



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:

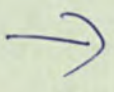
- a decision to consult on whether to extend to employed solicitors (the Lord Chancellor's preference)
- a firm decision of principle to extend to employed solicitors but consultation on problems and methods
- a decision of principle for more general freedom to undertake conveyancing subject to suitable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