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Prime Minister: /

PRIME MINISTER

Committee will be discussing conveyancing on Tuesday. The Policy Unit fears that the Lord Chancellor's proposals will lose the initiative. Agree to write to the Lord President as

2 October 1984 (attached)

CONVEYANCING BY NON-SOLICITORS AND EMPLOYED SOLICITORS

they propose?

Opening up the conveyancing business to greater competition is a vital element in the competition programme. Your intervention last December wrestled the initiative from the Opposition and set us on a course which has excited the public and already stimulated competition among solicitors. It would be a setback if this momentum were lost now.

The package offered by the Lord Chancellor - a restrictive new quango for non-solicitor conveyancers and a wait-and-see, all-very-difficult stance on employed solicitors - could well lose us the initiative. The public are fed up with gross overcharging. The Opposition could capitalise on this.

#### Non-Solicitor Conveyancers (NSCs)

Professor Farrand has done well to produce a unanimous report from a committee which embraces both the Law Society and the Consumers Association. The price is an anti-competitive arrangement: a Council modelled on the Law Society, with stiff examinations, designed to produce mini-solicitors. The report argues that only if NSCs are seen to be professional, and provide the consumer with as much protection as the Law Society, will NSCs provide a new source of competition. But the great and growing majority of conveyancing concerns

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registered property and is legally straightforward.

Conveyancing registered property should be open to anyone who has made proper insurance arrangements against incompetence and fraud. This would require NSCs to organise a compensation fund, as the National Association of Conveyancers has already done. For non-registered property we would need a positive licensing system, but a new Council is unnecessary and anti-competitive. We could find ourselves in the absurd position of paying £200,000 to launch a body which reduces, rather than increases the numbers of NSCs.

A simpler solution would be for the Office of Fair Trading to issue licences, on presentation of examination certificates issued by accredited polytechnics offering appropriate courses, kept up to the mark by the Council of National Academic Awards (CNAA).

#### Employed Solicitors

The Lord Chancellor is attempting to kick this into the long grass. He claims to have discovered a grave, unforeseen problem - the conflict of interest between professional obligations to a client and common law duties to an employer. He argues that the daunting list of safeguards against this problem (at Annex C of the paper) is insufficient and wishes to defer a decision.

This is unnecessary because the problems are slight. Under existing arrangements, independent solicitors frequently act both for client and Building Society. Solicitors' Practice Rules are robust enough to cope with such conflicts of interest as are likely to arise. The conflicts which the Lord Chancellor envisages - to do with the type and conditions of mortgages - have nothing to do with the critical point in conveyancing - establishing valid titles to property. Here there is an absolute identity, not a conflict, of interest between the Building Society and the client. If Building Societies were to take advantage of clients' trust in employed solicitors to foist disadvantageous borrowing terms, they would get found out. The additional safeguards against conflict of interest are, in our view, unnecessary. We suspect that the problem has been magnified by the Lord Chancellor's Department's concern about potential competition to independent solicitors.

Conclusions

*Prime Minister:* You might write to the Lord President in advance of the H Committee meeting on Thursday, either to invite him to report the outcome, as a way of signalling your interest, or to write at greater length to prevent this initiative from stalling. The following points could be made:

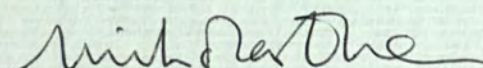
*or b)*  
*at greater length*  
*as to Policy*  
*Unit propose.*

*The longer letter note*

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- (1) You are concerned that the package of proposals - a new Council to regulate conveyancers and a deferred decision on employed solicitors - may lose us the initiative in an important area of our competition policy.
- (2) You fear that the regulatory arrangements proposed by the Farrand Committee may inhibit, rather than stimulate competition. Would it not be sufficient for conveyancers of registered property to organise their own indemnity arrangements, and for conveyancers of non-registered property to be licensed by the OFT?
- (3) You wonder whether the safeguards proposed against conflict of interest affecting employed solicitors are necessary at all, remembering that there will be an identity of interest between the Building Society and its client in respect to the most important point, the claim to title. Solicitors already act for both client and Building Society. If a Building Society were unwise enough to take advantage of the client's trust in an employed solicitor to press disadvantageous terms, it would soon get found out. And in any case, surely the Solicitors' Practice Rules are robust enough to withstand such pressure?
- (4) You hope H Committee can consider less elaborate ways of achieving our objective, with a view to legislation this Session.

  
NICHOLAS OWEN

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