

PREM 19/1558

MT

Confidential Filing

Restrictions on Conveyancing
for Reward to the Solicitors,
Barristers and Public notaries.

LEGAL PROCEDURE

November 1983

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
4.11.83		2.5.85					
15.11.83		8.5.85					
3.12.83		16.5.85					
8.12.83		29.5.85					
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17.7.85							
14.3.85							
15.3.85							
26.4.85							

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CLOSED**

PREM 19/1558

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
H(85) 12 th Meeting	23/04/1985
CC(85) 9 th Meeting, item 1	14/03/1985
CC(85) 8 th Meeting, item 6	07/03/1985
C(85) 6	04/03/1985
H(85) 11	13/02/1985
H(84) 37	28/09/1984
H(84) 36	28/09/1984
CC(83) 37 th Meeting, item 4	15/12/1983
C(83) 35	09/12/1983
H(83) 23 rd Meeting, item 1	06/12/1983
H(83) 45	30/11/1983
H(83) 22 nd Meeting, item 2	15/11/1983
H(83) 44	09/11/1983
H(83) 41	08/11/1983

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB (CABINET OFFICE) CLASSES**

Signed J. Gray

Date 20/2/2014

PREM Records Team



→ MEA

AI to see. CC No

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

Secretary of State for Trade and Industry

29 May 1985

CONFIDENTIAL

The Rt Hon Lord Hailsham of
St Marylebone, CH, FRS, DCL
Lord Chancellor
House of Lords
LONDON
SW1A 0PW

NBPM

D. Queenin

CONVEYANCING

At the meeting of 'H' Committee on 14 May, it was agreed that you should undertake more work on the position of licensed conveyancers employed by lending institutions, and on the position of estate agents and other interested parties who might wish to provide conveyancing services.

2 I was glad to see from your letter of 13 May that you agree with me that estate agents should be free to offer the same combined service as solicitors, provided that equivalent consumer protection can be secured; and that your officials are examining means of achieving this. I hope that the modalities can be settled quickly - if solicitors can offer a combined estate agency/conveyancing package, it should surely not be too difficult to devise a means of enabling estate agents to do the same - and I look forward to seeing your proposals soon.

3 I also hope that you can give the confirmation sought by Ian Stewart in his letter of 16 May, that the mechanism by which you could recognise certain bodies as qualified to offer conveyancing services would not preclude such services being offered by a company which employed solicitors for the purpose, and in which a lending institution had a minority shareholding.

4 As you have said, your proposed mechanism offers a means of making constructive progress. But we need to put flesh on these bones by developing detailed criteria for granting "recognition" which will allow the maximum freedom consistent with consumer protection.

JH1CJD



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5 I am copying this letter to the Prime Minister, Members of H
Committee, the Minister without Portfolio, the Solicitor General,
the Financial Secretary and Sir Robert Armstrong.

*Yours
Norman*

NORMAN TEBBIT

JH1CJD

CONVEYANCING BY EMPLOYED SOLICITORS

Questions

file

Line to take

I told the House that we would introduce legislation to enable solicitors employed by lending institutions to convey houses and also to extend that right to others. We have introduced legislation this Session on licenced conveyancers; the difficulties on conflict of interest have been much greater than we expected but, nevertheless, we still intend to bring forward legislation next Session. It will enable lending institutions to employ solicitors to provide conveyancing subject to suitable protection being provided for consumers.

16 May 1985



10 DOWNING STREET

From the Principal Private Secretary

8 May 1985

CONVEYANCING BY EMPLOYED SOLICITORS

The Lord President had a word with the Prime Minister on this matter this afternoon.

The Prime Minister did not feel that the Solicitor General's proposal made much practical sense. On the other hand, she recognised that any alternative which satisfied the Solicitor General's and her undertakings in the House would be difficult for the Lord Chancellor to accept. In view of the fact that the matter was to be included in the Building Societies Bill, which is not due until next Session, the Prime Minister was inclined to think that it was better to let it lie for the time being until it could be considered in a less heated atmosphere. The Lord President said that he would consider whether there was any means by which such a postponement could be achieved.

(F.E.R. BUTLER)

Miss Janet Lewis-Jones,
Lord President's Office.

CC NO



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DEPARTMENT OF TRADE AND INDUSTRY

1-19 VICTORIA STREET

LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

8 May 1985

Mr Tyrell - see

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1

Dear Lord President,

CONVEYANCING : H(85)12TH MEETING

attached

I have seen the letters to you of 26 and 29 April from the Minister without Portfolio and the Lord Chancellor.

2 Alex Fletcher's understanding of the conclusions of the meeting of H Committee accords with David Young's : that the Minister without Portfolio should look at the Solicitor General's suggestion, but also consider other options. The Lord Chancellor himself referred to more than one option.

3 I regard this as the only sensible course to follow. The Lord Chancellor acknowledged, in his paper to H Committee, that he saw no commercial logic in a business limited to the offer of conveyancing services by one lending institution to a borrower from another institution. The Solicitor General's proposal has its merits, but it seems likely to be of little interest in the market place and will not meet our objective of increased competition to bring benefits to the consumer. Nor would it offer a solution to the problem of conflicts of interest. Worst of all it would not fulfil our commitments in the Attorney General's answer to the PQ of 17 February 1984 nor that of the Prime Minister herself.

4 We really do need to take stock of where we now stand on this whole issue. Our commitment was to legislate to extend the right of conveyancing to employed solicitors and to examine the prospects for non-solicitor conveyancing, so as to introduce competition into the conveyancing market. The outcome to date is that:-

- the scope of the existing solicitor's monopoly will be widened under the Administration of Justice Bill to cover not only the deed of transfer but also the contract for sale. This will kill off the only existing source of competition to solicitors in conveyancing, unless and until licensed conveyancers become established in

JH4BAX



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reasonable numbers.

- the Bill provides for a new profession of licensed conveyancers to be set up with its own rules and entry criteria. It will be some time before the Conveyancing Council to be established under the Bill is in full swing. If its rules follow what was envisaged by the Farrand Committee it will be many years before licensed conveyancers will exist in sufficient numbers to influence the market particularly as substitutes for employed solicitors.
- Meanwhile, solicitors are increasingly undertaking estate agency work but estate agents and chartered surveyors are unable to employ solicitors or associate with solicitors to do conveyancing and up to now I have been minded to grant them wide privilege concerning their investment business under the Financial Services Bill. My own postbag reveals increasing concern at the unfairness of this. Your summing up at H concentrated on conveyancing by lending institutions, at which the Solicitor General's proposal was directed. We really must aim to give estate agents the same opportunity to provide combined services as solicitors have and are now exploiting.

5 All this seems to me to amount to a sorry record for a Government which is publicly committed to the promotion of competition generally and in the field of conveyancing in particular. Unless we can do better, we shall find it a difficult record to defend. The fact that, in the face of competitive challenges in this and other fields, the Law Society has permitted advertising 8 years after the MMC said this would be in the public interest is hardly a compensating factor.

6 It is a matter of judgment what Parliament will make of all this. In my view there is a strong risk that those who supported the "Mitchell" Bill will feel that we have led them up the garden path.

7 I am copying this letter to the Prime Minister, members of H Committee, the Minister without Portfolio, the Solicitor General and to Sir Robert Armstrong.

Yours Sincerely,
A. D. H. Lamb

JH4BAX

PP
NORMAN TEBBIT

(Approved by the Secretary of State and signed in his absence)



9 MAY 1985

121234
56789



Robin -

The Lord President discussed this with you last night and will have a word with the Prime Minister about it after the 4 pm meeting.

The attached correspondence shows how the battle lines are drawn up!

Janet 8/5

PRIME MINISTER

We have reached an impasse on conveyancing by employed solicitors.

H Committee discussed the ^{Solicitor General's} scheme by which building societies and banks should be given power to offer conveyancing services, provided that they did not do so to their own borrowers.

There was a majority in favour of this scheme in H Committee - which has a preponderance of lawyers. But Mr. Tebbit and Lord Young are strongly opposed to it. Lord Young asked for and was given a remit to do some work on the subject himself. This came out in the minutes in the form of a remit to do more work on the Solicitor General's scheme. Lord Young has protested against this remit since he does not think there is any sense in the Solicitor General's scheme, but of course the Lord Chancellor has been adamant in holding him to it.

The Lord President does not know where to go from here. If the matter is discussed again in H, there is likely to be both a row and a victory for the Lord Chancellor, and it would be difficult to reverse the conclusion at Cabinet. On the other hand, if it was brought to Cabinet in its present form you would be faced with a repeat of the last Cabinet discussion.

There seem to be three options:-

- 1) Make further efforts to support Mr. Tebbit and Lord Young's view that too much is being made of the point about conflict of interest (but how?). One suggestion has been that it should be referred to the Sub-Committee on Consumer Protection, but this would not avoid a row with the Lord Chancellor and it is difficult to see what reason could be given for it.

E. R.

- 2) Drop the whole proposal and renege on the commitments which you and the Solicitor General gave to the House.
- 3) Proceed with the Solicitor General's proposal which will probably be shown up as a nonsense when the Building Societies Bill comes before Parliament.

On the assumption that (2) is ruled out, the choice lies between (1) and (3).

The Lord President would like to have a word with you about this at the end of the briefing meeting on Betaney on Wednesday afternoon. You may like to have a prior word about it with Lord Young at your meeting with him in the morning. Both Lord Young and the Lord President have had private copies of the attached note by Nick Owen.

R. R. B

7 May 1985

c Mr Brawley



? Sir R. Butler

Reply Tues.

HOUSE OF LORDS.
LONDON SW1A 0PW

CONFIDENTIAL

2 May 1985

Dear Willie:

This read in
Conjunction with letter
in No 19 indicates
a hopeless dilemma
W 2/3

H (85) 12TH MEETING

I have seen the Minister without Portfolio's letter of the 1 May. I will report to H Committee on how we might give effect to the Solicitor General's variant as soon as possible.

However, whilst I recognise the Minister without Portfolio's reservations about the decision which Cabinet took in March, I am not persuaded that it would be helpful for us to reconsider any wider issues at this stage. We decided, after exhaustive discussion, that it is not practical for lending institutions to provide both conveyancing services and the loan in the same transaction. The Solicitor General's variant provides a way in which we can permit lending institutions to provide conveyancing services in transactions where they are not also involved in the provision of the loan. I do not think there can be any middle ground between those propositions.

If we are to make progress on this issue, we must now concentrate on developing the option under which we can extend the right to undertake conveyancing without prejudicing the interests of consumers, rather than distract ourselves by continually re-examining options which we have already rejected.

Lord Young

I am copying this to members of H Committee, the Solicitor General and Sir Robert Armstrong.

Yrs.

The Right Honourable Viscount Whitelaw CH MC
Lord President of the Council
Whitehall
London SW1

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Prime Minister. (4)
You will wish to see the record
of the H discussion, and
this covering note from Hartley
Booth.

PRIME MINISTER

2 May 1985

MBA 2/5

SOLICITORS DISCIPLINE

The Lord Chancellor rightly suggests more Government
action is necessary to tell the public:

(a) that a Disciplinary Tribunal for solicitors exists
(termed as Independent);

(b) solicitors can be sued for professional negligence.

I can speak directly of the second as I quite frequently
sued negligent solicitors. Invariably, they paid my clients
compensation before the matter came to court. Their
practices are obviously vulnerable to adverse publicity!

While the fears should, and can, be allayed, further
Government action was not recommended by the Lord Chancellor
nor is it needed on (b). The "free market" has a better
solution.

The weak side in the Law Society's Tribunal is that it is
a body of three - two of which are solicitors (appointed by
the Master of the Rolls) which meets at the Law Society. The
term 'Independent' is highly misleading. Either this term
ought to be dropped or there should be more lay members.
However, the Lord Chancellor has to come back to Cabinet.

Hartley Booth

HARTLEY BOOTH

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SECRET

c Mr Brearley



CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 01-233 3299

From the Minister without Portfolio
The Rt Hon Lord Young of Graffham

The Rt. Hon. Viscount Whitelaw CH MC.,
Lord President of the Council,
Whitehall,
London, S.W.1.

1st May, 1985

For Willie

Reilly acc. @ 11/5

H(85)12th Meeting

I have now seen the letters from the Lord Chancellor and the Home Secretary in response to my letter to you of 26th April.

I can, of course, well understand why those colleagues who have written should want to keep to the narrow remit which was discussed at our meeting. However, I am not sure whether I could in fact make any particularly useful contribution, over and above that which the Lord Chancellor can offer, to developing this option further. In view of this, I would be quite content for the Lord Chancellor to resume this remit himself as he suggests. At the same time, you might think it helpful if I was to submit a paper which contains one or two thoughts of my own in this difficult area which H might like to consider at the same time as the Lord Chancellor's memorandum.

I am copying this letter to members of H Committee, the Solicitor General and Sir Robert Armstrong.

Yours,
David

SECRET

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Ch Bready
~~Head of Office~~



ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3407

30 April 1985

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
LONDON S W 1

Dear Lord President,

EMPLOYED SOLICITORS : H(85) 12TH MEETING

*Only
30/4*

I have seen David Young's letter of 26 April to you.

In my view it is essential that he should proceed with the narrow remit from H Committee and that he should not seek to widen it. This question has been considered both by the committee of officials and by colleagues over a long period. It was with a great deal of difficulty, as you know only too well, that we were able to find a solution which was reasonably acceptable to the members of H Committee and that met the Government's declared intention to legislate to give employed solicitors the right to provide a conveyancing service whilst protecting the consumer from conflicts of interest.

We shall have to announce our policy when the Administration of Justice Bill is debated in the Commons, which will almost certainly be in May.

*Yours sincerely,
A.S. Hyett.*

(Approved by the Solicitor General
and signed in his absence.)

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SECRET
SECRET



C. M. Breatley
Minister with Portfolio

QUEEN ANNE'S GATE
LONDON SW1H 9AT

30th April 1985

Dear Willie,

(W) 30/4

H(85)12TH MEETING

I have seen David Young's letter to you of 26 April and Quintin Hailsham's letter of 29 April.

I am bound to say that I agree with Quintin that the remit from H Committee should stand as recorded in the minutes. It was difficult enough to reach agreement that the Solicitor General's suggestion should be pursued in this way. I do not think we should be re-opening other options at this stage.

I am copying this to members of H Committee and to Sir Robert Armstrong.

W. C.
W. C.

The Rt Hon Viscount Whitelaw, CH, MC

SECRET

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

c Mr Bready
10



HOUSE OF LORDS.

LONDON SW1A 0PW

Copy 1 of 19

29th April, 1985

SECRET

The Right Honourable
The Viscount Whitelaw, CH MC
Lord President of the Council,
Privy Council Office,
Whitehall,
London,
SW1.

Q
30/4

Dear Willie;

H(85)12th Meeting

The Minister without Portfolio has sent me a copy of his letter to you of 26th April.

I am in no doubt that the reason for his narrow remit is that the options for permitting lending institutions to offer conveyancing services have already been exhaustively considered by officials, in H Committee, and in Cabinet. We have come to the clear conclusion that it is not possible to permit lending institutions to provide both conveyancing services and the loan in the same transaction. The Solicitor General's variant - which specifically prohibits such dual capacity - is thus the only possible way forward. In the circumstances, it must be out of the question for the Minister without Portfolio's remit to be widened.

I am naturally content that the Minister without Portfolio should continue to carry forward consideration of the Solicitor General's variant. But if he would prefer not to, in view of the narrowness of his remit, I would of course be willing to resume the task myself. I would expect to be able to report back to the Committee on the provisions needed within two or three weeks.

Having now read the correspondence about the proposed Gas Bill and its concomitant repercussions on the legislative programme for next Session, I really do think the time has come to inject a little realism into this discussion. The plain fact of the matter is that even without the Gas Bill the only way we can carry out our obligations under the Solicitor General's answer to the PQ of 17th February 1984 is via the Building Societies Act and even then we may face a long and protracted battle in Parliament. If we go on rabbiting over matters for which even if we agreed we can find no legislative time we shall certainly be in default on the Solicitor General's answer to

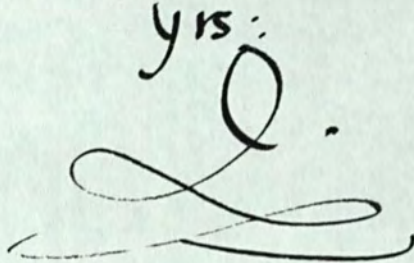
/...

Austin Mitchell. If this be once accepted which, as a matter of practical politics, I should have thought was fairly obvious, we may make some progress. Broad is the way that leadeth to destruction. The strait gate which leads forward is that for which we have legislative time.

to Mr Young

I am copying this letter to members of H Committee, the Solicitor General and Sir Robert Armstrong.

yrs:

A handwritten signature in cursive script, appearing to be 'L. J.', with a large loop and a horizontal flourish at the bottom.



Mr. Breatley
no

CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 01-233 3299

From the Minister without Portfolio
The Rt Hon Lord Young of Graffham

LP
Lord Chancellor
in writing
RL

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The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

26 April 1985

W. Williams

W
29/4

H(85)12TH MEETING

23 April

Now that I have had the chance to look at the record of last Tuesday's meeting of the Home and Social Affairs Committee, I would like to write to you about the remit the minutes have given to me.

They record that the Committee agreed that "legislative provision should be prepared for the Building Societies Bill to deal with the vires of lending institutions to offer conveyancing services and to limit the provision of such services to clients borrowing money for house purchase elsewhere, as had been suggested by the Solicitor-General. Further work needed to be done on these proposals and the Minister without Portfolio should undertake this"

I have an obvious interest in the terms of your summing up, since I must pay regard to them in carrying out the further work. I am more than happy to help you and the rest of our colleagues by getting involved very closely with the vexed issue of employed solicitors and I would like to think that I might be able to find a way out of the difficulties in which we find ourselves. But I am troubled by the somewhat narrow focus of my task, and I do not welcome being limited to working up a proposal which, as you will have gathered from my comments at the meeting, I do not think is a particularly attractive option to pursue.

I know none of us want to open up the discussion again but I had thought that although widely differing views were expressed, the general flavour of the meeting was that I should certainly look at the Solicitor-General's suggestion in some detail but

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-2-

The Rt Hon Viscount Whitelaw CH MC

26 April 1985

also consider other possible solutions, looking at the issues afresh (though since I am meant to report back to the Committee as soon as possible, and since this is already well-tilled ground, I do not think it is necessary to look at each and every proposal that has been discussed by colleagues in recent years).

I hope that you and our colleagues on H Committee will agree to me proceeding on this basis, with a moderately wide, but manageable, remit.

I am copying this to members of H Committee and Sir Robert Armstrong.

*James
Hain*

Pt. file: Copy
given to

Lord President
Minister without
Portfolio

PRIME MINISTER

CONFIDENTIAL

Prime Minister
Some marvellous material
here. But you may like to raise
orally with Lord Young at your
next bilateral rather than write
26 April 1985 to him

CONVEYANCING

minutes attached.

H Committee has discussed this subject again and reached the absurd conclusion that building societies should be given the power to offer conveyancing services, but not to their borrowers! This would, of course, wholly negate the point of the exercise - to simplify house transfer.

H has got itself into this position by taking a theoretical view of the conflict of interest "problem" confronting the employed solicitor, and totally disregarding the rather more serious conflict of interest problems encountered daily by private practice solicitors.

Employed Solicitors

The Lord Chancellor casts the solicitor in the role of financial adviser. It will surprise many solicitors, and most of the public to learn that the solicitor takes on the role of the accountant, the bank manager and the mortgage broker.

Some solicitors acquire some competence in this field, as an incidental part of their work. Some clients may rely on it but they would hardly look for this advice from the building society solicitor. Would anyone approach a Ford dealer for advice on whether an Austin was better suited to his needs?

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The usual sequence for the house purchaser is to call first at estate agents to find a property, to proceed then to building societies to find the finance for it, and finally to a solicitor to handle the mechanics, ie to put into legal form what is agreed between the buyer and seller, and between the borrower and the lender. For first-time buyers - those most in need of consumer protection - it is not typically the solicitor who advises on the choice of building society. The building society advises them how to find a solicitor, since few first-time buyers would have had occasion to require one.

If solicitors were actually, and effectively, engaged in advising clients on terms offered by building societies, we would expect to find that a small proportion (at least) of mortgage offers by building societies would be rejected on the advice of the solicitor, as being imprudent, or poor value. The Halifax Building Society - the largest in the country (and in the world) - researched this point among its 100 largest branches. It found no instance where a mortgage offer did not proceed as a direct result of a solicitor's advice (evidence to the Lord Chancellor's Department).

There is, fortunately, some direct evidence bearing on whether conflicts of interest arise when employed solicitors handle conveyancing. One of the few general exceptions to the Law Society's practice rules allow employed solicitors to act for fellow employees who are compulsory re-located at their employer's expense. The Halifax know of no instance in their own, or in other organisations, where a conflict of interest

has arisen in these cases. The Law Society was asked if it had received any complaints under this general rule. So far it has not indicated any.

Conflict of Interest in Private Practice

The Chairman of the Building Societies Association has revealed the conflicts of interest which solicitors face in private practice:

1. They act for building societies in most mortgages. Since the client's solicitor has to examine title anyway, this avoids duplication and saves the client around £60. The Law Society urges this as a standard practice and agrees a scale of fees with the BSA. There are apparently some conflicts of interest in a small number of cases. This does not trouble the Law Society; perhaps there is too much income at stake. The BSA is concerned that a pedantic concern about conflicts of interest might rule out this sensible practice, to the client's disbenefit.
2. Solicitors act as agents for building societies. Solicitors handle large sums for clients (probate, trusts, proceeds of house sale). They receive a commission from building societies in return for placing these monies with a building society. They face a conflict of interest here: whether to take the highest commission, or search for the highest rate of interest for their client. Solicitors acting in this way also

receive a "lending quota" from the building society which enables them to help clients find mortgages - further evidence against the proposition that the solicitor is an impartial financial adviser.

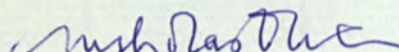
If solicitors' professional standards are robust enough to cope with conflicts of interest which arise for independent solicitors, surely they are robust enough to cope with those envisaged for employed solicitors? If they are not, it would seem that there is something in the profession itself which merits examination.

Where to go from here

There is a public demand for conveyancing by building societies, which we are committed to meet. A recent survey by Sweet and Maxwell in "Solicitors Guide to Advertising and Publicity" revealed that people who use solicitors for conveyancing consider them "unfriendly, aloof, expensive and slow". This bears out the observation of the Chief Land Registrar in his 1982-83 Report to the Lord Chancellor that he was "sorry to have to report" that 40% of applications for official search were lodged after the period of priority of 30 working days had elapsed. Failure to act promptly was the main reason why a leading building society suspended 18 solicitors from its panel in 1984.

David Young has been asked by H to do further work on proposals to solve the conflict of interest problem. His

first contribution might be to examine whether there is a problem in practice. His experience as a solicitor would help here. He could advise whether the proposals already advanced - the basic conveyancing service, a subsidiary conveyancing company, the special contract of employment for employed solicitors - meet the problem individually or in combination. You may wish to write to this effect, noting that the conflicts of interest for the private practice solicitor (particularly in the matter of commissions) seem as great, if not greater, than those which the employed solicitor would encounter in practice. Alternatively, if conflicts of interest are indeed such a problem, should solicitors be required to declare their commissions?


NICHOLAS OWEN

Pl. file on
the Conveyancing
file

1. Mr. Fisher } 36 sec
2. Mr. Turnbull } x1
3. Mr. Addison
4. Mr. Butler

Extract from speech by Mr Herbert Walden, Chairman of the Building Societies Association, at Newcastle, 1 April 1985.

I now turn to the question of conflicts of interest which it is being urged are so great as to be good reason for not giving building societies power to offer this service. Let no one doubt that the process of house transfer is and always has been

riddled with potential conflicts* of interest.

Professional people are professionals precisely

because they do not succumb to such conflicts. For

example, it is no great secret that many

professions including solicitors act as agents for

building societies; they direct money to building

societies in exchange for a commission payment.

They therefore face an immediate potential

conflict; do they put the money to the building

society which pays the highest commission, or do

they put it to the society paying the highest rate

of interest? The latter would probably be more in

the interests of their clients, for whom they are

acting as trustee or adviser. Many such agents

also receive a lending quota from the building

society; it is often in direct return for providing

investment moneys. The solicitor is therefore able

to provide his clients with access to loans because

he has helped to arrange them. Again, there must

be a potential conflict of interest here. The

solicitor would have a duty to his client to

X

provide the best possible loan terms, but he has a package of loans readily available if he wants them although they may perhaps be at slightly less beneficial rates.

These conflicts exist already and one would be foolish to turn ones back on them and pretend that they are non-existent. They are real yet professionals have been able to overcome them and to provide a generally unbiased service.

If building societies enter the house transfer services market then the number of potential conflicts of interest inevitably grows but I would argue that the growth is not significant and the new potential conflicts are no greater, and almost certainly very much less, than those already existing.

01-405 7641 Ext.

Communications on this subject should
be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

15th March 1985

Robin Butler, Esq.,
Principal Private Secretary to the
Prime Minister,
No. 10 Downing Street,
LONDON SW1

Note: Told Hyett that
this appeared to me the
note the solicitor had
dictated after Cabinet on 16.12.83
and from which the PM
had answered a question of

Dear Robin

CONVEYANCING BY EMPLOYED SOLICITORS

I refer to our telephone conversation today and enclose a
copy of the paper that I referred to and which it seems
originated from No. 10.

20.12.83

RB RB

18.3.84

Yours sincerely,
Stephen Hyett.

A. S. HYETT

Mr. Austen Mitchell's Conveyancing Bill

The Government is in favour of extending competition in this field as in others. The Government spokesman tomorrow will indicate what we intend to do. Mr. Mitchell's Bill is unfortunately not satisfactory because it does not provide adequately for the protection of the public. The Government therefore will introduce its own legislation to extend the right of conveyancing - not just of registered land, but of all land - to solicitors who are employed, for example, by banks and building societies. Before doing so, we will consult on how best to avoid the risks of conflict of interest to which the Benson Commission drew attention. Secondly, we intend to consult with the professions and others on other means whereby competition in this field may be further extended with safety, so as to make house buying simpler and cheaper for the public.

Extend competition even beyond the proposals in Bill



18 MAR 1965

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33



Ref. A085/764

PRIME MINISTER

Cabinet: Parliamentary Affairs:
Conveyancing by Employed Solicitors

BACKGROUND

When Cabinet discussed conveyancing by employed solicitors ~~last~~ ^{FLAG A.} week (CC(85) 8th Conclusions, Minute 6) it invited the Lord Chancellor to consider alternative ways of enabling employed solicitors to provide services to house buyers which would avoid the problems of conflict of interest and be an improvement on the "basic service" which Cabinet colleagues did not find satisfactory. The Lord Chancellor was also invited to consider what further action was needed to ensure the efficiency and probity of solicitors and to ensure that complaints against them were effectively dealt with. In both cases, he was invited to report back to the Home and Social Affairs Committee.

2. You will wish to remind Cabinet of the public undertakings which have been given by the Government in relation to legislation on employed solicitors, and of the added urgency these give to finding an acceptable solution.

3. On 20 December 1983, in reply to a Question in the House, you said:

"The Government have decided to introduce a Bill to enable solicitors employed by institutions such as building societies and banks also to convey houses. That goes for all kinds of conveyancing, not just properties that are on registered land."



4. On 12 January 1984, the Solicitor General ^{gave} ~~wrote to~~ Mr Austin Mitchell ^{an assurance in writing} as part of the negotiations resulting from the Second Reading of his House Buyers Bill. Amongst other things, he said:

"We are committed to legislation to enable solicitors employed by organisations such as building societies and banks to undertake conveyancing. A consultation paper will be issued early next month on how the potential difficulties with conflicts of interest and anti-competitive practices might best be overcome.... However building societies cannot offer the service to customers without an amendment to the Building Societies Act. We hope to legislate next Session".

The Solicitor General subsequently repeated these remarks in a Written Reply to a Question from Mr Austin Mitchell on 17 February 1984. He said "we hope to bring forward legislation permitting building societies to offer the service next Session."

HANDLING

5. The purpose of your intervention will be to remind Cabinet that, in the context of the further consideration which is now taking place, account should be taken of the commitments to legislation which were made by yourself and the Solicitor General. You may wish to suggest that a possible vehicle for any legislation on this, without adding to the programme, might be the Building Societies Bill in next Session's programme.

6. The Lord Chancellor is unlikely to be in a position to report much progress on either of the remits given to him last week, although he may be able to indicate when the further consideration of employed solicitors is likely to come to



H Committee. The Solicitor General may wish to comment in respect of his own statement to the House, which emphasised the need for consultation on the issue of conflict of interest.

CONCLUSION

7. You will not wish Cabinet to reach any conclusions at this stage. Further work is required before the substantive issue can come back to Cabinet.

RA

ROBERT ARMSTRONG

13 March 1985

* But he also said in the Second Reading debate on Mr Mitchell's Bill (16 December 1983):-

"We therefore intend to introduce our own legislation where necessary to extend the right of conveyancing, not just of registered land, but of all land, to solicitors employed by, for example, building societies and banks, subject to safeguards" (Hansard attacked)

On 12 January 1984 he gave Mr. Austin Mitchell the unequivocal pledge in para. 4. On that basis Mr. Mitchell withdrew his Bill.

P1. see also the unequivocal terms of the Cabinet decision of 15 December 1983 - flag B.

CONFIDENTIAL

BRIA AW



Ref. A085/694

PRIME MINISTER

Conveyancing by Employed Solicitors

(C(85) 6)

BACKGROUND

In December 1983 (CC(83) 37th Conclusions) the Cabinet considered the reduction of restrictions on conveyancing for reward. It concluded that -

- (a) There should be an examination of the extension of the right to conveyance outside the legal professions. The Farrand Committee was subsequently set up to examine this aspect.
- (b) The right to conveyance should be extended to solicitors employed by banks and building societies, and that consultations on how to achieve this objective and in particular to avoid the problems of conflicts of interest should be initiated as soon as possible.

2. On 20 December 1983, in reply to a Question in the House, you said:

"The Government have decided to introduce a Bill to enable solicitors employed by institutions such as building societies and banks also to convey houses. That goes for all kinds of conveyancing, not just properties that are on registered land. With regard to registered land, the Government are consulting to extend the right of conveyancing to others, if that can be done safely".



On 17 February 1984, answering a Question in the House from Mr Austin Mitchell, the Solicitor General announced the establishment of what became the Farrand Committee to consider conveyancing by non-solicitors and the scope for simplifying conveyancing practice and procedure. He said that the Government hoped to bring forward any necessary legislative proposals in the 1984-85 Session. He also announced that a consultation paper would be issued on how best to ensure that conflicts of interest and anti-competitive practices did not arise when solicitors employed by banks, building societies etc were permitted to undertake conveyancing for their employers' customers. He concluded "We hope to bring forward legislation permitting building societies to offer the service next Session".

3. The Farrand Committee reported on non-solicitor conveyancing in September 1984 and the Home and Social Affairs Committee then discussed its recommendations and the responses to the consultation exercise on employed solicitors. They approved the Farrand proposal for a new profession of licensed conveyancer (able to deal with both registered and unregistered land) and legislation on this aspect is at present in Parliament (the Administration of Justice Bill).

4. On employed solicitors, the Committee concluded that the problems of conflict of interest were significant and that further work needed to be done. The Lord Chancellor subsequently asked officials to consider how best to deal with the conflict of interest and anti-competitive practices which might arise if solicitors employed by banks and building societies were permitted to undertake conveyancing for their employers' customers. Following further discussion at H Committee on 21 February 1985 (H(85) 4th Meeting) the Committee concluded that the issues involved were evenly balanced and the decision must be taken by Cabinet.



MAIN ISSUE

5. There is only one main issue: whether the beneficial economic effects of allowing building societies etc to offer a conveyancing service (bearing in mind that the new profession of licensed conveyancers will soon be in operation) are sufficient to justify the loss of consumer protection which will be involved in the service offered by an employed solicitor.

6. A number of areas in which there would be no identity of interest between the building society and the borrower/purchaser have been identified. In the field of the mortgage their interests would directly conflict. Officials suggested that this conflict could be minimised by restricting conveyancing by employed solicitors to a "basic service" (Annex A of C(85) 6). This would make it clear that the employed solicitor also acted for his employer and could not give advice to the borrower on matters relating to the terms of the loan or any other issue on which the interests of the lender and borrower might not coincide. An alternative or additional safeguard, though one raising significant difficulties of its own, would be to legislate to exempt the employed solicitor from his general duty to act always in the interests of his employer. It is accepted that the "basic service" would, if it worked, avoid conflicts of interest. The concern is that this is at the expense of leaving the house-buyer with no or only partial advice on matters on which he would be well advised to have full advice. Of course he can choose not to use the employed solicitor, but many buyers (especially first-time buyers) are unlikely to be aware of all that is involved and may well accept a package of mortgage and conveyancing service from their building society or bank even without any particular financial inducement (which would be outlawed by a Code of Practice). By the time they perceive the shortcomings of doing so it may well be too late to adopt another course. The pros and cons need to be viewed against (i) the much more positive progress that has been made on licensed



conveyancers (and their likely effect on eg price) compared with what was expected at the time of the last Cabinet discussion and (ii) the statements made by you and the Solicitor General in particular about what would be done in this area.

HANDLING

7. You will wish to ask the Lord President to introduce his memorandum reporting the discussion at H Committee.

8. The Lord Chancellor will no doubt expect to speak next. The Secretary of State for Scotland will support him. The Secretary of State for Trade and Industry will wish to put the case for more freedom and will be supported by the Secretary of State for the Environment and the Secretary of State for Wales. The Chief Secretary and the Home Secretary are also known to have strong views. At some stage, you will wish to invite the Solicitor General and the Lord Advocate to give their views.

9. If the sense of the discussion is in favour of making a change, you will wish to consider briefly the legislative options. It might just be possible to include such a provision in the Administration of Justice Bill currently before the House of Lords, but this would require an amendment to the Building Societies legislation when there is a Building Society Bill next Session. The latter seems to be the most likely home for legislation, although it would be as well to confirm that this widening of its scope would be acceptable to the Chancellor of the Exchequer.

CONCLUSION

10. You will wish the Cabinet to reach conclusions on -

Committee of Ministers over terms of loan



- (a) Whether legislation should be brought forward to enable solicitors who are employees of building societies, banks etc to offer a conveyancing service to customers of their employers.
- (b) If so, whether this should be limited to the "basic service" (see Annex A to C(85) 6) to avoid conflicts of interest, or on some other basis.
- (c) If legislation is to be brought forward, should it be in the Building Societies Bill in next Session's programme?

RA

ROBERT ARMSTRONG

6 March 1985

CONFIDENTIAL

PRIME MINISTER

6 March 1985

CONVEYANCING BY EMPLOYED SOLICITORS

The Lord President has reported that H Committee was not entirely convinced that the consumer would be "entirely protected" under the basic conveyancing service which is envisaged that employed solicitors will provide. The Committee was worried that a large number of house purchasers might succumb to the attractions of one-stop shopping at a bank or building society, regardless of any warnings about conflict of interest.

How serious are the "conflicts of interest"?

Obscure "conflicts of interest" are discovered whenever the time for a decision on this subject approaches. The latest example is that a building society might impose restrictive covenants, against the purchasers' interests, in order to preserve property values in an area in which the society was already involved. It is difficult to avoid the suspicion that we are witnessing "solicitor protection" masquerading as consumer protection.

We should not exaggerate the extent to which present arrangements protect the consumer. Anyone with experience of housebuying knows that many independent solicitors know little about mortgage terms and conditions - certainly not enough to contest them. And far from being independent, solicitors have

CONFIDENTIAL

CONFIDENTIAL

- 2 -

a cosy relationship with building societies, because they are more than happy to act for both purchaser and building society once contracts have been exchanged.

The way to encourage independent solicitors to develop their skills is to relax the conveyancing monopoly. The more enterprising independent solicitors are already anticipating greater competition from employed solicitors and are taking advantage of the Law Society's permission to advertise (see attached).

How much consumer protection do we need?

It should not be our concern to entirely protect consumers. Unless we are to operate a Nanny State, consumers must take some responsibility for their decisions.

The Lord President rightly emphasises that we have to reach a judgement about the benefits of competition as against the possible sacrifice of consumer protection. The judgement of the consumers' champion - the Consumers Association - is very clear:

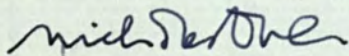
"We think this proposal is fine provided that the consumer is free to choose whichever conveyancing service suits him." (Which?, February 1985)

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Conclusions

In the Cabinet discussion tomorrow, we recommend that you:

1. Go for the basic conveyancing service by employed solicitors, subject to the conditions suggested by officials, namely: the limitations of the service are made clear; its costs are separately identified; the service is not tied to the mortgage. We cannot afford to lose this initiative if our competition policy is to mean anything, publicly and within Whitehall.
2. Reject the wrecking amendment suggested by the Lord Chancellor, that employed solicitors should only be allowed to act for the borrower on the conveyance or transfer itself, and not on the work leading up to it. This would torpedo the proposal.


NICHOLAS OWEN

Which?

For years we've been campaigning for improvements to the system of buying and selling a house. Since our last report (*On the move, Which?*, July 1984, p304), dramatic developments have taken place in England and Wales. This report gives you an update of what's been happening and highlights what still needs to be done

campaign update

What's happening now

Which? Solicitors can advertise

We've argued that restrictions on advertising by solicitors should be lifted. We think this will give people a better idea of the services solicitors can offer.

Since last autumn solicitors have been allowed to advertise their services and charges in the press, in *Yellow Pages* and even on radio. If their charges are advertised, it must be stated what services will be provided for those charges, and in what circumstances they may be increased. If a house conveyancing service

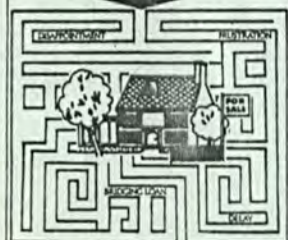
is advertised, but not the charges, it must point out that you can get a written estimate of costs for the work (although it's not obligatory to say this in brochures).

In October, when the ban on advertising was lifted, we collected scores of solicitors' ads from newspapers up and down the country. Some of them were very inventive indeed, making use of cartoons and clever designs to attract clients. See below for some of the ads which our 'judges' - members of our campaign staff - liked particularly.

We think that all of them are helping to break down the unapproachable image that solicitors sometimes project.

Solicitors' ads: the Which? judges' choice

LET GRAYSONS HELP YOU THROUGH THE CONVEYANCING MAZE!



If the thought of moving house seems a daunting prospect because of all the legal moves that are involved, don't worry... Graysons are the people to turn to.

We know all of the 'ins' and 'outs' of conveyancing, how to obtain the best for our clients - without drawing-out proceedings longer than necessary.

So, whether you're a first-time buyer or have another property to sell, you can be assured of a first-class professional service from Graysons.

We'll help you arrive at the property you desire... without going through the maze first!

INLEGAL MATTERS CHOOSE THE NAME THAT MATTERS

Please send me details of your legal services

Name

Address

Robert Grayson Sons SOLICITORS
7 North Church Street, Sheffield S1

I have an unruly family,[ⓐ] a mistress,[ⓑ] a crumbling property to sell,[ⓒ] a vicious dog,[ⓓ] an untaxed Cavalier GT,[ⓔ] a job that's on the rocks,[ⓕ] heirlooms under the floorboards,[ⓖ] a pacemaker,[ⓗ] and a strong desire to take up residence in South America![ⓙ]

More and more as you live your life you are a person at risk. Not just from the consequences of your own behaviour, but the multitude of problems which arise as you acquire property in the shape of house, spouse, car or company. You are legally responsible for it. You will need help from a Solicitor.

And, as it will be an association which will probably become more important as your responsibilities increase, it is worthwhile taking time at the beginning to find someone to suit you. For what would be the rest of your life.

Kidd and Spoor could help our friend in the headline in almost every aspect of life. As we're a Legal Aid practice our services might even be free.

We could offer representation in the Civil and Criminal Courts, advise on matrimonial problems, on home purchase and sale, on Accident and Insurance claims, on Road Traffic Offences, on Company, commercial and employment law, on Wills, Estates and family arrangements, on Medical/ legal problems... or on arrangements to transfer funds anywhere in the world.

Lots of expertise; built up over 150 years. But, above all, we want your life to run smoothly. So if you have any questions, or if there's a possibility of problems ahead, drop in to one of our branches. Or telephone. We're very good at listening.

Telephone: (091) 251 1022.
Blyth - Whitley Bay - North Shields
Wallsend - Newcastle upon Tyne

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£50,000 £280
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pa
Dms
25/2

10 DOWNING STREET

From the Private Secretary

Prime Minister⁽²⁾

EMPLOYED SOLICITORS

The Lord Chancellor found some support for
his views at H Committee, and the issues
will have to come back to Cabinet -
probably the week after next.

Dms
24/2

FROM THE PRIVATE SECRETARY

106



HOUSE OF LORDS,
SW1A 0PW

19th February, 1985

CONFIDENTIAL

David Barclay Esq.,
Private Secretary to
The Right Honourable
The Prime Minister,
10 Downing Street,
London, SW1.

*B/f to me with
H Cttee minutes post, after
mtg on 20 Feb
DMS
19/2*

Dear David

Conveyancing by Employed Solicitors

The Lord Chancellor has seen your letter of 18th February to Janet Lewis-Jones and has commented as follows:

"I am surprised that the Prime Minister should think there is any inconsistency between my paper (H(85)11) and the Cabinet conclusion numbered 1 of item 4 of CC(83)37th Conclusions. This (so far as is relevant) clearly states:

"agreed that action should be taken to extend the right of conveyance to employed solicitors and that consultations on how to achieve this and to avoid problems of conflict of interest should be initiated as soon as possible". (emphasis mine)

Consultations did in fact take place and revealed a wide division and a more serious danger of conflict of interest than I at first supposed at the time when I was mainly concerned with the implications of the Austin Mitchell Bill. It is true as the Prime Minister says that the majority on the official group considered that the problem of conflict of interest could be taken care of if the lending institutions were to offer only a "basic service". But the real question is how far they are right. If they are not, clearly we are back to square one.

What continues to worry me is that none of their proposed solutions tackles the real nature of the problem or shows any sign that they have even grasped its nature. This resides in the danger inherent in the relationship between the borrower and lender. Whatever the image that the building societies and the other lending institutions may like to promote, the interests of the lending institution are not those of the borrower, and no devices such as those proposed in the officials work can alter this.

/...

A conveyancing service which attempts, as does the "basic option", to exclude advice on the arrangements for the loan (where it is needed, only supplying the conveyancing work where the interests of the parties are identical) is obviously unsatisfactory, for the reasons set out in my paper. More than ever with the expansion of home ownership, people need independent advice before committing themselves to a complicated transaction of such significance as the purchase of a house on mortgage, which may affect them and their families (and not least the family budget) for years to come. By the time that the borrower realises that he should have obtained independent advice, it will often be too late. He will have been enticed into a situation into which he should never have been led by the bait of a conveyancing service which is irrelevant to the issues at stake."

I am copying this letter to the Private Secretaries to the members of H Committee and to Richard Hatfield (Cabinet Office).

Yours sincerely,

Richard

Richard Stoate

LEGAL PROCEDURE: Conveyancing NOV 83

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COMPLETION



10 DOWNING STREET

From the Private Secretary

18 February 1985

Dear Janet,

CONVEYANCING BY EMPLOYED SOLICITORS

The Prime Minister has seen a copy of the Lord Chancellor's paper for H Committee (H(85)11) about conveyancing by employed solicitors. She was surprised to note its conclusion, which appears inconsistent with the decision of Cabinet on this subject (CC(83)37th Mtg, item 4), and with her own statement of Government policy in the House on 20 December 1983 (Hansard col. 270).

The Prime Minister also noted the majority conclusion of the officials' report, that the problem of conflict of interest could be taken care of, provided that lending institutions offer a basic conveyancing service and make its limitations clear.

The Prime Minister feels strongly that the Government cannot deny lending institutions the chance to compete in the conveyancing market. Nor can it deny housebuyers the opportunity to choose their services. It would be contrary to the Government's entire philosophy. It would, moreover, be difficult to explain why people who aspire to buying and managing houses must be thought incapable of understanding what an employed solicitor could and could not do for them under the arrangements envisaged in the officials' report.

I am sending copies of this letter to the Private Secretaries to the members of H Committee, and to Richard Hatfield (Cabinet Office).

Yours ever,
David

(DAVID BARCLAY)

Miss Janet Lewis-Jones,
Lord President's Office.

I know that that resulted in the death of two of their security guards. Co-operation is very close between the Government of the United Kingdom and the Republic of Ireland in trying to block off munitions or, if they get over, in trying to find them. Indeed, the destruction caused in the Republic of Ireland by the activities of the IRA is very damaging indeed to the Republic and we therefore co-operate on these matters to the maximum extent. I also join with the right hon. Gentleman in being very grateful for what the American ambassador said when he came to see me last evening.

Mrs. Currie: May I turn my right hon. Friend's attention to another important question and ask if she will find time today to study the remarks of Judge Gibbens in the High Court on Friday and yesterday in which he expressed sympathy for a man who had unlawful intercourse with a 7-year-old girl and described it as an accident. Does she agree with me, as the mother of a 7-year-old girl, that the judge's remarks were disgraceful?

The Prime Minister: I have great sympathy with my hon. Friend. The Government regard with very great seriousness all sexual offences against children, and I cannot emphasise that too strongly. As my hon. Friend will know, the Lord Chancellor has called for a transcript of the proceedings so that he may first find the facts, which I believe is the proper course to take.

Mr. Steel: Is the Prime Minister aware that millions of her fellow citizens will, this Christmas, be contemplating the new year with some dread in view of her overruling of the Secretary of State for Energy on electricity prices, coupled with the Government's cuts in housing benefit? Does she begin to understand their anxieties?

The Prime Minister: My right hon. Friend answered questions very forcefully yesterday and pointed out that, as electricity prices had been frozen for two years, the possibility being considered might mean an increase of 2 per cent. over what would turn out to be the course of two years, whereas the Government whom the right hon. Gentleman supported, and whose life that support extended, had an increase in electricity prices of 2 per cent. every six weeks.

Mr. Lilley: Bearing in mind that 490 people were convicted last year of sexual assaults on children will my right hon. Friend agree that there is growing public concern at the leniency of sentences passed on such attackers, such as the one passed yesterday on the attacker of a 7-year-old child?

The Prime Minister: Within the statutory limits for sentencing that are laid down—and the statutory limits usually allow for very severe sentences—the precise sentence that is given is a matter for the judge. However, as my hon. Friend will be aware, the Government intend to introduce legislation that would subject a sentence alleged to have been too lenient to the scrutiny of the Court of Appeal. While that court could not then overrule that particular sentence, what it said might be a guide for future sentences.

Mr. Hume: Will the Prime Minister dampen down the hysteria in this country about Irish-American support for violence in Northern Ireland by recognising that the vast majority of Irish-Americans, of whom there are 44 million, do not support violence in Northern Ireland and that opposition to it is forcefully, strongly and

constructively expressed by their political leaders, such as Speaker O'Neill, Senator Kennedy and Senator Moynihan?

The Prime Minister: I agree with the hon. Gentleman that the overwhelming majority of the American people, including those in Government and in prominent positions—indeed, I think all in Government and in prominent positions—and the Irish, condemn violence as a means of pursuing political ends. Violence is the negation of democracy and we pursue democracy. They have the chance of pursuing these things through the ballot box. We hope that one day they will take that course and reject the path of violence.

Q2. Mr. Alex Carlile asked the Prime Minister if she will list her official engagements for Tuesday 20 December.

The Prime Minister: I refer the hon. Gentleman to the reply that I gave some moments ago.

Mr. Carlile: In the light of the recent crash of the first ground-based cruise missile to be tested operationally, what new steps do the Government propose to take to secure at least equal control of these very unreliable weapons?

The Prime Minister: The cruise missiles are not yet fully operational and will not be fully operational until the end of December, because that is the time appointed by the agreement with NATO. With regard to the control of these missiles, that is governed by agreements that have been satisfactory to all previous Prime Ministers, including the one whom the hon. Gentleman's party supported when it was able to do so.

Mr. Rathbone: Is my right hon. Friend satisfied with the liaison between the Law Officers and the Minister with responsibility for consumer protection on the House Buyers Bill?

The Prime Minister: I am sure that I am well served by the Minister with responsibility for consumer protection and by the Law Officers. I had hoped to be asked about that matter last Thursday, but unfortunately the questions that one expects and hopes for do not always come. Perhaps I might make it perfectly clear saying now what I would have said then,—it might have been better had I been asked the question then, but that is how it goes—that the Government have decided to introduce a Bill to enable solicitors employed by institutions such as building societies and banks also to convey houses. That goes for all kinds of conveyancing, not just properties that are on registered land.

With regard to registered land, the Government are consulting to extend the rights of conveyancing to others, if that can be done safely. I am grateful to have had the opportunity of referring to these matters.

Q3. Mr. Michael Forsyth asked the Prime Minister if she will list her official engagements for 20 December.

The Prime Minister: I refer my hon. Friend to the reply that I gave some moments ago.

Mr. Forsyth: Can my right hon. Friend assure the House that the Government's rate-capping policies have proved an enormous success in Scotland in practice? Does she agree that they have brought widespread relief to people, such as my constituents, who are living under the



10 DOWNING STREET

PRIME MINISTER

Employed Solicitors

The Lord Chancellor's recommendation is inconsistent with the decision of Cabinet on 15 December 1983 (Flag A) and *with* your own statement of Government policy in the House on 20 December (Flag B).

Agree a firm letter to H Committee in line with Policy Unit recommendations?

DMB

15 February 1985

*I have
strong views
we 2 would
cannot now
retract
not.*

PRIME MINISTER

15 February 1985

CONVEYANCING BY EMPLOYED SOLICITORS

The Lord Chancellor is still opposed to allowing employed solicitors to carry out conveyancing. According to his latest H paper, this proposal would give rise to "insoluble" conflicts of interest, reduce consumer protection and, possibly, competition too.

Officials from several Departments have considered the conflict of interest problem at length. With the exception of the LCD officials, who have been looking over their shoulders to the Lord Chancellor's emphatic views, they have agreed that the problem is limited. The only example to emerge in several months of discussion relates to retentions of funds by the building society, pending completion of repairs and the like. The solution is simple: building societies should offer a basic, conveyancing-only service and should make this clear to the borrower at the outset.

The recommended safeguards against building societies using their bargaining position to compete unfairly with independent solicitors would provide the latter with a greater degree of protection than other sectors of the economy enjoy.

Whichever Minister to whom it fell to announce that the conflict of interest problem is "insoluble", would look ridiculous. How could he explain why it is that an individual

E. R.

CONFIDENTIAL

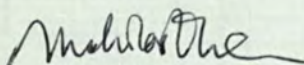
- 2 -

who aspires to own and manage a house is, at the same time, deemed incapable of understanding that the building society's solicitor would be available to carry out conveyancing, but not to assist the borrower in disputes with the building society? This patronising attitude to the public is contrary to our entire philosophy of choice, competition and responsibility. We would also face the embarrassment that we dissuaded the promoters of the Housebuyers Bill from perservering with it, by letting it be understood that we would solve the conflict of interest question.

We recommend that you intervene on this occasion to say that:

1. You note the majority conclusion of the officials' report that the conflict of interest problem could be taken care of, provided that lending institutions offer a basic conveyancing service and make its limitations clear.

2. ^{We cannot} ~~You question whether we can~~ now deny lending institutions the chance to compete and housebuyers the opportunity to choose in this matter. It would be contrary to our entire philosophy. Moreover, it would be difficult to explain why individuals aspiring to buy and manage a house were incapable of understanding what an employed solicitor could and could not do, under the arrangements envisaged in the report.


NICHOLAS OWEN

CONFIDENTIAL

CONFIDENTIAL



10 DOWNING STREET

From the Private Secretary

29 October 1984

CONVEYANCING FOR REWARD

The Prime Minister was grateful for the Lord President's minute of 24 October reporting on the further consideration given by members of H Committee to the subject of conveyancing for reward.

The Prime Minister has also seen the Chief Secretary's minute of 18 October, the Lord Chancellor's of 22 October, and the Secretary of State for the Environment's of 24 October.

The Prime Minister is content with the arrangements for non-solicitor conveyancers which have now been agreed on the understanding that the Lord Chancellor will at the appropriate stage consult the Secretary of State for Trade and Industry and other colleagues on the rules proposed by the council.

The Prime Minister is also content with the conclusion reached by H Committee on conveyancing by employed solicitors. She believes, however, that a decision to postpone legislation on this subject would be ill-received, and she hopes that the Government's commitment to early legislation can be reaffirmed.

I am sending copies of this letter to Private Secretaries to Members of the Cabinet, other members of H Committee, Henry Steel (Law Officers Department), Iain Jack (Lord Advocate), Alex Galloway (Paymaster General's Office), Dilwyn Griffiths (Permanent Under Secretary of State's Office, Department of Trade and Industry), and Richard Hatfield (Cabinet Office).

David Barclay

Miss Janet Lewis-Jones

CONFIDENTIAL

SM.

CONFIDENTIAL Prime Minister ⁽¹⁾

Minute from the Lord President attached.

Agree Policy Unit recommendations

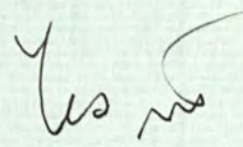
25 October 1984

at X and Y?

PRIME MINISTER

CONVEYANCING FOR REWARD

Non-Solicitor Conveyancers

Yes  EMB 26/10

There is now broad agreement amongst colleagues on the approach to non-solicitor conveyancers. It is a pity that a regulatory body is necessary but if we must have a Council, let it do its job with as light a touch as possible. Your intervention helped to secure agreement to arrangements which should ensure this. The legislation will emphasise the need for an efficient and economical service. The Council will not be bound by the Farrand Committee's proposals, which are excessively restrictive.

The best guarantee that we stick to this arrangement is that the Lord Chancellor should consult Norman Tebbit, and through him, the Director General of the OFT. The Lord Chancellor does not dissent from this in his reply, but he does not explicitly acknowledge it either. You might wish therefore to round off this correspondence along the lines:

You are content with the arrangements for non-solicitor conveyancers which have been agreed, on the understanding that the Lord Chancellor will consult colleagues, and in particular the Secretary of State

CONFIDENTIAL

E. R.

for Trade and Industry, on the rules proposed by the Council.

Employed Solicitors

The Lord Chancellor agrees to urgent consideration of safeguards. His forecast that "large and wealthy corporations" will drive "small competitive independent firms of solicitors" out of business is understandable but overstated. There will be powerful safeguards against unfair competition by building societies. Moreover, solicitors are already getting into shape to deal with the threat. The Law Society has agreed to allow advertising. Some solicitors are planning one-stop housebuying centres. This will provide a badly needed jolt to the estate agents. A new source of competition is probably the only way to undermine estate agents' rigid fee structures.

The Lord President cautions against pushing legislation on employed solicitors through in this Session. It would therefore be worth commenting in your reply that we must reaffirm our commitment to legislation on employed solicitors, to retain the initiative.

to propose will be ill-received.

I lean the decision

Nicholas Owen
NICHOLAS OWEN

** While recognising the force of his concern about ill digested legislation,*

copy
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PRIME MINISTER

CONVEYANCING FOR REWARD

In my minute of 8 October I reported that the Home and Social Affairs Committee (H) had discussed conveyancing for reward in the light of the first report from the Farrand Committee on conveyancing by non-solicitors and the results of the consultations which the Lord Chancellor had undertaken on conveyancing by employed solicitors. H's conclusions were that, to retain the initiative on conveyancing for reward, the Government should, subject to further consideration by the Treasury and the Department of Trade and Industry, bring forward legislation on conveyancing by non-solicitors broadly on the lines recommended by the Farrand Report early in the 1984-85 Session. Provisions on conveyancing by employed solicitors should, however, be deferred until a later Session so that further consideration could be given to the severe problems of conflict of interest which seemed likely to arise. My earlier minute set out the background to these conclusions.

[FLAC B]

2. Subsequently, the Chief Secretary wrote to you on 18 October with the considered views of Alex Fletcher and himself in the light of further discussion between their officials and those of the Lord Chancellor, and the Lord Chancellor wrote on 22 October with some further comments.

[FLAC C]

3. To take the issues in turn, on non-solicitor conveyancing the Chief Secretary and DTI Ministers are content to proceed with early legislation subject to a number of particular points mostly relating to the proposed Council on Conveyancing which will regulate the new profession. In so far as they bear on the legislation itself, the Lord Chancellor is content and I am sure that H Committee would wish legislation to be prepared on this basis.



4. The Chief Secretary also proposed that the Government should affirm its belief during the passage of the Bill in the scope for a simple conveyancing service for house buyers and indicate that in its view Farrand is too restrictive in certain respects. The Lord Chancellor observes that simplicity of conveyancing depends upon the general law and the nature of the individual transaction, rather than on the will of the conveyancer, and that he sees dangers in commenting on some aspects only of the detail of the Farrand recommendations in advance of that Committee's second report (on conveyancing itself) which is due at the end of the year. As the legislation will provide for a Government veto on the rules which the Council will make for regulating non-solicitor conveyancers, it is neither necessary nor wise for the Government to express detailed views on this aspect until we have Farrand's second report and the Council has formulated its rules in the light of it. There seems to me to be little point in trying to reach a final view on this before we have Farrand's next report and in my view this point should not be allowed to be a stumbling block to preparing and introducing the legislation.

5. On conveyancing by employed solicitors, the Chief Secretary suggests that officials should be asked to press ahead urgently with consideration of how best to overcome the problems of conflict of interest and anti-competitive practices so that we can reconsider the position by the end of the year, and that we should not yet close the door to the possibility of legislation in 1984-85. The Lord Chancellor is content with this and I am sure that H would be too. I should, however, say as a business manager, that I believe we will have difficulty in Parliament on this aspect if the legislation we introduce is not carefully thought through and well-drafted. I should have reservations about introducing perhaps ill-digested legislation on this well into the Session.



6. I am sending copies of this minute to Cabinet colleagues, other members of H Committee, the Attorney General, the Solicitor General, the Lord Advocate, the Paymaster General, the Parliamentary Under Secretary of State for Corporate and Consumer Affairs, and Sir Robert Armstrong.

Lord

24 October 1984



a No

*abp
DMS
25/10*

PRIME MINISTER

CONVEYANCING FOR REWARD

I have seen a copy of the minute which Peter Rees sent to you on 18 October.

I support his proposal for legislation to permit non-solicitor conveyancing. I agree with him that these additional safeguards are necessary to reduce the risk that the proposed Council for Licensed Conveyancers would foster "an inbred, inward-looking profession as restrictive as other professions with which we are familiar".

I also agree with the proposals for carrying forward consideration of legislation to permit employed solicitors to provide conveyancing services. Peter Rees is right in saying that employed solicitors would be the main potential source of competition. The responses to the consultation paper issued earlier this year show that further consideration is needed to prevent unacceptable conflicts of interest. But our aim must be to find a way through these difficulties, and I agree that officials should advise us how the difficulties revealed by the consultation could best be overcome.

I am copying this minute to other members of H Committee, the Parliamentary Under Secretary of State for Corporate and Consumer Affairs, and Sir Robert Armstrong.

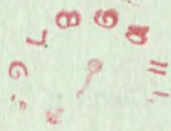
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PJ

24 October 1984

LEGAL PROCEDURE: Conveyancing

NOV 83



251

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.



HOUSE OF LORDS,
SW1A 0PW

Prime Minister

*cc'd
C*
*Await Policy Unit advice
+ minute from Lord Pes:*

Conveyancing for Reward

I think we should remember the terms of reference of the Farrand Committee which the Cabinet agreed should be the basis on which we should proceed. These were as follows:

"1. To consider what tests or other evidence of competence are needed for non-solicitor conveyancers in order to provide the public with a satisfactory assurance of adequate skill; how any such tests might be administered; and what other requirements should be placed on non-solicitor conveyancers to ensure adequate consumer protection.

2. To consider the scope for simplifying conveyancing practice and procedure, and any other matters concerning the simplification of house purchase which may be referred to the Committee."

I need hardly remind colleagues that the composition of the Committee was also agreed.

On the first limb of its terms of reference the Committee reported unanimously, and this report was the basis of my paper to H. The terms of reference show clearly that the object of legislation was not merely to promote competition, but to do so while ensuring adequate protection for the public. Since publication the Committee has received wide acceptance from the public and interested bodies. The report on the second limb of the terms of reference is still awaited.

In the light of this I am broadly content with the Chief Secretary's proposals of 18th October 1984 on the way in which we should implement the Farrand Committee's recommendations on non-solicitor conveyancers, but there are one or two points I should make.

(1) Whilst I agree that the Council should have statutory purposes which will inhibit it from acting unduly restrictively, and that the Council should have regard to the need to ensure that licensed conveyancers should provide an efficient and economical service, I do not believe it can be required to ensure that a "simple" service is provided. Simplicity depends upon the general law and the nature of the individual transaction, rather than on the will of the conveyancer. Of course if the Farrand Committee's report on the second limb of its terms of reference (which I expect to receive at the end of this year) enables us to simplify the conveyancing process, it may well be appropriate to amend the tests of competence required, as the Committee itself recognised. But we shall not know the answer until we see what they say.

(2) Although I note the belief that some of the recommendations may prove unduly restrictive, our best approach must be to emphasise that it is the Council and not the Committee which is to ensure that the restrictions it lays down are no greater than is necessary to provide adequate consumer protection, and in doing this the Council will have to take its own view of the requirements recommended by the Farrand Committee. If we start to indicate in advance of the final report on the second limb that particular recommendations are too restrictive, we should be expected to express firm views on all the recommendations. This would be inappropriate for legislation of this nature, where ex hypothesi the detailed rules are to be made by the Council subject to a Government veto.

(3) On employed solicitors, I agree that officials should give urgent consideration to what safeguards can be devised to ensure that the consumer is protected against conflicts of interest and anti-competitive practices. It should however be borne in mind that the main effect of opening competition to the salaried employees of building societies and banks will be to siphon off work from small competitive independent firms of solicitors and (if Farrand is implemented) licensed conveyancers and putting it into the hands of large and wealthy corporations. This does not

and may well reduce it
necessarily increase competition. However the main purpose here
is to avoid conflicts of interest.

I am copying this minute to other members of H Committee,
the Parliamentary Under Secretary of State for Corporate and
Consumer Affairs and Sir Robert Armstrong.

H. of S: M.

22nd October, 1984

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Legal Procedure

NO. 8 Conveyancing

CONDUCTOR

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MR BARCLAY

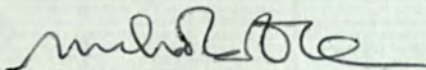
19 October 1984

CONVEYANCING FOR REWARD

The proposals in Peter Rees' letter of 18 October to the Prime Minister would reduce the risk that regulatory arrangements for non-solicitor conveyancers will inhibit, rather than stimulate competition. It is a pity that a regulatory body is necessary at all but, given the unanimous, independent report that there should be such arrangements, and the willingness of the pro-competitive Departments to accept this arrangement, I think we should persevere with it and keep its touch as light as possible. It is important that Ministers can veto excessively restrictive proposals and that the Secretary of State for Trade and Industry is consulted.

On employed solicitors, the re-affirmation of our commitment to legislating will be presentationally important.

The Lord Chancellor will be briefed this evening to say he is in broad agreement, subject to some minor points. I suggest that the Prime Minister should await his comments.


NICHOLAS OWEN

CONFIDENTIAL



FROM: CHIEF SECRETARY

DATE: 18 October 1984

PRIME MINISTER

CONVEYANCING FOR REWARD

*Await Lord Chancellor's
response.*

*Done
19/10*

The Treasury and the Department of Trade and Industry were asked by H Committee to consider whether we could accept that early legislation to allow conveyancing by non-solicitors should proceed, substantially on the basis of the proposals put forward by the Lord Chancellor. This minute reflects the views of Alex Fletcher and myself, in the light of further discussion between our officials and those of the Lord Chancellor.

As John Moore and Alex Fletcher explained at H Committee, we share your fears, recorded in your Private Secretary's letter of 3 October that the regulatory arrangements proposed by Farrand might inhibit rather than stimulate competition. We believe that interested observers are likely to come to the same conclusion, as the implications of the detail of Farrand's recommendations sink in (there are signs that this is already happening). There is a risk of failing to fulfil public expectations, quite apart from the danger that under a restrictive regime licensed conveyancers just will not emerge in sufficient numbers to ensure real competition.

Nevertheless, we acknowledge the political advantages of bringing forward legislation in the next session, and that given the virtual unanimity of the Farrand Committee we shall be pressed to act.

The crucial decision is whether to establish a new Council to regulate non-solicitor conveyancers. We have to accept that some such body is necessary if conveyancers are to be subject to rules of conduct and fitness in addition to tests of competence. We agree that our aim should be for such a body to become self-regulatory at an early date. Initially the Lord Chancellor seemed to envisage that there would be only limited Ministerial involvement at the outset and that it would be left to the Council to devise standards of both competence and conduct. This seemed to us to be likely to result in an inbred, inward-looking profession as restrictive as other professions with which we are familiar.

I understand, however, that since H Committee the Lord Chancellor's Department have indicated their intention to give the Council a statutory duty to lay down only the minimum requirements necessary for consumer protection. We believe that in order to limit the Council's freedom to propose undue restrictions the legislation should also require the Council to have regard to the need for licensed conveyancers to provide an efficient, economical and simple service (or some such purpose which would meet the customer's need not just to know that his money is safe but to have a cheap, effective service).

We also understand that the Lord Chancellor would vet the rules and code of conduct proposed by the Council. This will give Ministers an opportunity to ensure that specific proposals in Ferrand which are far too restrictive are not implemented (e.g. certain duties or restrictions which are more strict than those imposed on solicitors; the length of probation, and certain aspects of the transitional arrangements). Given that the normal competition legislation will apply on a continuing basis to the Council and the new profession, it will be important for the Secretary of State for Trade and Industry to seek the advice of the Director General of Fair Trading at that stage on the implications of the proposed rules for competition.

Even on this basis there will be a strong temptation for the Council simply to adopt Farrand, particularly if we followed Farrand's recommendation for a largely representational Council which would probably in practice mirror the Farrand Committee. Accordingly we think that it is essential for the Government to retain full freedom of appointment so that we can create a small eminent liberal body and get it off on the right footing, without there being undue influence from the Law Society. It is very important that the Council should be as independent of existing interests in this area as possible.

We would envisage that the power of appointment should cease after a transitional period, and that the Council should become autonomous, with competition legislation the main restraint on its developing in an anti-competitive direction.

Provisions along these lines would go a long way to meet our concerns. However, at a presentational level in order to make clear how we expect the Council to develop we believe it will be essential, during the passage of the Bill, for the Government to make it clear that it considers Farrand goes too far in the direction of over-regulation bearing in mind the essential simplicity of conveyancing (hopefully even more so after Farrand Part II) in a great majority of cases.

To sum up, we would be content to proceed on the basis of the Lord Chancellor's proposals on Farrand Part I provided that:

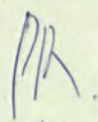
- the Council has statutory purposes which will inhibit it from acting unduly restrictively
- the legislation enables the Government to vet the rules of the Council at the outset
- the Government's initial power of appointment is unfettered

- the legislation provides that the Council could become self-regulatory at an early date (say 5 years from its establishment)
- the Government affirms its belief during the passage of the Bill in the scope for a simple conveyancing service for house-buyers and indicates that in its view Farrand is too restrictive in certain respects

The Lord President also recorded H Committee's conclusion that legislation on employed solicitors should not be brought forward in the 1984-85 Session. We shall have to take decisions on building societies' powers before the end of the year. They will inevitably need to cover building societies providing integrated house buying services, including conveyancing. We have therefore to carry forward the consideration of employed solicitors on much the same time scale. Some work has already been done by officials on safeguards. We believe that we should invite officials to press ahead on this front urgently so that we can reconsider the position by the end of the year.

In the meantime, in reaffirming our commitment to the principle of our intention to legislate on employed solicitors (which we consider to be the main potential source of competition) I believe we should leave the question of timing open at this stage and simply say we are considering carefully the responses to the consultation paper on employed solicitors.

I am copying this minute to other members of H Committee, the Parliamentary Under Secretary of State for Corporate and Consumer Affairs and Sir Robert Armstrong.



PETER REES

18 OCT 1984



CONDUCTOR

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CONFIDENTIAL

PRIME MINISTER

12 October 1984

CONVEYANCING

The discussion in H yielded a weak package - a quango for non-solicitor conveyancers and deferral of a decision on employed solicitors. The Lord Chancellor's legal prestige proved too much for the junior Ministers who attended.

The DTI, Treasury and DoE have been given a short time to consider a simpler solution for the non-solicitors. My expectation is that they will settle instead for:

- (1) A degree of Government control over the Council's appointments and rules. Provided that the Lord Chancellor consulted his colleagues - an important proviso - this condition would prevent the Council turning into a mini-Law Society, with unduly restrictive codes and entry requirements.
- (2) An energetic effort to resolve the employed solicitors' "severe problem" of conflict of interest. This has to be resolved by December to enable Treasury to instruct Counsel on the Building Societies' Bill in time for its 1985-86 slot.

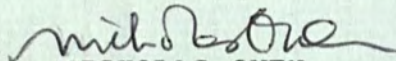
In our view, these steps are essential to retain the initiative on conveyancing. The Lord Chancellor's Department has been totally supine on employed solicitors. It has merely contemplated the conflict of interest problem during the last 4 months. The Lord President's Report of H underlined the marginal nature of the conflict, which concerns financial advice outside solicitors' area of expertise.

CONFIDENTIAL

It is likely that the Chief Secretary will write to the Lord President early next week. It would be helpful if the Lord President could persuade Quintin Hailsham to accept that:

- (1) The Administration of Justice Bill should retain for the Government some power of appointment to the Conveyancers' Council in its initial phase and that the Lord Chancellor will consult colleagues in exercising that power.

- (2) That a December deadline should be set for resolving the conflict of interest in respect to employed solicitors. This could still keep open the option of legislating in this Session.


NICHOLAS OWEN



9/10
Annex N 2/28
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PRIME MINISTER

Conveyancing for Reward

1. On 15 December 1983, Cabinet considered the subject of conveyancing for reward and concluded (CC(83)37th Conclusions, Minute 4):

- i. That action should be taken to extend the right to conveyance to employed solicitors and that consultations on how to achieve this and to avoid problems of conflict of interest should be initiated; and
- ii. That further consultations should be initiated to examine the possibility of extending the right to conveyance outside the legal professions;

and, consequently, in the light of these decisions:

- iii. That Mr Austin Mitchell MP's House Buyers Bill, which was due to have its Second Reading Debate the following day, should be opposed.

In fact, Mr Mitchell's Bill received its Second Reading on 16 December but was subsequently withdrawn, following discussion between the Solicitor General and Mr Mitchell and the Solicitor General's announcement of the establishment of a Committee including representatives of all the main relevant interests (now the Farrand Committee) to consider, first, conveyancing by non-solicitors and, second, the scope for simplifying conveyancing practice and procedure. In his announcement, the Solicitor General said that the Government hoped to bring forward any necessary legislative proposals in this area in the 1984/85 Session and also that it hoped to bring forward legislation permitting building societies to offer conveyancing services in 1984/85.

CONFIDENTIAL

2. The Lord Chancellor received the first report (on non-solicitor conveyancing) from the Farrand Committee a few weeks ago. He has also assessed the results of his consultation on the implications of extending the right to conveyance to employed solicitors. The Home and Social Affairs Committee (H) considered memoranda on both subjects last week and this minute reports the Committee's views on how we should take matters forward.

3. On non-solicitor conveyancing the Farrand Committee was asked to report by September on what tests or other evidence of competence are needed for non-solicitor conveyancers in order to provide the public with a satisfactory assurance of adequate skill; how any such tests might be administered; and what other requirements should be placed on non-solicitor conveyancers to ensure adequate consumer protection. The Farrand Committee's Report on this has been produced promptly and is most thorough. Essentially it provides for the establishment of a new profession of licensed conveyancer with a Council for Licensed Conveyancers to oversee regulation and tests of competence to ensure that consumer protection safeguards are met, including the protection of the consumer from the financial consequences of negligence or dishonesty. The Report was virtually unanimous.

4. The Lord Chancellor considered that the creation of a new body such as the proposed Council was unwelcome but the case for a single body was strong and no existing body would do. He proposed, however, that there should be no Ministerial involvement in appointing the chairman or members of the Council once the establishment of the new arrangements is complete, and that public funds should only be provided for pump-priming for a strictly limited initial period. He also proposed that the Council, and not the legislation directly, should set the standards of competence and other safeguards required. They might not,

therefore, be as onerous as those suggested by the Farrand Report though it would be for the Council to take its own view. Some Ministers, notably those from the Treasury and the Department of Trade and Industry, considered, however, that simpler arrangements for regulation and tests of competence could and should be devised.

5. H Committee as a whole took the view that timing was crucial. Legislation implementing the Farrand Report could be devised and drafted at the expense of only a few weeks delay to the proposed legislative vehicle, the Lord Chancellor's Administration of Justice Bill. The exploration and development of other proposals (eg arrangements not involving a new Council) would inevitably take some time, would either significantly delay the Administration of Justice Bill or require a new vehicle. In either case legislation would be ready for introduction unacceptably late both from the point of view of managing the programme of Government legislation for the Session and from the point of view of pre-empting any renewed action by private members and retaining the initiative for the Government.

6. Nonetheless, the Ministers from the Treasury and the Department of Trade and Industry sought more time to consider the Farrand proposals and the difficulties they saw in them. In the circumstances, the Committee agreed that they might have until early next week to consider whether they could accept that proposals on the lines proposed by the Lord Chancellor should be the basis of early legislation, or whether they wished to insist that the search for other arrangements should be pursued with the consequence of postponing legislation until the 1985-86 Session. I will report further to you and colleagues when I have their views. In the meantime the Lord Privy Seal agreed that drafting of legislation on the basis of the Farrand Report recommendations might be put in hand so that no time would be lost.

CONFIDENTIAL

7. Turning to conveyancing by employed solicitors, the Lord Chancellor reported to us the outcome of his consultations. The main point emerging was that the potential conflict of interest between an employed solicitor's duty to his employer and his duty to the house buyer was even greater than had earlier been expected. It arises not primarily in respect of establishing the claim to title but in giving the buyer advice in respect of the nature and conditions of the loan which the solicitor's employer is likely to make and on which he is also advising them. A further and equally difficult conflict will be introduced if we legislate in due course to enable building societies to undertake estate agency functions, so that the same solicitor could be acting for both buyer and seller. The Lord Chancellor's advice, and that of the Law Officers attending the meeting, was that while they did not conclude that the problems over conflicts of interest could not be resolved, they believed it essential to consider the problems further before framing legislation.

8. The Scottish Minister urged that legislation on employed solicitors should be postponed not only for these reasons but also so as not to inhibit discussions with the Law Society of Scotland about greater competition between solicitors eg on advertising and quotations. It appears very likely that if legislation on conveyancing by employed solicitors is introduced in Scotland, these discussions will be broken off.

9. The Committee concluded that legislation on conveyancing by employed solicitors should continue to be the Government's objective but that, given the further work that needed to be done on the potential conflicts of interest and the need to take account in this of the future role foreseen for building societies, such legislation should not now be brought forward

in the 1984-85 Session. This conclusion reinforces the importance of early decisions, as reported above, that will enable legislation to be brought forward quickly on non-solicitor conveyancing.

10. To summarise, H Committee considers that to retain the initiative on conveyancing for reward the Government should, subject to further consideration by the Treasury and the Department of Trade and Industry, bring forward legislation on conveyancing by non-solicitors broadly on the lines recommended by the Farrand Report early in the 1984-85 Session. Provisions on conveyancing by employed solicitors should, however, be deferred until a later Session so that further consideration can be given to the severe problem of conflict of interest which seem likely to arise.

11. I am sending copies of this minute to Cabinet colleagues, other members of H, the Attorney General, the Solicitor General, the Lord Advocate, the Paymaster General, and Sir Robert Armstrong.

WJW



8 October 1984

LEGAL PROCEDURE: Conveyance

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file

cc: Nick Owen

10 DOWNING STREET

From the Private Secretary

3 October 1984

The Prime Minister has now seen the papers for H Committee on conveyancing circulated by the Lord Chancellor. She is concerned that the package of proposals set out in the papers may not be sufficient to keep the initiative in this important area of the Government's competition policy which was gained earlier this year. In particular she fears that the regulatory arrangements proposed by the Farrand Committee may inhibit rather than stimulate competition. Moreover, she wonders whether the safeguards proposed against conflict of interest affecting employed solicitors are necessary, given that there will be an identity of interest between the building society and its client in respect of the most important point, the claim to title. The Prime Minister very much hopes that H Committee can consider less elaborate ways of achieving the Government's objectives with a view to pressing ahead more quickly than is currently envisaged by the papers before the Committee.

I am sending a copy of this letter to the Private Secretaries to members of H Committee and to Richard Hatfield (Cabinet Office).

(Timothy Flesher)

Miss Janet Lewis-Jones,
Lord President's Office

JL

Lawrencing.

CONFIDENTIAL

Prime Minister: 1

PRIME MINISTER

Committee will be discussing conveyancing on Tuesday. The Policy Unit fears that the Lord Chancellor's proposals will lose the initiative. Agree to write to the Lord President as they propose? (attached)

CONVEYANCING BY NON-SOLICITORS AND EMPLOYED SOLICITORS

Opening up the conveyancing business to greater competition is a vital element in the competition programme. Your intervention last December wrestled the initiative from the Opposition and set us on a course which has excited the public and already stimulated competition among solicitors. It would be a setback if this momentum were lost now.

The package offered by the Lord Chancellor - a restrictive new quango for non-solicitor conveyancers and a wait-and-see, all-very-difficult stance on employed solicitors - could well lose us the initiative. The public are fed up with gross overcharging. The Opposition could capitalise on this.

Non-Solicitor Conveyancers (NSCs)

Professor Farrand has done well to produce a unanimous report from a committee which embraces both the Law Society and the Consumers Association. The price is an anti-competitive arrangement: a Council modelled on the Law Society, with stiff examinations, designed to produce mini-solicitors. The report argues that only if NSCs are seen to be professional, and provide the consumer with as much protection as the Law Society, will NSCs provide a new source of competition. But the great and growing majority of conveyancing concerns

CONFIDENTIAL

registered property and is legally straightforward.

Conveyancing registered property should be open to anyone who has made proper insurance arrangements against incompetence and fraud. This would require NSCs to organise a compensation fund, as the National Association of Conveyancers has already done. For non-registered property we would need a positive licensing system, but a new Council is unnecessary and anti-competitive. We could find ourselves in the absurd position of paying £200,000 to launch a body which reduces, rather than increases the numbers of NSCs.

A simpler solution would be for the Office of Fair Trading to issue licences, on presentation of examination certificates issued by accredited polytechnics offering appropriate courses, kept up to the mark by the Council of National Academic Awards (CNAA).

Employed Solicitors

The Lord Chancellor is attempting to kick this into the long grass. He claims to have discovered a grave, unforeseen problem - the conflict of interest between professional obligations to a client and common law duties to an employer. He argues that the daunting list of safeguards against this problem (at Annex C of the paper) is insufficient and wishes to defer a decision.

This is unnecessary because the problems are slight. Under existing arrangements, independent solicitors frequently act both for client and Building Society. Solicitors' Practice Rules are robust enough to cope with such conflicts of interest as are likely to arise. The conflicts which the Lord Chancellor envisages - to do with the type and conditions of mortgages - have nothing to do with the critical point in conveyancing - establishing valid titles to property. Here there is an absolute identity, not a conflict, of interest between the Building Society and the client. If Building Societies were to take advantage of clients' trust in employed solicitors to foist disadvantageous borrowing terms, they would get found out. The additional safeguards against conflict of interest are, in our view, unnecessary. We suspect that the problem has been magnified by the Lord Chancellor's Department's concern about potential competition to independent solicitors.

Conclusions

Prime Minister: You might write to the Lord President in advance of the H Committee meeting on Thursday, either to invite him to report the outcome, as a way of signalling your interest, or to write at greater length to prevent this initiative from stalling. The following points could be made:

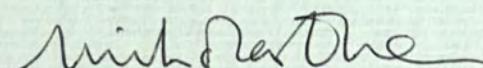
a) briefly asking for a report
 or b) at greater length as to Policy Unit propose.

The longer letter is

R.

CONFIDENTIAL

- (1) You are concerned that the package of proposals - a new Council to regulate conveyancers and a deferred decision on employed solicitors - may lose us the initiative in an important area of our competition policy.
- (2) You fear that the regulatory arrangements proposed by the Farrand Committee may inhibit, rather than stimulate competition. Would it not be sufficient for conveyancers of registered property to organise their own indemnity arrangements, and for conveyancers of non-registered property to be licensed by the OFT?
- (3) You wonder whether the safeguards proposed against conflict of interest affecting employed solicitors are necessary at all, remembering that there will be an identity of interest between the Building Society and its client in respect to the most important point, the claim to title. Solicitors already act for both client and Building Society. If a Building Society were unwise enough to take advantage of the client's trust in an employed solicitor to press disadvantageous terms, it would soon get found out. And in any case, surely the Solicitors' Practice Rules are robust enough to withstand such pressure?
- (4) You hope H Committee can consider less elaborate ways of achieving our objective, with a view to legislation this Session.


NICHOLAS OWEN

- 4 -
CONFIDENTIAL

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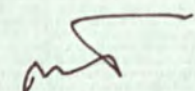

PRIME MINISTER

c.c. Mr. Redwood

CONVEYANCING

During the course of the day we were asked to clear the text of an answer which the Attorney General will be giving in the House on the Government's plans for conveyancing. The purpose of this answer is to demonstrate that the Government is going sufficiently far to enable Austin Mitchell to withdraw his Bill. The text has been negotiated with Mr. Mitchell.

The wording of the answer, no doubt reflecting the negotiations which have taken place, represents an advance on the note which the Solicitor General gave to Mr. Mitchell on 12 January and which you also saw. This note referred to "whether, and if so how, adequate tests of competence could be devised". The answer attached now refers to "what tests are needed for non-solicitor conveyancers", which creates a presumption that non-solicitors will be allowed to convey. I told the Lord Chancellor's Private Office that if the Law Officers were prepared to make this advance we would not stand in their way. I understand that the Chancellor and the Secretary of State for Trade and Industry are also content with the answer.

15 February 1984



Question

To ask Mr ^{Attorney} ~~Solicitor~~ General what plans the Government has for improving the house transfer system in England and Wales.

Answer

We have established a Committee, chaired by Professor Street of the University of Manchester, with the following terms of reference:

- "1. To consider what tests or other evidence of competence ~~would be~~ ^{are} needed for non-solicitor conveyancers in order to provide the public with a satisfactory assurance of adequate skill; how any such tests might be administered; and what other requirements should be placed on non-solicitor conveyancers to ensure adequate consumer protection.
2. To consider the scope for simplifying conveyancing practice and procedure, and any other matters concerning the simplification of house purchase which may be referred to the Committee."

The Lord Chancellor has invited the following organisations to nominate a representative to serve on the Committee.

The Law Society
~~Senate of the Inns of Court and of the Bar~~
Institute of Legal Executives
National Institute of Conveyancing Agents
Consumers Association
National Consumer Council
Building Societies Association
X ~~Bank Bankers Association~~
~~Committee of London Clearing Banks~~
Royal Institute of Chartered Surveyors
National Association of Estate Agents
Association of District Councils
Association of Metropolitan Authorities

local
A₁ law society

Society for Computers and Law

British Insurance Association

We have asked the Committee to report by September on the first limb of its terms of reference, and by the end of the year on the second limb. We hope to bring forward any necessary legislative proposals ~~next session.~~ *in the 1984/85 session.*

We will shortly issue a consultation paper on how best to ensure that conflicts of interest and anti-competitive practices do not arise when solicitors employed by banks, building societies and other organisations are permitted to undertake conveyancing for their employers' customers. We hope to bring forward legislation permitting building societies to offer the service next session.

The Government is also concerned about barriers to effective competition between solicitors in private practice. We intend to discuss with The Law Society the scope for amending the Solicitors Practice Rules so that solicitors may advertise their charges for conveyancing work.

We have also decided to institute a wider-ranging review of the house transfer system, designed to identify ways to simplify and

speed up the process. The issues will be considered inter-Departmentally with appropriate ^{Part. + public} consultation including reference ^{of} ~~at~~ specific issues to the committee. The review will be completed by the Autumn.

Furthermore we intend to speed up the extension of land registration. Additional manpower is to be made available to the Land Registry so that compulsory registration will cover areas containing 85% of the population - as opposed to 73% at present - by 1987. This is the first extension of compulsory registration (except for former council houses) since 1978.

These measures demonstrate the Government's commitment to simplifying house transfer and ^{to} ~~improving~~ competition so that the public can benefit from a quicker and cheaper system.

MR BARCLAY ✓

11 January 1984

cc Mr Redwood

CONVEYANCING MONOPOLY

The aide-memoire which the Solicitor-General proposes to hand to Mr Mitchell and Mr Wells is, in general, as forthcoming as it could be. It cannot, of course, commit the Government to legislating in respect to non-solicitors in advance of a consideration of tests of competence and other consumer protection requirements, but paragraph 7 strikes exactly the right note in anticipating the possibility of timely legislation.

The aide-memoire misses a trick at para 6 (held back for defensive briefing, perhaps) in omitting to mention that the Conveyancing Committee will not operate under the Law Commission, but will report directly to Ministers. The Law Commission will have a representative on the Committee, but will not Chair it. I understand that a Chairman less directly involved in the subject (a retired civil servant, or academic) is being considered. I think it likely that Mr Mitchell and Mr Wells will raise the question of the independence of the Committee.

NICHOLAS OWEN

PRIME MINISTER

Conveyancing

The Solicitor General will be meeting Mr. Austin Mitchell tomorrow morning in an effort to persuade him to withdraw his House Buyers Bill. He proposes to hand over the attached note which sets out the Government's position.

The note fairly reflects Cabinet's decisions. Indeed it puts them over rather more clearly than they emerged from the debate. It is also consistent with what you yourself said at Question Time on 20 December, except that in paragraph 6 it goes further in entertaining the possibility that non-solicitors might eventually - if satisfactory arrangements can be devised - be allowed to convey unregistered as well as registered land.

In paragraph 7, the possibility is kept open of provisions on non-solicitors being included in the legislation which it is hoped to introduce next session.

Content for the Solicitor General to hand this note to Mr. Mitchell?

DMB

11 January 1984

1. We announced on Second Reading a number of measures which we intend to take to improve competition in conveyancing and to make the procedure simpler. These were:-

(i) legislation to permit solicitors employed by organisations such as building societies to undertake conveyancing for their employers' clients. This would follow consultation on how the potential conflicts of interest might best be overcome;

(ii) consultation through a special committee on whether tests of competence can be devised so that non-solicitors could safely be permitted to undertake conveyancing for reward;

(iii) a review through the same committee, of conveyancing practice and procedure so that proposals for simplification can be examined systematically by those most concerned;

(iv) discussions with the Law Society about its restrictions on advertising, with a view to increasing competition between solicitors in private practice.

2. We have made good progress since Second Reading in establishing a likely timetable for those initiatives. We expect to make announcements in the near future along the following lines.

Employed Solicitors

3. We are committed to legislation to enable solicitors employed by organisations such as building societies and banks to undertake conveyancing.

A consultation paper will be issued early next month on how the potential difficulties with conflicts of interest and anti-competitive practices might best be overcome. So far as conflicts of interest are concerned, our provisional view is that we can rely primarily on appropriate amendments to the Solicitors Practice Rules. This might be supplemented, in the case of building societies, by a Code of Practice issued by the Building Societies Association and by a statutory requirement for societies to inform clients of the desirability of seeking independent advice where, for instance, the

society wishes to impose a special condition on the loan. The Code of Practice, which might be policed by the Director General of Fair Trading or perhaps by the Register of Friendly Societies, could also prohibit societies from discriminating against borrowers who chose not to use the society's conveyancing services.

4. The consultation paper will also seek views on whether other employed solicitors (eg those employed by estate agents or local authorities) should be permitted to undertake conveyancing. Our view is that, provided the potential conflicts of interest can be avoided it is right to enable all employed solicitors to do so.

5. We expect to complete the consultation process and make a decision by June. In order to permit employed solicitors to undertake conveyancing, it is only necessary to amend the Solicitors Practice Rules. However, building societies cannot offer the service to customers without an amendment to the Building Societies Act. We hope to legislate next session.

Non-Solicitors

6. We hope to establish the Conveyancing Committee within the next few weeks. We envisage that the membership will include representatives of the building societies, banks, local authorities, solicitors, non-solicitor conveyancers, insurers, surveyors, estate agents and of course consumers. The Committee's first task will be to consider whether, and if so how, adequate tests of competence could be devised for non-solicitors and what other requirements are needed for proper consumer protection. One obvious area of study will be whether relevant parts of the Law Society's examination could be used or adapted to ensure competence. The Committee will look first at registered land, but will be free to go on to consider whether satisfactory arrangements could be made for unregistered land as well. We shall make it clear that we hope the Committee will report on non-solicitors by the Autumn.

7. It is not possible in advance of the report to say exactly when we could introduce legislation. However, we are firmly committed to the principle of competition and so if the report recommended a scheme which gave adequate protection for the public we would want to get on with legislation to give effect to it as soon as practicable. We do not rule out the possibility that legislation on this might be brought forward at the same time as legislation on employed solicitors.

Conveyancing Practice and Procedure

8. The Committee will also examine conveyancing practice and procedure. Its purpose will be to ensure that the various proposals for change are examined systematically and that the work already going on is properly co-ordinated. The Committee will have a wide remit. It will be asked to examine whether or not the objectives of clauses 3 and 4 of the Bill can be achieved, and whether we can learn from Scottish conveyancing practice, and to consider the proposals made by the Law Society and others to streamline conveyancing. We want it to get on with this part of its work promptly as well, consistently with the priority which we require to be given to its report on non-solicitors.

Competition in Private Practice

9. As we indicated on Second Reading, competition between solicitors in private practice has increased since the Lord Chancellor abolished the fixed scales for conveyancing work ten years ago. This has led to a welcome reduction in the real cost of conveyancing. The relaxation of the restrictions on solicitors advertising has helped. But we think those restrictions should be further relaxed. The Government will shortly invite the Law Society to discuss the scope for, in particular, permitting solicitors to advertise prices for conveyancing work. We are confident that those discussions will be productive. We expect that it will be possible for the necessary amendments to be made to the Solicitors' Practice Rules this year.

I know that that resulted in the death of two of their security guards. Co-operation is very close between the Government of the United Kingdom and the Republic of Ireland in trying to block off munitions or, if they get over, in trying to find them. Indeed, the destruction caused in the Republic of Ireland by the activities of the IRA is very damaging indeed to the Republic and we therefore co-operate on these matters to the maximum extent. I also join with the right hon. Gentleman in being very grateful for what the American ambassador said when he came to see me last evening.

Mrs. Currie: May I turn my right hon. Friend's attention to another important question and ask if she will find time today to study the remarks of Judge Gibbens in the High Court on Friday and yesterday in which he expressed sympathy for a man who had unlawful intercourse with a 7-year-old girl and described it as an accident. Does she agree with me, as the mother of a 7-year-old girl, that the judge's remarks were disgraceful?

The Prime Minister: I have great sympathy with my hon. Friend. The Government regard with very great seriousness all sexual offences against children, and I cannot emphasise that too strongly. As my hon. Friend will know, the Lord Chancellor has called for a transcript of the proceedings so that he may first find the facts, which I believe is the proper course to take.

Mr. Steel: Is the Prime Minister aware that millions of her fellow citizens will, this Christmas, be contemplating the new year with some dread in view of her overruling of the Secretary of State for Energy on electricity prices, coupled with the Government's cuts in housing benefit? Does she begin to understand their anxieties?

The Prime Minister: My right hon. Friend answered questions very forcefully yesterday and pointed out that, as electricity prices had been frozen for two years, the possibility being considered might mean an increase of 2 per cent. over what would turn out to be the course of two years, whereas the Government whom the right hon. Gentleman supported, and whose life that support extended, had an increase in electricity prices of 2 per cent. every six weeks.

Mr. Lilley: Bearing in mind that 490 people were convicted last year of sexual assaults on children will my right hon. Friend agree that there is growing public concern at the leniency of sentences passed on such attackers, such as the one passed yesterday on the attacker of a 7-year-old child?

The Prime Minister: Within the statutory limits for sentencing that are laid down—and the statutory limits usually allow for very severe sentences—the precise sentence that is given is a matter for the judge. However, as my hon. Friend will be aware, the Government intend to introduce legislation that would subject a sentence alleged to have been too lenient to the scrutiny of the Court of Appeal. While that court could not then overrule that particular sentence, what it said might be a guide for future sentences.

Mr. Hume: Will the Prime Minister dampen down the hysteria in this country about Irish-American support for violence in Northern Ireland by recognising that the vast majority of Irish-Americans, of whom there are 44 million, do not support violence in Northern Ireland and that opposition to it is forcefully, strongly and

constructively expressed by their political leaders, such as Speaker O'Neill, Senator Kennedy and Senator Moynihan?

The Prime Minister: I agree with the hon. Gentleman that the overwhelming majority of the American people, including those in Government and in prominent positions—indeed, I think all in Government and in prominent positions—and the Irish, condemn violence as a means of pursuing political ends. Violence is the negation of democracy and we pursue democracy. They have the chance of pursuing these things through the ballot box. We hope that one day they will take that course and reject the path of violence.

Q2. Mr. Alex Carlile asked the Prime Minister if she will list her official engagements for Tuesday 20 December.

The Prime Minister: I refer the hon. Gentleman to the reply that I gave some moments ago.

Mr. Carlile: In the light of the recent crash of the first ground-based cruise missile to be tested operationally, what new steps do the Government propose to take to secure at least equal control of these very unreliable weapons?

The Prime Minister: The cruise missiles are not yet fully operational and will not be fully operational until the end of December, because that is the time appointed by the agreement with NATO. With regard to the control of these missiles, that is governed by agreements that have been satisfactory to all previous Prime Ministers, including the one whom the hon. Gentleman's party supported when it was able to do so.

Mr. Rathbone: Is my right hon. Friend satisfied with the liaison between the Law Officers and the Minister with responsibility for consumer protection on the House Buyers Bill?

The Prime Minister: I am sure that I am well served by the Minister with responsibility for consumer protection and by the Law Officers. I had hoped to be asked about that matter last Thursday, but unfortunately the questions that one expects and hopes for do not always come. Perhaps I might make it perfectly clear saying now what I would have said then,—it might have been better had I been asked the question then, but that is how it goes—that the Government have decided to introduce a Bill to enable solicitors employed by institutions such as building societies and banks also to convey houses. That goes for all kinds of conveyancing, not just properties that are on registered land.

With regard to registered land, the Government are consulting to extend the rights of conveyancing to others, if that can be done safely. I am grateful to have had the opportunity of referring to these matters.

Q3. Mr. Michael Forsyth asked the Prime Minister if she will list her official engagements for 20 December.

The Prime Minister: I refer my hon. Friend to the reply that I gave some moments ago.

Mr. Forsyth: Can my right hon. Friend assure the House that the Government's rate-capping policies have proved an enormous success in Scotland in practice? Does she agree that they have brought widespread relief to people, such as my constituents, who are living under the



2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref: J/P50/18025/83

Your ref:

10 January 1984

Dear Lord Chancellor

John Biffen has written to you, on 3 January, about the treatment of the House Buyers Bill in Parliament, following Norman Tebbit's letter to him dated 22 December.

The Prime Minister's reply to Tim Rathbone on 20 December makes our commitment to legislation quite clear, and I endorse the case for new Government legislation rather than amending Austin Mitchell's Bill. Nevertheless, I am concerned, given the strength of Parliamentary and public support for the proposals to relax the solicitors' conveyancing monopoly, that our action in killing the present Bill should be seen to be a positive one.

I think it would be helpful, accordingly, if a clear commitment could be given at that juncture to introducing the new legislation within a specified time. I am sure that we should secure widespread backbench support for, say, a promise to bring forward legislation in the next session of Parliament.

This would mean that officials of the interested Departments should be told to prepare detailed proposals within the next six months, and I understand that your officials have already arranged to begin the consultations within Whitehall. I feel that it is important that these proposals should cover not only conveyancing by employed solicitors but also by non-solicitors. To the extent that the discussions range wider than the specific provisions of the House Buyers Bill, Departments will no doubt be given an opportunity to make their views known to the special committee of the Law Commission which the Solicitor-General announced will be set up to consider wider issues of conveyancing law.

I am copying this letter to the Prime Minister, the Lord President, the Lord Privy Seal, members of H Committee, and Sir Robert Armstrong.

Yours sincerely

A. M. Davis

for PATRICK JENKIN

Approved by the
Secretary of State
and signed in his
absence

The Rt Hon the Lord Hailsham of Saint Marylebone CH

LEON PROZUBNIK

Conveyance

NOV 83



110 JAN 1984

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*With the Compliments
of the
Lord Privy Seal*



DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215) 5422
GTN 215)
(Switchboard) 215 7877

JU373

Secretary of State for Trade and Industry

6 January 1984

The Rt Hon John Biffen MP
Lord Privy Seal
Privy Council Office
Whitehall
London SW1

D John

HOUSE BUYERS BILL

Thank you for copying to me your letter of 3 January to the Lord Chancellor. I am sorry that there was no opportunity to take part in the discussion which you tell me has now taken place on the tactics to be employed in relation to Austin Mitchell's House Buyers Bill. I am not sure, if I had been able to participate in your discussion, whether I would have been as clear as you are on the ease with which the Bill can be killed at Report Stage, but we shall no doubt see how events evolve.

2 I am copying this letter to those who received yours.

f a
Norman

NORMAN TEBBIT

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*With the Compliments
of the
Lord Privy Seal*



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

3 January 1984

Dear Paddy,

HOUSE BUYERS BILL

You may like to know that John Wakeham, Paddy Mayhew and I have been considering what tactics to employ in relation to Austin Mitchell's House Buyers Bill. Since there is no question that the Bill could be taken over for the implementation of the Cabinet's policy on conveyancing and since it is defective in other respects, the only question is when and how to kill it. Our conclusion was that this should be done, more or less humanely, at Report Stage. We felt that there was no need to delay its move into Committee, but John Wakeham has not yet finally taken a view about the tactics to be employed during the Committee Stage. There is an argument for speeding this up in order not to delay Government hand-out Bills which follow, but I think that we must leave this to him nearer the time. What was clear, was that the Government should not offer any sort of assistance, including the services of Parliamentary Counsel.

I am copying this letter to the Lord President, other members of H Committee, the Secretary of State for Trade and Industry, the Solicitor General, the Chief Whip, First Parliamentary Counsel and Sir Robert Armstrong.

John Biffen
JOHN BIFFEN

The Rt Hon The Lord Hailsham of St Marylebone CH
Lord Chancellor



JF5 150

Secretary of State for Trade and Industry

DEPARTMENT OF TRADE AND INDUSTRY

1-19 VICTORIA STREET

LONDON SW1H 0ET

Telephone (Direct dialling) 01-215) 5422

GTN 215)

(Switchboard) 215 7877

22 December 1983

The Rt Hon John Biffen MP
Lord Privy Seal
Privy Council Office
Whitehall
LONDON
SW1

Dear Lord Privy Seal,

nbpm
Jub
22/12

SOLICITORS' CONVEYANCING MONOPOLY

It seems to me that the vote on the House Buyers Bill has left us looking rather untidy. Happily the Prime Minister's answer to Tim Rathbone on Tuesday has helped to make clear the Government's position. Nonetheless we must now consider how we handle the bill and the issues which it raises and decide if it should die in Committee or be amended to make it satisfactory from the point of view of safeguards for the consumer.

2 I am copying this letter to the Prime Minister, the Lord Chancellor, the Lord President, Members of H, and Sir Robert Armstrong.

Yours sincerely

Norman Tebbit
(Approved by the Secretary of State
and signed on his behalf)
NORMAN TEBBIT

20 DEC 1983



[Mr. Morris]

properly, and into which he has put so much hard work, and should take cognisance of the warnings about the difficulties. In any event, the Government should recognise the considerable feeling that exists on the issue — some of it, perhaps, misplaced, but most of it, consciously or unconsciously, mindful of the needs of the consumer, as set out by Benson. We need safety, competence and fair charges. None of those can or should be sacrificed. We need reform in the law of property and we need a repetition of that great era of the law of property, of 1925. The Government should respond to today's needs, and either amend my hon. Friend's proposals in Committee or present their own proposals. Above all, they should take the necessary action to invigorate and sustain the Law Commission in a fundamental and continuous review of this issue.

11.33 am

The Solicitor-General (Sir Patrick Mayhew): I warmly congratulate the hon. Member for Grimsby (Mr. Mitchell). He won a high place in the ballot, and he has selected a subject of supreme importance for all our constituents who aspire to own their own homes. As the right hon. and learned Member for Aberavon (Mr. Morris) said, the hon. Gentleman has produced a Bill which has properly attracted a vast amount of attention, and no doubt it will continue to inspire an interesting debate today. As so often happens in the House when we discuss an issue which crosses party considerations and is dealt with on a non-partisan basis, we get debates of the highest order. Perhaps I may be permitted to say that, up to now, the debate is proving no exception to that rule.

Mr. Lawrence: Would it not only be a courtesy, but a better earnest of the good intentions of the Bill, if its promoter were good enough to be present, not only during the speech of his party's Front Bench spokesman but when the Solicitor-General is making his response?

The Solicitor-General: I cannot believe that his absence is through any discourtesy to the House.

I hope that it will help the House if, on behalf of the Lord Chancellor and the Government, I tell the House now — it is a somewhat unusual stage, I know, for a Minister to intervene — about our thinking on the Bill and also about our proposals for the objectives which it seeks to achieve.

I followed with interest and admiration the speech of the right hon. and learned Member for Aberavon and I particularly noted his views about the need for action by the Government. There was much in his speech with which I agreed, and I shall come to that later.

If we read the long title of the Bill, we see that we are on solid common ground with the sponsors of the Bill. It says that the purpose of the Bill is to

"Extend competition and to protect consumers in relation to the provision of services in connection with the transfer of ownership of real property in England and Wales".

I am glad to say that it is now well known, from our deeds as well as our words, that the Government think that competition is beneficial. To whom? It is beneficial to the public, whom all Governments must serve.

We see nothing in the craft of conveyancing to cause that principle not to apply. Lack of competition with a conveyancing practice acts just as insidiously to induce

unnecessarily high charges and indifferent service as lack of competition with a greengrocer. That is why my noble and learned Friend the Lord Chancellor, in his first term of office, abolished the fixed scales by which, up till then, solicitors had calculated their conveyancing fees merely by reference to the value of the property conveyed. He thereby made possible and encouraged price competition. The process has since gone further, and we believe that it should now go further still. I shall come back to that matter later. The hon. Member for Great Grimsby said that he had found scant evidence of competition in Grimsby. Against that, we must put the evidence of the Benson Commission, which showed substantial and significant competition in 1981.

The Bill's promoter is equally right to recognise the need to secure protection for the public when they use the service of conveyancers. That is common ground between both sides of the House today, and I particularly noted the importance which the right hon. and learned Member for Aberavon attached to it. As has been said more than once, buying a house is probably the most expensive and momentous personal transaction that any of us and our constituents undertake. If it goes wrong, it can cause disaster and misery — perhaps even years later, when the person responsible is no longer available.

A person can do his own conveyancing at his own risk, but most people think that it is safer to pay someone who has expertise to do it. It would be perfectly possible to take a position of the purest *laissez-faire* and to hold that it is up to the customer to take what risks he likes and to shop wisely, to say that there should be no control over who holds himself out as an expert and that we should let unfettered competition thrive, but none of us, I think, with constituents to serve would go for that. Indeed, so far no one has done so, and I doubt whether anybody will.

The Bill focuses on important matters and the issue is, then, how best to achieve competition that is compatible with adequate safeguards for house buyers who are not sufficiently expert to be able to safeguard themselves. I know that the sponsors of the Bill agree with that proposition. It is not an easy issue to resolve. As the House knows, the way in which we have gone about it in England and Wales in the past 170 years or so has been to prohibit unqualified persons from doing such work, or from drawing or preparing for reward any instrument of transfer, or charge. By that means, Parliament has excluded everyone, except barristers, solicitors and notaries public.

Parliament introduced that rule because of the muddle and incompetence of lay conveyancers at the end of the 19th century, which must have been quite something. I note the point that the hon. Member for Great Grimsby made about it, but I think he will concede that that was the real reason for the rule.

Mr. Budgen: It was at the end of the 18th century —

The Solicitor-General: It was the 19th century, because the Stamp Bill was enacted in 1804.

Mr. Budgen: — or at the beginning of the 19th century.

The Solicitor-General: Perhaps Parliament reacted a good deal more rapidly than it does now. However, I am rather doubtful about that. I am quite prepared to fall out with anybody on any issue, but I think that there are more important issues before us today.

We have maintained that restriction because we and our predecessors have believed it to be the best way of protecting the public. Of course, the fact that it has survived for so long is no reason for it to continue to survive, if its true function has now become the protection not of the public but of the practitioners. That would, indeed, be a closed shop. However, I do not believe that it has become that.

I should not dream of suggesting that our present arrangements represent the only practical means by which a degree of protection can be afforded to the public. Of course they do not. The scheme in clause 1 provides an alternative, but, for the reasons which I shall explain, the Government consider that its protection is insufficient and unfair. We believe that it is not better but inferior to the protection given by our present arrangements. Equally, however, we think that the degree of competition provided by our present arrangements is unduly restricted. I shall explain how we think that it should be extended and what steps we intend to take.

First, as to the merits of abandoning our present qualification arrangements, may I ask the House to recall the circumstances in which the Benson commission was set up in 1976? The then Prime Minister referred to the fact that great public anxiety had been expressed about the organisation and practices of the legal profession, and accordingly among the matters referred to the Royal Commission were

"the rules which prevent persons who are neither barristers nor solicitors from undertaking conveyancing and other legal business on behalf of other persons."

That is a quotation from the commission's terms of reference.

The hon. Member for Great Grimsby said that the Royal Commission was asked to consider such matters not from the point of view of the consumer, but professionally, from the point of view of the of the profession's organisation. However, that is not a sustainable argument. The commission was asked to inquire whether changes were desirable in the public interest.

The commission covered the rules which prevent persons who are neither barristers nor solicitors from undertaking conveyancing. Therefore, its members were appointed slap on the question whether those rules were in the public interest. The commission reported in 1979. My hon. Friend the Member for Wyre (Sir W. Clegg) reminded us of its conclusions. It considered conveyancing in some detail, having received a large volume of evidence on the subject from both laymen and lawyers in this country and abroad. The commission found that although the process of conveyancing had been made less complex by land registration, the benefits of that had been largely offset by the increased importance and intricacy of the law relating to landlord and tenant, to planning, taxation and the matrimonial home. Those are matters to which the right hon. and learned Member for Aberavon has just given proper weight.

The need to protect the public from incompetence led a clear majority of the commission to recommend that the restrictions should not be relaxed. Indeed, it recommended that they should be strengthened by excluding notaries public from those permitted to undertake conveyancing and extending the restrictions to cover the contract of sale. It looked particularly at the suggestion that there should be a limited class of conveyancers, restricted to undertaking domestic conveyancing and subject to certain

constraints. It made the following general comment on those who advocated abolition of the present restrictions. It said that abolition

"tended to underestimate the number and frequency of difficulties which may be encountered unexpectedly in any conveyancing transaction, domestic or otherwise, and which required the advice and skills of a qualified practitioner".

The commission then referred to matters which the right hon. and learned Member for Aberavon mentioned. It said:

"It was argued that a licensed conveyancer in doubt or difficulty could seek the advice of a solicitor or barrister. Such a precaution would, however, be effective only if a problem were seen to require expert advice and the advice was taken and we consider that there would be insufficient protection in any such arrangement."

The commission then dealt with the suggestion that one could define certain types of domestic conveyancing that are unlikely to attract difficulties. It said:

"Registered conveyancing is usually given as an example. This argument does no more than repeat the argument in the preceding paragraph . . . We are satisfied by all the evidence given to us that any form of conveyancing, whether described as domestic, registered or in any other way, may give rise to difficulties apparent only to the expert. In any case which may be specified, ancillary problems may arise and strict control will be needed over the handling of client's money."

"We should take a heavy burden on ourselves if, without finding answers and solutions to the problems and obstacles that defeated the Royal Commission, which sat for three years and was appointed on those terms of reference, we said that surely a way could be found, and that it could not be beyond the wit of man, so we should make a change despite those recommendations.

Mr. Stephen Ross (Isle of Wight): If I remember rightly, the commission had 13 members, at least five of whom signed a minority report which did not go along with the comments the Solicitor-General is making. They thought that there could be a change.

The Solicitor-General: I have already acknowledged that the Royal Commission found by a majority of about two to one. It was not unanimous. The commission said that a licensing system would be unable to provide the level of positive control required, particularly in respect of standards of competence and ethical conduct. That point has already been dwelt upon. The result of the Bill would be effectively to reject those findings and conclusions. I must advise the House that if it adopts the Bill's principle and argument it will be doing a very unsafe thing.

I deal now with the sufficiency of present competition. Given our objective of ensuring the maximum possible degree of competition that is consistent with consumer protection, we are faced with three main options: first, to develop competition between solicitors in private practice; secondly, to enable solicitors employed by organisations such as banks and building societies to undertake the work; or, thirdly, to widen the field of conveyancers still more, by establishing some form of licensing system to permit non-solicitors to do it.

As to the first proposition, competition between solicitors has improved considerably in recent years. Since the Lord Chancellor's abolition of the scales, surveys by the Law Society and the Consumers Association show that solicitors' charges have been falling in real terms. Recent initiatives by the Law Society have also helped competition. The Law Society has devised a form of estimate to enable proper comparisons of charges to be

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made so that people can shop around. Its decision to relax restrictions on individual advertising is also a significant step in the right direction.

Today we have discussed whether the advertising of individual charges should be permitted. I am sure that it is right to leave it, in the first instance, to the profession to consider changing its practice rules. The Law Society has that under consideration. I have already expressed our views on the licence provision. The proposed system cannot provide the necessary protection.

The remaining option of extending conveyancing rights to employed solicitors offers a serviceable means by which a further element of competition can be injected. We therefore intend to introduce our own legislation where necessary to extend the right of conveyancing, not just of registered land, but of all land, to solicitors employed by, for example, building societies and banks, subject to safeguards.

There are potential dangers in allowing solicitors employed by building societies and banks to act for both employer and borrower. It is essential that the borrower's interest should not be prejudiced by a conflict between the solicitor's duty to the borrower and his duty to his employer. Such conflict can arise if, for instance, a borrower seeks advice about the form of mortgage that he should have or if the lender wants to impose special conditions on a loan. We are conscious of the fact that Benson recommended against permitting solicitors employed by lenders to act for borrowers as well because of the potential conflict of interest.

We think that before we legislate it is necessary to consult interested parties on how the potential conflicts might be overcome. For example, we could provide that employed solicitors owe a primary duty to the consumer. That could be enforced by the Law Society's conduct committee. We could provide that the use of a building society's solicitor should not be made a condition of a loan. We could provide that where costs are spread over the life of a mortgage the true cost and rate of interest should be disclosed. We should investigate all those possibilities.

Mr. Budgen: If a solicitor were acting for both the lender and the borrower, how could he owe a higher duty to one side than to the other?

The Solicitor-General: That problem is capable of being overcome by specific legislative provision. One could say that if a solicitor was invited by a building society to advise the borrower of the terms on which money was to be lent, he must place the interests of the borrower above those of the building society. It is a difficult matter, which must be investigated, but I believe that it is possible to overcome the conflict of interests. The possibilities must be investigated before legislation.

Mr. Jessel: Will costs be reduced by ending cross-subsidiation? Can my hon. and learned Friend satisfy the House about the urgency with which the matter will be treated? Will he set a time limit on consultation to ensure that it is not interminable? Does he intend to bring forward legislation soon?

The Solicitor-General: Competition almost always reduces costs and I would expect the same in this instance.

That is our hope. We believe that competition can be increased without prejudicing consumer protection. We intend to proceed promptly so as not to delay the introduction of the additional competition that I have mentioned.

Mr. Bowen Wells (Hertford and Stortford): Will my hon. and learned Friend spell out what he said about extending the ability of solicitors to operate in building societies, banks and other like institutions? That is important if we are to have more competition. What does my hon. and learned Friend have in mind when referring to other institutions?

The Solicitor-General: We are satisfied that it is possible and proper to legislate in respect of solicitors employed by building societies. That will need legislation. We think that it is right that solicitors employed by banks should be able to convey. Our mind is not closed to the possibility of solicitors employed by other institutions being permitted to convey, but in some cases there could be an insuperable conflict of interests. We shall investigate the possibilities.

Mr. Cormack: Am I right in thinking that those who act within building societies and banks must be qualified solicitors? Many solicitors delegate conveyancing functions to managing clerks. Will it not create a strange situation, since one could guarantee being looked after by a solicitor only by going to a building society or a bank?

The Solicitor-General: My hon. Friend is the victim of an amusing misunderstanding. It is not possible for anyone to effect a conveyance, whether it is of non-registered land or a transfer of registered land, unless he is a solicitor. Delegation of preparatory work is a matter for the individual office.

Mr. Alan Williams (Swansea, West): How can any statute ensure that the normal human instinct of looking after one's future employment will not prevail? If a solicitor is employed by a building society, his future is dependent on that building society. It will not matter what is done in terms of imposing a statutory duty—human nature will prevail.

The Solicitor-General: That observation does less than justice to the conscientiousness of solicitors and to the effect of the rules on professional conduct by which the legal profession is governed. Such matters need to be examined, but I believe that they are capable of being overcome without prejudice to the proper protection of the consumer. It is possible for a solicitor to ask himself, "Is there, or is there not, a conflict of interest if I act in the conveyance of a house both for the lender and for the borrower?" That ability is not held to have been abused.

It is important that the changes do not permit unfair competition. We intend to ensure that that does not happen. In particular, there must be no question of borrowers' prospects of securing a loan being affected in any way by their choice of a solicitor in private practice or one employed by the building society. The Director General of Fair Trading will ensure that competition is fair.

We intend to do more than that. We want house buying to be made simpler and cheaper for the public. The Benson Commission identified a number of sectors where reform could achieve that by simplification of the law, of records, of procedure and of documents. The commission

recommended that a standing committee should be established to examine suggestions for the simplification of land law and conveyancing. The Law Commission, as part of its continuing programme of law reform, already considers many aspects of the substantive law involved.

Further consideration can be given to the process of conveyancing as a whole, with a view to simplifying practice and procedure wherever possible. We have decided to set up a special committee, under the auspices of the Law Commission, to examine the various proposals and to ensure that work in many different areas is co-ordinated and the whole question kept under review. We intend that the committee should come forward with recommendations which, if they provide for the cheapening and simplification of conveyancing and house purchasing for the ordinary member of the public, we shall be anxious to debate.

The Law Society supports that, as the right hon. and learned Member for Aberavon said. It suggests that the committee should consider not only the key issues such as whether there could be a parallel profession of licensed conveyancers as a viable alternative to our present arrangements, but specific ideas such as those referred to by the right hon. and learned Gentleman, which appear generally attractive to the Government.

We intend, therefore, to consult on these matters by this and other means. I am confident that that consultation will bear valuable fruit.

Mr. Rob Hayward (Kingswood): How long will it take?

The Solicitor-General: If I knew that I should not need to consult. There is a commitment to legislate in the particular sense that I have described. Further legislation must depend on the setting up of the committee and the speed with which it can come forward with proposals. We intend to move as promptly as we can, consistent with the protection of the public.

Mr. Simon Hughes: Will the Solicitor-General assure us that the proposals will be dealt with with far greater speed than many other recommendations from the Law Commission? Many of its recommendations, not only on legal services but on other matters, have not been brought to the House. We need to be satisfied not only that the consultation process will be brief, but that the Government consider it their duty to bring the commission's proposals to the House within a short time of their publication.

The Solicitor-General: On Wednesday I moved the Second Reading of the Occupiers' Liability Bill, which followed exactly the lines of a Law Commission report. We wish to proceed quickly on these matters, and I am a great admirer of the Law Commission.

Mr. Alan Williams: The Solicitor-General has put forward a peculiar proposition—that it is not possible to put a terminal date on the consultations because if he does they will not be proper consultations. How does he reconcile that with the statement on regional policy by the Secretary of State for Trade and Industry earlier this week, when he put a clear terminal date on consultation and swore to the House that the consultation would be genuine?

The Solicitor-General: There are many ways of going about these matters. We could adopt the jurisprudence of the White Queen and give the verdict for execution first

and listen to the evidence later. On the other hand, we could consult those recommended by the Benson Commission about what steps should be taken.

I ask the House to trust the Government. We are not reluctant to encourage competition. I have made it clear that there is nothing in the craft of conveyancing to lead us to depart from our principles on competition. I hope that we will be trusted to get on with this matter as quickly as it is safe and prudent to do.

I hope that the hon. Member for Great Grimsby will forgive me if I do not go through the remaining clauses. They have been covered by my hon. Friend the Member for Wyre, and I should be unjustifiably trespassing—

Mr. Austin Mitchell: I am not sure whether the Solicitor-General is speaking on behalf of the Law Society or the Government. The Government published a White Paper on the Benson Commission four weeks ago, perhaps prompted by the Bill, which made no mention of maintaining the monopoly on conveyancing. Now, the Minister tells us that, after agonising deliberations in Cabinet, the monopoly is to be maintained. The Government hold out no hope of allowing conveyancers to compete with solicitors. Without such competition there can be no reduction in prices and no development of the services provided for the consumer. I find the Solicitor-General's reply disappointing.

In referring me to the points made by the hon. Member for Wyre (Sir W. Clegg), is the Solicitor-General accepting everything that the Law Society says about the Bill? Do not the Government have a view? Cannot they take the Bill as a vehicle and reshape it to achieve competition? The Solicitor-General appears to be relying on the Benson Commission's recommendations on conveyancers, but opposing its recommendations on building societies.

The Solicitor-General: It is always a mistake to try to take a short cut, even with the aim of sparing the time of the House. Each of the subsequent clauses after clause 1, which is the principal clause, contains material which is objectionable to the point of being impossible to amend in Committee.

Clause 2 would override the Law Society's practice rules, which prohibit solicitors from advertising for conveyancing. We agree that the Law Society should review those restrictions, but legislation at this stage would not be appropriate. It is important that the profession should be self-governing. If it were to abuse that position and act contrary to the public interest, the Government would have a responsibility to act, but that has not arisen.

Clause 3 seeks to improve the local land charge system. We are all aware of the criticisms about the time some local authorities take to respond to inquiries. However, when delay occurs it is not usually attributable to the searchers of the local land charges registered, because local authorities also answer a wide range of supplementary inquiries in accordance with arrangements negotiated between various associations and the Law Society. They cover such matters as building regulations, road schemes and planning proposals. The need for several departments within a local authority to contribute to the inquiry sometimes leads to delay. Official searches can invariably be dealt with quickly. It is a matter of convenience that they are usually given at the same time

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as replies to other inquiries, but they could be given separately and sooner. Therefore, the clause is directed at the wrong target.

Clauses 4 and 5 seek to reduce the time taken between offer and contract and the costs to prospective purchasers of commissioning surveys on properties which they do not eventually buy. They wish to make it possible for a purchaser to rely on a survey provided by the vendor. The Government have serious doubts about these clauses. The main reason why purchasers commission surveys is common prudence. Who would want to buy a house on the strength of a vendor's survey when he may have commissioned a number of unfavourable surveys before obtaining one that satisfied him? Why should building societies have to take that risk, which would tend to weaken the value of the security given to loans. That would be to the disadvantage of borrowers generally.

I very much dislike having had to speak so discouragingly of a Bill which seeks to serve the purposes which we all share — purposes which, by our past actions, we have implemented and which we intend by future actions — and they will be taken promptly — to implement further. The Bill's objectives are congenial to the Government but the ability to achieve competition is qualified by the need to achieve protection for the public. I regret to say that, on that point, the Bill fails beyond redemption.

I regret that I must advise the House that if it supported the Bill it would do no service to its constituents to whom it owes a duty to provide proper standards of safety.

Mr. Deputy Speaker (Mr. Ernest Armstrong): I remind the House that more than half the time available has been taken up by four speeches. I appeal to both lawyers and non-lawyers to be exceedingly brief. I have a long list of hon. Members who wish to put very different points of view to the House.

12.9 pm

Mr. Ken Weetch (Ipswich): I shall be as brief as I possibly can. I particularly appreciated the speech of the hon. Member for Wyre (Sir W. Clegg), who is a practising solicitor. I listened to him as a practitioner with great interest and respect.

This is a debating chamber; therefore I wish to take the debate some steps further basing my remarks on what the Solicitor-General had to say. I wish to comment on the proposals that he put forward. I support the Bill—I am one of its sponsors. I regard it as an important opportunity for a breakthrough on behalf of the owner occupier. I do so for two fundamental reasons.

First, the reform of house transfer is long overdue. To underline that I can quote no better authority than the chief general manager of the Halifax building society, who said:

"There is now 60 per cent. house ownership in this country and procedures have not changed much since the overhaul of the law in 1925 when the figure was 10 per cent. Home buyers are entitled to more competitive and cost effective service. The cost of buying and selling is far too high."

Secondly, the Bill is significant because it seeks to bring to bear on the whole process of house transfer more competition and freedom of choice. I believe that because of expensive restrictive practices—the current structure of conveyancing being one and there are others—the cost of moving house in Britain today is nothing short of

a scandal. The Bill offers a series of measures which aim at constructive reform but, as in all Bills before the House, some parts of it appeal while others do not. What I should like the Government to grasp is that the whole system of house transfer, including conveyancing, valuation, survey, registry and local searches, needs a complete overhaul. I impress on the Minister that if we wait for the professions to bring about these improvements, we will wait for ever. Despite the crying need for reform, the professions over the years have moved with disciplined lethargy.

The most important part of the Bill is clause 1, which seeks to amend section 22 of the Solicitors Act 1974. It aims at breaking what the general public understand to be the solicitors' monopoly of conveyancing and it seeks to do so in terms of registered property.

I should like to take up the point made by the hon. Member for Wyre when he was trying to define the nature of the solicitors' monopoly. Here we must choose our words carefully. The "monopoly" applies to only one small part of the conveyancing transaction. In simple terms, any person in Britain can do his or her own conveyancing if he or she so wishes. Monopoly does not cover do-it-yourself either on purchase or on sale. Neither does the monopoly cover conveyancing for sale. If one wishes to employ someone to conveyance a house for sale for fee, gain or reward, one can do so and there is no monopoly provision. But in house purchase the position is different. Section 22 of the 1974 Act says that the transfer of the deed in the purchase operation can be done only by certain people. In practice it means that commercial preparation of the deed is confined to a solicitor. Thus the "monopoly" bears only a limited meaning, but it has been sufficient over the years, through skilful promotion and scare stories from Chancery lane, for conveyancing to be the virtual province of solicitors.

The root of the restrictive practice is to load down the conveyancing of registered property which, although it must be done with care, is high grade clerical and administrative work, with an expensive legal qualification. As time goes on and as compulsory land registration becomes more complete, so the qualification restriction on registered property becomes more and more bogus.

The present position is also hypocritical. I have scores of letters in my constituency office to say that in many solicitors' offices unqualified and often unsupervised clerks do the job. There is no high-powered solicitor wrestling with esoteric complexities on the client's behalf but a clerk sending out standard forms with standard questions ritually eliciting standard and usually evasive answers. It is what Michael Joseph in his book called the "conveyancing fraud", and what a fraud it is.

The net result has been serious. First, it has led to prices that are far too high for the work done. My researches over the years have revealed that conveyancing charges on both sale and purchase are now around 1 per cent. of the purchase or sale price. If one buys and sells at £40,000 the conveyancing cost alone on sale and purchase is £800. That is not a conveyancing fee; I consider it to be daylight robbery. Conveyancing law may be an ass but it is an ass that knows how to charge. In the second place it has prevented many competitors other than solicitors from entering the arena and having a beneficial effect on cost. Last but not least, for many years it has prevented the emergence of improved technical and administrative procedures. The monopoly feather-bedding has meant

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P1. file

Ref. A083/3458

PRIME MINISTER

You probably know this already; but I should report that the Lord Chancellor is very steamed up about conveyancing. I am told that he has been saying that, if the Cabinet were to agree in principle that the right to undertake conveyancing should be generally extended, or should be extended to banks and building societies, he would have to resign, because of his profound disagreement with that as a policy. His particular fear is that the loss of conveyancing work and the income derived from it would put many country solicitors out of business, and could easily mean that many towns found themselves without any local solicitors.

2. On my information the Lord Chancellor could live with a decision to consult about the principle of extending the right of conveyancing; but not necessarily with a decision to accept the principle and consult about method.

RCA

14 December 1983

ROBERT ARMSTRONG

Mr. Austen Mitchell's Conveyancing Bill

The Government is in favour of extending competition in this field as in others. The Government spokesman tomorrow will indicate what we intend to do. Mr. Mitchell's Bill is unfortunately not satisfactory because it does not provide adequately for the protection of the public. The Government therefore will introduce its own legislation to extend the right of conveyancing - not just of registered land, but of all land - to solicitors who are employed, for example by building societies ^{and banks}. Before doing so, we will consult on how best to avoid the risks of conflict of interest to which the Benson Commission drew attention. Secondly, we intend to consult with the professions and others on other means whereby competition in this field may be further extended with safety, so as to make house buying simpler and cheaper for the public.



Ref.A083/3454

PRIME MINISTER

Restrictions on Conveyancing for Reward
(C(83) 35)

BACKGROUND

HAC's A+B

The Home and Social Affairs Committee discussed on 15 November and on 6 December (H(83) 22nd and 23rd Meetings) what the Government's policy should be towards restrictions on conveyancing for reward. These discussions were prompted by the need to follow up the reports of the Royal Commission for Legal Services and the Royal Commission for Legal Services in Scotland and not by Mr Austin Mitchell MP's House Buyers Bill, which was only published later. That Bill which has its second reading debate on Friday has, however, now made a decision urgent.

2. The majority recommendations of the Royal Commissions were quite different. The English Royal Commission (Benson) recommended that the statutory restriction of conveyancing to the legal professions should be strengthened; the Scottish Royal Commission recommended that, subject to certain safeguards, members of other professions should be entitled to undertake domestic conveyancing.

3. All members of the Committee are agreed that there should be a greater degree of competition in the provision of conveyancing. The Lord Chancellor pointed out that the policy he has so far pursued of encouraging the profession to eliminate restrictive practices has already had a significant effect. The cost of conveyancing has fallen in real terms (by about 10 per cent) since the abolition (at his initiative) of scale fees.

4. The Committee considered three alternative courses of action:

- a. To continue the Lord Chancellor's policy of encouraging the professions gradually to allow a greater degree of competition. The next step would be to reduce restrictions on advertising.



b. To allow employed solicitors (ie employed by banks, building societies etc) to undertake conveyancing for third parties. This is at present forbidden by Law Society rules. There is probably no need to limit this extension either to homes or to registered land.

c. To allow non-legally qualified persons to undertake conveyancing, subject to safeguards. This should almost certainly be limited to conveyancing homes on registered land. Further safeguards could vary from simple indemnity insurance, to policing of qualifications and the establishment of funds to compensate for dishonesty as well as incompetence. The provisions in Mr Mitchell's Bill are on these lines.

Only the Lord Chancellor supported option a. A strong body of opinion, led by the Secretaries of State for Trade and Industry and the Environment supported option c. A middle group including the Chancellor of the Duchy and the Lord Advocate felt it would be unwise to go beyond employed solicitors. The Lord President's view, as Chairman, was that all the Committee except the Lord Chancellor would have settled for the middle course (option b) as being likely to produce a considerable increase in competition with the minimum of adverse consequences. The Lord Chancellor has just written to you (his letter of 12 December) suggesting the line that the Government is attracted by the possibility of "permitting solicitors employed by organisations such as building societies to undertake conveyancing" and will consult further on that. The majority of H certainly wanted to go further than that and to take a firm decision of principle.

FAE C

5. The major factors in the argument were:

a. Impact on solicitors generally. The Lord Chancellor thinks that either options b. or c. would seriously damage the availability of legal services, particularly in rural areas. Small practices in particular depend



on conveyancing for a large part of their income and would not be viable if this business was lost to them. The alternative could be an increase in public expenditure as solicitors attempted to recoup lost business by increasing work done under the Government funded Green Form scheme for legal advice.

b. Consumer protection. There are doubts about how much consumer protection is necessary - especially if any change is limited to registered land. The Lord Chancellor emphasises the legal expertise required to deal with all the problems surrounding a transaction in land; the Trade and Industry Secretary and others emphasise that much of the work on registered land is relatively simple and is currently done by clerks without legal qualification. On balance there is agreement that some test of competence and provisions as to probity and indemnity would be required for any extension beyond the legal professions.

c. Conflict of interest. This is inherent in the extension to employed solicitors and not out of the question in a wider extension. Solicitors employed by builders or estate agents (who act for the vendor) should certainly be precluded from offering their services to purchasers. It was generally thought, however, that any potential conflicts of interest between eg a building society employing a solicitor and the purchaser for whom he acted, could be avoided by suitable rules.

c. Competition policy. The main objection to option a. is that it does not significantly increase competition; that any change would be slow and that it maintains an unnecessary and out of date restriction on consumer choice, which does not accord with the Government's general policy.

Mr Mitchell's Bill

6. The Home Buyers Bill, which is first order for Second Reading on Friday, provides for an exemption from the restriction in the Solicitors Act for certain persons acting



in transactions involving registered houses. Those exempted would be employees of recognised banks and building societies and those licensed by the Director General of Fair Trading. There are requirements to establish probity, but not competence, and the provision of insurance or other security. The Bill would also allow solicitors to advertise the terms on which they undertook conveyancing.

7. In addition, the Bill contains other provisions which are designed to make house buying easier and quicker. These relate to local authority land charge registers; use by the purchaser of the vendor's survey and use by a building society of the vendor's survey. The Lord Chancellor thinks that all these provisions are unacceptable, misconceived or unnecessary. For these reasons alone he would not wish the Government to support the Bill.

8. Legislation Committee has not in the circumstances considered the handling of this Bill. A small group of Ministers, chaired by the Lord Privy Seal, will if necessary meet to do so soon after Cabinet. In his letter to you of 12 December, the Lord Chancellor has suggested that the line to take in the debate should be to say that the Government is attracted by the possibility of allowing solicitors employed by building societies etc to undertake conveyancing. They would consult on this basis, possibly in the context of the Green Paper on the powers of building societies due next year. On that basis the Bill could not be supported.

HANDLING

9. You will wish to ask the Lord President to introduce his paper and the Lord Chancellor to explain his views. The Lord Advocate has been invited and could be asked to speak next. The position in Scotland is rather different to that in England and Wales and the Scottish Law Society have put up greater resistance to internal change.



10. If the Lord Chancellor maintains the line of his letter to you, the Cabinet should be faced with these main choices:

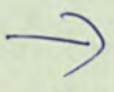
- a decision to consult on whether to extend to employed solicitors (the Lord Chancellor's preference)
- a firm decision of principle to extend to employed solicitors but consultation on problems and methods
- a decision of principle for more general freedom to undertake conveyancing subject to suitable constraints.

Correct rules laid down about conveyancing body. Not less than 1/2

Committee (c) how far can we restrict registration

A further variant would be the middle course combined with consultation on the principle of wider extension. At this point it may be helpful to ask the Secretary of State for Trade and Industry for his view. If he favours extension to non-solicitors, how would he see free access operating in practice? What pre-entry controls would be necessary? How could purchasers be protected against incompetence, or dishonesty? What types of persons would set up as conveyancers? Should the extension be to registered land only?

11. You might then ask the Solicitor General how he would see an extension to employed solicitors operating. To what extent would there be conflicts of interest and how could they be avoided? Most other members of Cabinet will wish to comment. The Chief Whip can advise on the feeling amongst MPs.



12. If the Cabinet favours the extension to employed solicitors only, an important consideration is how robust will this course be. Will it simply offend all the main interests?

Legislation and consultation

13. The extension to employed solicitors would not itself require legislation (although it would probably be necessary to enable building societies to undertake conveyancing) but if the Law Societies refused to co-operate it would become necessary.



It would certainly be necessary for any wider extension. There is no Government time this Session, so no time would be lost by consultation, which would be essential anyway if the Law Societies were to be persuaded to act. But it is important to be clear whether consultation is about principles or detail.

Mr Mitchell's Bill

14. Depending on the discussion, it may be useful to clarify the Government attitude to Mr Mitchell's Bill (Lord Privy Seal and Chief Whip) though any issues of detailed handling can be left to the Lord Privy Seal's separate meeting. Unless the widest option is preferred, it seems clear that MPs should be advised not to support the Bill and that Government Ministers should probably vote against it. Even if the widest option is preferred, consultation will be necessary and the Bill might be regarded as premature. In these circumstances Mr Mitchell might be urged to withdraw it at the end of the debate so that the Government can pursue the matter.

CONCLUSIONS

15. You will wish the Cabinet to reach conclusions on:
- a. Whether the Government's response to the Royal Commissions' reports should be to propose an extension of the right to undertake conveyancing of all land to employed solicitors, or of registered land more widely.
 - b. If the conclusion is in favour of a wider extension, what conditions to ensure competence and probity should be imposed.
 - c. Whether consultation with interested parties should be undertaken and whether it should be about the principle or only the details. The timing and content of any necessary legislation may depend on what emerges from this.



d. If necessary (ie if in doubt from what has gone before) the general line on Mr Mitchell's Bill. You may also wish to confirm that, on the basis of the conclusions, the Lord Privy Seal and a small group of Ministers will determine the detailed handling of the House Buyers Bill.

approved by ROBERT ARMSTRONG

and signed in his absence

Lindsay Wickinson

14 December 1983

PRIME MINISTER

Prime Minister

Dub 14/12

CONVEYANCING FOR REWARD

The situation has changed since the Lord Chancellor has in effect conceded the extension to employed solicitors. But this will not get us off the hook. If we go no further than this, our response to the Austin Mitchell Bill will still seem timid and anti-customer. We would still be defending the closed shop for solicitors.

There are now three options for Cabinet:

- (a) The status quo - no longer seriously defended by anyone.
- (b) Extension to employed solicitors -
 - (i) EITHER say, as Quintin prefers, that we are "attracted" by the idea and will consult on the principle;
 - (ii) OR say, with the rest of H Committee, that we have decided on the change and will consult on the detail.

We must insist on (ii). But if Ministers share our feelings that this is still too feeble, we could go a little further in the direction of:

- (c) Extension to non-solicitors -
 - (i) EITHER say that we have decided on the extension to employed solicitors and that we are "attracted" by the extension to non-solicitors of the right to convey registered land - with proper safeguards - and will consult;
 - (ii) OR accept the Mitchell Bill as a whole (or possibly promise a Government version of it). One of the difficulties about this is that the Bill contains other provisions which genuinely do need further work, eg about the purchaser using the vendor's survey.

The advantage of (c)(i) is that it keeps open the possibility of extending to non-solicitors without committing ourselves or pushing the Lord Chancellor too far too fast. So we would be working towards the end of the solicitors' closed shop - but in a responsible fashion, and allowing time for popular pressure to build up even more strongly than it has already.

If we close the door on Friday on the extension to non-solicitors, we shall do considerable damage to the image of this Government as an opponent of the closed shop and a defender of competition and the customer.

We suggest that, if Cabinet is in a mood for radical action, the Government should announce on Friday that we have decided on the extension to employed solicitors, and will consult on the extension to non-solicitors conveying registered land, by means of a Green Paper.

fm
FERDINAND MOUNT

PRIME MINISTER

1) Mr Maynt: To see. I have
spoken to DTS.
2) Pa

CONVEYANCING FOR REWARD

JMS
13/12

The Lord President has now circulated a paper on conveyancing for discussion at Cabinet this Thursday. (Flag A).

The paper sets out the three options considered by H Committee:

- (i) The status quo;
- (ii) Extension to employed solicitors;
- (iii) Extension to people without legal qualifications, subject to suitable safeguards.

The Lord President judges that the majority of H Committee would favour going as far as option (ii), but probably not as far as option (iii). You will recall, however, that Mr. Tebbit's impression of the meeting was that support for option (iii) was very substantial.

Since the Lord President circulated his paper, the Lord Chancellor has written again to colleagues. (Flag B). He has moved slightly from outright opposition to any change in the status quo, but only as far as suggesting a consultation exercise on option (ii). This is unlikely to satisfy opponents of the existing monopoly.

You left it with Mr. Tebbit that you would have a word with Lord Whitelaw before giving him guidance on how far you would like him to press the case for option (iii) in Cabinet. Unfortunately, Lord Whitelaw will not be back from Kenya until early on Thursday morning. Is there any guidance which you would like to offer Mr. Tebbit meanwhile about your preference between the three options?

JMS

Go as far as (ii) - but
do not press (iii) unless
others first raise it.
MS.

12 December 1983

LC NO



HOUSE OF LORDS,
SW1A 0PW

12 December 1983

L186/177/02

My Dear Margaret.

Restrictions on Conveyancing for Reward

I have now seen the Lord President's report of our discussions at H, which we are to consider at Cabinet on Thursday. I should emphasise that so far as the proposal in Mr. Austin Mitchell's Bill to permit non-solicitors to undertake conveyancing is concerned my objection is based on the over-riding need to protect the house purchaser and on the impossibility of doing that effectively without an adequate test of competence.

I recognise that colleagues do not share my view that we should concentrate on improving competition between private solicitors, by building on the progress which has already been made in relaxing the restrictions on individual advertising. However, as you know, that was the conclusion of the Royal Commission on Legal Services. I do not think we should lightly depart from the Royal Commission's recommendations, particularly as the consequences for the availability of legal services and for public expenditure on them are so difficult to predict. We must also make sure that the problems of conflicts of interest, which rightly concerned the Royal Commission, could be overcome.

I suggest that, whilst we cannot give any support to Mr. Mitchell's Bill, we should indicate in the debate that we are attracted by the possibility of permitting solicitors employed by organisations such as building societies to undertake conveyancing. We could announce that we will consult further on that, perhaps in the context of the Green Paper on the powers of building societies which is to be issued in the New Year. That would give the profession and the public at large proper opportunity to comment on the proposal and to put forward ways in which conflicts of interest might be avoided. It would also give us time to form a more realistic estimate of the likely consequences. Finally, it would avoid leaving us open to the charge that we were cavalierly disregarding one of the main recommendations of the Royal Commission without proper consultation.

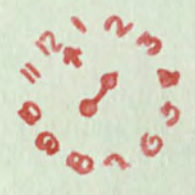
Yrs.,

The Right Honourable
The Prime Minister
10 Downing Street
London SW1

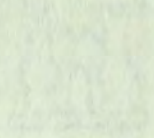
P.S. Copies of this letter go to other members of the Cabinet, the Solicitor-General and Sir Robert Armstrong.



12 DEL 1983



COMPTON



COMPTON



JH 329

PRIME MINISTER

PERSONAL
CONFIDENTIAL

CF

2

Please b/f for Cabinet
discussion.

Prime Minister

Dms
9/12

I understand that Mr Tebbit
spoke on these lines when
he raised this with you today

SOLICITORS' CONVEYANCING

Dms
8/12

I am grateful for the opportunity to have discussed with you this morning the line that I might take in Cabinet next week when the subject of solicitors' conveyancing comes to us.

2 My own concern is that it was clear from the discussion in H Committee earlier this week that there was support which I judge to be overwhelming, not only for the proposition that employed solicitors should be allowed to do conveyancing, but also for the further proposal that people other than solicitors should be allowed to convey registered land. In view of this, I believe there is every chance that our colleagues in Cabinet will come to the view that we must go forward with not only the proposals on employed solicitors, but the further proposal, which will raise more acutely the concerns felt by those who wish to see as little movement from the present position as possible.

I judge that the line could be held at the initial concession only if you were to give a very clear steer to colleagues.

3 I am copying this note to Willie, to make sure that he is fully aware of my assessment of the H Committee discussion.

NT

NT

8 December 1983



CCNO

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

RESTRICTED

The Rt Hon Peter Rees QC MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AG

*nbpm
2ms
8/12*

8 December 1983

Dear Peter,

I have seen Quintin Hailsham's letter of 7 November to Nigel Lawson about the desirability of accelerating compulsory land registration in England and Wales and have noted the agreement of H Committee on 15 November (H(83)22nd Meeting, Item 2, Conclusion 3), when they were considering the restrictions on conveyancing for reward, that Quintin should discuss with you the possibility of increasing the speed at which the land registration programme is extended. I have also seen Mr Barclay's letter of 17 November about the H Committee discussion on conveyancing, recording the Prime Minister's view that it would be highly desirable to speed up the registration of land.

attached

attached

As you know I have a similar concern for the extension of the Land Register in Scotland. In particular, I hope that the land registration programme in Scotland may not suffer such delays as have occurred in England and Wales. Although a start was made in April 1981 on what was supposed to be a 9 year programme this timetable has already slipped by some 3 or 4 years, to a significant extent, though not entirely, as a result of the application of manpower constraints. When I wrote to Leon Brittan on 11 May I suggested that we needed to find some way of introducing greater flexibility into the manpower arrangement for departments - such as the Department of Registers for Scotland and HM Land Registry - which provide demand-led services for the benefit of the public and which are self-financing in the sense that they defray all their expenses through the fees charged. Unless we can achieve the necessary manpower flexibility in such cases we shall frustrate developments of great public benefit which impose no costs whatever upon the Exchequer. I am sure the Treasury is well able to find a means of presenting our manpower targets that does not produce this absurd result.

As I explained in my letter of 11 May, the application of staffing constraints could seriously impede our right to buy policy for public sector housing tenants as well as delaying further extension of the land register to other parts of Scotland. In Scotland as in England and Wales extension of registration would pave the way for simplification of conveyancing procedures and a consequent reduction in the cost of house purchase. Indeed I consider extension of registration of title is the route most likely to achieve savings in the conveyancing field in Scotland - a view with which James Mackay fully agrees.

A modest increase in the staff of the Department of Registers for Scotland would help to speed up the programme for extending the land register, would expedite the Department's training programme, and would facilitate improvements in forward planning.

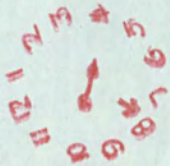
I should therefore be grateful if you would keep me in touch with the discussions on speeding up the land registration programme. If it is agreed that the Departments responsible for land registration should be treated as a special case, I shall of course arrange for a detailed case for additional staff for DRS to be put to the Treasury.

I am copying this letter to the Prime Minister, to Quintin Hailsham and to Patrick Jenkin.

Yours sincerely,
George

Legal Procedure: Restrictions on Conveyancing
for reward. Nov '83

- 8 DEC 1983



PRIME MINISTER

Mr. Tebbit will be staying behind after Cabinet tomorrow to discuss:

- (i) The solicitors' conveyancing monopoly. He seeks your guidance as to how far to push the issue, which will come to Cabinet next Thursday, 15 December (see the Policy Unit note and the Minutes of H Committee - Flag A);
- (ii) He wants to give you an oral report on the complex of issues relating to BT/ICL, listed in my letter to his Private Office - see Flag B;
- (iii) He also wants to raise a question of senior management in his Department. I believe he discussed this about six weeks ago and will be enquiring about progress. Unfortunately Sir Robert Armstrong will not be available;
- (iv) He has minuted you on INMOS - see Flag C. He is suggesting additional funding for INMOS either in the form of an additional loan or an increase in its temporary borrowing ceiling. Lord Cockfield is extremely sceptical and would require more by way of justification. He also recommends that if any more money is put in, there should be a revision of the terms. Policy Unit are deeply sceptical and also suggest more information is required. I have not yet had the Treasury's response. I suggest you do not raise this until the Treasury have replied, but if Mr. Tebbit raises it, you should take the same line as Lord Cockfield.

AT

A

PRIME MINISTER

THE SOLICITORS' CONVEYANCING MONOPOLY

Norman Tebbit wishes to see you after Cabinet tomorrow. He seeks your guidance as to how far to push the issue, which will come to Cabinet next Thursday (15 December).

We have to respond to Austin Mitchell's Home Buyers Bill on 16 December. This Bill has been extremely well received by the press. It is a pity that the Government had not introduced a Bill of this kind itself, following the successful opticians' decision, since it would fit so well with the kind of competition policy which we would like to see developed - one which focuses on the major items in the consumer's budget (housing, cars, food, insurance). If we cannot claim credit for breaking an unpopular monopoly, at least let us avoid being cast as hide-bound protectors of it. The half-way house solution of merely relaxing the monopoly to allow employed solicitors will not be a convincing response, even though this will allow a larger injection of competition than the non-solicitor conveyancers might provide. We ought, therefore, to take a constructive approach by offering to develop a licensing framework within which non-solicitor conveyancers can operate without detriment to the consumer.

For the moment, we must hope to make as much progress as possible while causing as little distress as possible to Quintin, who has had a very difficult time of late.

Employed Solicitors

The overwhelming majority of H believes that the restrictions ought to be widened to allow solicitors employed by building societies etc to do conveyancing. The Lord Chancellor's central objection here is the possible conflict of interest when a solicitor acts for both client and building society.

The best line might be: we are agreed that we should announce, in response to the Home Buyers Bill, that:

- See H minutes attached.
- (a) we intend to make it possible ^{for} ~~to~~ employed solicitors to do conveyancing; and
 - (b) the Lord Chancellor will draw up, in consultation with the Law Society, a code of conduct to avoid potential conflict of interest.

Conveyancing of Registered Land by Non-Solicitors

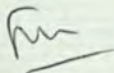
It is doubtful, however, whether this would be enough on its own to satisfy popular feeling. We would, after all, still be restricting the work to solicitors. We could still be portrayed as defending the closed shop so long as its members were largely our own supporters.

A sizeable number of Ministers in H/Cabinet do feel that we should go further. The officials' report outlines possible consumer safeguards designed for the conveyancing of registered land by non-solicitors, such as licensing, compulsory indemnity insurance and a compensation fund.

The Lord Chancellor points out certain difficulties which may arise in the conveyancing even of registered land. But how often do these difficulties occur in practice? Are they a conclusive argument against easing the restrictions? To use the medical analogy of which the legal profession is so fond, you don't insist on going to a brain surgeon every time you have a headache because of the complications that might conceivably arise. Ironing, cooking, driving a motor car - all of these activities would be confined to highly qualified experts if we took account of the accidents which have been very occasionally recorded.

We understand that these difficulties are not frequent (the Land Registry finds they arise in less than 1 per cent of cases) and are identifiable. For example, the register is amended, if necessary, following a divorce. There is no reason therefore why breakdowns of marriages themselves should give rise to conveyancing problems (see Annex). We envisage non-solicitor conveyancers identifying legal problems, but not solving them. If housebuyers encounter complex legal problems, they would be advised to consult their solicitor, but if they want a simple conveyancing operation, a non-solicitor conveyancer would be sufficient for many.

The best way through might be: to announce on 16 December that we intend to bring out a Green Paper which would outline the proposed consumer safeguards and invite public reaction. This would provide a strong positive steer from which we would find it hard to retreat, but would not commit us immediately.



Whatever the state of a matrimonial dispute, jointly owned property cannot be sold without both husband and wife signing the transfer document. A situation where the property is registered in the husband's name and he leaves the home and sells it, could give rise to problems for the purchaser if the wife still occupies the property. The Boland judgement two years ago dealt with such a case. A husband had offered his house as a security for a bank loan. His marriage and business collapsed; the bank wished to claim the house occupied by the wife. The House of Lords supported the wife. A conveyancer therefore needs to check that the purchaser will obtain vacant possession but there seems no reason why a legal training is required in order to ensure this.



HOUSE OF LORDS,
SW1A 0PW

5th December 1983

Dear Willie:

RESTRICTIONS ON CONVEYANCING FOR REWARD

I have seen Norman Tebbit's letter of 2nd December commenting upon my memorandum which is to be taken at H Committee tomorrow and setting out his views. I have also seen the letter of 1st December from the Director General of Fair Trading which has recently been circulated.

It is misleading to portray me as the defender of the profession whilst others protect the consumer. My conviction that the status quo should be maintained is not based upon a concern for the narrow interests of the profession. I am firmly convinced that the restrictions represent the only way in which the interests of the consumer can be properly protected. The uncertain prospects of compensation for negligence when it becomes evident many years after the event are not, in my view, an adequate substitute for ensuring that only those qualified to do so undertake conveyancing. Even the Scottish Royal Commission only recommended that members of other professions "who have the education, training and competence to provide a conveyancing service" should be permitted to do so. The officials' report contains no proposals for devising a satisfactory test of competence for non-solicitor conveyancers. I do not believe it is practical to do so.

I quite agree that the restrictions should only be maintained so long as they operate in the public interest. It is clear to me that they do; and the further stimulus which I propose for competition between solicitors will ensure that that continues to be the case.

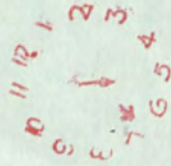
I am copying this letter to the Prime Minister, the Lord Advocate, members of H and Sir Robert Armstrong.

Yrs:

The Right Honourable
The Viscount Whitelaw, CH MC

Legal Proc
Nov 83
Conveyancing

- 5 DEC 1983





DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

Telephone (Direct dialling) 01-215 5422
GTN 215
(Switchboard) 215 7877

JF5028

PS / Secretary of State for Trade and Industry

5 December 1983

Private Secretary to the
Lord President
Privy Council Office
Whitehall
LONDON
SW1

Dear Janet,

*nbpm
JMS
5/12*

RESTRICTIONS ON CONVEYANCING FOR REWARD

My Secretary of State wrote to the Lord President on 2 December about the Solicitors' Conveyancing Monopoly.

2 The Lord President, and Members of H, may also like to see
... the attached copy of a letter from the Director General of Fair Trading which sets out his views of the issue.

3 I am copying this letter to the Private Secretaries of the Prime Minister, the Lord Advocate, Members of H Committee and Sir Robert Armstrong.

Yours ever,

Ruth

RUTH THOMPSON
Private Secretary

Encl

with DB



COPIES TO

FOR ADVICE (AND DRAFT REPLY IF APPROPRIATE)

PLEASE BY: 9/12

IF DEADLINE CANNOT BE MET PLEASE PHONE 215 5422

Mr. Cooke CC

BSAF

B/sect

Mr. Cairns

Mr. Eagers

CC

Mr. Dougherty

CA

Mr. Dobbs

FIELD HOUSE
BREAM'S BUILDINGS
LONDON EC4A 1PR
01-242 2858

1 December 1983

From the Director General of Fair Trading
Sir Gordon Borrie

The Rt Hon Norman Tebbit MP
Secretary of State for Trade and Industry
1 Victoria Street
London SW1H 0ET

Dear *Secretary of State,*
SOLICITORS CONVEYANCING MONOPOLY

I understand that the present statutory restriction of certain aspects of conveyancing to practising solicitors is to be discussed again by Ministers next week to agree, among other things, the Government's response to Austin Mitchell's House Buyers Bill. As my Office has a continuing interest in statutory professional monopolies, I hope you will find it helpful if I comment on this one.

In essence the question in this particular case is whether Parliament has conferred upon solicitors greater monopoly rights than can be justified for the protection of their clients. It is my considered view that the present monopoly can no longer be justified in its present form. The reasons are set out more fully in my recent Hamptons lecture but in brief I consider that it denies consumers adequate choice, deprives them of adequate information on which to choose, and makes for higher charges than are necessary. This is not sufficiently balanced by the setting and maintenance of standards of service and expertise.

There is particular current public interest in professional restrictive practices, following the announcement of the Secretary of State for Health and Social Security of the Government's intention to amend the Opticians Act 1958. Criticism of the solicitors' conveyancing monopoly has, however, been voiced over a long period, and with the considerable increase in home ownership it is inevitable that people are looking for a cheaper and simpler process of house transfer. One result has been the emergence of a number of conveyancing firms offering a low-cost service which, since only the final "instrument of transfer" is subject to the statutory monopoly under the Solicitors Act 1974, are able to do so by engaging the services of a solicitor or notary simply to prepare the instrument. I believe that there is substantial public support (rightly in my view) for what the House Buyers Bill seeks to achieve.

As you know, two Royal Commissions have examined the future of the conveyancing monopoly in England and Wales and in Scotland respectively. They came to diametrically opposite conclusions. I believe that this reflected simply a different judgment of essentially the same facts, as I am not convinced that differences of law and practice on either side of the border were the determining factors. The arguments of those who urged the retention of the monopoly are unconvincing and overlook the ability of the client to reach his own conclusions when given adequate information on what is necessary to protect his own interests.



It is possible to provide protection for the public without retaining the monopoly. The Scottish Royal Commission recognised the need for safeguards for house buyers in the event of open competition among conveyancers, and I understand that officials have prepared a paper for Ministers which among other things examines the practicability of appropriate arrangements. The main safeguard must be to provide financial security and I endorse the suggestion that those engaging in conveyancing work should be required by law to subscribe to an adequate indemnity scheme (perhaps insurance based but if necessary backed by a contributory compensation fund) to cover both negligence and dishonesty. If this alone were not thought to be sufficient protection for housebuyers against inadequate standards of skill among conveyancers, there are various ways in which control could be exercised by a system of licensing or registration, any of which could I believe be set up and operated at small public cost.

If conveyancers were freed of the present monopoly, the ability of solicitors to compete fairly and effectively for business would require removal of the existing restrictions on their freedom to advertise. As you know, I have long been engaged in attempting to persuade the Law Societies to liberalise their advertising rules in the way recommended by the Monopolies and Mergers Commission (MMC) in 1976. These recommendations were endorsed in full by the Scottish Royal Commission and, to a lesser extent, the English and Welsh Royal Commission also came out in favour of some relaxation. The Law Society have recently published some proposals which are a step in the right direction, though still falling well short of what the MMC had in mind, and which I shall soon be discussing with them.

You might think it would be useful to draw this letter to the attention of colleagues.

Yours sincerely

A handwritten signature in cursive script that reads "Gordon Borrie".

Gordon Borrie

LEGAL PROCEDURE: Restrictions on Conveyancing

Nov '83

15 DEC 1983





CENJO

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

Telephone (Direct dialling) 01-215 5422
GTN 215
(Switchboard) 215 7877

JU99
Secretary of State for Trade and Industry

2 December 1983

The Rt Hon Lord Whitelaw CH
Lord President of the Council
Privy Council Office
Whitehall SW1

nbpm
JMS
6/2

R Willie,

RESTRICTIONS ON CONVEYANCING FOR REWARD

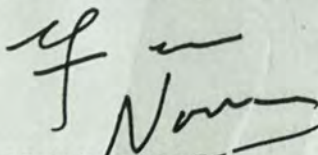
I have seen the paper produced by the official working party in response to the questions posed at the meeting of H on 15 November, and in the letter of 17 November from the Prime Minister's Private Secretary. I understand that the officials' paper will form the basis of a further discussion in H on 6 December. I have only just seen the Lord Chancellor's paper for this meeting, but as I shall be abroad until 5 December, colleagues may care to have an indication of my views in advance.

2 While the Lord Chancellor rightly upholds the interests of the legal profession and seeks to consider the interest of the consumer in that setting, I have to uphold the interest of the consumer and to consider the interests of the legal profession in that setting. It is not surprising that we should reach slightly different conclusions.

3 From my point of view, what is essential is that house buyers and sellers should have protection against monopoly, incompetence and malpractice. So long as they could be protected against incompetence and malpractice then the monopoly merely serves the interest of the monopolists - the legal profession.

4 The officials' report suggests that consumer protection can be provided without the monopoly in quite wide areas. I naturally would like the consumer to benefit additionally from competition so I hope that despite Quintin's misgivings we could set about a judicious easing of the monopoly by allowing employed solicitors and suitable lay persons to convey registered land.

5 I am copying this letter to the Prime Minister, the Lord Advocate, members of H, and Sir Robert Armstrong.


NORMAN TEBBIT

CONFIDENTIAL



2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

2 December 1983

cc Nick Owen
then pa pte.

DMS
2/12

Dear Lord Whitelaw

RESTRICTIONS ON CONVEYANCING FOR REWARD

I have seen the minutes of H on 15 November, the letter of 17 November to your office, conveying the Prime Minister's views, and Quintin Hailsham's second paper covering the report of the official working group dealing with the points raised by H and by No 10.

I agree with Norman Tebbit's argument, in his letter of 14 November to you, that maintaining the solicitors' monopoly runs counter to all our policies on stimulating competition. It is also difficult to reconcile with our efforts to encourage home ownership, and our concern to reduce the obstacles to labour mobility. I accept of course, Quintin's view that there must be adequate consumer protection, but that cannot be achieved by the maintenance of the present monopoly.

The case is strong for allowing conveyancing to be carried out by solicitors employed by bodies such as building societies and banks. Evidence provided by my officials in conjunction with Treasury to the official working group shows that potential conflict of interest can be dealt with in these cases. For solicitors employed by builders or estate agents, the conflict may well be a barrier. There is uncertainty as to the possible effect on the availability of legal services locally in rural areas, but I cannot regard this as sufficient justification for continuing the restriction on housebuyers' range of choice for conveyancing services.

For conveyancers who are not solicitors, it would be essential to establish adequate arrangements for consumer protection. What these should be would need greater consideration. But the report by officials makes it clear that the manpower and public expenditure implications are not an obstacle. I think, therefore, that we should accept in principle a further widening of the right to do conveyancing to those who could satisfy our requirements with regard to consumer protection.

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

Yours sincerely

A.H. Davis
Private Secretary

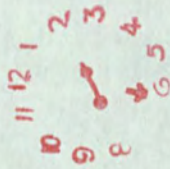
PP PATRICK JENKIN

Approved by the Secretary
of State and signed in
his absence

The Rt Hon the Viscount Whitelaw CH MC

Legal Procedure: Conveyancing for Leases: Nov 82

2 DEC 1983



(11)

SH



10 DOWNING STREET

From the Private Secretary

cc: LCO
 HO.
 DES
 NIO
 SO
 NO.

DoE
 LPS's O
 DHSS
 CDLO
 P/Emp
 HMT
 D Trans.

17 November, 1983 CW's O
 Lord Denham
 CO.
 DTI
 S. RTA.

The Prime Minister has seen a copy of the papers considered by H Committee on 15 November about conveyancing. She has also seen a copy of the minutes of the Committee's discussion.

The Prime Minister welcomes the Committee's decision to pursue the idea of extending to employed solicitors the right to offer conveyancing services. She has, however, some doubts as to whether this step alone would satisfy public discontent, particularly if (as is highly desirable) the registration of land were to be speeded up. The Prime Minister has accordingly asked if the official group could also investigate the possibility of providing the essential consumer protection, on which the Committee rightly insisted, for the conveyancing of registered land by persons other than solicitors. The Prime Minister considers that it might be possible to devise arrangements for safeguards involving professional standards, a compensation fund and supervision by the Department of Trade and Industry and the Office of Fair Trading; but she is conscious that it would take time for such arrangements to be developed. In the Prime Minister's view, therefore, it is all the more important to establish as soon as possible whether such arrangements would be practicable, particularly in the light of the need to respond to the House Buyers Bill, sponsored by the Consumers Association, which is due for its Second Reading on 16 December.

The Prime Minister has asked that the Policy Unit at No. 10 should be associated with the working of the official group.

I am sending copies of this letter to all the Private Secretaries to the members of H Committee.

DAVID BARCLAY

Miss Janet Lewis-Jones,
Office of the Lord President of the Council

EM

Prime Minister

16 November 1983
Prime Minister

(1)

PRIME MINISTER

Would you prefer to write now
or await H's final conclusions?

DMS
16/11

Write now
MB

CONVEYANCING FOR REWARD

H Committee's meeting was rather rushed and not wholly satisfactory. Willie's summing up asked officials to examine the pros and cons of extending to employed solicitors the right to offer conveyancing services.

This would be an effective short-term solution, giving banks and buildings societies the chance to offer "one-stop" housing purchase and so to drive down the level of fees. More competition and an end to the monopoly enjoyed by firms of solicitors. So far, so good.

But the solicitors' profession would still enjoy a monopoly of the work. And we would be missing the historic opportunity of land registration to open up the field. Even the Lord Chancellor admits that the conveyancing of registered land requires less skill (although he enters a caveat on flats in apartment blocks).

At the same time, H was unanimous that any widening of the field must contain sufficient safeguards for the consumer. There would clearly have to be regulations laid down by the Secretary of State for Trade and Industry, an Institute of Conveyancers with a code of conduct, professional standards, and a compensation fund. Membership of the Institute would need to be a condition for obtaining a licence from the Office of Fair Trading. If we are ever to make progress, work on the mechanics of this ought to start now.

You may prefer not to intervene until H Committee has concluded its deliberations. But there is a case for writing now to Willie:

- (a) welcoming the H decision to pursue the idea of extending to employed solicitors the right to offer conveyancing services;
- (b) expressing doubts as to whether this alone would satisfy public discontent, particularly if the registration of land is speeded up, which would be highly desirable;
- (c) asking whether the official group could also investigate the possibilities of providing the essential consumer protection, upon which H Committee was rightly insistent, for the conveyancing of registered land by persons other than solicitors. It was possible to envisage arrangements for

safeguards involving professional standards, a compensation fund and supervision by the DTI and OFT. It would take time for such arrangements to be evolved. It is therefore all the more important to establish as soon as possible whether they would be practicable, particularly in the light of the need to respond to the House Buyers' Bill sponsored by the Consumers Association, and due to be presented for a Second Reading by Austin Mitchell on 16 December, since this Bill outlines safeguards of this type.

- (d) expressing the hope that the No.10 Policy Unit might be associated with this work.

FERDINAND MOUNT

fm



JF4809
Secretary of State for Trade and Industry

cf No

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

14 November 1983

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AZ

nbpm

DMS

14/11

D. Willie,

RESTRICTIONS ON CONVEYANCING FOR REWARD

I have seen the Lord Chancellor's paper H(83)41, which we are to discuss in H on 15 November. *attached*

2 I have misgivings about taking a quick decision to preserve and enhance the solicitors' conveyancing monopoly, as he proposes. True, it can be seen as a consumer protection measure. But it is a measure which professes to protect consumers by restricting competition; and the resultant monopoly has led to widespread criticism in the press over a long period. There have been related criticisms of the solicitors' restrictions on advertising, which inhibit consumers becoming easily aware of the range or price of services offered by different solicitors. The Monopolies and Mergers Commission found against the Law Society rules restricting advertising in 1976. All in all we need to consider long and hard whether restrictions on competition are really the best or only way of protecting consumers.

3 I am also concerned that the conveyancing monopoly is out of keeping with our general stance on monopoly and competition. As a Government, we have made it an article of policy to encourage competition as a spur to greater efficiency. The professions are noteworthy as a surviving area of sheltered competition, which we need to examine closely. As regards the property sector, my Department took the lead in opening competition among architects and surveyors, by securing the ending of mandatory scale fees, in tune with the Monopolies and Mergers Commission's findings. I am not convinced that the preservation of the conveyancing monopoly is consistent with the wider steps we have taken.

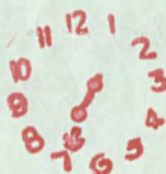


4 I am copying this letter to the Prime Minister, the Lord Chancellor, the Lord Advocate, the Secretary of State for the Environment, members of H, and Sir Robert Armstrong.

cf an
Norman

NORMAN TEBBIT

14 NOV 1983



PRIME MINISTER

CF

Bf when the Lord President
reports later this week
please.

Conveyancing

DMS
14/11

H Committee will be considering the solicitors' monopoly of conveyancing at their meeting next week. You will recall discussion about this at your September seminar.

The Lord Chancellor and the Secretary of State for Scotland have both circulated very defensive papers (Flags A and B attached). Some of the arguments they advance for retaining the monopoly are far from convincing (e.g. "savings in conveyancing costs will not result in a large reduction in the cost of house purchase").

✓ Other Ministers are likely to favour steps to reduce the solicitors' monopoly, and Lord Whitelaw will report the discussion at H to you.

A note by the Policy Unit is at Flag C. Agree with Ferdie to await the Lord President's report, and then consider chairing a meeting on this yourself?

Yes

DMS

11 November 1983

D.R.

10 November 1983
Policy Unit

PRIME MINISTER

I attach an analysis by Nick Owen of the Lord Chancellor's paper on the solicitors' monopoly of conveyancing. You will recall the feelings expressed at the September seminar in favour of breaking the monopoly.

A number of Ministers are expected to express the same strong feelings when the paper is discussed at H next Tuesday.

If, as we hope, H then refuses to agree the paper, you may wish to set up a small group or chair a meeting yourself.

FERDINAND MOUNT

FM

RESTRICTIONS ON CONVEYANCING FOR REWARD

Breaking the solicitors' monopoly on conveyancing for reward would be a most effective way of giving genuine and popular expression to the Government's commitment to competition. It would also assist labour mobility. The monopoly is a relic. It originates from 1804, and was granted on condition that solicitors collect Stamp Duty, introduced to finance the Napoleonic War. The monopoly served a useful purpose when titles were less well established than they are now, but it is difficult to see its relevance today, when three-quarters of properties are located in areas where registration (on transfer) is compulsory, and because other organisations with a competence in property matters - such as building societies - have emerged.

An injection of competition into the property transfer business would yield visible benefits to the 60 per cent of households which own their homes. Property transfer is expensive (500 hours of gross income for the average industrial worker, according to the Benson Report), lengthy and uncertain. In part this must be due to the archaic system of property transfer, handled by a fragmented collection of independent specialists - solicitors, estate agents, surveyors, building societies, banks - hampered by slow responses by local authorities to enquiries about planning consents. New forms of organisation are required, capable of offering packages which could compress both the timetable and the cost. Competition is the only means of securing this kind of change.

Solicitors have, it is only fair to say, become more competitive than they once were. The scale of charges was abandoned in 1973, but the public must still shop around for quotations because advertising is not permitted by the Law Society. The structure of conveyancing charges reflects this muted degree of competition. They are broadly related to the value of the property, even though conveyancing costs vary only slightly as between more and less expensive properties. (The Benson Report records that the purchase of a £10-15,000 house in 1978 required 6½ hours of solicitors' work, whereas a property of double that value required just one additional hour.) The differential as between properties which were registered before sale and those which were not (around 10 per cent) can hardly

reflect the differences in costs involved. The Law Society of Scotland recommended a 25 per cent reduction in respect of registered properties. Competition would lead to a more cost-related structure of charges.

The Lord Chancellor's Paper

The paper argues for the retention of the monopoly on three grounds:

- it protects the consumer from rogues and incompetents
- competition from institutions would be unfair; cut-price conveyancing would be used as a bait to secure mortgage business
- public expenditure costs would increase as solicitors attempted to restore their lost income from Green Form legal advisory work.

Consumer Protection

The problems presented are greatly exaggerated, certainly in respect to registered properties. The Land Registry has to satisfy itself of the proof of title. If it turns out that properties are falsely registered, the Land Registry is liable to claims. Legal problems can still arise - in respect to covenants governing the use of property, for example - but the register records when such covenants exist and non-solicitor conveyancers tend to avoid these cases. The paper draws attention to the dubious credentials of some non-solicitor conveyancers, but this is a poor guide to the standards of professionalism which could be expected to obtain, once conveyancing was allowed to emerge from its twilight zone. It is hardly surprising that, given its present status, this activity attracts the occasional dubious practitioner. Under the kind of licensing arrangements envisaged by the Consumers Association's Bill (to be presented for its Second Reading on 16 December) non-solicitor conveyancers would have to organise themselves in a professional way in order to secure licences to operate.

A licensing system would not "cost much public money". The costs would be borne by the conveyancing industry. Its practitioners already obtain insurance cover against liability for negligence. Through a professional association, they would also be able to

cover clients of members of the association in the case of loss through dishonesty on the part of a member firm. Government would be involved in the costs of policing the industry only insofar as the Office of Fair Trading needed staff to check the credentials presented by applicants to obtain a licence to operate, but there is no reason why fees could not be charged to cover this.

Unfair Competition

There is a possibility that large institutions might offer cheap conveyancing as a marketing ploy, but this is exaggerated in the paper. Not all building societies - the most obvious candidates in this context - will wish to compete with solicitors, since the latter provide them with business. Nor is it clear that this would be the most effective way of winning business; more active competition on interest rates, as demonstrated by Abbey National, would be a more effective business strategy. In general we do not think that liberalisation would damage the solicitors as a group (although it would alter the distribution of conveyancing business within the profession, as specialists in conveyancing emerge). In our view, in open competition, solicitors would retain the great bulk of the business because they enjoy the confidence of the public. Moreover, solicitors' fears for their income stem from a belief that there is some fixed lump of conveyancing business to be transacted. If, as we hope, property transfer becomes easier and home ownership extends, the volume of conveyancing business will increase. This could easily compensate for any loss in the solicitors' market share, which we believe will be modest, which might result from liberalisation.

Public Expenditure

The Lord Chancellor's paper envisages that solicitors would attempt to recoup their lost income through advisory work under the Green Form scheme, thereby pushing up public expenditure. This is a poor argument for sustaining their incomes from conveyancing by artificial means: why should the litigious be cross-subsidised by the homeowner? The cost of the Green Form scheme is at present £30-40m a year, is rising by 10 per cent a year, and may need to be capped in any case. The simplest way of doing this, without legislation, would be to increase the rate of contributions.

Conclusions

It is difficult to sustain the argument today that conveyancing cannot be safely handled in a competitive way. Nor is it credible to argue that the POEU must adapt to competition but solicitors need not. It is not credible, either, to argue that the Law Society, with suitable encouragement, can inject the desired level of competition into conveyancing. Earlier this year, Lord Benson himself criticised the profession for its slow response. Competition in this, as in most industries, can only be assured if there is a possibility of new entry from those outside the business. We therefore consider that the Government should invite those Departments with a close interest in conveyancing - Trade and Industry, Housing and the Treasury - to consider with the Lord Chancellor's Department how a suitable framework might be devised for regulating competition in this market on the assumption that the monopoly is abolished, or restricted.

NO

NICHOLAS OWEN

