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Lord President
Minister without
Portfolio

PRIME MINISTER

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Prime Minister

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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.

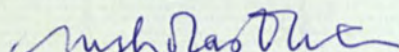
If solicitors' professional standards are robust enough to cope with conflicts of interest which arise for independent solicitors, surely they are robust enough to cope with those envisaged for employed solicitors? If they are not, it would seem that there is something in the profession itself which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