Civil Service following the TSRB recommendations. The outcome of these discussions should be reported back to colleagues. Meanwhile, work should be set in hand to draft an announcement and advice should be prepared on the arrangements for publishing the Report.

I am copying this letter to the Private Secretaries to the Lord Chancellor, Foreign and Commonwealth Secretary, Secretary of State for Northern Ireland, Attorney General, Lord Advocate, Paymaster General and to Sir Robin Butler.

Yours sincerely

Andrew

ANDREW TURNBULL

Alex Allan, Esq.,
H.M. Treasury.

PRIME MINISTER

THE ANDREW REPORT

I understand that you will shortly be discussing with a number of colleagues the recommendations of the Andrew Report on the Government Legal Service.

The Home Office has only a small number of lawyers, but they play a key role in the support my Department gives to me and my Ministerial colleagues here. They are thinly stretched. Nearly 25% of the complement is vacant. We are simply failing to attract good quality lawyers at Grade 7 here, despite the interesting work which we have to offer and the continuous effort which the Home Office and the Civil Service Commission put into recruitment. The main reason for this failure is that our rates of pay at both Grade 7 level and higher are not competitive. If pay, throughout the Grades, continues to be unattractive to the able lawyer, today's 25% shortfall of staff will quickly worsen and in a few years' time the Home Office will be in serious difficulties.

Andrew's recommendations on pay (as well as on the management of the Legal Service more generally) offer the opportunity to do something about recruitment and retention, and I hope that it will be grasped. I understand that at Grade 5 level and above the Treasury are ready to agree to increases in pay rates which are virtually the same as those proposed by Andrew. Andrew recommended that these increases should be awarded selectively. That is in line with the policy on Civil Service pay generally, and I welcome that.

But if the proposed increases are to have any effect on the staffing problems I have referred to above, it is essential that the selective approach is applied reasonably generously. The Treasury's instincts, which I understand, will be to confine the increases to as small a minority as possible. I do not believe that such an approach will make much impact on the problem. I hope that you and our colleagues will decide that, while each case will need to be considered on its merits, the presumption should be in favour of awarding increases rather than the reverse.

I understand that the Treasury are proposing to do nothing about pay at Grade 6 and 7 levels, whereas Andrew recommended selective increases of £2,650 - £3,300. As I have explained above, it is precisely at the Grade 7 level that the Home Office's problems arise. If we cannot attract recruits, our difficulties will soon deepen. I hope, therefore, that your meeting will agree to adopt Andrew's proposals for these Grades.

I am sending copies of this minute to the Lord Chancellor, the Foreign & Commonwealth Secretary, the Chancellor of the Exchequer, the Lord Advocate, the Chief Secretary, the Northern Ireland Secretary, the Scottish Secretary and Sir Robin Butler.

Douglas Hurd

19 December 1988


19. XII

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CCBUP

dti

the department for Enterprise

MANAGEMENT IN CONFIDENCE

PRIME MINISTER

The Andrew enquiry has naturally raised expectations; now that we have Sir Robert Andrew's report, I agree with the Attorney General that it is vital that the Government's response to what he recommends should be seen as fully adequate by those concerned. Several of my senior lawyers are known to have been hanging on to await the Government's response to Andrew, although they have received very attractive offers from the private sector. I therefore support the specific proposals made to your group by the Attorney General.

I know that some Departments are concerned about selective increases for lawyers having repercussions on the retention of able non-lawyers, both other specialists and generalists. I do not think that this applies to lawyers; they are an obvious specialist grade and there can be no spillover.

I regard the Andrew proposals for selectivity, essentially on the grounds of the relative marketability of individuals, as themselves breaking useful new ground in the development of flexible pay. I welcome them. Above all we must not hamstring ourselves with a meanly presented approach to their use, or quotas, which would prevent us from achieving our objectives.

888-273

PS1BYH

dti

the department for Enterprise

MANAGEMENT IN CONFIDENCE

I am copying this minute to the Ministers attending your meeting.

N.R Tl

D Y
(approved by the Secretary of State and signed in his absence)

19 December 1988

Department of Trade and Industry

888-273

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CCPO
LCCBUP

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

PRIME MINISTER

LAWYERS' PAY

I have seen the Attorney General's minute to you of 16 December.

I share his concern that we should have pay rates adequate to recruit and retain able lawyers of the kind we require in the Government Legal Service. That is why I am prepared to accept the Andrew recommendations on pay in the way set out in the note by officials. I am disappointed that the Attorney accepts Sir Robert Andrew's analysis, but not his conclusions.

In no significant respect do my proposals for the pay of lawyers at Grade 5 and above - the key grades - fall short of Andrew's recommendations. The Attorney's proposals, on the other hand, go further than Andrew in two important respects.

For Grades 4 and 5, Andrew recommended selective increases of £5,000 a year. He proposed that this should be achieved through a London allowance of £2,500 and further selective increases in the form of up to three spine points. In total this actually adds up to £6,600. I am prepared to accept this.

For Grades 2 and 3 he proposed selective increases of up to £10,000. I am prepared to accept this also. The proposals I have made would make available on a selective basis a total of up to £10,400 at Grade 3 and £12,000 at Grade 2 including one point for performance.

The Attorney General wants to go beyond Andrew by increasing the London allowance for Grade 5 to around £3,700. This would increase the total amount available at these levels to £8,000, more than half as much again as Andrew's £5,000.

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He also wants at Grade 2 and 3 both to implement my own proposals and to pay on top of that an across the board London allowance of £3,000. I regard such an allowance, which it is worth noting that Andrew did not actually mention specifically in his recommendations, as totally inappropriate to the nature of the Senior Open Structure. It is also unnecessary. Personal pay points used in the way I have proposed can take account of any special London dimension where necessary without the divisiveness and deadweight cost of a general allowance paid to all.

I doubt that implementing Andrew's recommendations in the way proposed would be regarded as disappointing by the vast majority of government lawyers.

On the other hand, if we were to go beyond Andrew as the Attorney has proposed, I would be very worried about the consequences in management terms for other groups of civil servants at these senior levels. By doing more than Andrew's recommendations we would be knocking away one of our main props in explaining what we were doing and why we were doing it. We would also, of course, be adding significantly to the cost.

I am copying this minute to the Foreign Secretary, the Lord Chancellor, the Secretary of State for Northern Ireland, the Secretary of State for Scotland, the Attorney General, the Lord Advocate and Sir Robin Butler.

Moira Wallace

pp [N.L.]

(Approved by the Chancellor and signed in his absence.)

19 December 1988

10 DOWNING STREET

Prime Minister

The Chancellor's riposte to the Attorney's overbid (which you minded to reject anyway) plus a further departmental case from DTI

AT

19/12

cc RVJP

PRIME MINISTER

ANDREW REPORT : PAY

On 7 April 1987, my predecessor and I sent to you a minute relating to the adequacy of resources available to the Law Officers in which we expressed our view that "our experience leads us now to be gravely concerned for the state of morale in the Government Legal Service, and accordingly for its future efficiency. It is a matter of great anxiety to us that the present prospects of a strong and effective Government Legal Service are so poor". Many colleagues wrote in support of these views at the time, one commenting that "it seems to me that we ignore the Law Officers' unusually trenchant comments at our mounting peril".

2. In the light of this correspondence, the Government decided to commission the Andrew Review. The Treasury also made an improvement, as an interim measure, to the pay of Grade 5, 6 and 7 lawyers. At the time I recorded my doubts about the treatment of Grade 5s and emphasised that the measure must be regarded as interim pending the outcome of Andrew.

3. Chapter 8 of Andrew's Report accurately and comprehensively analyses the very worrying situation in the Government Legal Service. I would draw to your attention paragraphs 8.3, 8.7, 8.8, and 8.9. Particular importance attaches to paragraph 8.11, which I set out in full below:

> "8.11. It is possible to interpret the recruitment and wastage figures in Chapter VI to indicate that the problem is confined to the lower grades and that it will be resolved by the pay increases already announced for the civil service as a whole. I believe that this view is too complacent; that it underestimates the strength of the competition (which is greater for lawyers than for civil servants generally) and that it misunderstands the nature of the pay problem. We are concerned with quality as well as

numbers and I believe that ambitious young lawyers considering a career look beyond starting salaries. Certainly, most of the young lawyers I met in the Government Legal Service were more worried about future prospects and rewards than about present rates of pay. The able lawyer who resigns from Grade 6 or Grade 7 does not do so simply because he is dissatisfied with his present salary, but because he knows that even if he is promoted the salaries of the higher grades will still compare very unfavourably with what is on offer elsewhere. Moreover, although the losses from the senior grades have so far been small in number, they are proportionately higher than in the civil service generally and are of critical importance. The level of experience of those from whom the most senior posts must be filled has already fallen and the loss of even a few more lawyers from key positions could create a situation in which it became very difficult for the Government to carry on its business. Consequently I believe that the pay problem must be looked at across the board, in the knowledge that the rapid increase in private sector salaries in London means that the gap is widening. It is not yet clear what effect this year's pay increases will have on recruitment; but it seems most unlikely that they will check mid-career wastage. It would be dangerous to delay remedial action until the situation has deteriorated further."

I fully endorse this conclusion.

4. It would, in my view, be very dangerous and, indeed very expensive, to ignore these warnings. Poor legal advice can have devastating consequences for the Government.

5. There are lessons to be learned from the gestation and formative years of the Crown Prosecution Service. Andrew in paragraphs 9.11 and 9.12 very fairly analyses what went wrong. At the time of the formation of the CPS, we were understandably concerned about the effect on pay of the reorganisation. But we foreseeably incurred the consequences which the Andrew Report so vividly described. We must not make the same error with the Government Legal Service.

6. The Andrew Report is anxiously awaited by those in the Government Legal Service. I have little doubt that there are many who are awaiting its publication before deciding whether to accept lucrative offers from the private sector. I accept, of course, that we cannot match the salaries that are being offered outside the public service. We must, however, if we are to retain lawyers within the Service and attract the right quality of recruits, offer them salaries which, taken with the advantages of working in the public sector, are sufficient to attract and keep them. Andrew points out clearly the scale of the disparity of salaries, particularly in London, inside and outside the Government service, a disparity which increases markedly as the lawyer achieves more experience.

At variance with 8(11) on page 2 of Ch/Ex minute

7. Since Andrew reported, there has been one general recruiting round for the Government Legal Service. The results of this round are alarming. 38 vacancies were advertised; of the 43 applicants seen by the Board only 19 were thought to be worth offers of employment. Of these, 4 were for posts outside London. Those offered London posts were mostly at the lower end of the scale of ability. Only one could be described as a possible high-flyer (he had also had an offer from the FCO which he is likely to accept.)

8. Having read Andrew's analysis of the situation in Chapter 8, I was frankly surprised and disappointed in his proposals in paragraphs 8.21 - 8.37. Yet the Treasury proposals fall short of the Andrew proposals. I believe that the proposals will be viewed similarly by the Government Legal Service. I have no doubt whatsoever that, if the Government reacted to these proposals by offering less than is recommended, there would be a large number of resignations and recruitment would become even more difficult.

9. I believe that we must implement the Andrew recommendations in full (except at Grade 7 where I accept the Treasury view), and at Grade 5, we should improve upon them, namely to the extent of the addition of one spine point for all London lawyers. This is the crucial career grade. An offer of £2,500 (equivalent to about two spine points) to all London lawyers at Grade 5

as an allowance falls, I have to say, seriously short of the minimum needed. I also regard the TSRB likely recommendations for all Grade 3s in London as not relevant for the purpose of implementing the Andrew recommendations. My own detailed proposals I set out in the Annex to this minute.

10. I cannot give you any assurance that the Andrew recommendations enhanced by the amendments I propose will be sufficient to recruit and retain the lawyers we need. They might not. Andrew himself recognises that his proposals might not be adequate in paragraph 8.36. I have, however, had regard to the wider concerns expressed to me by the Treasury, in being prepared to adopt this formulation as the minimum that I could agree to.

11. I accept that the effect of these proposals will be to create a gap between the pay of lawyers and other groups and that this may lead to problems on other fronts. Andrew dealt with this concern at paragraph 8.36 of his Report. I firmly believe that it would not be right to hold down lawyers' pay, with the consequences I have illustrated, to meet this concern. That would not be to secure value for money.

12. I am copying this minute to the Foreign Secretary, the Chancellor of the Exchequer, the Lord Chancellor, the Secretary of State for Northern Ireland, the Secretary of State for Scotland, the Chief Secretary, the Lord Advocate and to Sir Robin Butler.

A. M.

16 December 1988

ANNEX

Grade 7

I accept that there is no need for the selective increases of up to three spine points (recommended by Andrew) provided that detailed proposals on flexible promotion to Grade 6 are acceptable.

Grade 6

I endorse the Andrew recommendation (3 steps on spine on a selective basis). If this recommendation is regarded as being unworkable, I propose one additional step on the spine for all London lawyers. It is not acceptable to leave open the possibility of selective increases at Grade 6 until greater experience is gained of how selectivity works in practice at more senior levels.

Grades 5/4

Andrew proposed a special London allowance of £2,500 (about two spine points) plus the availability on a selective basis of three additional spine points and the full range of four performance points. I propose a special London allowance equivalent to three additional spine points, three selective spine points and two performance points added to the top of the range (where full selective increases are paid).

Grades 3/2

Andrew implies a London allowance of £3,000 and selective increases on top, up to a total of £10,000. I endorse this proposal. I consider that the London allowance of £3,000 should be available, irrespective of any special allowance for all Grade 3s, recommended by the TSRB in their next Report. I accept that the selective pay awards should be implemented by the use of personal pay points. One additional performance point should be added, available for those given personal pay points.

The selective pay scheme and use of personal pay points must, to be effective, be operated fairly and genuinely. There must not be an expectation that only a small number will qualify.

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Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

PRIME MINISTER

REVIEW OF GOVERNMENT LEGAL SERVICES

I attach a copy of the report of the review of Government Legal Services conducted by Sir Robert Andrew together with a note by officials about it. I thought it might be helpful if I set out my personal view in advance of your meeting next week.

The review has produced a number of useful recommendations designed to improve personnel management arrangements and make better use of lawyers in the Civil Service. I agree with the proposals made by officials about how we should respond to them.

Clearly the most difficult area is that of pay. Sir Robert Andrew has recommended making available on a selective basis additional amounts of up to £6,600 to lawyers at Grade 5 on top of normal Grade 5 salary levels, and of up to £10,000 to lawyers at Grade 2 and 3.

The emphasis on selectivity is helpful. But these are substantial amounts by any standards. The proposals would mean, for example, that Grade 5 lawyers in London would get a pay increase on 1 April of around £3,700, including the 4 per cent due to them then anyway. Some could get up to £7,800. With performance pay, some Grade 5 lawyers in London could aspire to earn almost £43,000 from April. All will also get a further increase on 1 August under the 5-7 long-term pay agreement. The effect would be to open up a considerable differential between lawyers and other groups in the same grades.

I am also conscious that:

(i) the figures do not support the idea that there is a serious retention problem at these levels. In the 18 month period up to the end of last July there were only six resignations at Grade 5 and above from the whole of the Government legal service, including the Crown Prosecution Service. This is an annual rate of only 1.2 per cent. There were only three resignations (excluding the newly formed CPS) in the 12 months before that. At Grade 6 level the resignation rates were 3.4 per cent and 1 per cent respectively;

(ii) the recruitment position is clearly unsatisfactory. The Civil Service Commission are still not succeeding by some margin in meeting the vacancies which departments are asking them to fill. But the situation is already improving. 1988 looks like being a better year than 1987 and the effect of the substantial increases in pay for Grades 6 and 7 promulgated earlier this year are probably still not fully realised. The Civil Service Commission expect an increase of around 15 per cent in the number of Crown Prosecutors recruited in 1988 and could double the number of other lawyers recruited, though admittedly from a low base. Two competitions directed specifically to posts in Inland Revenue and the Land Registry resulted in all the vacancies being filled;

(iii) salaries for senior lawyers in the Government Legal Service may compare unfavourably with those earned by the best lawyers in private sector commercial firms in London. But in other areas where lawyers are employed, and outside London, the material collected by Andrew suggests a rather different picture. In any event, comparability is not a part of our policy on pay, except

to the extent that it is reflected in the recruitment and retention position. And simply comparing salaries can be misleading. The nature of the job also matters.

However, I acknowledge the concerns some colleagues have expressed about quality and depth of experience; and it is possible that the most recent resignation figures may be distorted if people who might otherwise have resigned are waiting to see what came out of the Andrew report. I am therefore prepared to accept the Andrew recommendations for Grade 5 and above in the way set out in the report by officials, subject to satisfactory arrangements being worked out for the application of selectivity, and to keep the position of Grade 6 under review.

Increases of this order, even on a selective basis, are bound to stimulate claims for comparable treatment from other groups of staff. We will have to resist these. We are in a better position to do so to the extent that we are seen to be responding to the recommendations of a considered and published review. Going beyond the Andrew recommendations, as I understand that the Attorney would like us to do, would in my view be unjustified and would make our position much more difficult to defend.

I am copying this minute to the Foreign Secretary, the Lord Chancellor, the Secretary of State for Northern Ireland, the Secretary of State for Scotland, the Attorney General, the Lord Advocate and Sir Robin Butler.

[N.L.]

16 December 1988

(B)

REVIEW OF GOVERNMENT LEGAL SERVICES

Report by Sir Robert Andrew, KCB

Note by Officials

1. The Prime Minister announced on 14 January that she had approved the appointment of Sir Robert Andrew to undertake a Review of Government Legal Services. The review originated from concerns of Ministers about the morale and efficiency of the Services, about their organisation and use, and about the quality of legal advice available. The terms of reference asked Sir Robert to make recommendations on what legal services the Government needs, how they can be provided most effectively and economically and what changes are needed in the management of legal staff so as to make best use of them.

Summary of conclusions

2. Sir Robert Andrew concludes that the Government continues to need a wide range of legal services provided to a high standard and that the need for them is likely to go on increasing. It is likely to be more cost effective for the bulk of these services to continue to be provided in-house, but departments should be given more choice whether to meet their needs in government or outside. Some of the bodies providing services to the public could usefully become executive agencies and the relocation of some work out of London would prove cost-effective.

Discussed already with FERB

3. Whilst eschewing radical change, the Report proposes some organisational adjustments to improve the effectiveness of legal services. No major changes are proposed in the balance of responsibilities between the central legal departments for whom the Attorney-General is the Ministerial Head and departments requiring legal services. But some detailed adjustments are proposed in the Attorney-General's departments, partly to facilitate Andrew's proposals for improved personnel management of lawyers. A key recommendation is that the Treasury Solicitor should become Head of the Government Legal Service, including all lawyers employed in the Home Civil Service in England and Wales, and should play a more positive role in the management of the Service with the support of a new central unit.

4. Andrew concludes that there are serious problems of recruitment and retention which, against the background of a national shortage of lawyers, raise doubts about whether the quality of services can be maintained in the future. He recommends remedial action on three fronts:

a. **more effort on recruitment** both to publicise the opportunities offered by government service and to broaden the recruitment base. Sponsorship, articled clerk and pupillage schemes are proposed as well as greater flexibility in working arrangements to attract in particular married women and older lawyers;

b. **various management changes aimed at making better use of qualified lawyers.** These include centrally coordinated arrangements for the management of lawyers throughout the Service as well as steps to enhance job satisfaction (in particular an extension of rights of audience in the Crown Court), improvement in promotion prospects and better support arrangements for lawyers.

c. **selective pay increases.** While starting salaries compare reasonably well with the private sector, in mid-career they start to diverge. Since recruitment and retention problems are almost entirely confined to London, an extension of the London laywers' allowance to more senior grades is proposed. More selective increases are also recommended to recognise high "job value" - a combination of job weight, skills and marketability;

5. For the Foreign and Commonwealth Office, Scotland and Northern Ireland, Andrew recommends that the flexibilities in pay and grading should also apply.

<u>Response to the Report</u>

6. Sir Robert Andrew's report has been considered by a group of officials under Treasury chairmanship including representatives from the Crown Prosecution Service, the Law Officers' Department, the Lord Chancellor's Department, the OMCS, and the Treasury Solicitor's Department. Other departments have been consulted on various aspects of the report.

7. The machinery of government proposals have been considered further in a separate paper being submitted to the Prime Minister by the Head of the Home Civil Service. The specific proposal that the Treasury Solicitor should become Head of the Government Legal Service should provide a firm basis for the more effective deployment of legal resources across government and help to maintain and enhance the quality of legal advice.

Personnel Management

8. More coordinated personnel management of the Government Legal Service as a whole, as recommended by Andrew, will be needed to secure the most effective deployment of lawyers across Government. At first sight this proposal appears to run counter to the general thrust of Civil Service reforms such as the Financial Management Initiative and Next Steps. But greater decentralisation and devolution of responsibility in the interest of securing more effective management of individual departments and units within Government needs to be buttressed by satisfactory cooperative arrangements to ensure that the collective interests of Government are also well served. There should be considerable benefit to the Government Legal Service as a whole from improved succession planning, better directed career management and the ability to negotiate staff transfers between departments to cope with changing priorities and fluctuating workload. Proposals modelled on the current arrangements for the Government Economic Service have been endorsed by the relevant heads of department and their legal advisers. We therefore recommend that the Treasury Solicitor be formally designated Head of the Government Legal Service and that he be supported by a small Lawyers Management Unit.

9. The proposed management unit will have a key role in taking forward Andrew's various specific recommendations for improving personnel management of lawyers in government. We agree that greater effort needs to be put into recruitment, that the recruitment base should be broadened, and that there should be improved training and management development as Andrew suggests. The management unit will need to work closely with the Treasury, the OMCS and the Civil Service Commission in helping departments to implement all these recommendations.

Making the Best Use of Lawyers

10. The Report also makes a number of useful recommendations aimed at making better use of lawyers. Given the continuing shortage of lawyers and their relatively high cost, it is clearly important to ensure that the members of the Government Legal Service are used to best advantage and to achieve maximum value for money. Andrew notes that the quality of legal services is best where lawyers and administrators work closely together, with the lawyers being brought into discussions at an early stage. In policy areas this is already encouraged and we recommend that Heads of Department should seek further **integration of lawyers and administrators**. There should not be two separate cultures.

11. In the wider arena, the Report recommends that **rights of audience** for both Customs lawyers and CPS prosecutors should be extended to the Crown Court. This recommendation is being considered by the Lord Chancellor in the context of his forthcoming Green Paper on the legal profession which is to be published next month.

12. Andrew also notes that much work of a legal nature can be and is already being done by administrators. It is important that the scarce skills of lawyers should not be dissipated on tasks that could equally well be done by non-qualified staff. We endorse the Report's recommendation that the Lord Chancellor's Department should undertake a **review of posts** that do not require legal qualifications but which are currently filled by lawyers. Other employing departments should also critically examine their use of lawyers.

13. We also endorse the report's conclusion that, while a considerable part of the Government's work has to be done in-house because of its special nature (eg Parliamentary drafting) or for other reasons such as security, user-departments should be ready to **contract out** work where outsiders are better qualified or better placed, or can offer a more cost-effective service. It is already Government policy to encourage contracting out where this offers the best value for money. To facilitate the search for cost effectiveness and improved accountability we recommend that the Treasury Solicitor's advisory, litigation and conveyancing services should be converted to a **repayment** basis so that the consumers can know and bear the cost of the services they demand. Current work to this end needs to be pursued vigorously.

14. Departments should also consider the **creation of agencies** where this would lead to greater efficiency. The Land Registry is already under examination.

15. The report notes that **relocation** away from central London could reduce the cost of some legal services. We recommend that this be investigated in respect of the Land Registry's Headquarters and the Treasury Solicitor's Property Division in the first instance.

Pay

16. The Andrew recommendations on pay involve making available additional amounts of up to £6,600 to lawyers at Grade 5, and £10,000 to lawyers at Grades 2 and 3, on a selective basis, and smaller amounts at more junior levels. The Treasury propose to accept these recommendations at Grades 5 and above, though for Grades 2 and 3 on a slightly different basis than Andrew proposed, and to leave open the possibility of selective increases at Grade 6 until experience is gained with the operation of selectivity at more senior levels. The details are given in Annex A.

17. These proposals have been discussed with representatives of the legal departments and other employing departments. The legal departments have made clear that to the extent that these proposals do not meet the letter of what Andrew recommended they are unacceptable and that in relation to Grade 5 they do not go far enough. They have indicated that the Attorney General does not believe the Andrew recommendations go far enough and that he is likely to be making proposals of his own to the Ministerial group.

Implementation of the Report

18. The individual recommendations in the report are listed in the **Action Plan** at Annex B, which summarises our recommended response and sets what we believe to be a reasonably tight yet achievable timescale for implementation. We recommend that the Treasury in consultation with the Departments concerned should be responsible for reviewing progress in six months time.

Resource Implications

19. The cost of the pay changes amounts to between £1 million and £1¼ million in a full year, depending upon the extent to which selectivity is used. This and the cost of personal promotions should be met from within Departments' overall running costs provisions in the normal way. The same applies to Departmental expenditure on measures aimed at stimulating recruitment. Relocation would entail additional expenditure in the first instance but this should be more than offset by savings in running costs in subsequent years. Additional provision would be required for the Lawyers' Management Unit: assuming 6 staff, the cost (including common services) would be about £160,000 a year. Development of a legal data base would cost a minimum of £1 million. LCD believe that up to £50,000 will need to be spent to make the Statutory Publications Office more effective.

Publication of the Report

20. Sir Robert Andrew consulted widely, both within the Civil Service and outside, in the course of his review. The Report is likely, therefore, to attract interest within the profession. Reactions to it may not be entirely favourable: it may be seen as not sufficiently radical, as offering little to the private sector and challenging some cherished traditions. Within the Service the review has clearly raised expectations. While there may be relief that widespread privatisation and contracting out are not recommended, there may be disappointment that more is not suggested to improve pay and career prospects. On the other hand, non-lawyers in government may resent the special treatment recommended for lawyers.

21. We consider the arguments in favour of publication outweigh those against and therefore recommend that the Report should be published by HMSO at the same time as the Government's response. This might best be in the form of a Written Answer by the Prime Minister shortly after the Christmas Recess. Copies of the Report should be made available to the trade unions prior to publication. The report should be introduced to members of the Government Legal Service in a message from the new Head of Profession outlining the Government's response.

Conclusion

22. Ministers are invited to:

i. agree that the Treasury Solicitor should be formally designated Head of the Government Legal Service and supported by a small Laywers Management Unit (paragraph 8);

ii. note that the Lord Chancellor will be covering those proposals affecting rights of representation in the Courts in his forthcoming Green Paper (paragraph 11);

iii. agree that legal services which continue to be provided centrally by the Treasury Solicitor should be on a repayment basis (paragraph 13);

iv. consider whether the Treasury's proposed response to Andrew on pay is acceptable (paragraph 16 and Annex A);

v. endorse the other proposals for implementation contained in the Action Plan (paragraph 18 and Annex B);

vi. endorse the proposals for publication and announcement (paragraphs 20-21).

15 December 1988

ANNEX A

LAWYERS PAY

GRADES 2 AND 3

Andrew recommended that selective increases of up to £10,000 should be available to lawyers at Grades 2 and 3. He also implied in the text, though he does not explicitly refer to it in his recommendation, that £3,000 of this should be paid in the form of a special London allowance.

2. The Treasury believe that special London allowances for lawyers at these levels would be inconsistent with the nature of the senior open structure. Their understanding is, however, that the TSRB are likely to recommend a special allowance of £2,000 for all Grade 3s in their next report, due at the end of January.

3. The Treasury propose to respond to the Andrew recommendation by making greater use selectively of the existing range of discretionary increments above the normal scale maxima for Grades 2 and 3 as personal pay points, and have already agreed to this in two cases. In addition, they propose to extend the range for each grade by one additional performance point available for those given personal pay points. These additional points would be subject to the existing arrangements for discretionary increments, including the quota.

4. Compared with the Andrew recommendation of up to £10,000 the effect of these proposals would be to make available on a selective basis up to £9,000 for Grade 2 lawyers with the additional possibility of a performance point worth a further £3,200. For Grade 3 lawyers, including the expected TSRB recommendation the additional payments available would total £8,300, with the possibility of a performance point worth another £2,100.

Grades 4 and 5

5. The Andrew recommendation for Grades 4 and 5 was for a special London allowance of £2,500 plus the availability of three additional spine points available on a selective basis. These could be worth up to some £4,100.

6. The Treasury proposes to accept these recommendations.

7. Under the terms of the Grades 5 to 7 Agreement, the number of performance points available to groups of staff benefiting from selective increases is for decision on each occasion. In the case of Grade 5 lawyers the Treasury propose to make a minimum of two points available, with the full four still available for those in receipt of the London allowance only.

8. The consequence could be to increase the salaries of some Grade 5 lawyers in London by around £6,600, with a maximum salary of just under £43,000 (including Inner London weighting) with effect from 1 April, including performance pay.

Grades 6 and 7

9. Andrew proposed that selective increases of up to three spine points should also be available in certain instances to staff at Grade 6 and 7. But he also made clear that he did not think that starting salaries were much out of line with private sector counterparts.

10. The Treasury propose to leave open the possibility of selective increases at Grade 6 until greater experience is gained of how selectivity works in practice at more senior levels.

General

11. Staff at Grade 2 and 3 can expect also to benefit from the result of the TSRB review, with effect from 1 April. Staff at Grades 5 to 7 will receive 4 per cent on 1 April under the terms of the long-term pay agreement for these grades, followed by a further settlement on 1 August 1989 which is to be informed by a levels survey.

12. The effect of the proposals above is that all staff, even those on the maximum personal pay point, will still have available to them at least one further performance point. Most will have more. There is also the possibility of personal promotions.

15 December 1988

pmr.jg/docs/revgls

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REVIEW OF THE GOVERNMENT LEGAL SERVICES
REPORT BY SIR ROBERT ANDREW

ANNEX B

ACTION PLAN

RECOMMENDATIONS	COMMENTS	ACTION REQUIRED	TIMESCALE
1. The greater part of the Government's legal work should continue to be done on an in-house basis; but Departments should be ready to contract work out if:	Accept there is no case for a material change. General policy is that departments are free to decide whether to use in-house legal services or to contract out if more cost-effective. Choice better informed if user knows and bears cost of in-house options. In some areas such appraisal not possible until Treasury Solicitor's services on repayment basis. Agency status a further option where this would facilitate more cost-effective delivery of services.	Treasury Solicitor to expedite work on repayment plans.	Feasibility to be completed during 1989, for implementation 1990-91.
(a) the necessary expertise does not exist in government;			
(b) government does not have the resources to do the work without undue delay; or			
(c) it is more cost-effective for the work to be done in the private sector		Examination by Departments of contracting out and agency arrangements.	Continuous.
2. The present arrangements whereby:			
(a) advice is given by Departmental lawyers, primary legislation is drafted by Parliamentary Counsel's Office, and	(a) Accept.		

(b) litigation and conveyancing are (for the most part) handled by a central Department, should continue.	(b) Accept subject to examination of contracting out to or by individual Departments.	(b) As 1. above	(b) during 1989 and subsequently
3. The Law Officers' Department and the Treasury Solicitor's Department should be merged to form an enlarged Law Officers' Department under the Attorney-General, which would also include the Office of Parliamentary Counsel, the Director of Public Prosecutions (and the Crown Prosecution Service), the Director of Public Prosecutions (Northern Ireland) and the Serious Fraud Office. (paras 5.2 - 5.7)	Accept modified proposal to rename present LOD the Legal Secretariat, and call <u>all</u> legal depts reporting to Attorney-General the "Law Officers' Departments". Reporting lines and Accounting Officer functions remain unchanged. Ministerial responsibility for DPP(NI) and PCO remain as at present.	Legal Secretary to arrange new stationery etc.	Immediate.
4. The Treasury Solicitor should become Permanent Secretary of the new Law Officers' Department. In addition to acting as principal adviser to the Law Officers and supervising work on litigation and conveyancing, he should be Head of the Government Legal Service, embracing all Home Civil Service lawyers employed in England and Wales, with responsibility for the central management of the Service. He should be assisted by a Management Board and a Central Management Unit concerned, in consultation with Departments, with the recruitment, training, career development and deployment of legal staff. (paras 5.3, 5.10-19)	Accept that T.Sol should become Head of GLS, supported by a Lawyers Management Unit.	Decide organisational structure and staffing of LMU. Head of LMU appointed in consultation with Central Depts. Staff in post.	Agree structure by 1.2.89 Unit staffed by 1.3.89

5. (a) The Lord Chancellor's Department would not be affected by this organisational change, but should participate in the recommended arrangements for central management.	(a) Accept.	n/a.	Management Arrangements effective from 1.4.89.
(b) When the new Law Officers' Department is established the opportunity should be taken to transfer to the Lord Chancellor's Department the Statutory Publications Office. (paras 5.8-9)	(b) Accept in principle.	(b) Early study of future resource needs. Transfer of existing financial provision and staff from T.Sol. to LCD.	Transfer by April 1990
6. The Property Division of the present Treasury Solicitor's Department (which would form part of the new Law Officers' Department) should be re-located outside London. (para 4.15)	Accept that options for relocation should be examined.	TSol to discuss location and timing with staff and other interested parties, including HMT.	Discussions to be completed by 1.9.89.
7 (a) The Land Registry should be constituted as an executive agency, while remaining responsible to the Lord Chancellor. The agency should be free to use receipts from registration fees to engage additional staff so that the present backlog of work can be reduced.	(a) Accept. Registry already exempt from gross running costs and a candidate for Agency status. Work well advanced. No bar in existing arrangements to in-year use of receipts to provide more resources.	(a) Continue work by Land Registry on Agency status, together with review of current management accounting system, workload forecasting and fee-change procedures.	Agency status from 1.9.89.
(b) The headquarters of the Registry (or at least the greater part of it) should be re-located outside London. (para 4.18)	(b) Accept that options for relocation should be examined.	(b) Land Registry to study practicality of relocating some HQ functions.	Discussions to be completed by 1.9.89.

8. There should be a broader approach to the recruitment of government lawyers, designed to attract not only qualified and experienced lawyers but also undergraduates, who should be offered financial assistance to study for their professional examinations and should then undertake articles or pupillage within the Government Legal Service. (paras 6.16, 6.19)	Accept. Sponsorship of students already possible. Articles and pupillage schemes already being considered by departments but require further development and coordination.	Departments to develop schemes in conjunction with Law Society and Bar. LMU to coordinate. HMT to agree terms and conditions and determine funding arrangements.	Schemes in place by 1.6.89
9. Special efforts should also be made to attract married women into the Government Legal Service, including offers of part-time employment; and more use should be made of period appointments, secondments and the employment of older lawyers (paras 6.22, 6.23, 6.24)	Accept: already Civil Service policy.	LMU to coordinate departmental reviews of staffing policies and report.	Report by 1.7.89
10. To facilitate recruitment a much greater effort should be made to publicise the opportunities offered by the Government Legal Service, including the variety and interest of the work. This should be one of the tasks of the Central Management Unit, in consultation with Departments and the Civil Service Commission, using as a model work done by the Ministry of Defence in recruiting fast-stream engineers and scientists, and employing specialist consultants as required. (para 6.18)	Accept.	Lawyers Management Unit with CS Commission to review recruitment practices.	Review complete by 1.7.89

11. Departmental lawyers should be integrated into the work of the Departments they serve and involved at an early stage in all policy discussions with legal implications. (para 7.2)	Accept. Already government policy.	Policy to be reinforced by Heads of Department and Cabinet Office as appropriate.	Continuous.
12. While the present shortage of lawyers persists, fully qualified lawyers should only be employed in posts which require legal qualifications. There should be a review of posts in the Lord Chancellor's Department dealing with the administration of the courts and with judicial appointments to determine which posts need in future to be filled by qualified lawyers. (paras 7.4, 7.5)	Accept.	A review by LCD, Treasury's SIED and the LMU.	Review in first half of 1989.
13. There should be a more flexible attitude to retirement, permitting lawyers to serve up to age 65, subject to satisfactory performance, individual wishes and departmental needs. (para 7.19)	Accept. Heads of Department already have discretion up to Grade 3. Senior Open Structure cases to be considered by Head of Home CS.	Departments encouraged to use existing rules more flexibly. LMU to monitor.	Continuous

14. The complement of Parliamentary Counsel's Office should be increased to allow for the creation of an additional drafting team, so that the preparation of legislation is not held up by lack of resources. (para 7.9)	Treasury prepared to consider a detailed case covering long-term need and other means of meeting the requirement.	Parliamentary Counsel to present case.	Case part of PES 1989.
15. More senior posts should be created in the Crown Prosecution Service to deal with specialist casework; this would help to improve the present inadequate career prospects. (para 9.14)	Consider in conjunction with decisions on the current joint review of grading guidelines for legal posts in CPS.	CPS and Treasury SIED to complete current review and take consequential decisions.	Decisions by Summer 1989
16. To recognise experience and workload there should be more use of			
(a) straight through grading from Crown Prosecutor to Senior Crown Prosecutor in the CPS and	(a) (As for No. 15)	(a) (As for No 15)	(a) Decision by Summer 1989.
(b) personal promotions from Grade 7 to Grade 6. (paras 8.23, 8.25)	(b) Accept subject to arrangements for personal promotions in all departments.	(b) Departments to submit schemes or individual cases for Treasury approval as appropriate.	Continuous.
17. More use should be made of existing training facilities, both in government and outside, including managerial as well as professional training. (para 9.7)	Accept. Civil Service College training courses for lawyers and SMDP programme are under review in order to encourage departments to make more use of them.	LMU in consultation with OMCS to review training facilities within and outside government and issue guidance to departments. LMU to monitor attendance on training courses.	Guidance by 1.8.89. Continuous

18. (a) More effort should be devoted by Departments, in consultation with the Central Management Unit, to enhancing the performance of lawyers by the provision of better secretarial support and the exploitation of information technology.	(a) Accept in principle.	(a) Encourage Departments to make use of available studies on the better use of Secretarial and other support services and to evaluate available systems.	
(b) The comprehensive computerised legal data base at present being studied by a Committee should be introduced as soon as possible. (paras 7.16-17)	(b) Treasury prepared to consider detailed business case.	(b) Case to be presented by LCD.	Case presented by Mid-1989.
19. Greater effort should be devoted to the central management of the Government Legal Service to ensure that scarce resources are deployed where they are needed most and the careers of individuals (including high-flyers) are properly planned. This should be the responsibility of the Head of the Government Legal Service, assisted by a Management Board and a Central Management Unit. (paras 5.13-19, 9.10)	Accept, subject to framework endorsed by Departments.	Treasury Solicitor and LMU to work up detailed arrangements with departments within agreed framework.	Arrangements in place by by 1.4.89.

20. As a means of enhancing job satisfaction (and thereby improving recruitment and retention) as well as for reasons of efficiency, there should be a limited extension of rights of audience in the Crown Court to qualified lawyers in the Crown Prosecution Service and in C&E. (This recommendation will need to be considered as part of the Government's general review of the legal profession.) (paras 7.10-15)	To be considered in the context of the Lord Chancellor's forthcoming Green Paper on the legal profession.	Pursue outcome of Green Paper.	Green Paper Jan 1989. Legislation in 1989-90.
21. Members of the Crown Prosecution Service should be eligible for appointment as stipendiary magistrates. (para 9.15)	For consideration.	To be reconsidered by the Lord Chancellor.	During January 1989
22. Against the background of continuing recruiting difficulties and the loss of experienced staff to better paid jobs in the private sector, especially in London, there should be selective pay increases for government lawyers as follows:	Welcome emphasis on selectivity.		
(a) A London Allowance of £2,500 a year should be incorporated in the pay of all lawyers in Grades 4 and 5 working in the London area; (para 8.29-30)	(a) Treasury accepts.	(a) HMT to make final recommendations to Ministers after appropriate consultations with Unions.	from 1.4.89

(b) Selective increases in the form of up to three steps on the incremental ladder should be paid to lawyers in Grades 4-7, whether in London or elsewhere, who occupy posts of special value, defined in terms of job weight, skills and marketability; (paras 8.24-30)	(b) Treasury accepts relating selective increases to recruitment and retention and value of individual to Department. Keep possibility of selective treatment for Grade 6 under review.	(b) HMT with LMU devise criteria and select posts recommended by Departments after consultation with Unions.	from 1.4.89
(c) lawyers in Grades 2-3 should be paid on the basis of personal pay points which would take account of both the London factor (where applicable) and the concept of job value. (para 8.32)	(c) Treasury accepts use of personal pay points which can take into account London factor. TSRB are likely to recommend £2000 London Allowance for Grade 3.	(c) As for (b) except no consultation with Unions.	from 1.4.89
23. Ministers and the Head of the Government Legal Service should seek opportunities to emphasise the importance of the Service and to improve its status and "image". (para 9.17)	Accept.	As appropriate.	Continuous
24. (a) The Foreign and Commonwealth Office, which is also experiencing losses to the private sector, should apply to lawyers in the Diplomatic Service pay improvements similar to those recommended for the Home Civil Service.	(a) Treasury accepts with respect to London factor. Treasury accepts principle of selective pay increases if criteria met.	(a) HMT to consider in light of decisions for HCS.	from 1.4.89

(b) Close liaison on management issues should be maintained with the Central Management Unit in the Law Officers' Dept. (para 10.13)	(b) Accept		
25. The Overseas Development Administration should discuss with the Law Officers' Department the possibility of the latter's taking on work now done by the FCO and Crown Agents lawyers. (para 10.11)	Accept.	ODA to discuss cost effective arrangements with T.Sol.	Proposals by March 1989.
26. (a) Government lawyers employed in Scotland and Northern Ireland should be eligible for the selective pay increases recommended above. (b) The Departments concerned should consider to what extent they would benefit from more flexible grading arrangements and the various managerial measures recommended for England and Wales. (paras 11.16, 11.33)	(a) Treasury accept principle of selective pay increases if criteria met. (b) Accept.	(a) HMT to consider. (b) for consideration by the departments concerned.	from 1.4.89 Decisions by mid-89.
27. The possibility of combining the Crown Solicitor's Office and the Northern Ireland Departmental Legal Service (or at least co-locating them) should be kept open. (para 11.29)	Accept.	For discussion between departments concerned.	Discussions completed by March 1989.
28. Consideration should be given by the Scottish Office and the Crown Office to establishing a small management unit to facilitate exchanges of staff and the development of information technology etc. (paras 11.11, 11.17)	Accept.	Scottish Office and Crown Office to consider possible arrangements in consultation with Lawyers Management Unit.	Arrangements in place by mid-1989.

15.12.88



cc BUp

Ref. A088/3633

PRIME MINISTER

Ministerial Meeting on 20 December:
Andrew Report on Government Legal Services

You commissioned Sir Robert Andrew to undertake a review of government legal services at the start of this year, with a wide remit to consider what legal services government needs, how they should best be provided, and what changes in their management (including pay) are needed. Sir Robert reported at the end of October. On 20 December, Ministers will need to consider how to respond to his report, including decisions on the form and timing of an announcement, and on publication of the report.

2. This exercise has generated a considerable volume of paper:

--- Flag A - the Chancellor's note of 16 December covering

--- Flag B - a report by officials and detailed action plan covering all 28 of Andrew's recommendations;

--- Flag C - Sir Robert's report.

--- Flag D - my minute of 15 December on the machinery of government issues;

--- Flag E - the Attorney General's minute of 16 December on lawyers' pay.

FRBAPX

Handling

3. I suggest you take the discussion in four parts:

i. The machinery of government issues - you will want to tell Ministers of your conclusions (speaking note attached to minute at Flag D). This is unlikely to provoke discussion, though the Secretary of State for Northern Ireland may express disappointment that it has not been possible to follow through the Andrew recommendation to make the Attorney General responsible for all aspects of the DPP (Northern Ireland)'s work. The speaking note has been circulated to colleagues and I suggest that you propose that it be taken as read.

ii. Pay. This is likely to provoke the most controversy: see paragraphs 4-6 below.

iii. Other points of substance arising from the Andrew report and the report by officials. You will want to establish whether there is any dissent from the conclusions at paragraph 22 (ii), (iii) and (v) of the report by officials at Flag B. Colleagues may wish to hear a preview from the Lord Chancellor on rights of audience, (para 22 ii), on which he plans to issue a green paper next month covering inter alia the position of crown prosecutors. The proposition at para 22 (iii) for repayment for legal services provided by the Treasury Solicitor should not cause difficulty. It would be helpful to have a clear endorsement for the other proposals (para 22 v), covering a variety of ways of making better use of government lawyers and improving their personnel management: we need to use the limited supply of lawyers available to government to the best possible effect.

iv. publication of the Andrew report and form and timing of an announcement: see paragraph 7 below.

Pay

At your meeting FERB suggested rejecting AG's proposals to go beyond Andrew, but trying to get Treasury at or near Andrew. AG and Treasury both agree that Andrew goes too far on Grade 7.

4. Andrew recommended substantial pay increases for lawyers, with a helpful recognition of the merits of selectivity. The Treasury propose to accept the spirit of the recommendations at Grades 5 and above, though not always on precisely the same basis as Andrew proposed, to leave open the position at Grade 6 for the time being, and to turn down the proposal in respect of Grade 7. The Attorney in his minute of 16 December makes it clear that the Treasury proposals are unacceptable if they did not meet the letter of what Andrew recommended, and that anyway in relation to Grade 5 they did not go far enough. The Attorney's counter proposals are set out in his minute. The annex to this brief shows a comparison of the Andrew recommendations and Treasury's proposals.

5. The Treasury's arguments are encapsulated in the Chancellor's covering minute. The Andrew proposals in themselves represent substantial increases, and certainly would be seen so by other groups of staff. They are made against a recruitment and retention background which is by no means uniquely bad within the Civil Service, and which shows signs of getting better, even before the increases resulting from Andrew are promulgated. The Attorney's line seems less reasonable, and certainly would be very much more damaging and repercussive in pay policy terms. You may wish to feel for whether an agreement could be worked out at or near the Treasury's position, based on taking the stand, which would have to be capable of being substantiated under scrutiny, that this did in fact meet the spirit of Andrew.

6. But the Treasury's present proposals are not at present easy to defend from this point of view. In particular they do

little or nothing for Grades 6 and 7, and fall short in respect of the London allowance at Grade 3. (The TSRB's proposal for a London allowance is likely to be less than Andrew recommends, and will not be known publicly until the end of January or later.) Thus if you could reach agreement on the basis that the Government accepts the spirit of Andrew's recommendations you would need to invite the Treasury to look again at their detailed proposals and their presentation to make these more nearly defensible - eg by saying more about Grades 6 and 7, foreshadowing positively the TSRB and generally emphasising the availability of possible further selective increases under the general pay schemes that exist and which cover the lawyers as well as others.

but should Grade 3 Lawyers get a large London Allowance than the £2,000 TSRB is going to propose?

Publication and Announcement

7. Having asked Sir Robert Andrew to modify a reference to the Crown Prosecution Service, officials advise that the Andrew report should be published in full, and that you should announce the Government's response by written answer next month (Flag B, paragraphs 20-21). As to timing, I suggest a target date of Thursday 19 January, which is the earliest date HMSO will be able to publish the report; this would also give time to work out the terms of the necessary - and very important - announcements to staff. If you or colleagues wished to make an earlier announcement, dates from 11 January would be possible: but in this case, only a limited number of copies of the Andrew report would be available for use by Parliament.

8. In either case, I suggest you invite me to co-ordinate the preparation of a written answer for your approval, briefing for Press Offices and a notice to staff in Departments (to be issued in the name of the Treasury Solicitor, and covering all the main issues of interest to Government lawyers, not pay alone).

16 December 1988

R.E.R.B.

ROBIN BUTLER

FRBAPX

5.15.12

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This can be found in Annex 1 AG's minute

COMPARISON OF ANDREW RECOMMENDATIONS, TREASURY PROPOSALS AND ATTORNEY'S RESPONSE

		Andrew	Treasury proposals
Grade 7		Selective increases of up to around £2,650	Nothing
Grade 6		Selective increases of up to £3,300	Leave open for time being
Grade 5	(i)	£2,500 for all in London	Agreed
	(ii)	Selective increases of up to £3,700	Agreed
	(iii)	Plus full range of four performance points	Where full selective increases paid two performance points only
Grade 4	(i)	London allowance of £2,500	Agreed
	(ii)	Selective increases of three increments	Agreed in principle
Grade 3	(i)	London allowance of £3,000	London allowance of £2,000 likely be recommended by TSRB for Grade 3 generally
	(ii)	Further selective increases of up to £7,000	Selective increases of up to £6,300 (top of Grade 3 range) plus availability of one further performance point (worth a further £2,100)
Grade 2	(i)	London Allowance of £3,000	No specific London allowance. But selective increases of up to £9,000 (top of Grade 2 range) plus availability of one further performance point (worth a further £3,200)
	(ii)	Further selective increases of up to £7,000	

ANNEX

Grade 7

I accept that there is no need for the selective increases of up to three spine points (recommended by Andrew) provided that detailed proposals on flexible promotion to Grade 6 are acceptable.

Grade 6

I endorse the Andrew recommendation (3 steps on spine on a selective basis). If this recommendation is regarded as being unworkable, I propose one additional step on the spine for all London lawyers. It is not acceptable to leave open the possibility of selective increases at Grade 6 until greater experience is gained of how selectivity works in practice at more senior levels.

Grades 5/4

Andrew proposed a special London allowance of £2,500 (about two spine points) plus the availability on a selective basis of three additional spine points and the full range of four performance points. I propose a special London allowance equivalent to three additional spine points, three selective spine points and two performance points added to the top of the range (where full selective increases are paid).

Grades 3/2

Andrew implies a London allowance of £3,000 and selective increases on top, up to a total of £10,000. I endorse this proposal. I consider that the London allowance of £3,000 should be available, irrespective of any special allowance for all Grade 3s, recommended by the TSRB in their next Report. I accept that the selective pay awards should be implemented by the use of personal pay points. One additional performance point should be added, available for those given personal pay points.

The selective pay scheme and use of personal pay points must, to be effective, be operated fairly and genuinely. There must not be an expectation that only a small number will qualify.

CONFIDENTIAL

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C03 BER

SUBJECT cc MASTER

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBIN BUTLER

ANDREW REPORT: GOVERNMENT LEGAL SERVICES

You discussed with the Prime Minister your minute of 15 December on the Machinery of Government implications of the Andrew Report. She agreed:

(i) that the Treasury Solicitor should assume an additional "Head of Profession" function;

(ii) that a new merged Law Officers' Department should be created;

(iii) that the Treasury Solicitor should continue to provide services to the five Departments with small legal requirements on a repayment basis;

(iv) that there should be no change in the formal Ministerial responsibilities for the Parliamentary Counsel but that the Lord President should take on responsibility for negotiating with the Treasury their public expenditure resources;

(v) that there should be no change in the responsibilities for the DPP (Northern Ireland);

(vi) that the Lord Chancellor should take over responsibility for the Statutory Publications Office.

The Prime Minister has also seen your minute of 15 December on the Ministerial complement of the Law Officers' Department. She agreed that there was no case for an addition to the Ministerial team.

ANDREW TURNBULL

16 December 1988

CONFIDENTIAL

086 8

Prime Minister
Sir Robin will raise this at his meeting. Agree no case for an increase in ministerial complement is justified?
AT 15/12

Ref. A088/3626

PRIME MINISTER

ANDREW REPORT: MINISTERS AT THE LAW OFFICERS' DEPARTMENT

I am sending you separately advice on the Machinery of Government recommendations contained in the Andrew report on Government Legal Services.

2. I understand that in the context of the Andrew report generally, the Attorney General may wish to suggest that the ministerial team at the Law Officers' Department should be strengthened, perhaps by the addition of a Parliamentary Secretary.

3. If the Attorney General makes this suggestion, you will want to consider with the Attorney whether the volume of casework had now risen to levels which would warrant a third Law Officer. But I would see no case for an addition to the ministerial team based on the (limited) increase in the managerial responsibilities for the Government Legal Service as a whole which Andrew envisages the Treasury Solicitor should undertake as Head of Profession. The Treasury Solicitor will need to be seen to act with the full authority of the Attorney General. But the number of instances where the Attorney will need to become directly involved should be very small - just as Ministerial involvement in the central personnel management of Government economists, statisticians etc makes little call on Ministerial time.

FRB

ROBIN BUTLER

15 December 1988

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15.XII

CONFIDENTIAL

Ref. A088/3625

PRIME MINISTER

Prime Minister
Agree
(i) Treasury Solicitor to be Head of Profession?
(ii) A merged Law Officers Dept?
(iii) Treasury Solicitor to provide service to five depts on a repayment bases?
(iv) No change in Ministerial responsibility for Parl Counsel?
(v) No charge for PPP (Northern Ireland)?
(vi) Lord Chancellor to take over Statutory Publications Office?

AT 15/12

ANDREW REPORT: GOVERNMENT LEGAL SERVICES: MACHINERY OF GOVERNMENT RECOMMENDATIONS

The Chancellor of the Exchequer will be circulating a paper on the proposed response to the Andrew report for the meeting of Ministers on 20 December. This minute is about Andrew's proposals concerning the Machinery of Government. These proposals have been considered by Departments and by the Attorney General, and the conclusions reached are summarised in this minute.

2. Two modifications are proposed to the structure of the legal departments reporting to the Law Officers. First, the Treasury Solicitor should assume an additional "Head of Profession" function as Head of the Government Legal Service, supported by a small Lawyers' Management Unit. These arrangements will support rather than diminish Departments' abilities to manage their own staff, and are welcomed by Departments generally.

3. Andrew also recommends that the Law Officers' Department and the Treasury Solicitor's Department be merged to form an enlarged Law Officers' Department under the Attorney General, which would also include other Departments reporting to the Attorney General. The best way to achieve the objectives of Andrew's recommendation is to rename the present Law Officers' Department the Legal Secretariat (it containts only 10 professional staff); and then to label all the Departments reporting to the Law Officers* as the "Law Officers' Departments", somewhat akin to the "Chancellor's Departments". This would help to make clear that the Treasury Solicitor/Head

*Treasury Solicitor's Department, Legal Secretariat, Crown Prosecution Service, Serious Fraud Office.

of the Government Legal Service acted with the authority of the Attorney General behind him, and would generally clarify lines of accountability in an area where this has been less than clear. I attach an outline organisation chart at Annex A showing the revised structure, which I recommend you accept.

4. While most of the main departments employ their own legal advisers, five departments (Defence, Employment, Transport, Energy, Education and Science) which only have small legal requirements are served by outposts of the Treasury Solicitor's Department, and their personnel are managed on a common basis by the Treasury Solicitor. Andrew recommends that these arrrangements should be left as they are, and I recommend that you follow this advice, subject to review in a few years' time. It is however accepted that it would be right to put the Treasury Solicitor's services to Departments generally on to a repayment basis.

5. Andrew also makes three more detailed proposals:

(i) that Ministerial responsibility for Parliamentary Counsel should transfer from the OMCS to the Attorney General;

(ii) that the Attorney General should take full responsibility for the Director of Public Prosecutions (Northern Ireland), whose staff and resources are currently provided by the Secretary of State for Northern Ireland, and

(iii) that the Lord Chancellor should take over responsibility for the Statutory Publications Office (SPO) from the Treasury Solicitor;

6. On Parliamentary Counsel, there are well established arrangements for bringing the Attorney in to discussions with

Departmental Ministers on matters concerning the drafting of individual Bills, and no change in the formal responsibilities is needed on that score. But some Departments and their Ministers believe that there is no satisfactory mechanism for airing problems about the overall level of resources available to Parliamentary Counsel. The simplest way of dealing with this lacuna would be for you to invite the Lord President, who has responsibility for the legislative programme, to become involved in negotiating with the Treasury the public expenditure resources for Parliamentary Counsel; if you agree with this approach, I will clear it with Mr Luce and Mr Wakeham.

7. The proposal to give the Attorney General responsibility for the DPP (Northern Ireland) would create more management problems than it would solve. The Attorney General places no store on it and I recommend that it should be pursued no further.

8. I do however recommend that you accept the third proposal, that the Lord Chancellor should take over responsibility for the Statutory Publications Office (SPO). This would give a better fit with other existing responsibilities in the Lord Chancellor's Department, and should speed up the application of information technology to the SPO's work. The Ministers involved are content, and I suggest the transfer should take place from April 1990.

FRBAPS

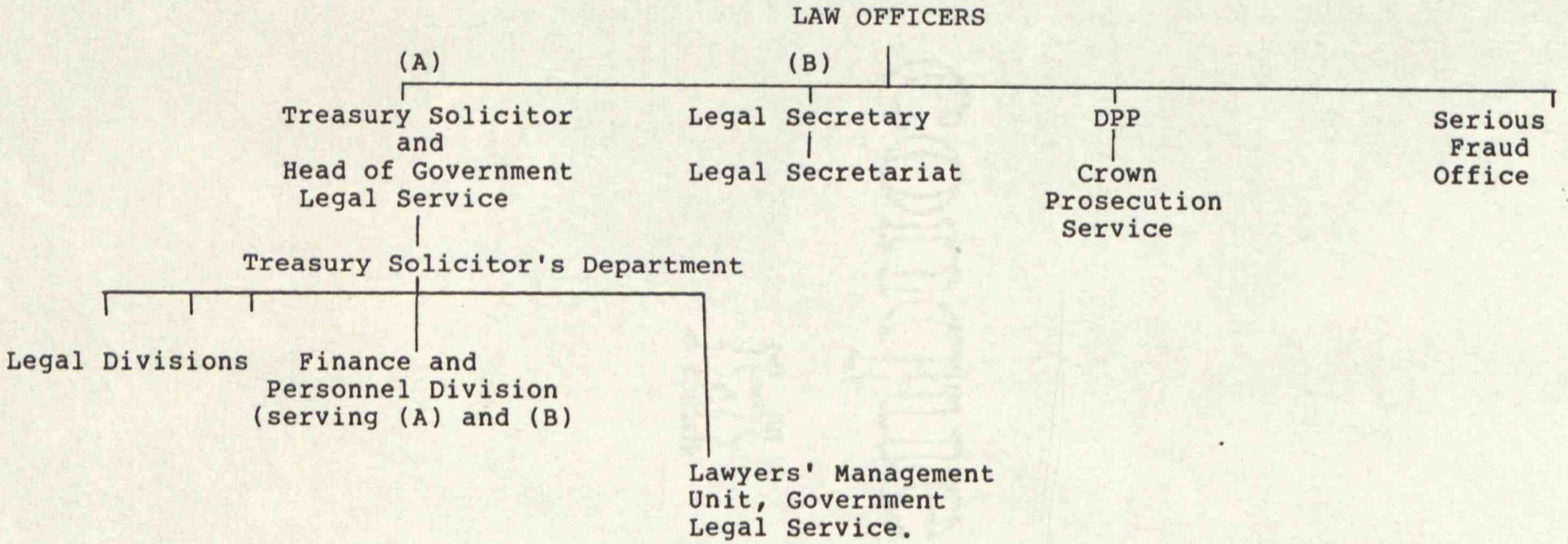
9. The Attorney General and Departments generally know of the proposals summarised in paragraphs 3-8 and are content with the solutions I have put forward above. If you agree, you might like to indicate this at the start of the Ministerial meeting on 20 December, and I attach a speaking note at Annex B which could be used for this purpose. The outcome could then be announced publicly along with the rest of the Government's response to the Andrew report when Parliament resumes after Christmas.

FRRB.

ROBIN BUTLER

15 December 1988

OUTLINE ORGANISATION OF PROPOSED LAW OFFICERS' DEPARTMENTS



ANNEX A

H/Table

ANNEX B

DRAFT SPEAKING NOTE FOR THE PRIME MINISTER'S USE ON 20 DECEMBER

The Andrew report contains a number of machinery of government recommendations. I have considered these on the basis of advice from the Head of the Home Civil Service: and I know that he in turn has taken soundings with the Attorney General and the other Ministers directly concerned, not all of whom are present here today.

My conclusions are that:

(i) Under the Ministerial direction of the Attorney General, the Treasury Solicitor should become the Head of the Government Legal Service. He should assume the advisory responsibilities for personnel management of lawyers across Departments as proposed in the Andrew Report;

(ii) The legal departments for which the Attorney General is the ministerial head should retain their existing distinct identities and responsibilities, but should in future be known collectively as "The Law Officers' Departments". The present Law Officers' Department should be renamed the Legal Secretariat.

(iii) The Departments of Education and Science, Defence, Employment, Transport, and Energy should continue to have legal services provided by outposts of the Treasury Solicitor's Department. These outposts should be put on to a repayment basis, along with the other services to Departments provided by T.Sol. The five departments concerned would remain free to seek agreement to the establishment of in-house legal services in the light of experience with the new arrangements.

FRBAPU

(iv) The ministerial responsibility for the Director of Public Prosecutions (Northern Ireland) should remain as it is now. The Attorney General should continue to deal at Ministerial level with matters concerning the drafting of individual Bills by the Parliamentary Counsel's Office but, in view of his concern with the legislative programme, the Lord President should become involved in discussion about the resources provided to Parliamentary Counsel.

(v) The Statutory Publications Office should be transferred to the Lord Chancellor's Department from April 1990.

FRBAPU



Tessa,
What is the background to this meeting

Tessa
Thk yr
NCV.

10 DOWNING STREET

N

both coming
TG 24/11

Nigel

Meeting on Sir Robert Andrews Report on the Government Legal Services:

Do both the Chancellor and the Chief Sec. have to attend or can one stand in for the other?

Tessa
Thk yr
N.

Tessa
23/11

Nigel.

They seem to have changed their minds. ChEx now not coming although CST is.

TG.
30/11

DCA/104

acw

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

7 November 1988

I am writing on the Prime Minister's behalf to thank you for the report on your review of the Government Legal Services which you submitted under your minute of 31 October.

The Prime Minister is very grateful to you for undertaking this work and for submitting your report within the time allocated for it. She has noted what you say in your covering minute about the work of the Legal Service, and she is arranging for her colleagues and herself to consider urgently the recommendations in your report.

The Prime Minister is also grateful to you for having written your report in such a way that it could be published. The Government will probably not want to publish it until at least they have reached some preliminary conclusions on the most urgent recommendations, but the Prime Minister warmly appreciates your consideration in writing the report in a way which makes it possible to publish it without further editing.

The Prime Minister has finally asked me to offer you her best wishes on your retirement.

(N.L. WICKS)

Sir Robert Andrew, K.C.B.

File 810

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBIN BUTLER

REVIEW OF GOVERNMENT LEGAL SERVICES

The Prime Minister was grateful for your minute of 4 November about the handling of Sir Robert Andrew's report. She agrees that you should proceed as you recommend in your minute but she would like the Chief Secretary to be added to the small group of Ministers which will consider the report's recommendations.

(N. L. WICKS)
7 November 1988

Prime Minister
Agree Handling
of this report as
FERB suggests below?
N.L.J.
4.11

Yes

Ref. A088/3201

PRIME MINISTER

Review of Government Legal Services

You have received Sir Robert Andrew's report. I am sending separately to Mr Wicks a draft letter of acknowledgment. This minute is about the handling.

2. The report contains a wide range of recommendations, extending from immediate pay issues to longer term issues of recruitment and training. There are some important recommendations on machinery of government and some of the recommendations involve a large number of departments.

3. Apart from the recommendations on machinery of government on which I will co-ordinate advice to you, the bulk of the recommendations cover pay and management issues which fall to the Treasury. I therefore think that the Treasury should take the lead in co-ordinating advice on the report. They will need to consider the pay recommendations immediately, particularly because some of them affect the pay of Grade 2 and 3 lawyers, on which the TSRB are currently preparing a report. It will be necessary to start processing these recommendations before the others.

4. I hope that it will be possible to produce advice on the report's recommendations in a month or so, which might be considered in the first instance by a small group of Ministers which could consist of yourself, the Lord Chancellor, the Foreign Secretary, the Chancellor of the Exchequer, the Attorney General, the Northern Ireland Secretary and the Scottish Secretary. We will also need to consider how the Government's conclusions on the report should be published and whether the

and Chief Secretary

PAYAAO

report itself should be published. Since the report covers machinery of government questions, I do not think that the report should be published before the Government has reached its conclusions on it.

5. If you are content, I will make arrangements for the report to be handled in this way. I propose at present only to distribute it to the Permanent Secretaries of the Treasury and the Lord Chancellor's Department, and to the Treasury Solicitor designate (Mr Nursaw), the Legal Secretary in the Law Officers Department and the Director of Public Prosecutions. They will be able to show it to their Ministers but I will ask them to keep it to as restricted a group as possible. Other departments can be consulted as necessary on those recommendations which specifically concern them.

MS Woolley
(Private Secretary)

for ROBIN BUTLER

Approved by the Head of the Civil Service and signed in his absence

4 November 1988

PAYAAO

010

Ref. A088/3182

MR WICKS

Review of Government Legal Services

The Prime Minister received under Sir Robert Andrew's minute of 31 October a copy of his report on the Government Legal Services. I am submitting separately advice on the handling of the report.

2. You will want to send an acknowledgment of this on the Prime Minister's behalf. I attach a draft.

3. You may want to consider whether this should be turned into a personal letter from the Prime Minister. Since Sir Robert prepared this report as a civil servant, not as an outsider giving his services voluntarily, I doubt whether a letter from the PM is necessary.

R.B.

ROBIN BUTLER

2 November 1988

CONFIDENTIAL

Prime Minister

Now arrived / F.E.R.B. well advised on substance and handling. Summary of recommendations is flagged. N.L.W.

PRIME MINISTER

REVIEW OF GOVERNMENT LEGAL SERVICES

In March of this year I began a review of government legal services. I have now completed the task and submit my report. Two copies are enclosed.

2. Although I received some criticisms, I believe that in general the lawyers employed in government provide a good service at low cost: the main problem is that there are not enough of them. If the work of government is to be carried on satisfactorily a substantial number of in-house lawyers is required; and a proportion of these must be of the highest quality. At present it is proving difficult to attract good lawyers to work for the Government, especially in London, and there is a serious loss of experienced staff to higher-paid jobs in the private sector. To deal with this situation I recommend changes in the way in which lawyers are recruited and selective pay increases. I also make recommendations on the organisation of the Government Legal Service (including the establishment of an enlarged Law Officers' Department), on the use of the private sector, on transferring work outside London, on the management of the lawyers employed in government and on the special problems of the Crown Prosecution Service.

3. There is one point which I have not mentioned in the report. It would be consonant with my general thesis about the importance of the law to government and the need for lawyers to be involved in policy discussions at an early stage, if the Attorney General, as the Minister in charge of the enlarged Law Officers' Department and the Ministerial Head of the Government Legal Service, were to be a full member of the Cabinet. I appreciate, of course, that other considerations arise here, including the argument that as a Law Officer he needs to preserve a degree of detachment. If for that or other reasons he remains outside the Cabinet, it may be that some other means can be found to enhance his status, and with it that of the Government Legal Service.

4. I do not know whether you will wish to publish my report, but it has been written in such a way that it could be published if desired. Meanwhile, I have marked it "Confidential". Regardless of whether the report is published, I hope that it will be possible to reach decisions on it promptly. The recommendations on pay are eagerly awaited by government lawyers and I have been told that some are postponing decisions on their future careers until they see what emerges. The existence of the review has also caused uncertainty in some quarters about whether work is likely to be moved outside government or outside London, and this has had an unsettling effect which should be ended as soon as possible.

5. I am sending a copy of this minute and of the report to Sir Robin Butler.

SIR ROBERT ANDREW

31 October 1988

ROYAL COURTS OF JUSTICE
LONDON WC2A 2LL

01-936 6269

Prime Minister (2)

PRIME MINISTER

CROWN PROSECUTION SERVICE - ANNUAL REPORT 1987-88

In Patrick Mayhew's absence I am today announcing in the House the publication of the second Annual Report on the Crown Prosecution Service, a copy of which I enclose. It is the first Report by the new Director of Public Prosecutions, Allan Green, QC.

The Crown Prosecution Service has made considerable progress during the year, handling some 1.6 million cases and building up in most areas a good spirit and good working relationships with both the Courts and the Police. The main problem is still recruitment, against the background of a nationwide shortage of younger barristers and solicitors.

Copies of the Report have been placed in the Libraries of both Houses.

N.L.

21 July 1988

cc PC

NBPM

PAYMASTER GENERAL

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Tom King MP
Secretary of State
Northern Ireland Office
Whitehall
LONDON SW1A 2AZ

6 July 1988

Dear Tom.

top one.

NORTHERN IRELAND CAR LEASING SCHEME

I am replying to your letter of 22 June to Richard Luce drawing attention to the Northern Ireland car leasing scheme and its possible application elsewhere, as the Treasury is responsible for policy on official cars.

2. I agreed similar arrangements for the Home Civil Service about a year ago. This followed an interdepartmental study which examined the use of official cars by civil servants on official business.

3. At the moment we have trial schemes in fifteen departments. The scope for expansion can be examined in a couple of years, when we have seen how they work. There are risks in these schemes of providing a 'perk' for low mileage users, and the potential savings are sensitive to changes in the rates of mileage allowance and car benefit scale charges. It will be very helpful if you can feed in the results of your own scheme to the review of the trials that are running.

4. The possible introduction of similar arrangements for MPs is a matter for the House itself, and I am sure that John Wakeham has noted the suggestion in your letter.

5. I am copying this to the Prime Minister and other Cabinet colleagues, Richard Luce and Sir Robin Butler.

Yours ever

Peter

PETER BROOKE

CIVIL SERVICE: Running Costs Pt. 3



Prime Minister 2

Secretary of State

Northern Ireland Office
Stormont Castle
Belfast BT4 3ST

Sec.

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Whitehall
LONDON
SW1A 2AT

22 June 1988

Dear Richard,

NORTHERN IRELAND CAR LEASING SCHEME

As you know, we recently created a new post of Director of Purchasing for Northern Ireland, and I mentioned to you at the end of last year the new car leasing Scheme which he has developed. The Scheme appears to offer significant savings - both in the civil service and in the whole of the public sector - and I thought you would like to know of our experience to date.

The point of the Scheme is to get away from the present system of paying civil servants 34.4p per mile for official travel, using their own cars. Under the new scheme, which is at present optional, staff are provided with a car that is fully taxed, maintained and insured. For their private use, they pay a minimum of £60 per month. The reimbursement for official travelling is restricted to fuel allowance of some 5p per mile.

It is already clear that there are significant savings to be made under this Scheme, as follows -

Mileage	Annual savings £
6,000	270
7,500	675
10,000	1,350
15,000	1,995

The Scheme is now on target to achieve £1 million per annum savings in the Northern Ireland Civil Service and a further £1 million per annum in the remainder of the public sector by the third year of the contract (Central Unit for Purchasing operates by agreement for the public sector as a whole In Northern Ireland).

One of the reasons for the savings that are achievable and why it does represent a very good deal for civil servants as well is that we have been able to get extremely competitive bids from suppliers anxious to have a share of this business. Staff are allowed to choose alternative vehicles from the basic models under the Scheme but in that case they have to pay a fully additional lease cost or any additional cost that may be incurred.This has had the indirect benefit of increasing car sales for British manufacturers and I list below the share so far achieved

Manufacturer	Percentage
Ford	50
Peugeot (Coventry)	16
Austin Rover	15
Vauxhall	11
Others (mainly Renault)	8

Other interesting features of the Scheme are that the contracts with the suppliers have been structured in such a way as to link prices directly to the best which obtain in the public sector in Great Britain and that administration has been simplified by use of a micro-computer programme which can store all car prices, carry out calculations for different models and mileages, maintain simple records of expenditure, etc.

Our most immediate interest is with civil service and with public sector but the issue of MPs cars and their allowances must obviously be relevant as well. It would be interesting to see whether this Scheme could effect significant savings in that area too.

I am copying this to the Prime Minister and Cabinet colleagues.

TK


23.VI.
AMЯA

MANAGEMENT - IN CONFIDENCE

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

31 March 1988

Dear Peter,

LAWYERS' PAY

You copied to me your letter of 18 March to Patrick Mayhew about lawyers' pay. I have also seen his reply of 22 March and David Young's letter of 23 March.

As I indicated in my letters of 17 November and 23 December I have two particular concerns about lawyers' pay: first, the position of the Crown Prosecution Service (CPS) and second, the knock-on effects on wastage or salary costs of magistrates' courts' clerks. On the first, your proposal should prove helpful to the CPS. On the second, the difficulties in recruiting and retaining experienced and well-qualified court clerks are already very great and any significant increase in CPS pay is bound to exacerbate these difficulties. I have no doubt that the Joint Negotiating Committee for Magistrates' Courts Staff will feel bound to take close account, in the 1988 pay round, of any changes in CPS pay which may be announced. This seems likely to have an impact on the level of local authority relevant current expenditure, and we will have to consider the implications during this year's local authority PES round.

I am copying this letter to the Prime Minister, the Lord Chancellor, the Foreign Secretary, the Secretary of State for Trade and Industry and Sir Robin Butler.

Yours,

Douglas

The Rt Hon Peter Brooke, MP.

CIVIL SERVICE: Running Costs
Pt 3

MANAGEMENT IN CONFIDENCE

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Sir Patrick Mayhew QC MP
Attorney General
Attorney General's Chambers
Royal Courts of Justice
LONDON WC2A 2LL

18 March 1988

Dear Patrick,

LAWYERS' PAY

Your letter of 19 November to John Major put foward proposals for increasing lawyers' pay because of recruitment and retention problems. We exchanged correspondence on this and subsequently discussed your proposals on 26 January. It was then agreed that the best way of taking them forward was to remit them to the existing official group on lawyers' pay.

2. As you know, that group has made good progress in sifting the evidence from departments on the recruitment and retention position. I have had a full report made to me, and I am now ready to make some proposals.

3. In my letter to you of 17 December I mentioned the prospects for new long-term pay arrangements at Grades 5 to 7 generally being in place by 1 April 1988. We have not yet quite brought discussions about this with the unions to a conclusion, but I hope that will not now be very long delayed.

4. The broad outline of the proposed agreement follows the existing agreements with the IPCS and the IRSF. All those covered would receive a pay increase of 4 per cent on 1 April this year, followed by a further increase (averaging 3 per cent) on assimilation to a new pay spine in the late autumn. In addition the new spine will include, for each grade, four performance related range points, of which the existing interim performance point would be the first. The size of the range points will be determined by the structure of the spine, which has still to be finally settled. But they seem likely to be between 4 and 4½ per cent. This sort of pay structure, which includes a significant element of performance pay, would on its own go a very long way towards meeting your concerns.

5. I recognise, however, that you regard the recruitment and retention position as pressing and that you expressed concern as far back as July last year. Exceptionally, I therefore propose to treat lawyers as a special case and to bring forward their assimilation to the new spine to 1 April. In addition we will try, in assimilating the existing London allowances to the new pay spine, to do so in a way which would involve some increase in the existing allowance at Grade 7, and would for the first time allow the allowance to be paid in part to those at the maximum of the Grade 6 scale.

6. As you will understand, it is impossible to put precise figures on this until we have finalised the details of the new spine for Grades 5-7. I cannot therefore at this stage give you exact numbers. But the table attached shows the kind of new scales I am envisaging. If, contrary to my expectations, our discussions with the unions about the proposed Grades 5 to 7 agreement come to nought, we would clearly need to think again, and very quickly.

7. Crown Prosecutors and legal officers will not, of course, be covered by the Grades 5 to 7 agreement. I propose to give these grades broadly similar increases from 1 April and, in doing so, to drop one point from the bottom of the scale for Crown Prosecutor (but not from that for legal officers). Our officials are giving further thought to the position of senior legal assistants.

8. In addition, I propose that the scale for Crown Prosecutors (but not legal officers) should be extended by the addition of one or more performance points. The details of this are still being discussed between our officials. As partial offset to the cost of doing this, we shall want commitments from the CPS about the implementation of changes, the scope for which has, I understand, been revealed by a recent staff inspection.

9. Taken together, these are by any standards substantial increases. I believe them, however, to be justified and I hope you will agree that they meet the concerns expressed by you and other colleagues. So far as running costs are concerned, there is little I can usefully add at this stage to the final paragraph of my letter of 17 December.

10. I am copying this letter to the Prime Minister, the Lord Chancellor, the Foreign Secretary, the Home Secretary, the Secretary of State for Trade and Industry (who I hope will take it as a response to his letter of 8 March to the Chancellor) and to Sir Robin Butler.

Yours ever

Peter

PETER BROOKE

MANAGEMENT IN CONFIDENCE

ILLUSTRATIVE NEW PAY SCALES WITH EFFECT FROM 1 APRIL 1988

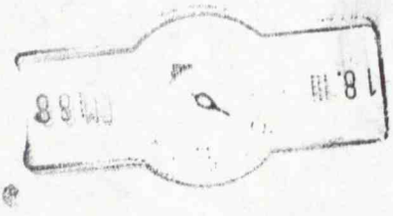
(Grades 5-7 scales depend on the new long-term arrangements still under discussion with the unions)

	Minimum	Maximum	Interim Performance Point	Highest Performance Point
Grade 5				
Basic	26,500	30,250	31,600	36,000
Including London weighting	28,000	31,750	33,100	37,500
Grade 6				
Basic	19,900	27,100	28,300	32,300
Including London weighting and allowance	23,700	29,200	30,450	34,450
Grade 7 (and Senior Crown Prosecutor)				
Basic	16,700	21,700	22,700	25,900
Including London weighting and allowance	19,750	25,200	26,300	29,800
Crown Prosecutor				
Basic	13,100	17,700	Performance Pay	
Including London weighting and allowance	15,600	20,200	Performance Pay	
Legal Officer				
Basic	11,110	15,600	-	-
Including London weighting and allowance	13,610	18,100	-	-

NOTE: London weighting calculated at inner rate.

C SERVICE

Running Costs pt 3



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NBPM

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-936-6201

12 January 1988

The Hon Peter Brooke MP
Paymaster General
HM Treasury
Parliament Street
LONDON S W 1

Dear Peter:

LAWYERS : RECRUITMENT AND RETENTION

Thank you for your letter of 17 December, written at John Major's request in reply to my letter to him of 19 November. I have already told John informally how sadly disappointing I find it.

Crown Prosecution Service

(i) Its needs are no less pressing by reason of the fact that it is, as we are all aware, a new organisation set up from scratch. There is a substantial risk that if the Service cannot recruit and retain lawyers in sufficient numbers, guilty defendants will go free. Expensive agents have to be used excessively. This cannot add up to value for money.

(ii) The usual pay additions, to which you refer, are not proving sufficient to stem the outflow of experienced lawyers, nor to improve sufficiently the rate of recruitment for (inexperienced) replacements.

Government Legal Service

(i) I referred in my letter to the special pay allowances which we have made for all lawyers up to Grade 6, expressing the firm opinion that they will be insufficient to attract recruits of the calibre we need.

(ii) I am afraid the urgency of the need for the measures I have proposed does not permit us to wait upon the eventual recommendations of the review of the Government Legal Service which you say is in the process of being set up, following the minute that Michael Havers and I sent to the Prime Minister in April. I am not aware whether the Chairman has even been selected as yet. I welcome any agreement which gives greater flexibility to pay and I note the current position in regard to a possible long term agreement for Grades 4 to 7. I do not know what the proposed timetable will be for the implementation of the various aspects of the agreement or whether the system will solve the problem of recruitment and retention of lawyers. As you know, my view is that action is required now and not in some months time.

(iii) The possibility of selective pay increases justified by immediate management need, to which you refer, was specifically canvassed in my letter - paragraph 17 - but you do not deal with the inherent disadvantage, which I identified. Selective pay increases based upon perceived management needs of individual departments are, of course, also bound to have a very demotivating effect on those in the same grades who do not receive them.

(iv) As to the question concerning the significance of counting re-advertised posts for the purpose of illustrating recruitment difficulties, the Treasury Solicitor has commented as follows: "The last column in Annex A to the Attorney General's letter showed that the percentage of those lawyers recommended for appointment by the Civil Service Final Selection Board and for whom the Civil Service Commission has issued a Certificate of Qualification (even so, some still withdraw before taking up appointment) has shown a steep decline in the last two years. It was, of course, appreciated that vacancies not filled have been re-advertised but that does not affect the fact that during recent months approximately 60% of those selected have not joined, the probable reason being that the salary offered to them was insufficient to persuade them to enter the Government Legal Service."

ATTORNEY GENERAL

You will I know accept that I understand and support your important responsibility of ensuring the maintenance of our policies of securing value for money through stringent control of salaries within the Government Service. My proposals are put forward in the belief that they are urgently necessary in order to secure the Government's policies relating to the Crown Prosecution Service and the Government Legal Service for which I have a responsibility. It is for this reason that I warmly endorse the proposal for an early Ministerial meeting put forward in David Young's letter to John Major of 21 December.

I am copying this letter to the Prime Minister, the Lord Chancellor, the Home Secretary, the Secretary of State for Trade and Industry and to Sir Robin Butler. I am also copying it to the Foreign Secretary, because of his responsibility for lawyers who are outside the Government Legal Service.

Yours ever,

Patrick

HPr



13 L PM 8.8

CIVIL SERVICE:
Running costs

cc PC

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

23 December 1987

sbpm

Dear Peter,

LAWYERS: RECRUITMENT AND RETENTION

I have seen your reply of 17 December to the Attorney General's letter of 19 November about the pay of government lawyers, and the letters of 21 and 22 December by David Young and John Mackay respectively on the same subject.

As you know from my earlier letter of 17 November, I am particularly anxious about the position of the Crown Prosecution Service (CPS). I share your view that the particular problems of the CPS are not typical of the Government Legal Service (GLS) generally. This points to the need to tackle the problems of the CPS without further delay and separately from the more general issues of the GLS. As I indicated in my earlier letter, I also have to be concerned about the effects for the Home Office of any increase in wastage or salary costs of magistrates' courts' clerks.

For less urgent issues I would be content for the official inter-Departmental group on lawyers' pay to continue its work. The wider and longer-term issues can be considered in the course of the review of the Government Legal Service which you are in the process of setting up. I hope this review can now be set in hand without further delay and completed within a reasonably short time.

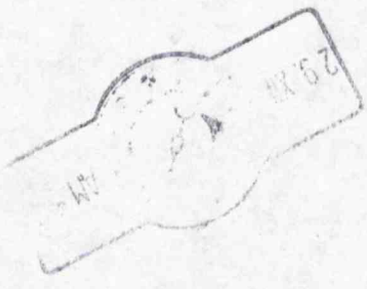
I am copying this letter to the Prime Minister, James Mackay, David Young, Patrick Mayhew and Sir Robert Armstrong.

Yours ever,

Douglas.

The Hon Peter Brooke, MP.

CIVIL SERVICE: Running Costs PT3



FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

HOUSE OF LORDS,
LONDON SW1A 0PW

22 December 1987

The Rt Hon Sir Patrick Mayhew QC MP
Attorney General
Attorney General's Chambers
Royal Courts of Justice
Strand
LONDON WC2A 2LL

Dear Attorney General,

LAWYERS: RECRUITMENT AND RETENTION

Thank you for sending me a copy of your letter of 19 November to the Chief Secretary.

I wholeheartedly welcome and endorse your proposals for increasing the salaries of lawyers in the Government Legal Service. They perform a vital function for Departments and for the Government as a whole. Without efficient and good quality legal back-up Ministers are highly vulnerable to judicial review and other court proceedings, as well as to public criticism. The quality and efficiency of the Government Legal Service also directly affects the vulnerability of the Law Officers who in providing advice to the Government have to depend upon the legal work provided by departments.

My Department has recently lost an alarming number of lawyers, (9 during the year ended 30 September 1987), including an extremely able Grade 3. I cannot afford to lose more, particularly as I have not been able to recruit sufficient candidates to fill the resulting vacancies. This could leave me exposed in the way I have described. The loss of so many lawyers is also placing the quality and calibre of my future senior officials at risk.

I believe we must move now to retain the good lawyers who are left and to attract more into the Service; an increase in pay is the only way in which this can be done. Your proposals would, I believe, achieve this as well as improving morale and motivation in the Government Legal Service.

Contd .....

I should perhaps mention that I support the proposed increases although I have to give special consideration to the fact that in my Department lawyers frequently have considerable administrative workloads, or are in administrative posts alongside administrators. This may cause short-term difficulties for me which I shall have to overcome. In the long-term, in order to maintain the morale and motivation of able administrators and lawyers, it may be necessary for me to look towards a Departmental pay spine to provide a solution. This would also be of considerable help in tackling other pay difficulties which are peculiar to the court service.

In response to Peter Brooke's letter, which I have just seen, I do not regard selective pay increases based on the need for lawyers who are doing a particular type of work within Departments as providing even a short-term solution. This approach would be extremely divisive amongst the lawyers in this Department and would, I am sure, cause resignations. I would not object to the inter-departmental group in lawyers' pay considering the question again if there is no prospect of your proposals being accepted. I am however most anxious that something positive should be done which will not result in further resignations or a lowering of morale.

Also for the longer-term, I hope the review of the Government Legal Service which Sir Robert Armstrong has proposed will start work soon. I am sure a full-scale review of this kind is urgently needed, but I do not think we should delay any pay increase for the lawyers until after it is finished.

I am copying this letter to the Prime Minister, Douglas Hurd, Peter Brooke, John Major, David Young and to Sir Robert Armstrong.

Yours sincerely,

Ken Clarke

(approved by the Lord Chancellor and signed in his absence)

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

MANAGEMENT IN CONFIDENCE

21 December 1987

The Rt Hon John Major MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AG

Prime Minister
to note that there is a spirited debate among Ministers on lawyers' pay.
See also the Chancellor's minute below.
N.L.W. 21.12.

Dear John,

LAWYERS: RECRUITMENT AND RETENTION

I want to support strongly the proposals for pay for Government lawyers put to you by Patrick Mayhew in his letter of 19 November. Indeed, I do not think his proposals yet go far enough in respect of the more senior legal grades in London. I have seen Peter Brooke's response (his letter of 17 December): but I think we must have far more sense of urgency on this long-standing problem than his response contemplates.

I need not repeat what I said in my letter of 13 October about the problems my Department faces over the retention of experienced legal staff. Patrick's proposals for the legal grades up to and including Grade 7, should meet my needs. But at Grade 5 and Grade 6 (and above) in London I believe we must go further than he proposes.

Grade 5 is a key grade, in which we must have lawyers experienced in the problems of Government. Something - not enough - has been done for the more junior lawyers earlier this year, but Grade 5 and above have seen no recognition of their marketability outside. Because of the past losses at and above this grade I simply cannot afford to lose any more of this experience. Grade 6 is the powerhouse and here too we must retain people who by this stage are accumulating valuable experience. I consider that we need for our lawyers some £4-6,000 more at the overall maximum for each of these grades above Patrick's proposals, but within this including a more substantial provision for performance related increments - see below.

DW5CKK

How this is paid is for consideration. My Department has much earlier made proposals, still before the Treasury, for a special pay allowance (SPA) for my lawyers. Patrick expresses his opposition to this, on the ground that it will inhibit mobility. We have experience with SPAs in other occupational groups that have worked satisfactorily. But I do not wish to chop logic with Patrick, if on reflection he would support proposals on the lines of mine above for grades 5 and 6 for London based lawyers generally. My position is that I have Departmental responsibilities to discharge and I must be able to hold the staff of the quality I need to discharge them. Peter Brooke suggests that the possibility of selective pay increases should be considered further at official level. But this cannot now be expected to be fruitful without prior ministerial discussion.

I certainly agree with Patrick that part of the sums we propose should be by way of selective performance related increases. Peter Brooke refers to the Treasury negotiations with the unions generally in respect of grades 4-7. It is urgent to move and be seen to move on pay for lawyers. Can these negotiations be expected to bring us, with effect in full from 1.4.88 -

(a) the sort of sums I would wish to contemplate by way of performance related increments: say, three discretionary points of £2,000 each at the top of the Grade 5 (lawyer) scale?

and (b) a substantial differential for lawyers - perhaps £4,000 - as compared with the other grade 5's, reflecting the difference in their marketability?

We must do something also for the lawyers at grade 4 and above. The losses which have occurred at this level of some of our ablest people show that we are simply too far away from market rates to be able to rely on the factors which may keep non-lawyers in Government service against the pull of higher salaries outside. My Department proposed to the Treasury earlier that Treasury evidence to the TSRB should raise this issue: can you say whether this has been done?

I am clear that ministers need to meet on this urgently in the New Year, to resolve some of the fundamental issues.

I am copying this letter to the Prime Minister, the Lord Chancellor, the Home Secretary, the Attorney General and to Sir Robert Armstrong.

LORD YOUNG OF GRAFFHAM

DW5CKK

999-49

CIVIL SERVICE:
Running Costs

CONFIDENTIAL: MANAGEMENT
IN CONFIDENCE

PAYMASTER GENERAL

Treasury Chambers, Parliament Street, SW1P 3AG

Sir Patrick Mayhew QC MP
Attorney General
Attorney General's Chambers
Royal Courts of Justice
LONDON WC2A 2LL

1. ~~NW~~ to see
2. NBPM

17 December 1987

Dear Patrick,

LAWYERS: RECRUITMENT AND RETENTION

John Major has asked me to reply to your letter of 19 November about the recruitment and retention of lawyers and their pay. I have also seen Douglas Hurd's letter of 27 November.

Before turning to pay, perhaps I could comment on recruitment and retention. The Crown Prosecution Service has clearly encountered staffing problems. But it has been setting up a new organisation from scratch and its experience must be regarded as atypical. For the rest of the Government Legal Service I understand that the latest figures show 64 vacancies - not a comfortable picture but not quite as bleak as that painted in Annex A of your letter (which I understand makes the vacancy position look worse than it is by counting the same vacancy every time it is advertised). We also have to remember that staff complements have been increased: even excluding the CPS the Government is employing 5 per cent more lawyers than it did two and a half years ago.

That said I recognise your concern that some genuine difficulties exist with the legal groups. We are, of course, already doing a number of things about this:

- First, earlier this year we introduced a special London allowance for all lawyers up to Grade 6, as well as special pay additions for the Crown Prosecution Service. Some lawyers have done very well in pay terms out of this, with increases backdated to April for lawyers at Grades 6 and 7 of up to 15 per cent. These are substantial amounts. They only took effect at the end of September and it is too early to judge their full impact.
- Second, and more fundamentally, we are in the process of setting up the review of the Government Legal Service prompted by your earlier minute to the Prime Minister. This is to be a wide ranging examination of how best to meet the Government's need for legal advice, which will include questions of structure, staffing and terms and conditions, including pay. Both John and I will take a close interest in the outcome.

- Third, we are in the process of trying to negotiate with the unions a long-term flexible pay agreement for Grades 4 to 7 - analogous to that already concluded for IPCS grades and provisionally agreed with the Inland Revenue Staff Federation for their staff (subject to a ballot). The intention is to have this in place by next April. If we are successful, arrangements of this kind will allow us to deal more readily with the sorts of problems now affecting the legal groups - most of whom are in Grades 4 to 7 - in a much more precisely focused way. We will be able to pay regard to **particular** areas of recruitment and retention, rather than resort to large across-the-board increases which would of course cut right across the general thrust of the changes we have been making in the Civil Service pay system generally. We have recently agreed to try to deal with the much smaller scale but analogous problems with government medical officers in the same general way.
- Finally, we have set up an interdepartmental group on lawyers' pay to provide a forum to discuss problems of the kind raised in your letter.

The most logical approach to lawyers' pay would be to hold off introducing any major changes until after the planned review of the Government Legal Service has been completed. It is conceivable that the review could lead to recommendations affecting the structure of the service and with implications for pay. But I accept that it would be wrong to do nothing meanwhile if there are immediate problems which have to be dealt with before the completion of the review, which realistically could take some time. It is for this reason that the Treasury has already said in the lawyers' pay group that they are prepared to consider on their merits new claims from Departments for selective pay increases which can be justified by immediate management need, and which ideally would need to be capable of fitting into the proposed new arrangements for Grades 4 to 7. Since then, as far as I am aware, no such claims have yet been made. I therefore suggest that the best way forward would be for us to ask the Treasury's interdepartmental group on lawyers' pay to look at this question again in the light of our correspondence.

I have discussed with John your concern that some Departments would not be able to afford increases in lawyers' pay of the kind you believe to be necessary. I am sure you will see that it would cause John great difficulty if he moved from the general position that Departments should absorb pay increases within their agreed running cost limits. Any special problems can be examined as and when they arise.

I am copying this letter to the Prime Minister, James Mackay, Douglas Hurd, David Young and Sir Robert Armstrong.

Yours ever

Peter

PETER BROOKE

CIVIL SERVICE:
Running Costs #3

17.XII ... 87



CCBG

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

MANAGEMENT IN CONFIDENCE

4

01 936 6602

Prime Minister
to see.
N. L. W
19.11

The Rt Hon John Major MP
Chief Secretary
HM Treasury
Parliament Street
London
SW1P 3AG

19 November 1987

Dear John:

LAWYERS: RECRUITMENT AND RETENTION

1. When I wrote to you on 2 July with the 1987 PES bid for the Crown Prosecution Service (CPS), my introductory paragraphs reflected my concern at the state of that Service. I sought to reserve the right to approach you again on the question of pay for CPS lawyers.

2. When Nick Lyell wrote to you on 21 October, he repeated our concern about the CPS, and also referred to our concern about the Government Legal Service (GLS) as a whole. He referred to the Minute that Michael Havers and I sent to the Prime Minister in April.

3. I am now able to put to you a package of proposals. It seems sensible, however, to refer first in some detail to the problems that we are encountering in the recruitment and retention of lawyers, both by the CPS and by the GLS as a whole. If what follows is set out at some length, that is because of the importance that I attach to this issue: we are confronted by real danger.

Recruitment

4. That there is the gravest difficulty in recruitment is well known. The problem is most vividly illustrated in the CPS. The present complement for lawyers in the Service is 1770. On 1 September there were only 1266 staff in post. Since January of this year, the number of new lawyers joining has averaged 14 each month. In the same period, the wastage figures have averaged 6 lawyers each month. Even if this meagre rate of recruitment were to be maintained, the Service would not be fully staffed for over 5 years. The position is worse than the figures alone suggest. The new recruits are predominantly at the lowest grade (Crown Prosecutor), whilst those who leave include a significant number of the more experienced Senior Crown Prosecutors. In consequence, the average length of experience among SCPs - those who manage the bulk of the Service's work - is decreasing.

5. In order to enhance recruitment from within existing resources, the CPS has devised a number of initiatives. These include:

a) CPS organised local recruitment campaigns;

b) a vigorous and professionally handled advertising campaign;

c) sponsorship of non-qualified staff through legal training at polytechnics, etc;

d) sandwich placements from universities and polytechnics;

e) improved recruitment literature and visits to universities to publicise further the CPS as a career;

f) short term contracts with better terminal payments;

g) encouragement of part time working;

h) encouragement to Commonwealth lawyers to consider working holidays in England and Wales;

i) periods of secondment for lawyers from the private sector;

j) improved career development (fast stream) for the most able lawyers.

6. For the GLS as a whole, the Treasury Solicitor has gathered information about complements and staff numbers, as well as data concerning those who have left the GLS for the private sector during the last three years and their reasons for doing so. Your officials already have copies of the schedules containing this information. There is one additional document which will not be available to you: I attach it at Annex A. It records statistics prepared by the Civil Service Commission concerning recruitment to the GLS between 1976 and 1987, to which the Treasury Solicitor has added a further, revealing column.

7. As in the CPS, senior management in the GLS has made every effort to recruit able new lawyers. The same emphasis has been placed upon advertising campaigns and publicity drives in universities and polytechnics; periods of Articles have been offered within the GLS; provisional posts are offered without the necessity of passing a Final Selection Board before commencing employment.

MANAGEMENT IN CONFIDENCE

8. It is difficult to see what else could be done to attract new recruits to the GLS. Nevertheless, as you will see from Annex A, the number of lawyers appointed, expressed as a percentage of the number of vacancies declared by Departments, dropped from 82% in 1983 to 38% in 1986. You will see from column 2 that it has been necessary to hold a number of additional recruitment 'rounds' (as many as 4 in 1986) which were in the nature of 'special rounds' for Departments and intended only to meet their own needs. Even these 'special rounds' have been relatively unsuccessful. The worst was in July this year, when the Treasury Solicitor advertised 9 vacancies. Of the 24 lawyers who applied, only 4 were considered suitable and only 1 took up appointment.

9. There is no doubt in my mind why recruitment to the GLS is such a serious problem, nor why it is steadily getting worse. Lawyers of the ability that the Government must have are able to earn, in the private sector in London, at least £10,000 per annum more at every stage of their career. Even articled clerks are offered £16,000 per annum by firms in central London. Until recently, that exceeded the top point on the Legal Officer scale in the GLS.

10. It is true that Special Pay Allowances have been offered by the Treasury, which were accepted by the First Division Association and promulgated in October 1987. They add £1,000 to the points on the Legal Officer scale; £1,500 to the points on the Grade 7 scale; and £2,000 to the points on the Grade 6 scale. For Grade 6's this increase is only applicable within the pre-existing maximum, which is retained. Whilst these SPA's are welcome, I have not the slightest doubt that they will be insufficient to attract recruits of the calibre that we need, particularly at Grades 6 and 7 where, as I will demonstrate below, we are losing experienced staff.

Retention

11. Even in its short life to date, the CPS has suffered alarmingly from the loss of lawyers, mainly to the private sector. There are three principal reasons: pay, career prospects, and morale. They are closely related. The CPS is a broad based pyramid, with comparatively few positions at the more senior levels. The Director and his Board of Management are examining ways of enhancing career prospects, by, for example, creating senior specialist lawyer posts for those who do not aspire to managerial positions. What is plain is that if you need to pay a lawyer a competitive salary to attract him at the outset of his career, you need to continue to pay him a competitive salary throughout his career in order to retain him.

12. Many of the most valuable members of the CPS who are leaving, in the SCP grade, are leaving for more money and because of the flagging morale of a seriously overworked Service. I know this from (among other sources) an extensive programme over many months of personal visits to CPS Areas. Burdens that they bore willingly at the outset are now seeming scarcely tolerable. Their spirits are weakened further by the continual adverse criticism that the Service attracts from the media. Much of this criticism is ill-informed or misguided: the Director and I are taking every available opportunity to rebut it. Where it is well founded, however, it is almost always directly attributable to shortages of staff. It is a vicious circle. As recruitment continues to fail to meet the required levels, so the morale declines, the criticism mounts and the lawyers leave. This downward slide cannot be allowed to continue.

13. In the GLS as a whole, the picture is no brighter. Between October 1984 and September 1985 a total of 7 lawyers left the GLS, either for more pay in the private sector or for partnership offers. This number included none at Grade 5 or above. In the following twelve months, a further 7 lawyers resigned and, as you will see from the relevant schedule, the Department of Trade and Industry suffered heavily because one of those who went was at Grade 3. Nevertheless, the total was still relatively small.

14. The picture has changed dramatically in the last twelve months. During this period, 22 lawyers left for the private sector and gave as their reason for resigning the availability of higher pay and better prospects. Four Departments showed unacceptable losses. The largest is that headed by the Treasury Solicitor, which lost 7 lawyers during the year. 5 resigned from Trade and Industry (one of those at Grade 2 and one at Grade 5). Environment, which has not been particularly vulnerable in the past, lost 4 lawyers for more pay (and 'perks'), as did Customs and Excise.

15. There is a considerable diminution of efficiency with every lawyer lost, even if immediate recruitment of a replacement occurs - which it does not. A tripling in the numbers of those leaving the GLS shows a worsening of the problem. Unless better careers are offered and, in particular, more pay is found for lawyers, the deterioration is likely to accelerate.

Proposals

16. I am accordingly certain that we cannot delay increasing, and sufficiently, the pay across the board for all lawyers in grades beneath the Senior Open Structure. I

attach at Annex B a summary of proposals for new maxima and minima. The differences between the lowest grades in the GLS and the CPS - Legal Officer and Crown Prosecutor - reflect the peculiar difficulties and needs of the CPS, which are already acknowledged in the existing pay scales. The figures are exclusive of London weighting allowances and the lawyers' London allowance, which I would expect to continue.

17. I recognise that these proposals would carry considerable additional costs. These are costs which could not be met from within the present running costs provision of most, if not all, Departments concerned. I have considered carefully whether they might be reduced by proposing selective pay increases: increases for lawyers in particular Departments where recruitment and/or retention is most affected. There is certainly a case for selective pay increases to reflect ability: indeed, provision for rewarding ability already exists in the pay structure. But I do not think that the idea of selective pay increases for "marketability" will stand up. Lawyers in the GLS are subject to central management, for it is a Service; and they can be asked to move from one Department to another. If more pay goes to a lawyer in a "marketable" Department, what is to be done if he should move to a less marketable Department, as the good deployment of the Service may require? Consistently, he should be paid less; but I think that hardly practicable. There are other powerful arguments which leave me in no doubt that selective pay increases (other than on grounds of merit/ability) would not work, but I will not extend this already over-long letter by developing them here.

18. My proposals represent what in my opinion is the least we have to do in order to arrest, and reverse, the decline in the CPS and the GLS as a whole. I greatly hope you will

MANAGEMENT IN CONFIDENCE

be able to accept them.

19. I am copying this letter to the Prime Minister, the Lord Chancellor, the Home Secretary, the Secretary of State for Trade and Industry and to Sir Robert Armstrong.

Yours ever,

Patrick

ANNEX A

(Page 1)

RECRUITMENT OF LAWYERS (LA/SLA ENGLAND AND WALES):
CIVIL SERVICE COMMISSION ANNUAL REPORT STATISTICS 1976 - 1987

1 YEAR	2 ROUNDS	3 VACANCIES	4 APPLICATIONS	5 INTERVIEWED (BY FSB)	6 RECOMMENDED FOR APPOINTMENT	7 APPOINTED	8 CASES NOT SETTLED	9 COL. 7 AS A PERCENTAGE OF COL. 3
1976	4	82	522	167	3 SLA 83 LA	2 SLA 56 LA	2	71%
1977	2	102	730	174	5 SLA 90 LA	4 SLA 60 LA	3	63%
1978	3	104	453	167	6 LSA 104 LA	6 SLA 69 LA	1	72%
1979	5	75	491	125	2 SLA 64 LA	 46 LA	5	61%
1980	3	51	580	147	3 SLA 54 LA	2 SLA 34 LA	1 SLA 3 LA	71%
1981	3	31	717	96	3 SLA 30 LA	3 SLA 21 LA		77%

...../Continued...

ANNEX A

(Page 2)

1	2	3	4	5	6	7	8	9
1982	5	47	700	155	3 SLA 61 LA	3 SLA 35 LA	5	81%
1983	5	60	770	161	9 SLA 60 LA	6 SLA 43 LA	1	82%
1984	4	93	677	130	9 SLA 59 LA	7 SLA 40 LA		51%
1985	3	117	549	151	14 SLA 66 LA	8 SLA 43	1 SLA 12 LA	44%
1986	7	191	499	198	40 Grade 6 and 7 61 LO	29 Grade 6 and 7 44 LO		38%
1987	6	136	291	162	35 Grade 6 and 7 42 LO	23 Grade 6 and 7 * 35 LO		

*On the assumption that those recommended for appointment (other than two who have already declined appointment) in Round 3 take up their posts, 43% of the 1987 vacancies have been filled. From past experience, however, it is unlikely that all the remaining successful candidates will join the GLS.

PROPOSED NEW SCALES FOR THE LEGAL GROUPS *

	Present	Proposed	Comments
Legal Officer	10,387-14,587	13,000-16,800	6 points
Crown Prosecutor	11,603-16,576	14,000-20,500	8 points, larger increments towards top of scale
Grade 7 (and Senior Crown Prosecutor)	15,030-20,292 (-21,092 performance point)	18,000-23,000 (-26,200 performance point)	8 main points and 3 performance points
Grade 6	18,786-25,335 (-26,335 performance point)	21,400-26,500 (-29,500 performance point)	5 main points and 2 performance points
Grade 5	24,765-28,215 (-29,465 performance point)	28,500-31,500 (-32,750 performance point)	4 main points and 1 performance point
Grade 4	30,344-31,844 (-33,469 performance point)	32,500-34,500 (-36,125 performance point)	3 main points and 1 performance point
Senior Legal Assistant	17,336-23,534	18,135-25,535	7 points
Legal Assistant	9,189-16,476	11,535-19,435	

* All these scales exclude both the general and the lawyers London allowances which it is presumed will continue.



JAA/32/A

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CCBG

Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 5949
Switchboard 01-213 3000

Minister of State

The Rt Hon John Major MP
Chief Secretary
Treasury Chambers
Great George Street
LONDON
SW1

26 October 1987

Dear John

NBPM

NET CONTROL OF RUNNING COSTS: NUCLEAR INSTALLATIONS INSPECTORATE (NII)

Thank you for your letter of 14 October.

I am grateful for your confirmation both that there is no difference in principle between us as regards the aim of achieving an alternative to gross control of NII running costs, except with regard to timing, and that, assuming a satisfactory outcome to next month's review by officials of HSE's progress in developing output and performance measures, you would be happy to look again at the target date. I was, however, surprised to learn that your target date of April 1989 was based on your officials understanding that HSE saw difficulty in developing the necessary accounting arrangements more quickly, since this is not HSE's view. As I explained in my previous letter HSE have been actively pursuing MPO's requirements with regard to the output and performance measures, and it was on the former's perception that substantial progress had been made that the April 1988 target was predicated.

I note what you say about making too much of a link between a dispensation from gross running cost control and the recruitment of the required number of inspectors. We have not, as yet, been advised by HSE that they consider a further increase in the NII cadre to be desirable but for the reasons given in Michael Spicer's letter such a development would not

be unexpected and would be difficult to oppose. Given the necessarily high salary levels of NII it is highly unlikely that HSE would be able to absorb the cost of such an increase in full, or even in part, although we would, of course, expect them to review their priorities to see what off-setting savings could be found. I am therefore grateful for your undertaking ultimately to consider re-deploying savings from elsewhere within the DE Group which you would normally wish to see surrendered, if we are not able to implement a net running costs regime for NII by April 1988 and a further increase in the NII cadre proves necessary.

I am copying this letter to the Prime Minister, George Younger, David Young, Nicholas Ridley, Cecil Parkinson, Richard Luce, Michael Spicer and Sir Robert Armstrong.

Yours ever

John

JOHN COPE

CIVIL SERVICE: running costs pt 3



CONFIDENTIAL

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

~~01 936 6203~~

01 936 6602

The Rt Hon John Major MP
Chief Secretary
HM Treasury
Parliament Street
London
SW1P 3AG

21 October 1987

Dear John,

CROWN PROSECUTION SERVICE RUNNING COSTS

In Patrick Mayhew's absence today, I am replying to your letter to him of 19th October 1987. Patrick has seen and considered your letter and the draft of this reply.

We have great difficulty in accepting your proposal that we reduce our running costs figure for the Crown Prosection Service to a level which reflects our possible staffing position next year. The people in that Department have had to face enormous difficulties because of shortage of staff caused first of all by the serious underfunding in the first part-year of its existence, which Patrick did his utmost to avoid when negotiating the establishment of the Service in 1985, and then later by the difficulties we have had in recruiting lawyers. The fillip that their morale received by hearing of the substantial increase in complement this year, even though they knew that we still had to put the necessary staff in post, went a considerable way to ensuring that they continued to work at a level beyond that which

could be expected. If the Director now goes back to them to announce that he has just accepted a reduction in that number, it will have a most serious effect. That effect will, we are certain, manifest itself in three ways.

First, staff will be demotivated to the extent that our work suffers. Second, staff will leave; this will itself depress the spirit of those who remain and will also cost us money while we replace the leavers by private agents. Third, the news of this blow will filter out (the FDA is proving adept at forecasting bad news about the CPS to further its attempts to obtain better terms and conditions of service for its members) and will reduce our flow of recruits.

Nevertheless, Patrick and I see the force of your arguments in favour of realism and despite our misgivings we are prepared to accept a compromise on the terms outlined on page 2 of your letter. We must, however, seek some safeguards:

1. The PES bid in Patrick's letter of 2nd July is accepted with the exception of those parts concerned with time limits, lenient sentences and tape recording. We must reserve the right to come back to you on the first two of these in the light of the forthcoming policy decisions. I refer to tape recording further below.

2. That you agree our actual need for staff as set out in the original PES bid, modified as above, and that when we are able to recruit up to that number our running costs provision can be increased accordingly.

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3. That a suitable adjustment is made to the CPS' two Votes to ensure that we have sufficient funds for the corresponding number of private agents. For a reduction of 200 lawyers this will amount to a net increase of £4.4 million. Details are shown in the attached Annex.

We would be grateful for confirmation that these are acceptable.

Your letter went on to raise the question of tape recording and here I must stress the significant advantage we see this policy affording the prosecution and the increase we expect it to provide in the proportion of defendants whom the Service is able properly to prosecute to conviction. This increase in value for money is there to be achieved, and we therefore expect any phasing in to be over as short a period as possible and certainly within the PES period. The police are already well down the path to implementation and we will therefore start the financial year 1988/89 from a relatively high base. Against this background I am sure that we can reach an agreement on phasing the funding of this initiative.

You will recall that in their Minute to the Prime Minister of 7th April 1987, Michael Havers and Patrick expressed their grave concern for the state of morale in the Government Legal Service as a whole. You will also recall that their warnings were echoed by all those colleagues who responded; and I hope that by now you will have seen a copy of David Young's letter to Patrick of 13th October about the Serious Fraud Office. I understand that Mr Kemp has undertaken to prepare a paper for submission to the Lawyers Pay Group which will address the problem of recruitment and retention of staff which now so seriously threatens the GLS.

CONFIDENTIAL

SOLICITOR GENERAL

CONFIDENTIAL

As for the CPS itself, Patrick warned you in his letter of 2nd July that he might need to return to you. Almost daily we receive reports of the ill effects of the Service's chronic staff shortages, but what you will I know appreciate is not only the reduced effectiveness of the Service from not having sufficient lawyers, but the greatly increased cost arising from the consequent increased use of private agents. In short, agents are more than twice as costly; and as I have explained above, such extra costs amount to £2.2 million per annum for every hundred lawyers we are short. We have given considerable thought to how this undesirable bill might be reduced. We are at present completing a package of proposals for lawyers' pay which will reduce this burden and as soon as we have considered its impact on the Government Legal Service as a whole we will write to you again. There will be an additional cost, but this will be small in your overall PES calculations and will be aimed at reducing expenditure on private agents. We hope to give you more details in the very near future.

I am copying this letter to the Prime Minister, the Home Secretary, the Lord Chancellor and to the Secretary of State for Trade and Industry.

Yours ever

Nick.

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ANNEX

COST OF USING PRIVATE AGENTS RATHER THAN CPS LAWYERS

To make up a short-fall of 200 lawyers

	£ Million	
Cost of private agents	+ 7.66	(Vote 27)
Cost of "supervising" private agents	+ 0.94	(Vote 26)
Savings in lawyers' salaries	- 4.20	(Vote 26)
Net Cost	+ 4.40	



004/4215

CONFIDENTIAL

cc BG.

nbpm

Treasury Chambers, Parliament Street, SW1P 3AG

John Cope Esq MP
Minister of State
Department of Employment
Caxton House
Tothill Street
London
SW1H 9NF

14 October 1987

Dear John,

NET CONTROL OF RUNNING COSTS: NUCLEAR INSTALLATIONS INSPECTORATE

Thank you for your letter of 6 October. I also have Michael Spicer's of 24 September.

There is no difference between us as regards the aim of achieving an alternative to gross control of NII running costs but on timing you regard my target of 1989 as being over-pessimistic. If you can produce the alternative control arrangements which are required to justify a dispensation from gross running cost control in time to introduce the new system in April 1988 all well and good. But I understood from my officials that HSE saw difficulty in developing the necessary accounting arrangements anything like that quickly. In setting the target of April 1989 I sought to speed up the process rather than slow it down. Our respective officials are, however, to review progress in this respect next month and if at that stage matters appear to have improved I shall be happy to look again at my target date.

Meanwhile I think Michael Spicer is making too much of a link between a dispensation from gross running cost control and the recruitment of the required number of inspectors. I do not see a dispensation from gross controls as being essential to resolving problems of resources. Naturally we look to HSE to absorb increases in costs in one area by adjusting their priorities. But if, in the ultimate, this proves impossible I am, as you acknowledge, prepared to consider redeploying savings from elsewhere within the DE Group which I would normally wish to see surrendered.

CONFIDENTIAL

I hope we shall now be able to make early progress on the question of meeting the criteria for a dispensation from gross running cost control.

I am copying this letter to the Prime Minister, George Younger, David Young, Nicholas Ridley, Cecil Parkinson, Richard Luce, Michael Spicer and Sir Robert Armstrong.

Yours Ever,

JOHN MAJOR

CIVIL SERVICE

RUNNING

COSTS

PT 2

JA/40

COPA.

Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 5949
Switchboard 01-213 3000

Minister of State

The Rt Hon John Major MP
Chief Secretary
HM Treasury
Great George Street
London SW1

6 October 1987

NBPM

Dear John

NET CONTROL OF RUNNING COSTS: NUCLEAR INSTALLATIONS INSPECTORATE

Thank you for your letter of ~~7~~ flap September.

I am grateful for your undertaking to consider the possibility of a transfer of some of the running costs savings flowing from the reduction in unemployment since this year's Estimates were approved to HSE to help meet the effect of the latest NII pay settlement. I understand that our officials are now discussing this in the context of the Winter Supplementaries.

Looking to the longer-term I believe you are being unduly pessimistic about HSE's rate of progress in developing the necessary controls and do less than justice to the efforts they are making. HSE, in the light of MPO guidance, is actively pursuing the steps that need to be taken to meet the latter's concerns about output and performance measures. If there are other matters which your officials feel are not being sufficiently addressed then it would help if they would let HSE know what these are so that they too can be taken forward urgently. I entirely agree that we should set a target date for the introduction of net running costs control for NII but I cannot accept that it should be as far away as you suggest: 1 April 1988 is, I believe, a realistic target and one that I hope you will accept.

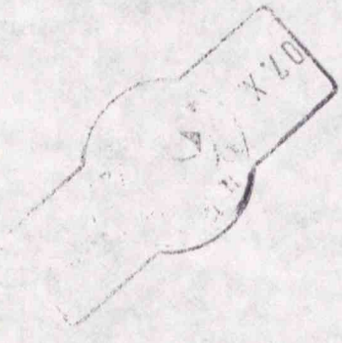
Copies of this letter go to the Prime Minister, George Younger, David Young, Nicholas Ridley, Cecil Parkinson, Richard Luce and to Sir Robert Armstrong.

Yours ever

John

JOHN COPE

CIVIL SERVICE: Running Costs PT3



004/4206

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

John Cope Esq MP
Minister of State
Department of Employment
Caxton House
Tothill Street
London
SW1H 9NF

7 September 1987

Dear John,

NET CONTROL OF RUNNING COSTS: NUCLEAR INSTALLATIONS INSPECTORATE

Thank you for your letter of 11 August.

I entirely take your point that the NII operates under the glare of public scrutiny and it is important that it is staffed adequately to carry out its functions. Otherwise the government would be exposed to severe criticism if there were an incident involving a threat to public safety from a nuclear plant. But I cannot agree that we need to change the control system simply to achieve adequate staffing or that it is wise to dispense with the present system, which does ensure that some pressure for efficiency is placed on the organisation, in advance of adequate safeguards being in place.

I would however be happy to exempt the NII from gross control just as soon as there is a robust alternative in place. I do not understand why HSE are taking so long to develop the necessary alternative system and I would like now to set a target date, say April 1989, for completion of the work which they have in hand.

You take up Cecil Parkinson's point that companies applying for licenses can be relied upon to ensure that the costs of inspection are kept to a reasonable level. While I recognise that the companies concerned would want to ensure that they were getting value for money I think it would

be quite wrong for HSE to rely solely on companies whom they are visiting (to ensure safety standards are enforced) to keep a check on HSE's own costs. It is our responsibility as government to ensure that our operations are economical and that proper control is exercised over spending. Moreover the power of the companies to ensure economy would be constrained by the fact that they have no alternative but to be inspected by the NII.

Regarding the increase in costs in the current year arising out of the recent NII pay settlement I would expect HSE to be able to adjust its expenditure to afford the £0.5 million you mention. Failing that I would be prepared to consider a proposal for a running cost limit transfer to allocate to HSE some of the running cost savings which your own department will be able to make because of the reduction in unemployment since this year's Estimates were approved. I shall ask my officials to get in touch with yours to discuss the details.

I am copying this letter to the Prime Minister, George Younger, David Young, Nicholas Ridley, Cecil Parkinson, Richard Luce and to Sir Robert Armstrong.

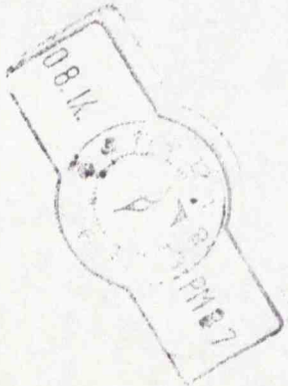
Yours Ever,
John

JOHN MAJOR

CIVIL SERVICE

RUNNING COSTS

PT 3



OF

CONFIDENTIAL

CCBG

Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 5949
Switchboard 01-213 3000

Minister of State

16pm

The Rt Hon John Major MP
Chief Secretary
HM Treasury
Parliament Street
London
SW1P 3AG

11 August 1987

Dear John

NET CONTROL OF RUNNING COSTS: NUCLEAR INSTALLATIONS INSPECTORATE

Thank you for your letter of 27 July to Norman Fowler; I am responding as he is now away from the office on holiday. I have also seen Cecil Parkinson's letter of 23 July and welcome the support he has given to our request for urgent and sympathetic consideration of the case for allowing the NII to move to a system of net running costs control. I endorse his assessment of the potential political difficulties if NII is perceived to be unable to undertake its duties.

I appreciate your concern about not allowing such a change until any doubts about efficiency and performance criteria are resolved. I also understand that when a change to net running costs control is agreed this should normally apply only in the following financial year. But, as Norman explained in his earlier letter, the HSE is facing severe difficulties on running costs this year and an exemption from gross running costs control would offer the most obvious solution to the problem. A formal submission on the NII was put to your officials in March this year, following earlier discussions. So far it appears that only limited progress has been made because what your officials require is likely to involve significant revisions to planning and control systems within the NII.

Like you we remain optimistic that a solution can be agreed in due course. However, you will know that in its latest report the Health and Safety Commission's Advisory Committee on the Safety of Nuclear Installations recommended "The increase of some 50 in the size of the Inspectorate" (from a figure of around 100) The Select Committee on Energy in its latest report, when told that there were 98.5 Inspectors out of a projected total of 120, expressed concern about

NII resources and recommended "that the Government give its urgent attention to ensuring that the NII can recruit and retain sufficient staff of sufficient quality to discharge all its responsibilities". Cecil Parkinson has re-emphasised the importance of ensuring that the NII is fully staffed (that is 120 Inspectors) as quickly as possible. He has also argued convincingly that the main licencees will provide an effective check on increases in charges and that anyway the need to ensure public confidence in the Inspectorate is of paramount importance. All this reinforces our earlier argument that in principle the case for net running costs control for the NII is well founded and that the system needs to be introduced this year.

The NII pay increase will cost an estimated additional £½m this year. There is no prospect of the HSE finding this amount because of other inescapable demands upon their running costs provision. Furthermore at this stage it is difficult to envisage the remainder of the DE Group finding the offsetting savings, especially given the need to absorb this year's pay settlement.

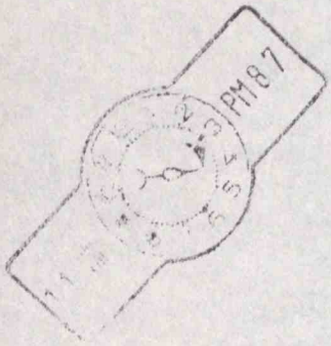
In my view these reasons justify a change to net running costs control this year, on the understanding that discussions will continue at official level on what controls need to be put in place to satisfy the Treasury criteria.

I am copying this letter to the Prime Minister, George Younger, David Young, Nicholas Ridley, Cecil Parkinson, Richard Luce and Sir Robert Armstrong.

Yours ever

John

JOHN COPE



CIVIC SERVICE

RUNNING COSTS

PT 3

004/4210

010

RESTRICTED

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Norman Fowler MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London
SW1H 9NF

Dear Norman,

27th July 1987

NET CONTROL OF RUNNING COSTS: NUCLEAR INSTALLATIONS INSPECTORATE

Thank you for your letter of 15 July. I have also received Cecil Parkinson's letter of 23 July.

I think it may be unnecessarily pessimistic to say that discussions on exemption from gross running costs control "seem to be running into difficulties". I agree that there are important hurdles to be overcome in terms of effective efficiency and performance criteria but I understand that there have been co-operative discussions between HSE and our respective officials and that work is proceeding. But we cannot expect such a radical departure to happen overnight and it would be unwise to cut corners in preparing the ground for an effective alternative system of control.

I note what you say about the possibility of having to seek increased provision this year. But since the extra costs of the NII pay settlement have been known so early in the year I do hope you will be able to make the necessary adjustments to ensure that they can be afforded within existing provision.

I am copying this letter to the Prime Minister, George Younger, David Young, Nicholas Ridley, Cecil Parkinson, Richard Luce and Sir Robert Armstrong.

Yours Ever,
John

JOHN MAJOR



file PMM

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

23 July 1987

DEPARTMENTAL RUNNING COSTS

The Prime Minister was grateful for the analysis of departmental running costs set out in your letter to me of 20 July.

D. R. Norgrove

Miss Jill Rutter,
H. M. Treasury.

ec

002/4208

CCBG

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

David Norgrove Esq
Private Secretary
10 Downing Street
London
SW1

Prime Minister 2

DRS
21/7.

20 July 1987

Dear David,

DEPARTMENTAL RUNNING COSTS

I enclose, in response to your letter of 10 July to Tony Kuczys tables showing:

- the growth of spending on total departmental costs since 1980, in cash and in real terms, distinguishing between pay and other costs (Table 1);

- details of changes since 1978-79 in average Civil Service earnings per head, average earnings in the economy as a whole, and general inflation (measured by the RPI) (Table 2);

- total running cost increases from 1983-84 in cash and in real terms, for the ten largest departments (Table 3);

The figures in Tables 1 and 2 have been adjusted for various classification changes. We do not have all the data in appropriate form for the whole period since 1979 so the time-spans of the three tables are not congruent. The material does show the general trends reliably, however.

The main conclusions are:

(i) running costs in total have risen by an average of 1.8% a year in real terms;

(ii) the total pay bill has remained roughly constant in real terms. Average pay per head tended to increase in real terms, even though in most years pay settlement increases - and hence pay scale rises for individuals - were close to general inflation. This was because the reduction in Civil Service jobs (at an average of 2% a year) was in terms of absolute numbers mainly in the lower grades;

(iii) in the years since 1980-81, Civil Service average earnings rises were lower than those in the economy overall. If 1980-81 (the final year of pay research) is brought in they were higher. But again large losses of lower-paid Civil Service jobs will have influenced these averages.

(iv) spending on non-manpower items (accommodation, public utility charges, bought-in goods and services) tended to rise quite steeply - by an average of over 5% a year in real terms. This was partly because contracting out and competitive tendering cause some services previously provided in-house to be reclassified as supply spending. There were also sharp increases in spending on consultancy and maintenance for information technology projects.

As the Chancellor mentioned to the Prime Minister, the Chief Secretary intends proposing to Cabinet next week a strategy for departmental running costs covering the Survey period as a whole, based on a target of keeping running costs spending roughly constant as a proportion of total public spending. On present plans, this implies holding the increase to some 1% a year in real terms. We estimate that pressures from pay, other costs and demand to resource new or expanding functions, will amount to 2½%-3% a year in real terms. Departments will need to bridge the gap by annual efficiency gains equal at least to 1½% a year.

In effect, the strategy will require a somewhat higher level of efficiency gain and a lower average rate of increase in real spending than departments have achieved in the past. But we would be grateful if you could bear in mind that some departments may not realise this because the average real rise of 1.8% a year in past running costs is not easy to calculate from published figures.

Yours,

Jill

JILL RUTTER
Private Secretary

014-3653

Table 1

Cash and real terms changes in running costs 1980-81 to 1986-87

	1980-81+	1981-82+	1982-83+	1983-84	1984-85	1985-86	1986-87
Running Costs							
Cash total £m	8,007	9,028	9,811	10,499	11,155	11,703	12,531
Cash increases %	-	12.8	8.7	7.0	6.2	4.9	7.1
Pay bill changes in real terms %	-	2.5	- 2.8	- 1.7	- 0.6	- 0.8	3.2
*Other cost changes in real terms %	-	3.0	9.7	9.9	5.8	- 1.9	5.2
Total running costs changes in real terms %	-	2.6	1.3	2.4	1.9	- 1.2	4.0

Notes

Real terms calculations based on GDP deflators.

+ Figures adjusted to take account of introduction of repayment for accommodation services in 1983-84.

* These costs are for non-manpower services - e.g accommodation, public utility charges, brought-in goods and services (including consultancy), computer maintenance and hire, software etc.

015-3653

Table 2

Annual Increases in Earnings over previous year

	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1986-87 over 1978-79	1986-87 over 1979-80	1986-87 over 1980-81	1986-87 over 1982-83
CIVIL SERVICE Outturn average earnings %	11.6	27.3	11.1	8.7	6.4	6.1	6.1	7.3	120.5	97.6	55.2	28.5
AVERAGE EARNINGS INDEX (Whole economy) %	16.9	19.8	11.7	8.9	7.7	6.5	8.6	7.7	128.6	95.4	63.1	34.1
RETAIL PRICES INDEX	15.8	16.3	11.5	7.1	4.7	5.1	5.9	3.2	93.3	66.9	43.5	20.2

Table 3

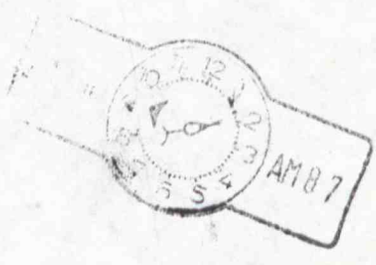
Cash and Real Terms Percentage Increases in Running Costs

1983-84 to 1987-88

Department	Cash Outturn 1983-84 £m	Cash Provision 1987-88 £m	Cash Increase %	Real Terms Change %
MOD	4,393	5,293*	20.5	1.1
DHSS	1,259	1,527	21.3	1.9
Employment Group	725	939	29.5	8.8
Inland Revenue	778	978	25.7	5.6
Home Office and LCD	732	948	29.5	9.0
Northern Ireland	363	476	31.1	9.9
FCO and ODA	327	436	33.3	11.9
Customs and Excise	329	420	27.7	7.1
DTI	211	276	30.8	9.9
Transport	216	273	26.4	6.3

*Adjusted for contractorisation of the Royal Dockyards in 1987-88.

GOVT MACHRAGHER: PL 24



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

10 July 1987

RUNNING COSTS

The growth of running costs was mentioned briefly at yesterday's meeting on the Ibbs Report. The Prime Minister would be glad to see a run of figures for the growth of total running costs year by year since 1979. It would be helpful if figures could also be shown separately for the major departments. You might want also to show figures for the RPI and for the pay component of costs.

David Norgrove

Tony Kuczys, Esq.,
H.M. Treasury.

Govt MACH - Rayner

Personal + Confidential

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

David Norgrove Esq.,

24. 11. 86

No. 10, Downing Street

Dear David

RUNNING COSTS

You will recall we spoke about Lord Young's minute to the PM of 30 October.

The attached minute, which the Chief Secretary decided not to send, sets out the line which the Treasury took on this subject. You may find it useful for your personal information, not for the Prime Minister's use.

Yours,

Jill

013/1289

Not sent

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Copy sent to D Norgrove on personal basis as background.

FROM: CHIEF SECRETARY
DATE: November 1986

PRIME MINISTER

RUNNING COST AND MANPOWER CONTROLS

In his minute to you of 30 October David Young has raised the issue of whether running cost and manpower controls may be constraining us in developing programmes directed at reducing unemployment and saving public expenditure.

2 I recognise the points he is making about the need to strike a balance between sometimes conflicting objectives. I have taken a careful interest in running costs and manpower for the DE Group and I think that we now have the balance about right for this programme. Supporting the importance of and priority for such initiatives as more rigorous availability for work testing I have agreed to overall figures for the Group which David accepts as being tough but realistic.

3 Since last year's Public Expenditure Survey an increase in running costs has been agreed for the DE Group of approaching £70 million for 1987-88 (excluding the £12.5 million for employment advisers transferred from DHSS). This represents nearly an 8 per cent increase from the previous figure for 1987-88 compared to under 4 per cent for the Civil Service overall. The manpower target has been increased by 4,000 for April 1987 excluding the transfer from DHSS. This represents a 7 per cent increase above the previous figure for April 1987 compared to an increase of under 1 per cent for the Civil Service overall.

4 Running costs have been a major issue in this year's Survey and I have pressed colleagues hard to keep running cost increases to a minimum. Cabinet has endorsed the policy of retaining strict limits on Civil Service running costs and manpower and the Government has published a manpower target for April 1988. David confirms that he is totally committed to containing and reducing

administrative overheads. A strict control on running costs and manpower must continue to be an important objective for the Government, but I believe my approach demonstrates that it can be exercised sensitively to reflect policy objectives and priorities.

5 David Young asks that we find some way of identifying and distinguishing cases where we are in effect substituting manpower for a much less cost-effective programme expenditure in order to reach policy objectives. We already do this within the Survey process. I have been prepared to see increases in DE manpower and running costs at a much greater level than for the Civil Service overall because of the case he made, but it does of course have its effect on the overall position on running costs.

6 I am copying this minute to David Young.

JOHN MacGREGOR

CCBG.

Prime Minister (2)

MEA 22/8

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Tom King MP
Secretary of State
Northern Ireland Office
Stormont Castle
BELFAST BT4 3ST

22 August 1986

Dear Tom,

NORTHERN IRELAND CIVIL SERVICE (NICS): MANPOWER AND RUNNING COSTS

Thank you for your letter of 12 August to John MacGregor proposing to increase the NICS manpower target for 1 April 1987 by 535 to 25,510, and to increase the Northern Ireland DRC limit by £0.9 million. I am reluctantly prepared to accept your assessment that this increase in manpower is unavoidable. We are of course committed to maintaining constant downward pressure on civil service manpower numbers and I hope you will continue to press for savings wherever possible in reviewing your targets for the Survey years.

I also accept your present assessment that this increase in manpower will entail an increased running costs requirement of £0.9 million in the current year. I would however question your proposal to announce an increase in the NI running cost limit at this stage. Set against your overall limit of £446 million, and coming on top of the increase of £5 million which we agreed in April, this further small increase will give the wrong signals in relation to our overall policy on running costs control. I would prefer therefore that you did not make an announcement unless and until this is absolutely necessary and it is clear that there is no potential shortfall which might offset the increased requirement which you now foresee. However, if later in the year you are convinced that an increase of up to £0.9 million cannot be absorbed I should be grateful if your officials could clear your proposed announcement with mine at that time.

In response to your reference to self-financing services I should point out that because running costs are controlled gross it is not normal practice in GB to accommodate self-financing changes

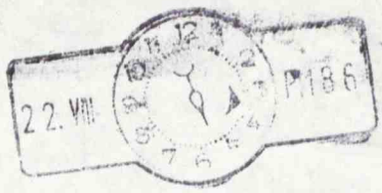
in higher gross running costs in year. However, I am content to accept your assessment that the DOE NI proposals considered on their merits justify exceptional treatment.

I am copying this to the Prime Minister — and am of course replying on behalf of John MacGregor in his absence.

Yours ever

PETER BROOKE

CIVIC SERVICE
RUNNING COSTS
P 53



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CONFIDENTIAL

CCBG

Secretary of State

Northern Ireland Office
Stormont Castle
Belfast BT4 3ST

Rt Hon John MacGregor OBE MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AF

12 August 1986

NBM

Dear Chief Secretary,

MANPOWER AND DEPARTMENTAL RUNNING COSTS

I have been reviewing the manpower and running cost requirements of Northern Ireland Departments and the Northern Ireland Office for 1986/87, against a background of considerable pressure in all my Departments. As a result, I propose to increase the manpower target for 1 April 1987 for Northern Ireland Departments from 24975 (the figure which was agreed in December last, supplemented by the addition in respect of the Budget Employment Measures which you agreed in your letter of 7 April) to 25510. In addition I will require a small increase in the departmental running cost limit for the Northern Ireland Office and the Northern Ireland Departments from £446.0m to £446.9m. The reasons for these increases, which have been discussed in detail with your officials, are set out below.

On manpower I have become increasingly aware over the past year that in a number of areas important developments, consistent with our overall strategy, could only be sustained by some increase in the manpower of Northern Ireland Departments. These include the following:

(a) The Central Information Systems Division of the Department of Finance and Personnel, which provides the

IT capacity for the Northern Ireland Civil Service as a whole, requires a substantial addition to manpower to enable major projects to be undertaken; these will promote the efficiency of the Northern Ireland Civil Service as a whole and should lead to savings in the longer term.

(b) The Social Security Office network of the Department of Health and Social Services has for some time depended on the substantial employment of casuals to cope with the rising workload resulting from current levels of unemployment in Northern Ireland and from the need to move towards computerisation of benefit administration. This use of casuals has proved far from satisfactory and I propose to allow DHSS to replace a substantial number with permanent staff. This will only be possible if I increase the overall NI departmental manpower target.

(c) Department of the Environment requires substantial additional staff to enable it to introduce 5-year vehicle testing (compared to 3-year testing in the rest of the UK); to increase the drive to improve water leakage control; and to expand the work of the Land Registry to meet rising demand. These enhanced activities will more than pay for themselves, either through increased fees received as a result of a greater volume of work or through reduction in the need for programme expenditure at a later date.

(d) In order to sustain the Industrial Development drive, which remains a priority activity within Northern Ireland the Industrial Development Board requires some easement of its manpower target to facilitate the

CONFIDENTIAL

sectoralisation of its approach to Industrial Development in line with the recommendations of a review of its structure by management consultants.

(e) More detailed scrutiny of the requirements of the Department of Economic Development on the implementation of the employment measures announced in the Budget has shown that the addition which we agreed at that time (75 posts) understated DED's requirements by 14 posts.

In undertaking my review I have had at the forefront of my mind the importance of restraining Departmental Running Costs to the limits announced to Parliament earlier in the year. I propose, therefore, to contain the cost of the manpower increases envisaged above within the departmental running cost limit for the NIO and Northern Ireland Departments, with two exceptions. In line with exceptional practice in Great Britain, I propose to take an increase of £0.8m in respect of the self financing services of DOE set out at 2(c) above. In addition I am taking an increase of £0.1m to cover the additional costs in respect of the Budget Employment Measures. I propose to cover the total increase in my running cost limit of £0.9m by reallocation of PES resources within the Northern Ireland Block.

I should be grateful for your confirmation that you have no objection to my announcing these limits as soon as possible after the recess.

I am copying this letter to the Prime Minister.

Yours Sincerely
N Dorand
(Private Secretary)

for TK
(Approved by the Secretary of State and signed in his absence)

SP

CONFIDENTIAL

PART 2 ends:-

W. Ricketts to HMT 19.9.83

PART 3 begins:-

SS/NIO to CST 12.8.86


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