

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

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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.