



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