



# Report of the Committee on Legal Aid and Legal Advice in England and Wales

*Presented by the Lord High Chancellor to Parliament  
by Command of His Majesty  
May 1945*

LONDON

PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE

To be purchased directly from H.M. STATIONERY OFFICE at the following addresses:  
York House, Kingsway, London, W.C.2; 13a Castle Street, Edinburgh 2;  
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1945

Price 9d. net

Cmd. 6641

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\* The Committee record with regret the resignation of Mr. F. J. Burrows on his assuming an appointment overseas.

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NOTE.—The estimated cost of the preparation of this Report (including the expenses of the Committee) is £453 14s. od. of which £81 os. od. is the estimated cost of printing and publishing the Report.

# REPORT

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To the Right Honourable the VISCOUNT SIMON, G.C.S.I., G.C.V.O., O.B.E.,  
Lord High Chancellor of Great Britain.

## INTRODUCTION

1. We were appointed a Committee on the 25th May, 1944, "to enquire what facilities at present exist in England and Wales for giving legal advice and assistance to Poor Persons, and to make such recommendations as appear to be desirable for the purpose of securing that Poor Persons in need of legal advice may have such facilities at their disposal, and for modifying and improving, so far as seems expedient, the existing system whereby legal aid is available to Poor Persons in the conduct of litigation in which they are concerned, whether in civil or criminal courts."
2. We have held forty-eight sittings of which twenty-six were for the purpose of hearing evidence. We have received oral evidence from the witnesses whose names are set out in Part 1 of Appendix 1 to this Report, most of whom had previously submitted written evidence. In addition we have received written evidence from the organisations and individuals whose names are given in Part 2 of Appendix 1. We desire to express our thanks to these witnesses who have given us great assistance not only by their oral evidence but also by the memoranda which they have submitted.
3. We desire to preface our Report with two general observations.
4. In the first place, among the evidence which has been laid before us, we have received a number of suggestions for the re-organisation of the work and procedure of the courts with a view to lowering the cost of litigation. Similar proposals have also appeared recently in the Press. We are of the opinion that these matters do not come within our terms of reference.
5. Secondly, throughout our enquiry we have taken pains to follow the distinction between legal aid and legal advice which is made in our terms of reference. By legal aid we mean assistance in conducting or defending proceedings in the courts, whether by remission of court fees, free legal representation, provision for the payment of witnesses' expenses or otherwise. By legal advice we mean advice on legal matters, drafting of simple documents, and negotiations apart from the conduct of litigation, but we do not include conveyancing or probate matters or the drafting of wills, although certain of these matters have been dealt with in the past under the heading "legal advice."

## I

### HISTORY OF LEGAL AID AND LEGAL ADVICE IN ENGLAND AND WALES

#### A. High Court

6. For probably more than 150 years there has existed, in many of the courts of whose jurisdiction the present Supreme Court is heir, and in the Supreme Court when it came into existence in 1876, a system whereby Poor Persons could sue or defend in forma pauperis. Originally, before an applicant could be admitted so to sue, it was necessary for him to swear that "He was not worth more than £5." It seems to be uncertain whether in reckoning this sum the value of any matter at stake in the action was to be counted. At a later date the limit was raised to £25. But it appears unnecessary to give any detailed consideration to these early systems.

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7. The first regular scheme for the assistance of Poor Persons litigation in the Supreme Court was introduced by Order XVI, Rules 22 to 31D of the Rules of the Supreme Court, which came into operation on 1st January, 1914.

8. The general scheme of these Rules (which applied only to litigation in the Supreme Court) was as follows:—

(a) a person might be admitted to take or be a party to legal proceedings as a Poor Person on satisfying the court that—

(i) he had a reasonable cause of action or defence; and

(ii) his means did not exceed the sum of £50 (excluding wearing apparel, household goods, tools of trade and the subject matter of the action). There was power to raise the limit to £100 in special circumstances.

(b) There were established in each of the three Divisions of the High Court, and in certain District Registries, officers called "Prescribed Officers." They were, in the King's Bench and Chancery Divisions, Masters in those Divisions; in the Probate, Divorce and Admiralty Division a Registrar of that Division, and, in the District Registries, the District Registrar.

(c) The applicant made his application to the appropriate Prescribed Officer, and his application was thereupon referred by that Officer to a solicitor taken from a list of solicitors kept by the Officer, who was to report whether and on what terms the applicant ought to be admitted as a Poor Person. The reporting solicitor might make enquiries as to the means and position of the applicant and the merits of his case.

(d) On receiving the report the court might admit the applicant as a Poor Person, and thereupon assign to him to conduct his case counsel and a solicitor taken from lists kept of members of the Bar and the Solicitors' profession who were willing to act. The reporting solicitor could not be employed as conducting solicitor.

(e) The effect of admission as a Poor Person was to relieve the person so admitted of the payment of any court fees or of any costs to any other party (subject to an exception hereafter to be mentioned) and to forbid the barrister or solicitor acting in the matter to take any fee, profit or reward from him for the enquiry, or report or the conduct of the proceedings. It further forbade the recovery of any costs from the other party to the proceedings, and the payment of any costs to him.

(f) The exceptions to these rules about costs were that the Judge might direct them to be paid if the other party to the proceedings had acted unreasonably in prosecuting or defending them, and, in that event, there might be allowed to the solicitor for the Poor Person such fees as might have been allowed in an ordinary action. And where a substantial amount was recovered by a Poor Person, the court might order that out of that amount such costs should be allowed to the solicitor as he would have recovered if he had been acting in the ordinary way for a paying client.

9. The framers of these Rules were conscious that there was not in existence any fund from which the out of pocket expenses incurred in the conduct of the action could be defrayed. They provided, therefore, that "nothing contained in this Rule shall preclude any solicitor or counsel from receiving remuneration out of any fund which may from time to time be created by the Treasury for the payment of the out of pocket expenses or other charges of solicitors or the fees of counsel so assigned." Their hope was that such a fund might be created by voluntary contributions from the public assisted perhaps by contributions from the Treasury. The fact that the system was started only eight months before the beginning of the war of 1914-18 destroyed whatever chance there might have been of bringing any such hope to fruition.

10. In spite of the fact that there was no such fund available as has been already described, substantial use was made of the system established by the Rules of 1914. In the year 1918 77 persons were admitted to sue or defend as Poor Persons in the Chancery and King's Bench Division, and one was so admitted for the purpose of an appeal to the Court of Appeal. These figures of admission bore no very high proportion to the number of applications, which were 305 in the two Divisions and 5 in the Court of Appeal. In the Divorce Division, however, in the same year 4,101 applications were made for admission, 2,218 were granted and 1,014 petitions were dealt with. The number of Poor Persons cases tried in that year in that Division was 486, and all but 15 were successful.

11. The situation was examined by a Committee appointed by the Lord Chancellor, and presided over by Mr. Justice P. Q. Lawrence, which reported in October, 1919<sup>1</sup>. They drew attention to the discrepancy between the number of applications granted and the number of petitions which resulted, and they found that "it is mainly due to the Poor Persons being unable to find the necessary out of pocket expenses to enable them to start or proceed with their cases." They found also that "the out of pocket expenses in an ordinary matrimonial case under the Poor Persons Rules amounted on an average to about £10 ("made up of actual out-of-pocket expenses £5 chiefly travelling expenses of witnesses, and office expenses £5"). "The out of pocket expenses of a nullity case under the Poor Persons Rules amount on an average to £25."

12. The Committee recommended:—

- (a) that the reporting solicitor should be forbidden to exact a fee.
- (b) that the conducting solicitor should not be allowed to receive any payment direct from the Poor Person; that all payments made by the Poor Person in respect of out of pockets should pass through the Poor Persons Department.
- (c) that allowance for office expenses should be forbidden.
- (d) that in addition to the £50 capital qualification, the Poor Person should be required to satisfy the test of not possessing a usual income from all sources of £2 a week, or, in special circumstances, £4.
- (e) As regards "local conduct and trial of matrimonial cases" that jurisdiction should not be given to the County Court; and that facilities should be given for the conduct of Poor Persons' divorce cases in District Registries, and for the trial of divorce cases at Assizes.
- (f) that there should be a deposit of £5 in each case.

13. They also considered and rejected a proposal that individual members of the solicitors' profession should cease to be concerned with Poor Persons cases and that the prosecution and defence of such cases should be transferred to a government official with a staff.

14. Effect was given to many of the recommendations made by Mr. Justice Lawrence's Committee, but the system on its general lines was continued.

15. In 1922 provision was made for the trial of Poor Persons' divorce cases at 10 selected Assize towns.

16. Difficulties, however, still made themselves apparent in the working of the system, and a further enquiry was made into it by a Committee, again presided over by Mr. Justice P. Q. Lawrence, which reported in February, 1925<sup>2</sup>.

<sup>1</sup> Cmd. 430.

<sup>2</sup> Cmd. 2358.

17. The main features of their Report were as follows:—

- (a) They recommended a large addition to the number of Assize towns at which matrimonial cases could be heard.
- (b) That Poor Persons' matrimonial causes should be commenced and prosecuted at a number of District Registries.
- (c) The then existing system under which admission as a Poor Person was the work of the Prescribed Officers, assisted by what was called "The Poor Persons Department" should cease, and the work should be undertaken by the solicitors profession, acting through Committees appointed by the Law Society and by every Provincial Law Society, and approved by the Lord Chancellor.
- (d) That the "reporting solicitor" should be abolished, and that the local Committee, whether in London or in the country, should undertake all the enquiries necessary before admission and grant the certificate of admission.
- (e) No money should be demanded or received for profit costs or office expenses.
- (f) No higher deposit for out of pocket expenses should be required from any Poor Person than might be sanctioned from time to time by Rules of Court.

18. As in 1919 so in 1925 the overwhelming majority of all the cases in which Poor Persons were concerned were matrimonial causes.

19. The Committee also recommended that a grant should be made by the Treasury, through the Lord Chancellor's Department, to the Law Society for the purpose of defraying the office expenses of the Committees, both in London and in the country. No part of this sum was to go to the actual expense of litigation. It was intended merely to pay the salaries of any clerks who might be employed by the Committees, and to defray the cost of office premises. The amount recommended by the Committee was £3,000. This sum has gradually increased, and the amount estimated for the financial year 1944-45 was £14,500.

20. Effect was given to the recommendations made by the Committee by amendments made from time to time in the Rules of the Supreme Court, and, in particular, by the Matrimonial Causes Rules, 1937. The number of Assize towns at which matrimonial causes might be heard as well as the number of District Registries in which matrimonial causes might be commenced and prosecuted have been greatly increased. By provision made in 1944 matrimonial causes of all types may proceed in any of the High Court District Registries specified for the purpose, and may be tried at any one of the Assize towns so specified. The Rules of the Supreme Court applicable to the matter are contained in Order XVI, Rules 22-31H inclusive, and in the Matrimonial Causes Rules, 1937, as amended.

21. An outline of the present system as provided in these Rules will be given in the next chapter, but first it is necessary to call attention to certain other recent developments.

22. In the years immediately preceding the present war, signs began to appear in parts of the country that the strain on the profession was being felt. In several places the provincial Law Societies reported that they were experiencing difficulty in finding enough solicitors to conduct the cases. When the war began a Committee, under the Chairmanship of Mr. Justice Hodson, was considering the situation; but the outbreak of war terminated their deliberations.

23. During the progress of the war, however, more difficulties arose. Very many solicitors joined His Majesty's Forces, or left their practices to undertake other work of national importance; so that out of about 17,000 in practice immediately before the war there now remain rather less than 7,000. The proportionate number of solicitors' clerks, who also are temporarily lost to the profession is even higher. The result has been to throw an almost intolerable burden upon the remaining solicitors in respect of their private practices, and to make it almost impossible for them to find time to attend to the gratuitous work involved in undertaking Poor Persons' cases.

24. Furthermore a necessity arose for creating machinery to deal with the very large number of matrimonial causes in which persons serving in His Majesty's Forces were and are engaged.

25. At the same time it was necessary to take note of the fact that a very large proportion of the persons seeking relief by way of divorce, though they would in peacetime have been, by reason of the size of their incomes, within the scope of the Poor Persons Rules, and therefore capable of being admitted as Poor Persons, were now in receipt of pay which was at a rate greater than that which would allow them to be admitted.

26. It was, therefore, common ground among all those interested in the subject that some system must be devised which would be available for members of the Forces. But it was recognised that it would be useless to extend the financial limits imposed by the Rules unless some machinery could be devised to supply the gaps already mentioned among the solicitors' profession so that professional assistance should be available.

27. Accordingly, by agreement between the War Office, the Lord Chancellor's Department and the Treasury, the Rules of the Supreme Court were amended so as to enable the admission of any applicant desirous of instituting or being a party to a matrimonial cause who was in the army holding a rank not above that of sergeant, and not possessing such an income or such other assets as, in the opinion of the Poor Persons Committee, rendered it unreasonable that he should be admitted as a Poor Person. This amendment was applicable to women as well as to men.

28. At the same time arrangements were made by the War Office for the establishment in the various Commands at home of Command Legal Aid Sections and Legal Advice Bureaux, whose function is to make the preliminary enquiries so as to be satisfied that the applicant is entitled to the benefit of the scheme, and has a prima facie case for seeking relief, to ascertain the names of witnesses, and to take statements from them, and to forward the documents in the case to the Poor Persons Committee of the Provincial Law Society, or, where that Committee is unable to assign a solicitor, to the Secretary of the Poor Persons Committee (of the Law Society) in London. Similar organizations were later established in the larger Commands overseas to meet the case of members of the Forces of both sexes stationed there.

29. At a subsequent date the Army scheme was made available to the Royal Air Force, when Officers and Other Ranks of the R.A.F. were attached for duty with the Command Legal Aid Sections. Later again a scheme on similar lines was introduced by the Royal Navy.

30. The organisations described in the preceding paragraphs not only afford assistance to those people in the Forces who require legal aid, but also give legal advice to those who require it. It will be necessary to refer to this matter in a later part of this Report.

31. In 1942, the Law Society in consultation with the Lord Chancellor's Department and the War Office, established the Services Divorce Department

to undertake those cases with which the provincial Poor Persons Committees were unable to deal. (Details of the organisation of this Department will be found on page , and figures showing the amount of the work which it has done are contained in Appendix II.) The establishment of the Services Divorce Department has greatly relieved local Poor Persons Committees, but some of these Committees are still unable to find among the depleted numbers of the solicitors remaining in practice men who are able to undertake Poor Persons' cases. Where any Committee finds itself in this position, the cases arising in this locality are sent to the Law Society, who have established a Poor Persons Civilian Department on similar lines to the Department for the purpose of dealing with these cases.

### B. County Court

32. No system has ever existed in the County Court for the assistance of Poor Persons engaged in litigation in that court.

### C. Advice apart from Litigation

33. Allusion has already been made to the arrangements for giving legal advice to persons in the Forces. In addition to this system there exist two main agencies, namely:—

- (i) Poor Man's Lawyers, and
- (ii) Citizens' Advice Bureaux.

These will be considered in Chapter IV.

### D. Criminal Courts

34. For many years, and perhaps from time immemorial, there has existed the practice of granting "dock briefs." That is to say a prisoner on indictment has been entitled to the service in his defence of any barrister who happens to be in court at the time when he is in the dock on tendering to counsel the sum of one guinea without the intervention of a solicitor. A barrister so selected is under an obligation to accept the brief.

35. It has also long been the practice of Judges when about to try cases which present features of difficulty, either of fact or of law, if the prisoner is obviously not in a financial position to pay for counsel, to ask some member of the Bar to undertake the defence gratuitously.

36. In 1903 the Poor Prisoners' Defence Act of that year made provision for more substantial legal aid for prisoners tried on indictment, giving power to the committing Justices, or the Judge of the court of trial (including the Recorder or the Chairman of Quarter Sessions), to certify that he ought to have such aid, and that, in that event, a prisoner should be entitled to have a solicitor and counsel assigned to him. The Justices or Judge could only give such a certificate where it appeared, "having regard to the nature of the defence set up by the Poor Prisoner, as disclosed in the evidence given or statements made by him before the committing Justices, that it is desirable, in the interests of justice," so to do. Where a certificate was given, the expenses of the defence, including fees of counsel and solicitor, and the expenses of witnesses, were to be paid out of public money, the rates and scales of payment being settled by Regulations made by the Home Secretary. These Regulations provided for fees to counsel of £1 3s. 6d. which might be increased to £3 5s. 6d. if the Judge certified that the case was one of exceptional length or difficulty, and to the solicitor a fee not exceeding two guineas, which might be increased in similar circumstances to £5.

37. A committee to enquire into the facilities for giving legal aid to the poor was appointed, under the chairmanship of Mr. Justice Finlay, in 1925. This Committee in its first Report, dated 29th March, 1926,<sup>1</sup> suggested certain amendments to the existing system, namely:—

(a) That while there should not be any general increase in the fees allowed to counsel employed under the Act of 1903, there should be power in exceptional cases to allow up to ten guineas.

(b) That certain alterations should be made in the method of computing the out-of-pocket expenses incurred by solicitors acting under the Act.

(c) That where legal aid is granted, it should be done at the earliest moment, and that the committing Justices on committing a case where, in their opinion, legal aid is necessary, should ask the person to be committed whether he desires to apply for legal aid, and, if so, should deal with the matter then and there, without prejudice to the power of the Judge, where the Justices refuse legal aid, himself to grant it, if he thinks it desirable.

(d) That the committing Justices should have power to grant legal aid in the Magistrates Court in indictable cases, where the charge is one of murder, or where the Chairman certifies that legal aid is necessary by reason of the great gravity of the charge.

(e) That in summary cases, there should be a power to grant legal aid, but only where the presiding magistrate gives a certificate that it is necessary in the interests of justice by reason of exceptional circumstances in the case.

(f) In bastardy and maintenance cases they thought that the Justices should have power to certify for legal aid whether for the complainant or the respondent.

38. The Poor Prisoners Defence Act, 1930, gave effect with modifications to some of the recommendations made by the Finlay Committee. To what extent this was achieved will appear in the next chapter.

## II

### EXISTING FACILITIES FOR LEGAL AID IN CRIMINAL MATTERS

#### A. Magistrates Courts

39. Under the Poor Prisoners' Defence Act, 1930, free legal representation may be provided in Magistrates Courts by the magistrates granting a legal aid certificate or a defence certificate. A legal aid certificate is granted in respect of proceedings before Courts of Summary Jurisdiction. A defence certificate is granted to persons committed for trial for indictable offences.

#### LEGAL AID CERTIFICATES

40. Section 2 of the Poor Prisoners' Defence Act, 1930, provides that: "If it appears to a court of summary jurisdiction or examining justices that the means of any person charged before them with any offence are insufficient to enable him to obtain legal aid and that by reason of the gravity of the charge or of exceptional circumstances it is desirable in the interests of justice that he should have free legal aid in the preparation and conduct of his defence before them, the court or justices may grant in respect of him a certificate (in this Act referred to as a "legal aid certificate"), and thereupon he shall be entitled to such aid and to have a solicitor." Counsel may also be assigned where the defendant is charged with murder and the Justices think fit. These provisions apply both to cases being dealt with by the

<sup>1</sup> Cmd. 2638.

magistrates and to those where they are acting as examining justices with a view to committing for trial at Quarter Sessions or Assizes. A list of solicitors and counsel willing to undertake the defence of poor prisoners is kept by every clerk of assize and clerk of the peace and a copy is supplied to every clerk to justices in the district. On granting a legal aid certificate the justices are required at the same time to assign a solicitor to the prisoner from this list "after taking into account any representations which the prisoner may make." When Counsel has also been assigned the Solicitor so assigned may instruct any member of the Bar whose name appears on the list mentioned above.<sup>1</sup>

41. A Solicitor assigned under a legal aid certificate may be allowed a fee not exceeding £3 3s. and a further fee not exceeding £1 11s. 6d. for every day on which an adjourned hearing takes place but no fee is payable on an application for an adjournment or for a remand or for bail. In addition the solicitor may be allowed travelling expenses actually and necessarily incurred by himself and his clerk and, subject to taxation, any other out-of-pocket expenses actually and reasonably incurred. Counsel assigned under a legal aid certificate may be allowed a fee not exceeding £3 5s. 6d. and a further fee not exceeding £2 4s. 6d. for every day on which a hearing takes place, and in addition if he attends from a distance exceeding twenty miles measured in a straight line, a further fee not exceeding £1 1s. on each occasion.<sup>2</sup> All the fees payable under the Poor Prisoners Defence Act, 1930, are paid from the county fund or, in a county borough, the general rate fund, which for convenience are referred to in this Report as "local funds."

#### DEFENCE CERTIFICATES

42. Section 1 of the Poor Prisoners Defence Act, 1930, provides that where it appears to the committing justices upon a person being committed for trial for an indictable offence that his means are insufficient to enable him to obtain legal aid then, if he is being committed for trial upon a charge of murder, they must grant a defence certificate, and if he is being committed for trial upon any other charge, they may grant a defence certificate "if it appears to the certifying authority, having regard to all the circumstances of the case (including the nature of such defence, if any, as may have been set up), that it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence at the trial." When a defence certificate is granted the defendant is entitled to have solicitor and counsel assigned to him for this purpose in the same way in which a solicitor is assigned when a legal aid certificate is given. The solicitor is entitled to be supplied with a copy of the depositions by the clerk to the justices at the expense of local funds. Where the charge is one of murder or the case appears to present exceptional difficulty the justices may certify that in their opinion the interests of justice require that the prisoner shall have the assistance of two counsel.<sup>1</sup>

43. A solicitor assigned under a defence certificate may be allowed a fee not exceeding £4 14s. 6d. If the presiding judge at the conclusion of the trial certifies that the case was one of considerable length or difficulty, the fee may be increased to such sum as he may direct not exceeding £9. Counsel assigned under a defence certificate may be allowed a fee not exceeding £3 5s. 6d., or in the case of two counsel being instructed, a fee not exceeding

<sup>1</sup> Poor Prisoners (Counsel and Solicitors) Rules, 1931 (S.R. & O. 1931, No. 582, L.15) printed in Stone's "Justices Manual" 1944, p. 2378.

<sup>2</sup> Costs of Poor Prisoners Defence Regulations 1930 (S.R. & O. 1930, No. 1065, L.25) as amended by the Costs of Poor Prisoners Defence (Amendment) Regulations 1944 (S.R. & O. 1944, No. 207, L. 17) printed in Stone's "Justices Manual" 1944, p. 2376.

£5. 10s. 0d. may be allowed to the leading counsel. If the presiding judge at the conclusion of the trial thinks fit and the trial has lasted more than one full day, he may certify that the case was one of exceptional length or difficulty, and thereupon counsel's fee may be increased to such sum not exceeding £11 (or £16 5s. 0d. for leading counsel) as he may direct.<sup>1</sup>

#### COURT FEES

44. The only court fees which affect a person granted a certificate are fees payable on the issue of a witness summons, which amount to 2s. 6d.

45. The magistrates have power, however, to remit court fees in any proceedings before them for poverty or other reasonable cause.<sup>2</sup>

#### WITNESSES' ALLOWANCES

46. There is no provision for the payment of witnesses' expenses in summary cases, but in indictable offences these expenses are paid out of the local funds.

#### B. Quarter Sessions—Appellate Jurisdiction

47. Legal aid in the trial of criminal cases at Quarter Sessions is explained in paragraphs 50-52, in conjunction with legal aid in criminal cases at Assizes. Part of the work of Quarter Sessions, however, consists of hearing appeals from magistrates courts.

#### APPEAL AID CERTIFICATES

48. Where notice of appeal to Quarter Sessions against a conviction for an offence has been given and the appellant or the other party has not sufficient means to obtain legal aid, either may apply to the magistrates court for an appeal aid certificate. This may be granted if it appears to the court that the applicant's means are insufficient to enable him to obtain legal aid, and that by reason of the nature of the offence of which the appellant was convicted, or by reason of the sentence or of exceptional circumstances, it is desirable in the interests of justice that the applicant should have free legal aid in the preparation and conduct of the appeal, or, as the case may be, in resisting the appeal. If the application is refused by the magistrates there is a right of appeal to Quarter Sessions.<sup>3</sup>

49. The fees payable to solicitors and counsel assigned under an appeal aid certificate are similar to those payable when a defence certificate is granted (paragraph 43)<sup>4</sup> and are paid out of local funds in the same way.

#### C. Quarter Sessions and Assizes

50. It is convenient to deal with legal aid in criminal matters at Quarter Sessions and Assizes together.

#### DEFENCE CERTIFICATES

51. If the committing justices have not granted a defence certificate as mentioned in paragraph 42, such a certificate may be granted by the Judge, Recorder, or Chairman of the court of trial at any time after reading the depositions.

<sup>1</sup> Costs of Poor Prisoners' Defence Regulations 1930 (S.R. & O. 1930, No. 1065, L 25) as amended by the Costs of Poor Prisoners' Defence (Amendment) Regulations 1944 (S.R. & O. 1944, No. 203, L 17), printed in Stone's "Justices Manual", 1944, p. 2376.

<sup>2</sup> Criminal Justice Administration Act 1951, Section 12.

<sup>3</sup> Summary Jurisdiction (Appeals) Act, 1933.

<sup>4</sup> Costs of Poor Appellants and Respondents (Summary Jurisdiction Appeals) Rules 1933 (S.R. & O. 1933, No. 1119, L 23).

## DEFENCE AT THE REQUEST OF THE COURT, AND DOCK BRIEFS

52. The Poor Prisoners' Defence Act, 1930, did not affect the practice of granting dock briefs or of requesting members of the Bar at Quarter Sessions or Assizes to give their services to the prisoner except that defences undertaken at the request of the court are now paid for out of local funds. The Act of 1930 has, however, resulted in a considerable reduction in the use of these two forms of procedure.

### D. Court of Criminal Appeal

53. The Criminal Appeal Act, 1907, Section 10, provides that the Court of Criminal Appeal may assign a solicitor and counsel, or counsel only to an appellant in any appeal, or proceedings preliminary or incidental to an appeal, when it appears desirable in the interests of justice that the appellant should have legal aid and that he has not sufficient means to enable him to obtain that aid. (In practice a solicitor as well as counsel is rarely assigned, and legal aid is rarely granted in appeals against sentence only.) Section 15(5) of the Act imposes a duty on the Registrar of the Court of Criminal Appeal to report to a judge thereof any case in which it appears to him that, although no application has been made for the purpose, a solicitor and counsel, or counsel only, ought to be assigned to an appellant.<sup>1</sup> The Clerk of Assize on each Circuit prepares a list of Counsel and Solicitors willing to act for appellants under the Act, and forwards the list annually to the Registrar of the Court of Criminal Appeal, who selects Counsel and a Solicitor from the lists when legal aid is assigned.<sup>2</sup>

54. The fees allowed to Solicitors and Counsel are not exceeding £2 2s. 0d. for the Solicitor and not exceeding £2 4s. 6d. for Counsel, with power in the Registrar to increase these sums in exceptional circumstances.

55. The expenses of legal aid under the Act are defrayed out of local funds.

### E. House of Lords

56. Somewhat similar provisions apply to the case of appeals to the House of Lords.

### F. Other Facilities

#### LEGAL AID FROM TRADE UNIONS

57. We refer below (paragraphs 88 and 114) to the facilities for legal aid and legal advice given by trade unions to their members but we should mention here that the rules of many trade unions provide that legal aid shall be provided by the union only when it is necessary for the protection of a member charged with an offence alleged to have been committed in the course of his employment.

#### LEGAL AID FROM CHARITABLE FUNDS

58. At least one charitable fund exists to provide legal aid in criminal cases and there may be others. The fund to which we refer is the Poor Prisoners' Defence Fund which was endowed by a Mrs. Rose Hyland in 1910 and is administered by three trustees under a scheme of the Court of Chancery of the County Palatine of Lancaster. The income is used to provide legal aid for accused persons and prisoners (with a preference for those brought before any court in the County of Lancaster) who would otherwise be unable through lack of means, to obtain professional or expert assistance for their defence in proceedings before any court of criminal jurisdiction in England.

<sup>1</sup> Criminal Appeal Rules 1908, Rule 37 (S.R. & O. 1908, No. 227, L.6).  
<sup>2</sup> Criminal Appeal Rules 1908, Rule 38 (S.R. & O. 1908, No. 227, L.6).

## EXISTING FACILITIES FOR LEGAL AID IN CIVIL MATTERS

59. The Courts having jurisdiction in civil matters are:—

The House of Lords,  
The Court of Appeal,  
The High Court,  
The County Court,

Courts of special jurisdiction such as the Lord Mayor's and City of London Court, and Liverpool Court of Passage,  
Special Tribunals such as Pensions Appeal Tribunals,  
Quarter Sessions in appeals from Justices in civil matters,  
Petty Sessions in Matrimonial cases, Bastardy, Civil Debt and sundry other matters.

### House of Lords

60. In the House of Lords facilities for legal aid exist only in the form of the *in forma pauperis* procedure to which we have referred in paragraph 6.

### Court of Appeal

61. The existing facilities for legal aid in this Court are the same as those for the High Court which are described in the next paragraph.

### High Court

62. As has been indicated earlier there is now a system whereby a poor person as defined by the rules (i.e. one who has neither capital exceeding £50 nor income exceeding £2 a week; in special circumstances those figures can be doubled) may obtain legal aid. Such aid can be given in any case to which a poor person is party in the High Court. The basis of this is that neither the barristers nor the solicitors concerned receive any remuneration for their services, and the State forgoes Court fees.

63. To work the system the Law Society appoints local committees. The persons appointed have to be approved by the Lord Chancellor. These Committees receive and consider applications for legal aid. With them alone rests the decision (a) whether the applicant is within the means limit, (b) if the applicant's capital exceeds £50 and/or his income exceeds £2 a week whether the limits shall be extended, (c) whether the applicant has a *prima facie* case. If the Committee decides that the applicant ought to have legal aid it grants a certificate known as a Poor Persons Certificate. There is no appeal from the refusal of the Committee to grant a certificate.

64. In determining whether the capital of the applicant exceeds £50 or £100 wearing apparel and tools of trade and the subject matter of the proceedings are excluded, but household furniture is included. Income includes income from all sources. There is an exception to this in the newly introduced procedure for members of H.M. Forces, which is described in paragraphs 70 and 119-123.

65. A very large proportion of practising solicitors have volunteered to undertake Poor Persons Work. The Poor Persons Committee has a list of volunteer barristers and solicitors and when it grants a certificate it nominates a barrister and a solicitor from the list, to undertake the applicant's case. From that moment the relationship of solicitor and client exists between the solicitor nominated and the poor person. No poor person may discharge the solicitor or barrister acting for him without the leave of the Court or of a

Judge, and no solicitor or barrister may discontinue his assistance unless he satisfies the Court or a Judge or the Poor Persons Committee that he has reasonable ground. If, during the conduct of a case a poor person's means increase beyond those stated in the certificate he must report that fact to the conducting solicitor who must report it in writing to the Poor Persons Committee. The Committee may then apply to the Court or a Judge to discharge the certificate.

66. A litigant, who has been granted a Poor Persons Certificate, is granted exemption from payment of Court fees, and, save in exceptional circumstances, is not liable to pay costs either to his own solicitor or to the other side if he is unsuccessful. The exceptional circumstances are as follows:—

(a) If it appears to the Court or a Judge that any other party has acted unreasonably in bringing or defending proceedings or in his conduct of them, or that the special circumstances of the case require it, the Court or Judge may order the other party to pay the costs of the poor person, including profit costs, in addition to out-of-pocket expenses, but even in these circumstances the other party will not be ordered to pay counsel's fees or Court fees;

(b) Where it appears to the court or a Judge that the proceedings are of such length or difficulty as to throw an unusual burden on the solicitor acting for the poor person, the court or Judge may order the other party to pay such sum as the court or Judge thinks fit in respect of such unusual burden;

(c) The court or Judge may order a sum to be paid to the conducting solicitor out of any money recovered by the poor person provided that the total amount to be paid out for profit costs shall not exceed one-fourth of the sum recovered after deduction of all proper disbursements made by the solicitor;

(d) Where it appears to the court or a Judge that a certificate has been obtained by fraud or misrepresentation the poor person may be ordered to pay the costs of the other party.

67. The poor person has to pay out of pocket expenses such as witness's expenses, fares, telephone calls, but not office expenses. In practice the Poor Persons Committee requires the poor person to pay a deposit to meet these expenses, and the amount usually required is £5. If the actual expenses exceed this sum the Poor Person is required to provide a further sum; if they are less the balance is repayable to the Poor Person. In many cases a poor person has made no application for repayment and cannot be traced, and a sum of £9,700 is now in the hands of the Paymaster General representing the accumulation of the unpaid surpluses.

68. When a poor person succeeds in an action he may not recover costs from the unsuccessful litigant, beyond the amount that he himself has paid to meet out of pocket expenses.

69. We feel we ought not to pass from this subject without adding our tribute to that frequently paid by the Judges but too little appreciated by the public to the work done for poor persons by barristers and solicitors. They do not merely work without reward, but in the case of barristers often, and in the case of solicitors always, at cost to themselves. Barristers often have to incur travelling expenses, both branches of the profession have, of course, to bear their overhead expenses. We are informed that of all costs received by solicitors about 70 per cent. is swallowed up in overhead expenses, so that every Poor Persons Case undertaken by a solicitor represents a substantial financial burden to him.

*H.M. Forces*

70. The benefits of the Poor Persons Procedure outlined above extend to Navy, Army and R.A.F. personnel not above the rank of Sergeant or equivalent rank (including members of the W.R.N.S., A.T.S., W.A.A.F., and V.A.Ds.) provided that the member does not possess such an income or other assets (excluding service pay and emoluments) as to render it unreasonable that he or she should be admitted as a Poor Person. We refer to this subject more fully below when explaining the work of the Services Divorce Department (paragraphs 71 to 81) and the facilities for free legal aid for members of H.M. Forces (paragraphs 119 to 123).

*The Services Divorce Department*

71. In September, 1941, the Law Society informed the Lord Chancellor that, in view of the absence of so many solicitors and clerks on active service, many Poor Persons Committees had reported that there was substantial delay in the allocation of cases for conduct by solicitors on the rotas. In order to meet this situation the Law Society offered to set up a department to conduct the matrimonial causes of service men and women, and suggested that the military authorities should make arrangements whereby lawyers already serving should assist in the preparation of cases and the collection of evidence. These proposals commended themselves to the Lord Chancellor and in full consultation with him and with the War Office the Services Divorce Department was duly established by the Law Society and started its work on the 1st January, 1942.

72. Any member of the Forces who is, or is entitled to be, a party to any matrimonial cause in the High Court may be represented by the department provided that he or she is not above the rank of Sergeant, Petty Officer, or Petty Officer Wren and, exclusive of his or her service pay and allowances, has not such private assets as would make it unreasonable that he or she should be admitted as a poor person. The department also acts for the wives of serving men who come within the same limits as to rank and test as to private assets.<sup>1</sup>

73. The Law Society are entitled to receive a sum not exceeding three guineas towards the expenses of the department, and this sum is included in the deposit (usually fixed at £5) which is required from the applicant for a poor person's certificate.<sup>2</sup>

74. The Naval Legal Aid Sections and the Army and R.A.F. Legal Aid Sections and Bureaux assist by obtaining statements from service men and women and their witnesses, and by preparing the cases for submission to the Poor Persons Committee. When a certificate is issued by the Committee, the case is assigned to one of the conducting solicitors in the Services Divorce Department.

75. Although the establishment of the Services Divorce Department considerably eased the burden of poor persons cases which fell upon solicitors remaining on the rotas throughout the country, by the end of 1942 the number of solicitors was insufficient to enable even the civilian cases to be allotted for conduct expeditiously and, in the circumstances, the Law Society established a Civil Section of the Divorce Department to conduct any case in which a Poor Persons Committee, whether in London or the provinces, found it impracticable to nominate a conducting solicitor within a reasonable time, or where a conducting solicitor who had already been nominated was unable effectively to proceed with the case.

<sup>1</sup> R.S.C. Order XVI, Rule 23A

<sup>2</sup> R.S.C. Order XVI, Rule 28A.

76. Out of the deposit paid in civilian cases also which are assigned to the Civil Section of the Divorce Department for conduct, a sum of three guineas may be paid to the Law Society towards the expenses of the Department.<sup>1</sup>

77. The department as at present constituted is divided into four sections:— the Service Section, the Civil Section, the Assize Section, and the Accounts Section. The Service Section consists of five units or self-contained practices, each carried on by a solicitor who has his own staff. The Civil Section and the Assize Section respectively each consist of one unit under a solicitor. The Assize Section, which has only recently been formed, takes over all cases to be tried at Assizes as from the date they are set down for trial, and the solicitor in charge of the Section acts as agent for all the conducting solicitors at the larger Assizes, which he attends where the number of the department's cases to be heard is such that it is not possible to obtain the services of local solicitors to act as agents. The Accounts Section has a cashier and four assistant cashiers, who keep the individual ledger accounts of the clients of all conducting solicitors, and is the Section responsible for payment of all clients' disbursements.

78. The whole department is supervised by a solicitor, who has three clerical assistants and is available for consultation and responsible for the allocation of new cases to the various conducting solicitors.

79. It should be observed that the Services Legal Aid Schemes substitute a "rank test" for the normal "means test" under the Poor Persons Procedure, and have in effect resulted in extending the scope of the Procedure, in view of the fact that the Committees, when considering whether it is reasonable that a service man or woman should be admitted as a poor person, are not to take into account service pay and allowances.

80. Many practical difficulties have arisen as a result of so many of the clients being overseas and witnesses residing in remote parts of the country, so that all instructions and statements have to be obtained by correspondence and the conducting solicitor often has not had an opportunity of interviewing either the client or any witness until the day of trial.

81. Considerable difficulties have also been experienced by the Law Society in securing the necessary staff for the department, but as the department has been developed so the number of cases handled has steadily increased, as may be seen from the statistics contained in Appendix III.

#### County Court Special Tribunals, etc.

82. Apart from the unofficial facilities discussed in the next paragraph there is no provision for legal aid for the Poor in the County Court (save that in remitted cases where legal aid has been granted in the High Court it continues in the County Court), Courts of Special Jurisdiction, or Special Tribunals, nor in civil cases at Quarter Sessions or Petty Sessions.

#### Unofficial Facilities for Legal Aid in Civil Matters

83. Although, as already mentioned, there is no official provision for legal aid in civil matters except in the High Court and Court of Appeal efforts have been made by unofficial bodies to provide some facilities for legal aid in civil matters, particularly in the magistrates' courts and the county courts. These may be grouped under the following headings:—

- (a) Poor Man's Lawyer organisation;
- (b) Free Legal Aid for Members of H.M. Forces;
- (c) Trade Unions and Approved Societies;
- (d) Charitable funds.

<sup>1</sup> R.S.C. Order XVI, Rule 28B.

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## (a) POOR MAN'S LAWYERS

*The Bentham Committee*

84. The Bentham Committee which was formed in 1929 provides facilities for legal aid in selected cases chiefly in the County Courts which are referred to it by the Poor Man's Lawyer centres in London which are affiliated to the Bentham Committee. When a case arises at such a Poor Man's Lawyer centre which seems to call for legal aid it is referred to the Bentham Committee who usually arrange to interview the poor person concerned. The Committee will assist only those applicants whose income is not more than £4 per week. The Committee have facilities for obtaining free police reports and in some classes of case also free medical reports. If, after considering the evidence collected, the Committee consider that there is a *prima facie* case, they will send the applicant to one of their Honorary Solicitors (of whom there are 60 in peacetime) who proceeds to handle the case gratuitously in the same manner as he would deal with any other case in the course of his own private practice. If necessary one of the Committee's Honorary Counsel (of whom there are 90 in peacetime) is allocated to the case as well. If the applicant is too poor to pay court fees or other necessary disbursements, the Committee are prepared to pay them.

85. It is explained to the poor persons who are assisted that in the event of their losing the case they will themselves be liable to pay any costs to the other side, but two important features of the Committee's work are that in no circumstances do the Solicitors acting for the poor person make any charge against him and also that if the solicitor recovers costs from the other side he hands them over to the Committee. We refer below (paragraphs 103-104) to the work of the Bentham Committee in providing free legal advice.

*Other Poor Man's Lawyers*

86. Some Poor Man's Lawyer centres retain their own firms of solicitors who are prepared to take cases on reasonable terms and some provincial Poor Man's Lawyers maintain rotas of conducting solicitors. Unlike the Bentham Committee, however, most of the provincial Poor Man's Lawyers allow the conducting solicitor to retain any costs he recovers from the other side. Very often these Poor Man's Lawyers have a small fund from which court fees and medical fees and other expenses can be guaranteed if the conducting solicitor considers that the case is a good one. In the event of the case being lost the Poor Man's Lawyer will reimburse the solicitor for court fees and witnesses' allowances from funds at their disposal. In one area at least the arrangements also include a rota of conducting solicitors who are prepared to take matrimonial and affiliation cases in the magistrates' courts either for a nominal fee of £1 is. 6d. or for no fee at all.

## (b) LEGAL AID FOR H.M. FORCES

87. Under the schemes for Free Legal Aid for Members of H.M. Forces, which are described in detail below (paras. 119-123), it is provided<sup>1</sup> that if "the applicant's case appears likely to result in litigation in some court in England other than the High Court the adviser will advise the applicant to seek a practising solicitor and so far as he can will put him in the way of finding one." In view of this provision the Law Society asked the provincial Law Societies to make what arrangements they could for securing that solicitors in their area would assist members of H.M. Forces who had cases in that area in courts other than the High Court. This has been done in some areas by the Secretary of the provincial Law Society and in others by the local Poor Man's Lawyer organisation.

<sup>1</sup> Free Legal Aid, Army Council Instruction 1398 of 4th July, 1942.

## (c) TRADE UNIONS AND APPROVED SOCIETIES

*Trade Unions*

88. Nearly all trade unions provide legal aid for their members in matters connected with their employment but not in matters not so concerned. The mode of providing the legal aid varies. Some trade unions have their own Solicitors' Department, others have a Legal Department which, though not staffed by professional lawyers, is staffed by laymen with a knowledge of the particular branches of law with which they have to deal. In other cases the unions refer their members to a firm of solicitors, the union bearing the cost.

*Approved Societies*

89. Many approved societies will assist their members who may have claims for workmen's compensation, or at common law for personal injuries, to prosecute such claims, and the National Health Insurance Act contains provisions enabling a society to make advances pending the settlement of the claim and in certain circumstances to take proceedings themselves to enforce the claim.<sup>1</sup> No corresponding provision exists for those who are deposit contributors under the National Health Insurance Act and not members of an approved society.

## (d) CHARITABLE FUNDS

90. Legal Assistance is provided by various charitable funds of which the following are examples.

*Metropolitan Magistrates' Court Poor Box Funds*

91. The income of these poor box funds comes mostly from city companies and from the interest on investments made from bequests. Legal aid can be provided by metropolitan magistrates out of these funds in matrimonial and affiliation cases which are outside the scope of the Poor Prisoners Defence Act, 1930 (see paragraph 40 above). The fees paid to solicitors out of the poor box funds in such cases are the same as those paid in cases where a legal aid certificate is granted under the 1930 Act.

*Women and Children's Protection Society*

92. The Women and Children's Protection Society whose legal aid is confined to cases within the metropolitan area (although advice is given by letter to women who apply to it from any part of England and Wales) are able from its funds to provide free legal aid to satisfactory applicants who are unable to pay for the help of a solicitor. The help is limited to women in matrimonial cases and affiliation cases and in cases under the Guardianship of Infants Acts.

*Moral Welfare Associations*

93. Some Moral Welfare Associations engage solicitors to assist applicants for affiliation orders, and also will engage solicitors and counsel to act for a woman who has obtained an affiliation order if an appeal against the order is made by the man to Quarter Sessions.

*Soldiers', Sailors' and Airmen's Families Association*

94. This association which has branches throughout the country is prepared to advance the railway fare to secure the attendance of members of His Majesty's Forces as defendants or witnesses in matrimonial cases, affiliation cases or cases under the Guardianship of Infants Acts.

<sup>1</sup> National Health Insurance Act 1936, Sections 52 and 53.

*British Legion*

95. The British Legion pays the costs incurred by members of the Legion and their dependants in respect of certain types of legal proceedings (these do not include divorce proceedings).

## IV

**EXISTING FACILITIES FOR LEGAL ADVICE**

96. The existing facilities for legal advice are more sporadic than those for legal aid. There is no organised provision for legal advice throughout the country comparable with the provision made by the Poor Prisoners' Defence Act, 1930, for legal aid in criminal matters, or by the Poor Persons' Procedure for legal aid in civil matters in the High Court and the Court of Appeal.

**Gratuitous advice by members of the Legal Profession**

97. Lest it should be overlooked in an account which necessarily deals chiefly with organised facilities for legal aid and legal advice, we desire to mention the gratuitous legal advice given by members of both branches of the legal profession in the ordinary course of their work. This help, of course, is quite unorganised and on that account is apt to be overlooked, but there are probably few solicitor's offices which do not habitually carry clients from whom no payment will ever be asked in view of their circumstances. Similarly many members of the Bar are willing to give an opinion to solicitors for a poor client, or to appear in court on such a client's behalf without fee.

**Advice by Magistrates, Magistrates' Clerks and County Court Registrars**

98. Stipendiary Magistrates, Magistrates' Clerks and County Court Registrars frequently give advice on legal matters to poor persons.

**Poor Man's Lawyers**

99. The Poor Man's Lawyer is the oldest organisation offering legal advice for the poor. It began about fifty years ago in university and other settlements. The first was started at Toynbee Hall in 1893. Lord Finlay's Committee reported that in 1928 there were 27 non-political Poor Man's Lawyer centres in London and also 27 run by the three main political parties. Poor Man's Lawyers were also to be found in ten provincial towns.<sup>1</sup> Immediately before the outbreak of the present war the number of non-political centres in London had increased to 55 and the number of centres in the provinces was about 70, though many of these were very small, being offshoots from the local Council of Social Service, and not comparable with the usual type of Poor Man's Lawyer centre. Less than a dozen provincial towns with a population over 100,000 have a Poor Man's Lawyer organisation such as is described in these paragraphs. In many places, however, political parties have founded legal advice centres and have done most useful work on a non-political basis.

100. Poor Man's Lawyer centres are held in a variety of buildings, chiefly settlements, church halls, missions and social service centres, and are ordinarily open one evening a week. One or more barristers or solicitors attend to give legal advice and usually their names are not disclosed to the applicants. The advisers give their services without receiving payment, although at many centres there is a box where those who wish may put contributions. This money is used to meet expenses but not to pay the advisers or helpers. If

<sup>1</sup> Final Report 1928 Cmd. 3016, Appendices II and III.

there is a clerical helper the applicants are first interviewed by him and details of their names and addresses and the nature of the enquiry are entered on a form. The applicant then sees the legal adviser. It is not usually possible for this interview to take place in a separate room owing to the limited accommodation available. The adviser (or the clerical helper) satisfies himself by enquiry from the applicant that his means entitle him to seek free legal advice. The income scales which are followed vary, but in general advice is not given to those whose means exceed the £4 per week of the Poor Persons Rules. Allowance is made in some centres for the number of children and amount of rent. The adviser hears the applicant's statement of the facts and advises him. Frequently the advice shows that what has been felt to be a grievance is not really a grievance at all. Many, but not all, centres have a few standard text books, but if a question raises unusual points the adviser asks the applicant to return at a later session and refers to the authorities in his office in the meantime.

101. The facilities for letter-writing vary. At some centres the adviser drafts a letter for the applicant to send in his own name, and at others the adviser signs the letter himself as "honorary legal adviser," or as "Poor Man's Lawyer."

102. We give the following examples of Poor Man's Lawyer centres:

#### *The Bentham Committee*

103. We have referred (paragraphs 84-85) to the work of the Bentham Committee in providing legal aid in civil cases, but the committee also perform a most useful service in fostering and co-ordinating legal advice at Poor Man's Lawyer centres in London. It is largely due to the work of this Committee that the number of non-political centres increased from twenty-seven to over fifty between the publication of the Final Report of Lord Finlay's Committee and the outbreak of the present war. The Bentham Committee arrange for the attendance of barristers or solicitors at centres, provided such centres are affiliated to the Committee. Before agreeing to the affiliation of any centre enquiries are made to ensure that the centre is run under suitable conditions for the benefit of poor persons and not in the interests of the solicitors who attend it. (It is a regulation at nearly all Poor Man's Lawyer centres, both in London and in the provinces, that if an adviser takes cases requiring more than advice which are referred to him from the centre, he should not accept any case in which he has himself advised at the centre, except in very special circumstances.) If the enquiries are satisfactory the centre is affiliated on the understanding that the Committee's Regulations for the guidance of Poor Man's Lawyer centres will be observed. These Regulations aim at securing correct professional standards of conduct. (Somewhat similar Regulations have been made by some provincial Poor Man's Lawyer organisations, especially those run under the aegis of a provincial Law Society.)

104. The Bentham Committee's income of rather more than £600 a year is derived from subscriptions from individuals—chiefly members of the Bar and Solicitors—and professional bodies, such as the Law Society and the Inns of Court. It also receives donations from nearly all the Metropolitan Magistrates Courts Poor Box Funds.

#### *The Society of Our Lady of Good Counsel*

105. This is a Roman Catholic society whose work is in practice confined to London although occasionally help has been given in cases in other parts of the country. The assistance given is not confined to Roman Catholics. The Society combines the provision of legal aid (in the county courts and

the magistrates courts) and legal advice. Applicants are interviewed by a lady almoner who is a whole-time officer of the society. She enquires into their means and the nature of the case and, if the applicant's means are below the society's limits, he is referred to a solicitor who deals with the case as he would deal with that of an ordinary client except that he makes no charge. In some cases clients are interviewed by the solicitor at the society's office. It is an important feature of the society's work that cases are classified into fourteen categories and that solicitors and counsel are able to choose the type of work with which they are most familiar.

106. The society's income is derived from subscriptions from members of the profession, donations from some of the Metropolitan Magistrates Court Poor Box Funds and from money raised by social functions arranged for the benefit of the society's funds.

*Cambridge House Free Legal Advice Centre: Mary Ward Settlement Free Legal Advice Centre*

107. An arrangement has been made in London whereby all cases from Citizens Advice Bureaux south of the Thames are dealt with by the Cambridge House Free Legal Advice Centre and those north of the Thames by the Mary Ward Settlement Free Legal Advice Centre.

108. Cambridge House Legal Advice Centre was in peace-time the largest single Poor Man's Lawyer centre in the country and dealt with 40 to 50 cases on the one evening a week when the centre was open. At the outbreak of war, when all evening activities stopped, the centre tried the experiment of opening for a short period during the day, and from this has sprung the interesting development of a whole-time Poor Man's Lawyer centre staffed mainly by full-time solicitors who receive small salaries and where whole-time typing and clerical assistants are also employed. This has facilitated an increase in letter-writing and has also made it possible for the centre to do much more by way of negotiation than the normal type of Poor Man's Lawyer centre can do.

109. The centre's income is derived from subscriptions from people who are interested in the work (many being members of the legal profession), grants from the Pilgrim Trust and the Ministry of Health (the latter on account of Citizens' Advice Bureau work done in the same premises) and contributions from applicants for advice and those who have received help at the centre in the past.

110. The Mary Ward Settlement Free Legal Advice Centre works on similar lines to Cambridge House, being open every day, and receives cases from Citizens' Advice Bureaux and other organisations north of the Thames.

*The Birmingham Poor Man's Lawyers Association*

III. The particular feature of this Association's work to which we desire to draw attention is that the provision of legal advice and legal aid generally is probably more centralised in Birmingham than in any other large town. This is due to the fact that the Birmingham Law Society, the Birmingham Poor Persons Committee and the Birmingham Poor Man's Lawyers Association are all administered from the Law Library of the Birmingham Law Society. Some members of all three bodies are the same and they have the same Honorary Secretary, a practising solicitor who exercises a general supervision by daily attendance at the Law Library. This unity of administration is obviously much to be desired.

*The Manchester and Salford Poor Man's Lawyer Association*

112. This Association runs Poor Man's Lawyer centres at five branches in the two cities. The branches are conducted on the usual lines of a Poor Man's Lawyer centre, all the advisers, branch secretaries, clerical helpers and short-hand-typists who attend being voluntary workers. There is a whole-time assistant secretary who receives a salary and who works at a central office. This office is not intended for the purpose of giving advice (the assistant secretary is not a barrister or solicitor) but to implement the work done at the branches. The Association consider that cases involving more than one or two letters or complicated enquiries should be referred to a conducting solicitor; thus about 500 of the 3,000 cases dealt with by the Association annually are referred to one of the conducting solicitors, each of whom takes roughly one case a month. The rota of conducting solicitors is maintained in the central office, and the conducting solicitor may be asked to report the result of negotiations, etc., to the central office. When cases call for co-operation with other social service organisations, this can best be done through the central office.

113. The Association's income is derived from subscriptions (chiefly from members of the legal profession) and from the Manchester Law Society, as well as from the contributions made by applicants for advice at the branches. In addition the Association receive a subscription from the Social Welfare Committee of the Manchester City Council, with the approval of the Minister of Health, as an "institution calculated to render useful aid in the administration of the relief of the poor".<sup>1</sup>

**Trade Unions**

114. We have referred (paragraphs 57 and 88) to the facilities for legal aid in criminal and in civil matters which are provided for their members by nearly all trade unions. In addition trade unions give legal advice to their members and this, unlike legal aid, is not confined to matters connected with their employment.

**Information by Local Authorities concerning the Rent Acts**

115. Landlords and tenants may obtain information from their local authority as to their rights and duties under the Rent Restrictions Acts.

**Citizens' Advice Bureaux**

116. The Citizens' Advice Bureaux organisation is the most widespread voluntary service providing information and advice for the public. Its purpose is to provide for all citizens a free service of information and advice on personal and domestic problems, to put individuals in touch with the best means of obtaining the help they need, whether through statutory or voluntary organisations, and generally to make available to the citizen information as to the provision which exists for his benefit. The service was established by the National Council of Social Service at the outbreak of the war in 1939, in co-operation with a number of other voluntary agencies, and there are now about one thousand Bureaux widely dispersed throughout the country. Each Bureau is an autonomous unit and works in close association with the statutory authorities and voluntary bodies. They are normally conducted by a representative committee; in some towns working under the auspices of a Council of Social Service or case work agency; and organising their work so as to be able to call on the services of experts and individuals with special knowledge. In each Civil Defence Region there is a committee representative of the Bureaux in the area, which advises on questions of policy and organisation and which assists in maintaining and improving the quality of the work.

<sup>1</sup> Poor Law Act 1930, Section 67 (e).

117. The National Council of Social Service provides a headquarters service which maintains a flow of essential information to each Bureau, and also a staff of travelling officers who keep in close touch with Bureau workers and committees and are able to advise on the solution of difficult problems of organisation and advice. There are some 10,000 workers at the Bureaux, 90 per cent. of them voluntary, and they represent a great variety of interest and experience. The importance of this service was recognised by the Government early in the war and the Ministry of Health has provided an annual grant in aid of the work, and many local authorities have also given assistance in the provision of premises and equipment and in some cases through money grants. Altogether over nine million enquiries have been brought to the Bureaux since the inception of the service. They cover such matters as food and clothes rationing, evacuation, call up to the Forces, direction to employment, domestic difficulties, Civil Defence, War Damage, Income Tax, housing, communication with foreign countries, refugees. Sometimes the enquiries can be dealt with by simple explanation of the regulations, but often reference must be made to some Department or organisation on questions requiring expert attention. For example, the Bureaux are advised to refer individuals making claims under the War Damage Act to the local centre of the Poor Man's Valuer Association.

118. In planning this service it was anticipated that many legal problems would be brought to the Bureaux and early in 1940 consultations took place between the National Council of Social Service and the Law Society as to how this need might be met. The Bureaux were advised to secure professional help through Poor Man's Lawyers or Legal Advice Centres where these existed, but this only affected a number of towns and the National Council and the Law Society prepared a tentative scheme to meet the needs in other places. This provided for the grouping of Bureaux and the establishment of Legal Advice Centres in conjunction with the local Law Society. The scheme proposed that legal assistance at rates reduced according to the means of the applicant, should be provided by a panel of solicitors who would give advice through the Centre. The absence on war duties of many members of the legal profession made it very difficult to provide legal assistance for the Bureaux throughout the country and the scheme was only operated in some towns. In consequence, the Bureaux have in some instances made arrangements with local solicitors to help in dealing with more difficult enquiries. In some places lawyers attend the Bureaux at specified times to see those unable to pay for legal advice but the more usual procedure is for the solicitor to see the enquirers at his own office or to advise the Bureau as to the appropriate advice that should be given. The Bureaux have found it difficult to secure a satisfactory clearance of legal questions during war time but nevertheless the help which many solicitors and barristers have provided has been greatly valued by Bureau workers.

#### Free Legal Aid for Members of H.M. Forces

119. We have referred already (paragraphs 27-31, 70, 71 and 87) to schemes for free legal aid for H.M. Forces. The Army Legal Aid Scheme<sup>1</sup> was introduced in July, 1942, for the British Army and in October, 1942, was made available for the R.A.F.<sup>2</sup> The Naval Legal Aid Scheme<sup>3</sup> was introduced in July, 1943, for the Royal Navy and Royal Marines. Both Schemes apply to all ranks up to and including the ranks of Serjeant and Petty Officer (including

<sup>1</sup> The Scheme is explained in a pamphlet entitled "Free Legal Aid" notified in Army Council Instruction No. 1398 of 1942 (dated 4th July 1942).

<sup>2</sup> The Army scheme was adopted by the R.A.F. by Air Ministry Order No. A 1163 of 1942.

<sup>3</sup> The Scheme was introduced and explained by Admiralty Fleet Order No. 3046 of 1943 dated 8th July 1943.

women members of the Services) provided that they have not sufficient private resources apart from their pay and allowances to employ their own solicitors and Counsel. The Army Scheme was later made available to members of the certain Allied Armies who are serving in this country limited to their English and Scottish legal problems.

120. Both Schemes deal only with the applicants' civil legal problems, including divorce, and do not deal with criminal matters or anything which affects discipline and the relationship of the applicants with the Service in which they are employed. Within those limits the Schemes are designed to provide legal advice and the preparation of causes to be heard in the Courts of Great Britain.

121. The Army Legal Aid Scheme consists of Unit and Formation Legal Advice Bureaux and Command Legal Aid Sections at home and overseas. Before an applicant can be advised or assisted, he is required to sign a form stating that he has not sufficient resources to enable him to employ professional advisers, and that he understands that he will have no right to compensation either against the State or against any person giving advice or assistance from which he may suffer loss or damage. The Legal Advice Bureaux are staffed by serving barristers and solicitors (Army and R.A.F.) acting voluntarily, and their function is to give legal advice at appointed times in unofficial places such as Regimental Quiet Rooms. A further duty is to obtain the statements of witnesses resident in their neighbourhood for the purpose of Court proceedings by applicants in other areas. When Legal Advice Bureaux find that the legal problem is not readily solved without reference to text books or that it is likely to involve Court proceedings, they refer the cases to the Legal Aid Section of the Command. Where Commanding Officers are unable to form Legal Advice Bureaux because no serving barristers or solicitors are available, or because in Units at home they are unable to invoke the assistance of civilian lawyers, they refer the applicants to their Command Legal Aid Section.

122. The Command Legal Aid Sections are staffed by whole-time serving barristers and solicitors and solicitors' clerks from both the Army and R.A.F. The officers are barristers or solicitors while the other ranks are solicitors or solicitors' clerks. The duties of Legal Aid Sections are to give legal advice and, where Court proceedings are contemplated in the English jurisdiction, to prepare the cases for submission to the Poor Persons Committee under the Poor Persons Rules, or for conduct by solicitors in the inferior Courts. The Sections do their best to obtain the services of civilian solicitors, who will conduct the cases in the inferior Courts without remuneration or for nominal fees. Those cases which fall to be dealt with in the Divorce Court are, when the certificates have been granted under the Poor Persons Rules, assigned to the Services Divorce Department for conduct. By arrangement with the several Associations, free advice by Surveyors and Valuers is available to the Legal Aid Sections when required. The Command Legal Aid Sections supervise and assist the Legal Advice Bureaux in their Commands. In Commands overseas Forward Legal Aid Sections are often established in addition to the Legal Aid Section at Command Headquarters for the convenience of troops where Legal Advice Bureaux cannot be formed.

123. The Naval Legal Aid Scheme differs from the Army Legal Aid Scheme in that it has no Legal Advice Bureaux, but consists only of Legal Aid Sections established in the home manning ports, namely, Chatham, Lowestoft, Portsmouth and Devonport, to which the legal problems of applicants are submitted through Commanding Officers. The Naval Legal Aid Sections are staffed by whole-time serving officers and other ranks in the same way as the Army Legal Aid Sections, and their duties are similar. Their difficulty of being without Legal Advice Bureaux to obtain statements in cases for Court proceedings is to some extent made good by their invoking the assistance of civilian lawyers and other persons to take the statements in the neighbourhood of the witnesses.

## CONCLUSIONS AND RECOMMENDATIONS\*

## Outline

124. The Committee has been greatly impressed by the evidence submitted pointing to the need for a new approach to the whole question of legal assistance.

125. Many witnesses paid tribute to the work of Poor Man's Lawyers and Legal Aid Centres, but we are satisfied that though their work is often excellent, and generous as the legal profession has been with their gratuitous service, the total of all the existing free facilities is inadequate to meet the present demand. We think that it would be impossible to expect any extension of gratuitous professional services, particularly as there appears to be a consensus of opinion that the great increase in legislation and the growing complexity of modern life have created a situation in which increasing numbers of people must have recourse to professional legal assistance.

126. It follows that a service which was at best somewhat patchy has become totally inadequate and that this condition will become worse. If all members of the community are to secure the legal assistance they require, barristers and solicitors cannot be expected in future to provide that assistance to a considerable section as a voluntary service.

127. In framing our recommendations we have found it necessary first to clear certain questions of general principle, the answers to which will determine the range of legal aid and advice, the type of persons to whom it will apply, and the nature of the organisations through which it will be provided. Our views on these questions may be summarised as follows:—

(1) Legal aid should be available in all Courts and in such manner as will enable persons in need to have access to the professional help they require;

(2) This provision should not be limited to those who are normally classed as poor but should include a wider income group;

(3) Those who cannot afford to pay anything for legal aid should receive this free of cost. There should be a scale of contributions for those who can pay something towards costs;

(4) The cost of the scheme should be borne by the State, but the scheme should not be administered either as a department of State or by local authorities;

(5) The legal profession should be responsible for the administration of the scheme, except that part of it dealt with under the Poor Prisoners' Defence Act;

(6) Barristers and solicitors should receive adequate remuneration for their services;

(7) The Law Society should be requested to frame a scheme on the lines outlined in our detailed recommendations providing for the establishment of Legal Aid Centres in appropriate towns and cities throughout the country;

(8) The Law Society should be answerable to the Lord Chancellor for the administration of the scheme, and a central Advisory Committee should be appointed to advise him on matters of general policy;

(9) The term "poor person" should be discarded and the term "assisted person" adopted.

\*Recommendations are denoted throughout this chapter by asterisks.

### Responsibility for Administration of Scheme

128. From the outline of our recommendations given in the last paragraph it will be clear that an organisation will have to be set up and the question immediately arises as to who shall administer the scheme. From the evidence given to us there appear to be three possibilities:—

A scheme administered by:—

- (1) The State,
- (2) Local authorities,
- (3) The lawyers themselves (the use of the word "lawyers" is perhaps open to criticism, but it is a convenient term and where we use it in the course of our recommendations we refer to the various organisations of barristers and solicitors).

129. There was almost unanimity amongst witnesses that any scheme evolved should be administered by the lawyers. Some witnesses at first suggested that there should be a State scheme or a scheme administered by local authorities, but nearly all agreed eventually that a scheme administered by the lawyers would be the best. We think that the reasons given by the Labour Party and by the Association of Municipal Corporations in their memoranda summarise the views of the various witnesses. The following is an extract from the Labour Party's memorandum:—

"There are obvious objections to the State itself establishing and maintaining legal advice bureaux. Not the least of these objections is that the State itself is directly or indirectly affected by many of the claims upon which such bureaux would have to advise. Nor, in the opinion of the Labour Party, is it desirable that local authorities should be entrusted with the duty of establishing and maintaining legal advice bureaux. . . . Differences, political or otherwise, might well arise were a local authority to be held responsible, directly or indirectly, for the advice given in any particular matter. Moreover, it has to be borne in mind that many local authorities, particularly those concerned with passenger transport undertakings, are themselves frequently parties to litigation."

130. The following is an extract from the Memorandum of the Association of Municipal Corporations:—

"We take the view that it is not the proper function of a local authority to advise and act on behalf of individual ratepayers in private matters where other ratepayers (who also contribute to the salaries of the officers of the local authority) are concerned. In our opinion, the same objections apply to State services administered by officers directly paid and employed by the State."

"We consider that it would be disadvantageous if the close confidential and privileged relationship which exists between solicitor and client should be replaced by the relationship of a member of the public towards the State or a municipal officer. Moreover, there is a considerable body of law in which the State and local authorities are concerned on the other side."

131. We are in complete agreement with these views and we think the arguments put forward in the two memoranda we have quoted are unanswerable. There is an additional reason for suggesting that the control of the scheme should be in the hands of the lawyers; as has been stated earlier in this report, the management of the present Poor Persons system has been undertaken by the Law Society for many years, and thereby the Law Society and the provincial Law Societies have gained experience which will be of inestimable value in administering the scheme which we propose.

132. We think, however, that matters coming before the Court of Criminal Appeal, Courts of Assize in the exercise of their criminal jurisdiction, Quarter Sessions and Petty Sessions (where we refer to these Courts hereafter we shall for the sake of convenience do so under the term "criminal courts") should be dealt with separately.

### Legal Aid in Criminal Courts

133. The Poor Prisoners' Defence Act, 1930, and section 2 of the Summary Jurisdiction (Appeals) Act, 1933, have operated with some success, but there have been criticisms.

134. In the first place it has been said that there was reluctance to grant a certificate. In the future we wish to see legal aid granted to persons charged with criminal offences more readily than has been the practice in the past in some parts of the country. In our view the spirit of the Act of 1930 should always be carried out and a more generous use of the Act should be made.

135. In this connection our attention has been drawn to the following paragraphs in *Justice of the Peace* (newspaper), 1943, page 325:

#### "Poor Prisoner's Defence"

Some observations made by Mr. Justice Humphreys at a recent trial for bigamy should be widely known, and carefully noted by magistrates and clerks.

From the newspaper report it appears that the learned judge, on inquiring why the prisoner, who, it seems, may have pleaded guilty, was not represented, was informed by prosecuting counsel that clerks to justices were often reluctant to grant legal aid to persons who did not disclose their defence before the magistrates.

Having referred to section 1 of the Poor Prisoners' Defence Act, 1930, Mr. Justice Humphreys remarked that such people were 13 years behind the times, adding that it was very desirable that accused persons should be represented.

The justices (not the clerk, who advises them), have a discretion under the section to grant a defence certificate in respect of a poor prisoner, if they consider it in the interests of justice that he should have legal aid in the preparation and conduct of his defence. They are to have regard to all the circumstances of the case, including the nature of such defence, if any, as may have been set up.

Under the repealed Act of 1903, it was undoubtedly necessary that a defence should have been disclosed before legal aid could be granted; the Act of 1930, however, requires the certifying authority to take into consideration the defence, if any, thus clearly implying that the disclosure of a defence is not now a condition precedent.

The idea still prevails, however, in some quarters; and the same newspaper which contains the report of the observations of Mr. Justice Humphreys goes on to mention another case on the following day, in which a clerk to justices informed a man who was being committed for trial that as he had not disclosed a defence, it was a case for a dock brief, to plead in mitigation of sentence. The justices refused a defence certificate.

It is to be hoped that the effect of what Mr. Justice Humphreys has said will be that legal aid and defence certificates will be more freely granted. A man who has disclosed no defence before the magistrates, and even a man who has said that he pleads guilty, may be under a misapprehension as to his legal position, and might be advised by counsel that he had a good defence and ought to plead not guilty.

Some courts go so far as to grant a certificate even when it appears that there is no defence in law, if they think it in the interests of justice that the accused should be represented at the trial, holding that the word defence should be liberally interpreted as meaning the case for the defendant."

136. The next criticism was that solicitors taking part in the scheme were not adequately remunerated. We are satisfied that it would often be impossible for a solicitor adequately to prepare a case without being seriously out of pocket at the present rate of remuneration, and it is interesting to note that while the amount of fees for a defence under the Poor Prisoners' Defence Act is rigidly fixed, without any regard to the amount of work involved, there is no such limit in the case of prosecutors' costs payable out of local funds under section 1 (1) (2) of the Costs in Criminal Cases Act, 1908.

137. Another criticism was that certificates often are not granted in sufficient time before the hearing day for the solicitor to be able to prepare a case properly.

138. Practically every witness complained that the persons entitled to legal aid were frequently unaware of that fact and that there was no proper machinery for seeing that they were made acquainted with it.

139. Every witness who dealt with the question of legal aid in Magistrates' Courts expressed the view that legal aid should be available for both sides in civil cases coming within the Magistrates' jurisdiction. They had in mind particularly bastardy, matrimonial cases, proceedings under the Guardianship of Infants Act, and such cases as applications for the recovery of possession under the Small Tenants Recovery Act, 1838.

#### *Recommendations with Regard to Criminal Courts*

★140. We recommend that:

(1) Legal aid shall be granted in all cases heard in criminal courts where it appears desirable in the interests of justice, and that any doubt as to whether or not a certificate shall be granted, shall be resolved in favour of the applicant. In the term "all cases" we include the parties on both sides in civil cases coming before the criminal courts;

(2) A certificate entitling the person to whom it is granted to legal aid shall be granted in cases in Magistrates' Courts by two magistrates, one stipendiary or alderman of the City of London, as the case may be: in Quarter Sessions by the Recorder or Chairman; in other courts by the Judge. Provision shall be made for application to the Clerk of the Court by letter or in person;

(3) On appeal, a certificate may be granted either by the Court from whose decision or by the Court to which the appeal is made;

(4) It shall be the duty of the authority granting a certificate to ensure that adequate time is allowed for the preparation of the case. In normal circumstances this should not be less than four days;

(5) Solicitors and barristers shall be fairly remunerated, having regard to the amount of work involved in each case. The amount to be paid shall be assessed by the Clerk to the Justices, Clerk of the Peace or the Clerk of Assize, as the case may be, and that official may call for and tax a bill. In this matter there shall be an appeal from the Clerk to the Justices to the Clerk of the Peace and in the case of a Quarter Session bill from the Clerk of the Peace to the Chairman of Quarter Sessions. Proper allowances for travelling (including travel by car, which shall be

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allowed at the same rates as the County Council for the county concerned allows its officers) and reasonable allowances for witnesses, including expert witnesses shall be made;

(6) The cost of working this system shall be borne by the taxpayer and not by the ratepayer as at present;

(7) That proper publicity shall be given to the system (see paragraph 186 (2) to (8));

(8) As an interim measure, the attention of the proper authorities should be drawn to the provisions of the Poor Prisoners' Defence Act, 1930, and steps should be taken to see that they are more frequently employed.

### Legal Aid in Civil Cases

#### A. CLASS OF PERSONS TO BE AIDED, METHOD OF CALCULATING MEANS OF AND CONTRIBUTIONS BY ASSISTED PERSONS

141. A person who needs assistance in litigation will apply for a certificate, and before a certificate is granted he must show:

(a) that he has a prima facie case, and

(b) that he is in that section of the community for which legal aid is intended.

Rules for defining the section of the community to which legal aid will be available will be required. These rules must be based on the circumstances of the individual applying for aid: they might, however, embody either of two principles. They might fix arbitrary income limits and exclude altogether those whose incomes exceed the limit; those within it being provided with legal aid free of charge or subject only to the payment of a small sum towards out of pocket expenses: or they might consist of rules designed to ensure that everyone who makes use of the scheme pays what (if anything) he can afford and only exclude those who cannot on any reasonable view be regarded as appropriate subjects for State aid at all.

142. A scheme of the former kind, being one for free legal aid at the expense of the community, would have to be restricted within comparatively narrow limits: it would be very rigid and is bound to give rise to anomalies and hardship among those whose income is round about the limit. An outstanding characteristic of expenditure on legal matters, is that people may be involved in litigation through no fault of their own, and the costs of that litigation may be far beyond their financial circumstances. Many people of moderate means, who in the ordinary way would not contemplate seeking aid from the State may suddenly find themselves in urgent need of help for this special purpose. In our view people in this position should be able to get the help they need without being treated as "poor persons."

143. If the basis of the scheme is that those who use it pay what they can reasonably afford, the upper limits to such a scheme can quite properly be put high enough to cover all those who are able to pay something, but could not face the prospect of being involved in litigation entirely unaided.

144. In our view the second scheme is right and our proposals accordingly consist primarily of rules for determining what (if anything) a person taking advantage of the scheme can afford to pay towards costs incurred and, since it is in the long run to net income available after inevitable prior charges have been met, rather than to gross income that one must look for this purpose, it is to net income that we have had regard in fixing the figures mentioned below.

145. In computing income for the purpose of our proposals the income of the husband and wife should normally be aggregated but not that of any other member of the family or household. Any income which the Assistance Board

is at present by Statute required to leave out of account in determining their payments should similarly be left out of account here. We feel also that, in view of the difficult position in which many people just starting in their profession or business frequently find themselves through the necessity of raising capital for the purpose, charges payable in respect of a loan raised by an applicant for the purposes of his profession, trade or business should be regarded as standing on the same footing as "tools of the trade" and deducted in arriving at the income to be regarded as available.

146. Subject to these exceptions the whole of the income or joint income should be considered; but for reasons of convenience the necessary calculations should be based on the net income available after deduction of income tax and any other customary or statutory charges. For example, wages would be brought into account at the net amount actually drawn by the man after such deductions have been made. All future references to income in this report will refer to income adjusted in accordance with these provisions.

147. We think that a single man without dependants cannot reasonably be required to make a payment towards legal costs unless his income exceeds £3 a week. In the case of a married man, the net figure should be £4 a week, after allowing in respect of each child an amount equal to the allowance which might be payable by the Assistance Board for the maintenance of such child. A single person with dependants should be treated on the same basis as a married man.

148. A person with an income of less than these amounts will be given help free of charge. A person with an income above these amounts will be required to contribute to the cost of the litigation in proportion to his income. What the basis of this contribution shall be is a matter to which we have given much consideration. We have come to the conclusion that a fair figure is one half of the difference between £156 or £208 as the case may be, i.e. between a year's income at £3 a week or £4 a week, and the applicant's adjusted income (i.e. adjusted in accordance with our previous recommendations) for a year. Thus a single man with an income of £5 a week will be liable to contribute £52; a married man with the same income would be liable to contribute £26. The precise contribution expected from a man in a particular case will depend upon the amount of the costs to be incurred. Our formula is merely to arrive at a maximum and whatever the action cost, he would not be liable to contribute more than this maximum.

149. While we do not think that adjustment for temporary expenses, such as those caused by illness and the like, is required at the point when the amount to be levied is being assessed, we assume that when the question of enforcement arises, as it no doubt will in a proportion of cases, such matters will be kept in mind so as to avoid the possibility of hardship. It will, indeed, be necessary to provide for a revision of the amount levied on the applicant should any substantial change either way occur in his circumstances.

150. We have considered whether provisions are needed for adjusting these figures by reference to such matters as the rent paid or special commitments, of any kind. We have already dealt with the special case of loan charges in connection with a person's trade or business. Apart from this we do not think any rules are necessary except as regards rent. Rent always presents a difficult problem in a scheme of this kind. Elaborate rent rules would complicate the scheme unduly and would necessitate enquiry into the extent to which other members of the household might be regarded as responsible for a share of the rent paid. We doubt whether it would be appropriate to attempt such a degree of precision, particularly as the ascertainment of income must itself proceed on rather broad lines in view of the fact that payment over a period of months is contemplated. We accordingly think it would be

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sufficient that discretion should exist to make an appropriate adjustment if an applicant represents that he is committed to the payment out of his unaided resources of a rent in excess of 15s. a week. These provisions are intended to apply only to married men and to single persons with dependants.

151. We have so far dealt only with income. In a scheme of this kind we feel that capital assets stand on a different footing and must be treated separately. We think it right to take a reasonably generous view of the amount of income a man should have before being expected to pay for legal expenses. We feel that, subject to the safeguarding of a small "nest egg," a man involved in litigation can properly be expected to use his capital before requiring public aid. There are, however, two rather different types of cases to be considered.

152. In the ordinary case of the man who in addition to an earned income on which he supports himself has a small amount of capital, we think that the rule should be that capital in excess of £25 in the case of a single man and £50 in the case of a married man should be regarded as available to defray costs incurred. A man with capital should accordingly be required to contribute everything above £25 or £50 as the case may be, in addition to the contribution he would make dependent upon his income. If an applicant was possessed of capital adequate to meet the whole of the probable costs of the litigation a certificate entitling him to legal aid would be refused.

153. As in the case of income, capital belonging to husband and wife should be aggregated for this purpose. A man should not, however, be required to realise his furniture, clothing or household effects, nor anything which could reasonably be regarded as "tools of his trade," an expression which in certain circumstances might even extend to such a thing as a motor car, if genuinely required for the purposes of his trade or business. As regards the house in which he lives, a somewhat difficult question arises in those cases, where a man owns an unencumbered house, or one on which the equity is substantial and where therefore he could without difficulty raise a sum to meet a claim for costs. We are informed that the Assistance Board is required by Statute to ignore altogether the value of the house in which a man lives. In general we think the same rule should be followed for the purposes of the present scheme, but there should be reserved a discretionary power to consider on their merits exceptional cases where a man clearly has available a valuable asset such as an unencumbered house, a policy of insurance or a reversion on which he could without difficulty raise money. In such a case it might well be reasonable to require him to make some payment or to refuse a certificate.

154. There is another class of case where we feel it is difficult to lay down general rules in advance. There will be cases, though they are not likely to be numerous, where the person relies for his livelihood wholly or mainly on income derived from capital (e.g. small shopkeeper). We think that cases of this kind will have to be dealt with on their merits as they arise, as much will depend on the amount and nature of the capital and the possibility of realising part of it without undue hardship. The underlying principle should be that while no one should be expected to make any payment if it would have the effect of materially diminishing an already exiguous income, people with substantial sums of capital must in general be prepared to pay their own law charges.

155. There remains the question of the upper limit. But for the fact that we have recommended that costs payable to solicitors working under the scheme should be scaled down, an upper limit might be dispensed with because

the man with substantial means would be required to pay the whole of the costs involved. As things are, however, an upper limit is essential and we think that should be £420 a year net income for both married and single persons.

★156. We recommend that:

- (1) For all purposes of this scheme income shall be income adjusted in accordance with the following provisions:—
  - (a) Any income which the Assistance Board is by statute required to leave out of account in determining their payments shall be left out of account in this scheme;
  - (b) From the income of a married man there shall be deducted in respect of each child an amount equal to the allowance which might be payable by the Assistance Board for the maintenance of such child.
  - (c) Amounts paid or payable as Income Tax shall be allowed as a deduction.
- (2) The income of husband and wife shall normally be aggregated but the income of no other member of the family shall be aggregated.
- (3) The upper income limit at which a person shall be entitled to a certificate shall be £420.
- (4) The amount of contribution in respect of income shall be as follows:—
  - (a) In the case of a single man or woman, one half of the difference between £156 and his adjusted income for one year;
  - (b) In the case of a married man, one half of the difference between £208 and his adjusted income for one year;
- (5) Contributions by a defendant or in exceptional circumstances by a plaintiff may be paid by instalments. Failure of an assisted litigant to maintain payment of the instalments ordered will render him liable to have his certificate cancelled.
- (6) The amount of contribution may be reviewed if a change of circumstances takes place during the payment of instalments but trifling changes of circumstances or illness of short duration shall be ignored.
- (7) Where an applicant has capital, the capital of husband and wife shall normally be aggregated. Any household effects, tools of trade and the house in which the applicant lives shall be disregarded. Capital employed in a business shall be disregarded if it would have the effect of materially diminishing an already small or uncertain income. Subject to the foregoing an applicant for a certificate shall contribute the following sums in addition to any contribution he will make under the recommendations with regard to contribution based on income:—
  - (a) If a single person, all capital above £25;
  - (b) If a married person, all capital above £50.
- (8) In every case where a man has capital adjusted as above in excess of £500 the Area Committee (see paragraph 171 (4)) in consultation with the Assistance Board should consider all the circumstances and be entitled to refuse a certificate on the ground that the applicant should employ a solicitor in the ordinary way.
- (9) A single man with dependants will be treated on the same basis as a married man.
- (10) In cases in the Divorce Court the modifications set out in paragraph 161 will be applied to the above recommendations.
- (11) The Assistance Board shall assess income and capital. There shall be no appeal from their assessment (see paragraph 171 (10) (a)).

The amount of contribution may often exceed the actual cost of the action and in that event the amount to be paid by the assisted person would be the actual cost of the action. The issue of a certificate in such a case would be in the nature of an insurance against the amount the assisted litigant would have to pay exceeding the amount of a contribution calculated in accordance with our recommendations.

#### B. COURTS WHERE ASSISTANCE SHALL BE GIVEN.

157. *House of Lords, Court of Appeal and High Court.* We recommend:—

That where the applicant's circumstances justify, a certificate shall be granted in all cases before these Courts.

158. *Divorce Division.*—One matter should be mentioned specifically since it frequently, though not exclusively, arises in suits for divorce. This is the cost of preliminary enquiries. We think these should be borne by the parties making those enquiries except in so far as they may be recoverable from the other side in accordance with the established principles of taxation.

159. We consider that it is undesirable in principle that public money should be employed in speculative enquiries into the conduct of individuals with a view to civil litigation, particularly in matrimonial cases. Moreover, in practice it would be impossible to devise effective safeguards against abuse.

160. This matter seems to require special mention since it is contemplated that the solicitor and client basis should be adopted when financing legal aid.

★161. We recommend that:

(i) Where the wife is the applicant and it is decided that a certificate shall be granted, there shall first be granted in a proper case a certificate limited to the stage where she can get an order for security for costs from the husband, and if it should subsequently prove impossible for her to obtain such an order a further certificate may be issued;

(ii) Where a husband has been ordered to give security for costs such order shall be treated as complied with if he lodges with the Registry a certificate from the Local Committee after consultation with the Assistance Board to the effect that he is unable to comply with that order, or where the Local Committee after consultation with the Assistance Board certifies that he can only contribute a named sum towards the amount ordered if he lodges the certificate and pays into Court the amount named in the certificate.

(iii) No part of the cost of making preliminary enquiries shall be borne by the community.

162. *County Court.*—Most witnesses expressed the view that legal aid should be given in County Courts. It is true that it was suggested by one witness, whose experience entitled his evidence to the most careful consideration, that the granting of legal aid could serve no useful purpose in County Courts, and that the judge could watch the interests of unrepresented litigants.

163. We agree with the view expressed in the Labour Party's Memorandum which is as follows:—

"No doubt the Judge gives such a person all the assistance in his power but this is only to place upon him an unnecessary burden and he could rarely be fully satisfied that he has ascertained every relevant consideration to enable him to arrive at a right decision."

164. It is certainly true that some cases in the County Court have most involved questions of fact and of law which require considerable preparation if they are to be properly presented. In such cases it is impossible for the Judge to deal with the matter adequately when he hears of the case for the first time when it comes before him for trial. On the other hand, there are hundreds of thousands of cases in the County Court where legal aid is not necessary either in the interests of justice or for the protection of the poor. For instance, we believe no sound reason could be found for granting legal aid on a judgement summons and legal aid would be a waste of time and money in debt cases where there is no dispute as to indebtedness or amount and the only question is how it shall be paid.

★165. We recommend:

(1) That legal aid shall be granted in County Courts to those whose net income does not exceed £420 a year and on the same terms as to contribution as under High Court cases;

(2) That no certificate be granted in the following cases:

(a) Judgment summons.

(b) In the case of a defendant where the amount of debt is admitted and the only question is as to method of payment.

166. *Coroner's Court*.—There are often cases when it is desirable that persons appearing before this Court should have legal aid.

167. *Courts of Special Jurisdiction*.—Certificates shall be granted here. Some of these Courts, e.g. the Mayor's and City of London Court, are for all practical purposes the same as County Courts and where that is so, those parts of our recommendations as relate to County Courts will apply.

168. On the other hand, there are Courts such as the Court of Chancery of the County Palatine of Lancaster and in cases before this Court our recommendations with regard to the High Court would apply.

169. *Special tribunals*.—There are some tribunals where barristers and solicitors have a right of audience, and there are others where, although they have no absolute right it is customary to allow them to appear.

★170. We recommend:

That legal aid shall be granted to persons within the scope of our recommendations when they are concerned in matters coming before Coroners' Courts and any tribunal where audience is normally granted to barristers and solicitors.

#### C. MACHINERY

★171. We recommend that:

(1) The administration of the scheme shall be in the hands of the Law Society. The fullest co-operation of the Bar Council and members of the Bar will be necessary for the success of the scheme;

(2) In discharging their functions the Law Society shall be answerable to the Lord Chancellor.

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(3) England and Wales shall be divided into ten areas. The Law Society suggest the following:—

<i>Northern ...</i>	Cumberland	Durham	Northumberland	
<i>North</i>				
<i>Western</i>	Cheshire	Lancashire	Westmorland	
<i>North</i>				
<i>Eastern</i>	Yorkshire			
<i>Western</i>	Herefordshire	Shropshire	Staffordshire	Warwickshire
	Worcestershire	Monmouth		
<i>Midland ...</i>	Derbyshire	Leicestershire	Lincolnshire	Northamptonshire
	Nottingham	Rutland		
<i>Eastern</i>	Bedfordshire	Cambridge	Essex	Hertfordshire
	Huntingdonshire	Norfolk	Suffolk	
<i>South</i>	Cornwall	Devon	Dorset	Gloucestershire
<i>Western</i>	Somerset			
<i>Southern ...</i>	Berkshire	Buckinghamshire	Hampshire	Oxfordshire
<i>South</i>				
<i>Eastern</i>	Kent	Surrey	Sussex	
<i>London</i>	Administrative County of London—Middlesex			
<i>Wales</i>				

(4) In each area there shall be set up an Area Committee consisting of solicitor members appointed by the Law Society with the addition of representatives of the Bar if the Bar so desires.

(5) Each Area Committee shall have a central office and Headquarters.

(6) Each Area Committee shall appoint an Area Secretary and such staff as he requires, to be remunerated on a scale to be agreed with the Lord Chancellor.

(7) Members of the Area Committee shall be required to attend meetings as often as the scheme needs. Their remuneration, if any, will be agreed with the Lord Chancellor and they should be paid all travelling and other expenses.

(8) The functions of the Area Committee will be as follows:—

(a) to be responsible for the general organisation of the scheme in its area,

(b) to appoint local committees throughout its area,

(c) to be responsible for the receipt and distribution of monies. Area and Local Committees shall keep such books of account as may be directed by the Lord Chancellor which shall at all times be open to inspection on behalf of the Lord Chancellor and the Law Society,

(d) to be responsible for the revocation of certificates on good cause being shown,

(e) in case of complaint against a barrister or a solicitor to report the facts to the disciplinary body concerned which would take such action (including removal from the panel, if it thought fit) as may appear appropriate in the case,

(f) to hear appeals from refusals of local committees to grant certificates,

(g) to report to the Law Society annually or at more frequent intervals if the Law Society so requires.

(9) Local Committees shall be appointed wherever necessary. They shall consist of solicitors appointed by the Area Committee with a Secretary, who shall be a solicitor and shall be remunerated. The appointment of Secretary will be whole time where necessary, in other cases part time. Members of the Local Committees will not be remunerated but will be repaid all travelling and other expenses.

(10) The functions of the Local Committee will be:

(a) Upon application being made for a certificate (unless it is patent that the applicant is outside of the scheme) to decide whether the applicant has reasonable grounds for being represented. If it is decided

that there are such grounds to refer the matter to the Assistance Board who will certify to the local committee the means of the applicant,

(b) to grant certificates in appropriate cases,

(c) to see that adequate facilities for legal advice and legal aid are available to persons in their area who are entitled to the benefit of this scheme,

(d) to report to the Area Committee any points of difficulty which may arise, and on any matter upon which the Area Committee asks for a report,

(e) to keep proper books of account which should be open to inspection on behalf of the Lord Chancellor, the Law Society or the Area Committee.

(11) Within any rules made by the Lord Chancellor the Law Society shall have power to make rules regulating the work of the Area and Local Committees.

(12) Panels will be established and solicitors and barristers may place their names upon any of the panels and upon any number of the panels, but in the case of County Courts they may limit the County Courts in which they are prepared to practise. They may resign at any time but must complete any matters on hand.

The Panels are:—

(a) Advice.

(b) High Court and Appeals for divorce business.

(c) High Court and Appeals for all other civil litigation.

(d) County Courts, Coroners' Courts and Special Tribunals.

(e) London agency business.

(13) Advice is dealt with separately in paragraphs 174-178.

(14) Except as in (23) below, when a person is granted a certificate he may engage any solicitor on the appropriate panel.

(15) A Solicitor on a panel shall not be entitled to refuse to accept a client who produces a certificate unless—

(1) he is already retained by or regularly acts for another party to the litigation, or

(2) he has so much panel business on hand that he cannot accept further panel business and carry it out satisfactorily, or

(3) he has personal reasons: e.g. he has already told a litigant that because of something that has happened in the past he is not prepared to act for him.

Where a solicitor seeks to refuse to act for a person presenting a certificate he must inform the Secretary of the Local Committee and give briefly the reasons for his refusal.

(16) Immediately a solicitor accepts a client the relationship of solicitor and client is established and the solicitor will proceed with the conduct of the case in exactly the same way as he would if the client were not an assisted litigant, save only that when the services of a barrister have to be employed, no barrister shall be employed unless his name is on the appropriate panel.

(17) The money required by the solicitor to meet out of pocket expenses other than office overheads may be drawn by him from the Area Committee upon submitting details of the amount required and the reasons for which it is required. The Area Committee shall have power to question any proposed expenditure and to refuse to sanction it or to sanction a reduced amount.

(18) It shall be the duty of the solicitor to report to the Secretary of the Local Committee any material change in his client's financial circumstances coming to his knowledge which may take place after the certificate has been issued.

(19) Before incurring any expense for an expert witness the solicitor shall obtain the sanction of the Area Committee.

(20) In High Court actions, normally only one barrister will be employed but the Area Committee may certify that the case is a suitable one for two barristers. The cost of two barristers shall never be allowed unless the Area Committee has certified the case as a suitable one for two barristers. In County Court actions, cases before Coroners' Courts, and cases before special tribunals, normally a barrister will not be employed but may be employed where the Area Committee certifies that it is a suitable case for a barrister.

(21) There shall be no interlocutory appeal without the consent of the Area Committee.

(22) A fresh certificate must be granted in respect of any appeal other than an interlocutory one.

(23) In a divorce matter where the amount of the applicant's contribution does not exceed £10, including any amount which is obtained under an Order for security, the Law Society shall deal with it in the same manner as it has dealt with divorces in the Service Divorce Department.

(24) *Costs in High Court matters:* At the conclusion of the litigation for which a certificate is granted a bill shall be taxed on a solicitor and client basis and there shall be payable by the State to the solicitor disbursements in full other than counsel's fees and 85 per cent. of the total allowed in respect of profit costs.<sup>1</sup>

Briefs will be delivered to Counsel unmarked, the Taxing Master will fix the fee which he would normally allow on taxation. 85 per cent. of this would be allowed to the barrister.

Money payable to solicitors and barristers will be paid by the Area Committee from block grants received by the Law Society from the Lord Chancellor's department.

(25) *Costs in County Court matters:* A new County Court scale shall be prescribed on a solicitor and client basis including counsel's fees. This scale should provide reasonable remuneration for work undertaken and be applicable to all actions where a certificate has been granted irrespective of the amount involved except that where the claim is for a named amount the solicitor shall not be paid for costs an amount exceeding, in the case of a defendant, half the amount claimed, or in the case of a successful plaintiff, half the amount recovered, but the County Court Judge or Registrar shall be empowered to certify that any particular case is a case where by reason of special circumstances this limit ought not to apply and in that event the full amount of the bill shall be paid.

(26) *Costs of cases before Coroners' Courts and Special Tribunals:* The amount of remuneration to be paid shall be assessed by the Area Committee in each case, the Area Committee having regard to the amount of work done and seeing that barrister and solicitor are fairly remunerated for work that is necessary.

(27) In High Court and County Court matters, where no writ or plaint is issued the rule-making authority should provide rules setting out a simple procedure for applying to the appropriate Court for an order for taxation.

<sup>1</sup> The 15 per cent. deducted really represents 50 per cent. of the profit normally remaining to the solicitor after meeting his overhead expenses. We have not found it possible to assess the average amount of overhead expenses involved in the case of barristers.

# D. LIMITATION OF LIABILITY OF AN UNSUCCESSFUL ASSISTED LITIGANT TO THE OTHER PARTY FOR COSTS

★172. We recommend:

(1) That where the assisted litigant is involved in litigation the fact that a certificate has been granted to him shall be brought to the notice of all other parties to the proceedings.

(2) That if the assisted litigant is unsuccessful, any order for payment by him of the costs of the successful party shall be limited to such amount as the Judge may direct having regard to the financial circumstances of the assisted litigant (and for this purpose the Assistance Board will supply a certificate of financial position if so required by the Judge) and any order so made shall only be enforceable in such manner as the Judge may direct.

(3) That the assisted litigant's household furniture, tools of trade and house shall not be considered as part of his means for this purpose.

# E. LIABILITY OF THE OTHER PARTY FOR COSTS OF A SUCCESSFUL ASSISTED LITIGANT

★173. We recommend that:

Where the assisted litigant is successful and the other party against whom he may recover costs is an unassisted litigant the ordinary amount of costs shall be recoverable, and the taxing master shall pay no regard to the fact that the successful litigant has been an assisted litigant. In Divorce cases costs recoverable by one spouse from another should not exceed his or her contribution together with the amount if any covered by an order for security. All costs recovered from the unsuccessful litigant are to be paid to the Area Committee and it shall be the duty of the solicitor for the successful assisted litigant, the Local Committee and Area Committee to see that all reasonable steps for the recovery of such costs are taken. The Area Committee shall refund to the successful assisted person any balance remaining on his account after all costs of the action have been met.

## Legal Advice.

174. Valuable work has been done by voluntary organisations giving legal advice, in London, Birmingham, Manchester and some other large cities, and, indeed, in many small towns. We think that very few people know how great a volume of work is undertaken by these organisations and there is no doubt that they have been of the greatest help to the poorer sections of the community. Many of them have been good enough to send memoranda and to send witnesses to answer our questions.

175. Witnesses who dealt with the matter of legal advice agreed that, good as the facilities are in some places to-day, they needed extending first of all because, even in towns where the Poor Man's Lawyers are really well organised, there is too much work for the volunteers to deal with and there are large tracts of the country, especially rural areas, where there are no facilities at all.

176. We have come to the conclusion that there should be facilities for legal advice available all over the country. Further, as there are often times where advice is needed immediately, it is clear that we must provide a system that can meet this demand. Lastly, it is plain that we can only do this through the solicitors' branch of the legal profession, and we must provide for remuneration for the service they render.

177. The organisation which we have already recommended (in paragraph 171) for the purpose of legal aid will also be responsible for providing legal advice. It is obvious that one cannot subject to a means test the person who

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needs advice on a small point and therefore we shall not recommend any general upper means limit.

★178. We recommend:

(1) That all applicants for legal advice shall be given legal advice on payment of a fee of 2s. 6d. subject to the following:—

(a) this fee may be remitted in suitable cases.

(b) where it is apparent that the applicant is able to pay the costs of getting advice in the ordinary way, legal advice may be refused.

(2) Each Area Committee at its Headquarters shall have an office open during all reasonable hours for the purpose of giving advice. We consider that such offices should be open on occasions in the evening, because that is often the only possible time for working people.

(3) In addition, in each centre of population in its Area, where a whole time office can be justified, the Area Committee will set up a branch office for legal advice.

(4) Whole time paid solicitors will be employed in those offices for this purpose. In centres of lesser population, the Area Committee will organise advice sessions on regular days and will arrange (through Local Committees) for a solicitor to sit there during the advertised hours and such solicitor will be paid a fee of so much per session, the amount to be fixed by the Area Committee.

(5) To meet the needs of places which cannot be covered by any of the foregoing provisions, the Area Committee will arrange to send solicitors from its own Headquarters to fixed places at fixed times, i.e. there will be an itinerant Poor Man's Lawyer.

(6) In cases of emergency, in areas covered by (3) and (4) a person needing legal advice may apply to the Secretary of the Local Committee who may either deal with the matter himself or, if he thinks it a proper case, refer it to a solicitor upon the advice panel. The person seeking advice will then attend that solicitor, who will advise him and will be paid a fee of 7s. 6d. from the funds of the Area Committee.

(7) Where, in addition to legal advice, a matter can probably be dealt with by the writing of a letter, the solicitor giving advice will write that letter but if anything in the nature of negotiations is likely to ensue the proper course would be to issue a certificate on the appropriate litigation panel.

(8) In advice, as in litigation we attach importance to the maintenance of the normal relationship of solicitor and client. Therefore, a solicitor advising, whether he is a whole time servant or a part time servant of the Area Committee or whether he is remunerated by a fee for a particular case, will be in the same position as every other solicitor as regards negligence. In the case of the solicitor remunerated by a fee for the case, he is probably covered by his own insurance. If not, he should take steps to see that he is so insured. In the case of the servant of the Area Committee, whether whole time or part time, the Area Committee should take out an insurance policy to indemnify the solicitor against any claim.

#### Finance.

★179. We recommend that:

(1) The State shall bear the cost of this scheme;

(2) Each year, each Area Committee shall prepare and submit to the Law Society an estimate of its expenditure for the coming year;

(3) Each year the Law Society shall submit to the Lord Chancellor's department an estimate of the amount required throughout the whole of England and Wales;

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(4) The Lord Chancellor shall make a block payment to the Law Society and the Law Society shall allocate it to the various Area Committees according to their needs;

(5) All contributions from assisted litigants and from applicants for advice and costs recovered from unsuccessful litigants shall be payable to the Area Committees as agents of the State.

It will be important to see that all money that can be recovered from any of these sources is recovered. We have no doubt that the Area Committees will give this matter their attention, but in addition, we think that the auditors of the Lord Chancellor's department should be constantly on the watch to see that all money that can be recovered is recovered.

(6) All administrative expenses shall be charged against the block grant;

(7) Where a certificate is granted, the Area Committee will advance money for actual out of pocket expenses as those expenses are immediately about to be incurred by the conducting solicitor, subject to the discretion already recommended (paragraph 171 (17));

(8) At the conclusion of the litigation for which a certificate is granted, the Area Committee shall pay the solicitor the amount payable to him in accordance with our recommendations subject to the Committees' right to withhold payment of profit costs until they are satisfied that the solicitor has done all that can reasonably be expected of him to recover any monies due to the State either from the assisted litigant or from the other side;

(9) The Council of the Law Society shall have control over the Area Committees and shall be entitled to call for accounts and for an explanation of any item at any time.

#### Court Fees.

180. Remission of court fees has been anciently a method by which our superior courts could in part ease the way of deserving but impecunious litigants. As we have shown, this method has been recognised and made part of the system under the Poor Persons Procedure, in that no court fees whatever are charged to a litigant admitted under that procedure. No such assistance is, or can at present be given, in the County Courts which are, of course, the courts where poor litigants are mostly to be found. The remission of fees is a valuable aid for these fees both in the High Court and in the County Court can be a serious burden upon a litigant.

181. We have considered the question whether remission of fees should be automatically granted to a litigant who will be aided under the scheme we suggest. It is a feature of the scheme that assistance should be given not only to those totally unable to afford to litigate but also to those who have the means to contribute partially. Once they become aided litigants it is our aim that they should be in all respects placed in the same position as those who are able fully to pay the costs involved. They should not be segregated into a separate category in the records of the courts and they should pay, or rather, have paid for them, the ordinary court fees. Moreover, unless fees are payable by aided persons it will not be possible to know exactly the extent of the assistance afforded out of public funds.

182. This will involve no additional expense upon the Exchequer for it will pay with one hand and receive with the other. The amount of additional work, by way of book entries, involved to those concerned to operate the system of legal aid is, we are assured, negligible.

★183. We recommend:

That full Court Fees should be paid in assisted cases.

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### Informing the Public of Facilities.

184. It has been pointed out to us by many witnesses that whatever scheme we recommend should be given proper publicity at all times, so that those whom it is intended to benefit may have no difficulty in ascertaining the advantages open to them under the scheme.

185. In the case of legal advice and legal aid in civil cases, we think there will be no difficulty. We are of the opinion that the Citizens' Advice Bureaux should continue their useful functions after the war. We are satisfied that large numbers of people needing help and advice will turn to those Bureaux in the first place which can advise the applicant where he can obtain legal advice if that is all he needs or put him in touch with the Secretary of the Local Committee if he needs legal aid.

★186. We recommend that:

(1) The closest contact be maintained between the Citizens' Advice Bureaux and the Local and Area Committees and that the co-operation of the Citizens' Advice Bureaux be welcomed.

(2) A notice with regard to legal aid be printed upon every County Court summons issued for the Judge's list but that in all other cases in that Court it be left to the discretion of the Registrar whether such a notice be given or not.

(3) Every person arrested shall, immediately he is taken to the police station, be given by the Police Officer taking the charge, a printed slip (supplied by the Home Office) informing him of facilities available to him under the Poor Prisoners Defence Act.

(4) A similar slip shall be attached to every summons issued in respect of offences where the defendant is liable upon conviction to be sentenced to imprisonment without the option of a fine. We attach importance to this warning being given on a separate slip and not being printed as part of the summons.

(5) A similar notice shall be handed by the Clerk to the Justices to every person laying any information leading to the issue of a bastardy summons, matrimonial summons or a summons under the Guardianship of Infants Act 1925 and a like notice shall be attached to every summons issued upon such information.

(6) Where a defendant is committed for trial it shall be the duty of the Chairman of the Court to advise the defendant verbally of his right to apply for legal aid and the Justices' Clerk shall hand to him a printed slip repeating that advice.

(7) Where a convicted prisoner is sent to prison, it shall be the duty of the Governor of the prison to advise him upon admission of his right to appeal and to hand to him a slip giving him information about facilities for legal aid in the event of his appealing.

(8) In the case of a person found guilty and not sent to prison, if he asks whether he is entitled to appeal it shall be the duty of the Clerk to the Justices to hand him a printed slip telling him briefly how he can appeal and how he can obtain legal aid.

### Advisory Committee

★187. We recommend that:

The Lord Chancellor should appoint an Advisory Committee, consisting of individuals selected by him for their knowledge of the work of the Courts and of social conditions—the Committee to have the following functions:—

(1) To consider the interests of the citizen in relation to the scheme and to advise on matters of general organisation;

(2) To consider and recommend on any questions of policy and administration submitted to it by the Lord Chancellor;

(3) To consider and report to the Lord Chancellor on an Annual Statement to be submitted by the Law Society on the working of the Scheme.

## Rules

188. For the working of this scheme many sets of rules will be necessary, and there will be amendments from time to time. It seems to us that the success of the scheme may be impaired if there are several rule making authorities for this purpose, and we think the Lord Chancellor should be the rule making authority. We have no doubt that his Lordship would always consult the Treasury with regard to rules affecting finance and the rule making authority of the High Court and County Court on matters affecting those Courts.

★189. We recommend:

- (1) That there shall be a rule making authority;
- (2) That the Lord Chancellor shall be that authority.

## Cost of Scheme

190. The present cost of the Poor Persons Schemes, as administered by the Law Society, amounted to £42,339 in 1944 of which sum £30,789 was expended on the Services Divorce Department. We do not think that it is possible to foretell with any degree of accuracy the total cost to the State of the Scheme which we propose. We estimate, however, that the cost of the administration of the Scheme, that is to say the cost of maintaining the administrative machinery which we have proposed, would be slightly under £200,000 per annum.

191. In conclusion we wish to express our thanks to Mr. G. Stuart King, the Secretary of the Assistance Board, from whom we have received great help in arriving at our recommendations for assessing the incomes of assisted persons.

192. We wish also to record our thanks to our Secretary, Major W. T. C. Skyrme, of the Lord Chancellor's Department, and to Miss E. J. Edward who was joint secretary during the early part of our deliberations. We desire to express our high appreciation of their work and to pay tribute to the industry, efficiency and unflinching tact with which they performed their duties and which were of the greatest assistance to us at all stages of our inquiry, including the preparation of this Report.

(Signed)

RUSHCLIFFE.  
JAMES AITKEN.  
JOAN BICKFORD-SMITH.  
R. F. BURNAND.  
MABEL CROUT.  
FELIX E. CROWDER.  
W. ALAN GILLET.  
G. E. HAYNES.  
F. L. C. HODSON.  
MOELWYN HUGHES.

WILFRID H. P. LEWIS.  
S. C. T. LITTLEWOOD.  
R. E. MANNINGHAM-BULLER.  
T. MATHEW.  
A. E. A. NAPIER.  
SCHUSTER.  
S. H. SMITH.  
SOUTHWOOD.  
BERTRAND WATSON.

May, 1945.

## SUMMARY OF RECOMMENDATIONS

### I. IN CRIMINAL COURTS (133-140).

Legal aid should be granted in all cases heard in criminal courts where it appears desirable in the interests of justice (140). In the term "all cases" we include the parties on both sides in civil cases coming before the criminal courts.

A certificate entitling the person to whom it is granted to legal aid should be granted in Magistrates' Courts by two magistrates, in Quarter Sessions by the Recorder or Chairman, in other courts by the Judge (140).

On appeal, authority to grant a certificate should be vested either in the Court from whose decision or in the Court to which the appeal is made (140).

It should be the duty of the authority granting a certificate to ensure that adequate time is allowed for the preparation of the case. In normal circumstances this should not be less than four days (140).

As an interim measure, the attention of the proper authorities should be drawn to the provisions of the Poor Prisoners' Defence Act, 1930, and steps should be taken to see that these are more frequently employed (140).

The cost of working this system should be borne by the State and not by the local authorities as at present (140).

## 2. IN CIVIL CASES (141-156).

Legal Assistance should be available to all persons with net incomes of not more than £420 per annum (156). The assisted person will be required to pay a contribution towards the cost of his case except in the following circumstances where assistance will be granted free of charge:—

(a) In the case of a single man or woman whose income does not exceed £3 a week.

(b) In the case of a married man whose income does not exceed £4 a week (156).

Subject to certain exceptions, an applicant should contribute the following sums in addition to any contribution he may make under the recommendations with regard to contribution based on income (156 (7)):

(a) If a single man, all capital above £25;

(b) If a married man, all capital above £50.

Special provisions should apply to cases before the Divorce Courts (157-160).

## 3. Assistance should be available in the following courts:—

House of Lords (157)

Court of Appeal (157)

High Court (157-165)

County Court (162-165)

Coroner's Court (166, 170)

Courts of Special Jurisdiction (167, 170)

Special Tribunals (in which audience is normally granted to solicitors and barristers) (169)

All Criminal Courts (140).

## 4. REMUNERATION.

*In High Court matters.*—At the conclusion of the litigation for which a certificate is granted a bill should be taxed on a solicitor and client basis and there should be payable by the State to the solicitor disbursements in full other than Counsel's fees and 85 per cent. of the total allowed in respect of profit costs. Counsel should similarly be paid 85 per cent. of the fee normally allowed on taxation (171(24)).

*In County Court matters.*—A new County Court scale should be prescribed on a solicitor and client basis (171(25)).

*In Criminal Courts.*—Solicitors and barristers should be fairly remunerated, regard being paid to the amount of work involved in each case. The amount to be paid should be assessed by the Clerk to the Justices, Clerk of the Peace or the Clerk of Assize as the case may be and that official may call for and tax a bill. In this matter there should be an appeal from the Clerk to the Justices to the Clerk of the Peace and in the case of a Quarter Session bill from the Clerk of the Peace to the Chairman of Quarter Sessions. Proper allowances for travelling and reasonable allowances for witnesses, including expert witnesses should be made (136, 140).

*Cases before Special Tribunals.*—The amount of remuneration to be paid should be assessed by the Area Committee in each case, the Area Committee having regard to the amount of work done and seeing that barrister and solicitor are fairly remunerated for work that is necessary (171(26)).

5. Where the assisted person is involved in litigation the fact that a certificate has been granted to him should be brought to the notice of all other parties to the proceedings (172).

6. If the assisted litigant is unsuccessful, any order for payment by him of the costs of the successful party should be limited to such amount as the Judge may direct having regard to the financial circumstances of the assisted litigant (and for this purpose the Assistance Board would supply a certificate of financial position if so required by the Judge) and any order so made should only be enforceable in such manner as the Judge may direct (172).

The assisted litigant's household furniture, tools of trade and house should not be considered as part of his means for this purpose (172).

7. Where the assisted litigant is successful and the other party against whom he may recover costs is an unassisted litigant the ordinary amount of costs should be recoverable, and the taxing master should pay no regard to the fact that the successful litigant has been an assisted litigant. All costs recovered from the unsuccessful litigant should be paid to the Area Committee and it should be the duty of the solicitor for the successful assisted litigant, the local Committee and the Area Committee to see that all reasonable steps for the recovery of such costs are taken (173).

8. Full Court Fees should be payable in assisted cases (180).

#### 9. ORGANISATION.

For the purpose of carrying out our recommendations, the following organisation should be created and administered by the Law Society which should be answerable to the Lord Chancellor (171):—

(a) England and Wales should be divided into areas of a convenient size for administrative purpose, each area covering that of a group of Provincial Law Societies.

(b) The working of the scheme in each area should be entrusted to an Area Committee, on whom would rest the obligation to ensure that the country as a whole was adequately served, both for advice and litigation and, for this purpose, to establish local legal aid committees. Area Committees and Local Committees would have paid secretaries. Members of the Committees would be paid all out of pocket expenses. Members of Local Committees would not be remunerated. The remuneration, if any, of members of Area Committees would be agreed with the Lord Chancellor. Local Committees would, in appropriate cases, grant Legal Aid Certificates.

An appeal against refusal to grant a certificate would lie to the Area Committee (171 (8) (f)).

Persons to whom certificates have been granted would choose a Solicitor, and where necessary Counsel, from panels which would be established for this purpose.

#### 10. ADVICE.

All applicants for legal advice should be given legal advice on payment of a fee of 2s. 6d. subject to the following:—

- (1) this fee may be remitted in suitable cases
- (2) where it is apparent that the applicant is able to pay the costs of getting advice in the ordinary way, legal advice may be refused (178).

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B. E. A  
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Fenner  
W. L. T  
Mrs. Tar  
Dr. E. J  
Miss Cice  
Miss Cal  
C. L. Ho  
Sir Charle  
G. F. Kir  
W. Latey  
S. L. Elb  
E. A. God

In cases of emergency, a person needing legal advice should be able to apply to the Secretary of a Local Committee who might either deal with the matter himself or if he thinks it a proper case, refer it to a solicitor upon the advice panel. The person seeking advice would then attend that solicitor, who would advise him and would be paid a fee of 7s. 6d. from the funds of the Area Committee (178).

Each Area Committee at its Headquarters should have an office open during all reasonable hours for the purpose of giving advice. In addition, in each centre of population in its Area, where a whole time office can be justified, the Area Committee should set up a branch office for legal advice (178).

Whole time paid solicitors would be employed in these offices for this purpose. In centres of lesser population, the Area Committee would organise advice sessions on regular days and would arrange (through Local Committees) for a solicitor to sit there during the advertised hours and such solicitor would be paid a fee of so much per session (178).

11. The cost of the Scheme should be borne by the State. Each year the Law Society should submit to the Lord Chancellor's Department an estimate of the amount required throughout the whole of England and Wales. The Lord Chancellor should make a block payment to the Law Society and the Law Society should allocate it to the various Area Committees according to their needs (179).

12. The closest contact should be maintained between the Citizens Advice Bureaux and the Local and Area Committees and the co-operation of the Citizens Advice Bureaux should be welcomed (186).

13. In certain circumstances a notice should be served on those entitled to apply for legal aid informing them of their right to apply (186).

14. The Lord Chancellor should appoint an Advisory Committee, consisting of individuals selected by him for their knowledge of the work of the Courts and of social conditions (187).

15. The words "Assisted Person" should be substituted for "Poor Person" (126 (9)).

## APPENDIX I

### PART I

#### LIST OF WITNESSES EXAMINED BY THE COMMITTEE.

B. E. Astbury, Esq., Charity Organisation Society.	
G. Corbyn Barrow, Esq., Solicitor.	
Fenner Brockway, Esq.	Independent Labour Party.
W. L. Taylor, Esq.	
Mrs. Tanner Smith	
Dr. E. J. Cohn, Barrister-at-Law.	
Miss Cicely Craven	Howard League for Penal Reform.
Miss Calvert	
C. L. Hodgkinson, Esq.	
Sir Charles Doughty, K.C.	Bar Council.
G. F. Kingham, Esq.	
W. Latey, Esq., M.B.E.	
S. L. Elborne, Esq., M.B.E.	
E. A. Godson, Esq.	

- R. W. H. Fanner, Esq.  
 A. F. Stapleton Cotton, Esq. } Incorporated Justices Clerks Society.  
 Miss Juanita Frances }  
 Miss Carol Morrison } Married Women's Association.  
 T. Sargeant, Esq. }  
 His Honour Judge Hancock, M.C.  
 G. D. Heath, Esq., Toynbee Hall.  
 Gilbert Hicks, Esq., President, Association of County Court Registrars.  
 His Honour Judge Hildesley, K.C.  
 Bruce Humphrey, Esq., Registrar of Croydon County Court.  
 F. H. Jessop, Esq. } Associated Law Societies of Wales.  
 E. Bevan Thomas, Esq. }  
 J. Mervyn Jones, Esq. }  
 G. Muirhead, Esq. } Cambridge House.  
 R. Egerton, Esq. }  
 Miss Dorothy C. Keeling } National Council of Social Service.  
 B. E. Astbury, Esq. }  
 G. Stuart King, Esq., C.B.E., M.C., Secretary of the Assistance Board.  
 A. C. Morgan, Esq., (President) } Law Society.  
 Eric Davies, Esq. }  
 L. S. Holmes, Esq. }  
 T. G. Lund, Esq. }  
 Morgan Phillips, Esq. } Labour Party.  
 Lewis Silkin, Esq., M.P. }  
 J. P. Eddy, Esq., K.C. }  
 R. S. W. Pollard, Esq. }  
 Edgar Duchin, Esq. } Haldane Society.  
 Stephen Murray, Esq. }  
 F. J. Powell, Esq., Metropolitan Magistrate.  
 A. L. Samuell, Esq. } Bentham Committee.  
 H. Salt, Esq. }  
 G. Hall Clark, Esq. }  
 S. Seuffert, Esq., Society of Our Lady of Good Counsel.  
 E. L. Thackray, Esq. } Mary Ward Settlement.  
 Kenneth Nunn, Esq. }  
 Dr. Glanville Williams, Barrister-at-Law.  
 E. F. Young, Esq., Solicitor.

## PART II

## STATEMENTS SUBMITTED TO THE COMMITTEE.

- Flight Lieut. Allen Jones.  
 Assistance Board.  
 Bar Council.  
 G. Corbyn Barrow, Esq.  
 Bentham Committee.  
 Cambridge House.  
 Charity Organisation Society.  
 Dr. E. J. Cohn.  
 Association of County Court Registrars.  
 F. E. Crowder, Esq.  
 H. D. Darbishire, Esq.  
 Wing Commander Eric Errington, M.P.  
 R. C. L. Gregory, Esq.  
 Haldane Society.  
 Howard League.  
 Bruce Humphrey, Esq.  
 Independent Labour Party.  
 Incorporated Justices Clerks Society.  
 J. Mervyn Jones, Esq.  
 Kingston Labour Party.  
 Labour Party.  
 Lancaster, Morecambe & District Law Society.  
 Law Society.  
 Associated Law Societies of Wales.  
 Magistrates' Association.  
 Manchester and Salford Poor Man's Lawyer Association.  
 Albert Marshall, Esq.  
 Ministry of Labour and National Service.  
 Marriage Guidance Council.  
 Married Women's Association.  
 Mary Ward Settlement.  
 Association of Municipal Corporations.  
 National Association of Probation Officers.  
 National Council of Social Service.  
 National Union of Railwaymen.  
 J. Nolan, Esq.  
 C. H. Norman, Esq.  
 Nottingham Law Society.  
 Pedestrians Association.  
 F. J. Powell, Esq.  
 W. R. Howe Pringle, Esq.  
 Progressive League.  
 Lord Roche.  
 St. Albans Citizens Advice Bureau.  
 M. Schmitthoff, Esq., and J. E. Terry, Esq.  
 Solicitors Managing Clerks Association.  
 Toc H.  
 Toynbee Hall.  
 Tyneside Council of Social Service.  
 Urban District Councils Association.  
 Ernest Willis, Esq.  
 Womens and Childrens Protection Society.

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## APPENDIX II

## STATISTICS

## I. Applications made to Poor Persons Committees of the Law Society and the Provincial Law Societies

## LONDON

Year	1937	1938	1939	1940	1941	1942*	1943	1944
Pending at commencement of year ...	271	381	928	520	973	1,605	4,407	4,696
Received during the year ...	2,947	6,737	3,833	3,161	3,849	7,507	7,646	11,137
Granted ...	1,221	2,873	1,965	1,068	1,245	2,623	4,502	4,694
Refused ...	915	1,766	1,402	975	1,051	1,058	1,320	1,000
Otherwise dealt with ...	701	1,551	874	665	921	1,024	1,535	964
Pending at end of the year ...	381	928	520	973	1,605	4,407	4,696	9,175

## PROVINCIAL

	1937	1938	1939	1940	1941	1942	1943	1944
Pending at commencement of year ...	914	1,223	2,954	2,760	3,301	3,448	3,227	3,050
Received during the year ...	4,503	11,866	6,723	5,501	6,052	5,520	4,991	4,981
Granted ...	2,289	5,611	3,795	2,314	2,294	2,280	1,913	2,070
Refused ...	1,104	2,722	1,805	1,449	1,466	1,322	1,357	1,400
Otherwise dealt with ...	801	1,802	1,317	1,197	2,145	2,139	1,898	2,597
Pending at the end of the year ...	1,223	2,954	2,760	3,301	3,448	3,227	3,050	1,964

	1939	1940	1941	1942	1943	1944
Cases disposed of in London and the Provinces	11,158	9,117	8,800	10,446	12,525	12,725

## II. Work done by the Services Divorce Department

	1942	1943	1944	Total
<b>SERVICE UNITS</b>				
Cases assigned ...	1,749	3,424	3,782	8,955
Petitions filed ...	795	2,125	3,188	6,108
Cases set down ...	380	986	2,140	3,506
Decrees nisi ...	152	848	1,573	2,573
Decrees absolute ...	16	374	1,223	1,613
<b>CIVIL SECTION</b>				
Cases assigned ...	—	990	747	1,737
Petitions filed ...	—	440	446	886
Cases set down ...	—	173	388	561
Decrees nisi ...	—	50	330	380
Decrees absolute ...	—	4	145	149

\* The Services Divorce Department began its work on the 1st January, 1942.

III.—Particulars relating to Legal Aid and Defence Certificates under the Poor Prisoners Defence Act, 1930, and to Appeal Aid Certificates under the Summary Jurisdiction (Appeals) Act, 1933.

A. Legal Aid Certificates

(i) COURTS OF SUMMARY JURISDICTION.

Proceedings before Courts of Summary Jurisdiction relating to summary offences and indictable offences dealt with summarily.

Number of Certificates

	Applied for by prisoner		Offered by Justices without application by prisoner	
	Granted	Refused	Accepted	Declined
1938 ... ..	293	113	34	2
1939 ... ..	221	87	37	1
1940 ... ..	189	57	28	1
1941 ... ..	159	58	42	—
1942 ... ..	192	41	51	5
1943 ... ..	201	49	64	—
1944 ... ..	212	49	101	12

(ii) EXAMINING JUSTICES

Proceedings before Examining Justices with a view to the committal of the prisoner for trial at Assizes or Quarter Sessions.

Number of Certificates

	Applied for by prisoner		Offered by Justices without application by prisoner	
	Granted	Refused	Accepted	Declined
1938 ... ..	495	180	83	4
1939 ... ..	400	111	100	4
1940 ... ..	360	58	81	7
1941 ... ..	346	58	109	2
1942 ... ..	406	64	128	7
1943 ... ..	444	70	119	4
1944 ... ..	415	80	155	13

Number of certificates which included provision for counsel for prisoners charged with murder :—

1938	1939	1940	1941	1942	1943	1944
27	35	35	46	40	25	34

Prisoners'  
diction

## B. Defence Certificates

## Proceedings before Courts of Assize and Courts of Quarter Sessions

## (i) COMMITTING JUSTICES

Applications for certificates determined by Justices on committal of the prisoner for trial at Assizes or Quarter Sessions and offers made by them

## Number of Certificates

	Offences	Applied for by prisoner		Offered by Justices without application by prisoner		Authorising two Counsel
		Granted	Refused	Accepted	Declined	
1938 ...	Murder ...	42	—	16	1	22
	Other Offences ...	1,057	400	96	6	6
1939 ...	Murder ...	67	—	34	2	43
	Other Offences ...	842	331	73	2	1
1940 ...	Murder ...	64	2	17	—	29
	Other Offences ...	687	197	73	3	13
1941 ...	Murder ...	65	—	22	—	37
	Other Offences ...	690	191	104	2	8
1942 ...	Murder ...	71	1	26	1	32
	Other Offences ...	796	275	153	5	2
1943 ...	Murder ...	44	—	35	—	36
	Other Offences ...	1,035	201	183	12	5
1944 ...	Murder ...	43	—	36	1	29
	Other Offences ...	1,150	221	205	6	10

## (ii) COURTS OF QUARTER SESSIONS

(a) Applications for Certificates determined by Courts of Quarter Sessions and offers made by them; (b) Defences undertaken, without defence certificate being granted, at the request of the Court.

## (a) Number of Certificates

	Applied for by prisoner		Offered by Court without application by prisoner		Authorising two Counsel
	Granted	Refused	Accepted	Declined	
1938 ...	450	282	37	3	—
1939 ...	436	268	28	1	—
1940 ...	290	173	26	1	—
1941 ...	249	181	49	3	—
1942 ...	269	189	49	1	—
1943 ...	271	170	63	3	—

(b) Number of Defences undertaken at the request of the Court under Section 3 (3) of the Act—

1938	1939	1940	1941	1942	1943
65	68	37	53	56	67

## (iii) COURTS OF ASSIZE

(a) Applications for Certificates determined by Courts of Assize and offers made by them; (b) Defences undertaken, without defence certificates being granted, at the request of the Court.

## (a) Number of Certificates

	Offences	Applied for by prisoner		Offered by Court without application by prisoner		Authorising two Counsel
		Granted	Refused	Accepted	Declined	
1938	Murder ...	—	—	—	—	—
	Other Offences ...	240	154	30	3	2
1939	Murder ...	2	—	—	—	2
	Other Offences ...	190	106	34	—	—
1940	Murder ...	1	—	1	—	1
	Other Offences ...	153	123	41	—	1
1941	Murder ...	1	—	—	—	1
	Other Offences ...	150	136	44	1	1
1942	Murder ...	2	—	—	—	1
	Other Offences ...	230	157	45	3	—
1943	Murder ...	—	—	—	—	—
	Other Offences ...	213	108	47	—	—

(b) Number of Defences undertaken at the request of the Court under Section 3 (3) of the Act—

1938	1939	1940	1941	1942	1943
134	115	84	130	151	138

## G. Appeal Aid Certificates

## (i) COURTS OF SUMMARY JURISDICTION

Applications for certificates determined by Courts of Summary Jurisdiction.

## Number of Certificates

	Applied for by—	Granted	Refused	Authorising Solicitor and Counsel	Authorising Solicitor only
1938	Appellant ...	122	92	80	34
	Respondent ...	10	4	10	—
1939	Appellant ...	96	91	65	25
	Respondent ...	6	—	5	1
1940	Appellant ...	87	59	67	16
	Respondent ...	10	1	8	1
1941	Appellant ...	59	41	40	12
	Respondent ...	4	1	3	—
1942	Appellant ...	51	53	33	16
	Respondent ...	8	2	6	2
1943	Appellant ...	55	29	35	12
	Respondent ...	10	1	8	1
1944	Appellant ...	91	35	48	23
	Respondent ...	12	—	6	3

## (ii) COURTS OF QUARTER SESSIONS

Applications for certificates determined by Courts of Quarter Sessions.

## Number of Certificates

	Applied for by—	Granted	Refused	Authorising Solicitor and Counsel	Authorising Solicitor only
1938	Appellant ...	71	47	67	1
	Respondent ...	1	—	1	—
1939	Appellant ...	48	50	(a) 41	—
	Respondent ...	—	—	—	—
1940	Appellant ...	62	37	60	—
	Respondent ...	2	—	2	—
1941	Appellant ...	50	26	47	1
	Respondent ...	3	—	3	—
1942	Appellant ...	42	33	38	1
	Respondent ...	2	—	2	—
1943	Appellant ...	37	13	36	2
	Respondent ...	—	—	—	—

(a) including 1 case authorising counsel only.