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CABINET

RESTRICTIONS ON CONVEYANCING FOR REWARD

Memorandum by the Lord President of the Council

The Home and Social Affairs Committee discussed on 15 November and again on 6 December what the Government's policy should be towards restrictions on conveyancing for reward.

2. The reports of both the Royal Commission on Legal Services and the Royal Commission on Legal Services in Scotland considered the issues and made recommendations. However, the majority recommendations of the two 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 domestic conveyancing should not be confined to the legal profession and that, subject to appropriate safeguards, members of other professions should be entitled to undertake it. A decision has been made more urgent by Mr Austin Mitchell MP's House Buyers Bill, which is down for Second Reading on 16 December. That Bill proposes that the conveyancing of registered houses should be undertaken by anyone licenced by the Director General of Fair Trading.

3. All members of the Committee are agreed that there should be a greater degree of competition in the provision of conveyancing services. This would be consistent with our general policies on the benefits of competition and supports our policies on encouraging home ownership and removing obstacles in the way of labour mobility. There is, however, some difference of view on how that competition should be encouraged:

a. The Lord Chancellor favours an increase in competition solely among the existing private practitioners by encouraging the Law Societies to revise substantially their internal rules about advertising. He has already had success on these lines (for example the real cost of conveyancing has fallen significantly since the abolition of scale fees) although this success has not been mirrored in Scotland.

b. A further extension of competition within the legal profession could be achieved by allowing solicitors who are themselves employed (for example by banks or building societies) to conveyance for third parties.

c. Finally there is the possibility of allowing non-legally qualified persons to offer conveyancing, subject to suitable controls. This is the option pursued in Mr Austin Mitchell's Bill.

Any of the three choices would improve competition. The difficulty lies in knowing by how much and with what consequences.

The Lord Chancellor's preferred course of action would clearly be the most limited. He, for his part, sees very real danger to the provision of legal services generally in the proposal (b. above) to allow employed solicitors to do conveyancing. He thinks that this will result in a large swing of business away from solicitors in private practice and that this will seriously damage the viability of small practices, particularly those in rural areas. The results will be that some practices will close down, leaving the surrounding area with insufficient sources of legal advice, while others will seek to increase the amount of their work which is funded by the Green Form and legal aid schemes. This could in turn lead to increased public expenditure or difficult decision about limiting the scope of operation of these schemes. Furthermore the Lord Chancellor considers that even this step would seriously damage relations between the Government and the legal professions. He is also concerned about the conflicts of interest that could arise for an employed solicitor between his responsibility to his employer and his responsibility to his client.

5. The Lord Chancellor feels that these considerations apply even more strongly if the right to conveyance is extended to non-solicitors (c. above). Furthermore he does not believe that it would be possible to implement an adequate system of consumer protection in relation to non-solicitors. The consequences, therefore, of allowing something like the scheme in Mr Austin Mitchell's Bill would be to put at risk the transaction (buying a house) which, for most people, is one of the most important they undertake in their lives.

6. Many members of the Committee, on the other hand, believed that our general approach to competition should lead us to question very carefully where the balance of advantage lies and whether many of the difficulties could not be overcome. Some considered that there was little reason to doubt that effective arrangements could be made if desired regarding insurance and registration of non-solicitor practitioners, and that these could be operated with very little additional cost to the Government. They would concede that mistakes could be made, but would argue that there is no reason to suppose that these would be significantly more frequent or more disastrous than under the existing regime.

7. Other members of the Committee considered, however, that the risks involved in extending the right to offer conveyancing services to non-solicitors were too great but that this was not so if the right was extended only to employed solicitors. This in itself would not require legislation if the Law Society agreed to amend its rules (although it might require legislation to enable building societies to offer these services). It was thought the Director General of Fair Trading would

be able to control any attempts by banks or building societies to use unfair practices (for example to require their customers to use their conveyancing services as a condition of receiving a mortgage) while special arrangements could be made to deal with the possibility of conflicts of interest between the solicitor's responsibility to his employer and to his client. If this course of action was adopted, there would be no need to restrict it to registered land and indeed no logic in doing so.

8. My feeling as Chairman was that a substantial majority of the Committee took the view that the best course would be to announce, probably in the Second Reading debate on Mr Austin Mitchell's Bill, that the Government was committed to an extension of the right to offer conveyancing to employed solicitors. The method of doing this - but not the principle - would be for discussion with the Law Societies in England and Scotland. The extension could apply to all land and not simply to registered houses as in Mr Austin Mitchell's Bill. This would improve still further the competition within the legal profession which has already been created by the Lord Chancellor's efforts. But I did not feel that there was a clear majority in the Committee to extend the right to do conveyancing to non-solicitors.

9. I invite the Cabinet to consider whether:

- a. to limit the right to conveyance to the existing practitioners while encouraging the Law Societies to revise substantially their internal rules about advertising; or
- b. in addition to extend the right to conveyance to employed solicitors and to undertake consultations on how best to avoid conflicts of interest and unfair competition; or
- c. in addition to extend the right to conveyance at least registered houses to non-solicitors with suitable safeguards as regards competence, probity and indemnity.

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Privy Council Office

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