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Aunt N. J. J.
consult -
Chas. G. J.

PRIME MINISTER

Conveyancing for Reward

1. On 15 December 1983, Cabinet considered the subject of conveyancing for reward and concluded (CC(83)37th Conclusions, Minute 4):

- i. That action should be taken to extend the right to conveyance to employed solicitors and that consultations on how to achieve this and to avoid problems of conflict of interest should be initiated; and
- ii. That further consultations should be initiated to examine the possibility of extending the right to conveyance outside the legal professions;

and, consequently, in the light of these decisions:

- iii. That Mr Austin Mitchell MP's House Buyers Bill, which was due to have its Second Reading Debate the following day, should be opposed.

In fact, Mr Mitchell's Bill received its Second Reading on 16 December but was subsequently withdrawn, following discussion between the Solicitor General and Mr Mitchell and the Solicitor General's announcement of the establishment of a Committee including representatives of all the main relevant interests (now the Farrand Committee) to consider, first, conveyancing by non-solicitors and, second, the scope for simplifying conveyancing practice and procedure. In his announcement, the Solicitor General said that the Government hoped to bring forward any necessary legislative proposals in this area in the 1984/85 Session and also that it hoped to bring forward legislation permitting building societies to offer conveyancing services in 1984/85.

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2. The Lord Chancellor received the first report (on non-solicitor conveyancing) from the Farrand Committee a few weeks ago. He has also assessed the results of his consultation on the implications of extending the right to conveyance to employed solicitors. The Home and Social Affairs Committee (H) considered memoranda on both subjects last week and this minute reports the Committee's views on how we should take matters forward.

3. On non-solicitor conveyancing the Farrand Committee was asked to report by September on what tests or other evidence of competence are needed for non-solicitor conveyancers in order to provide the public with a satisfactory assurance of adequate skill; how any such tests might be administered; and what other requirements should be placed on non-solicitor conveyancers to ensure adequate consumer protection. The Farrand Committee's Report on this has been produced promptly and is most thorough. Essentially it provides for the establishment of a new profession of licensed conveyancer with a Council for Licensed Conveyancers to oversee regulation and tests of competence to ensure that consumer protection safeguards are met, including the protection of the consumer from the financial consequences of negligence or dishonesty. The Report was virtually unanimous.

4. The Lord Chancellor considered that the creation of a new body such as the proposed Council was unwelcome but the case for a single body was strong and no existing body would do. He proposed, however, that there should be no Ministerial involvement in appointing the chairman or members of the Council once the establishment of the new arrangements is complete, and that public funds should only be provided for pump-priming for a strictly limited initial period. He also proposed that the Council, and not the legislation directly, should set the standards of competence and other safeguards required. They might not,

therefore, be as onerous as those suggested by the Farrand Report though it would be for the Council to take its own view. Some Ministers, notably those from the Treasury and the Department of Trade and Industry, considered, however, that simpler arrangements for regulation and tests of competence could and should be devised.

5. H Committee as a whole took the view that timing was crucial. Legislation implementing the Farrand Report could be devised and drafted at the expense of only a few weeks delay to the proposed legislative vehicle, the Lord Chancellor's Administration of Justice Bill. The exploration and development of other proposals (eg arrangements not involving a new Council) would inevitably take some time, would either significantly delay the Administration of Justice Bill or require a new vehicle. In either case legislation would be ready for introduction unacceptably late both from the point of view of managing the programme of Government legislation for the Session and from the point of view of pre-empting any renewed action by private members and retaining the initiative for the Government.

6. Nonetheless, the Ministers from the Treasury and the Department of Trade and Industry sought more time to consider the Farrand proposals and the difficulties they saw in them. In the circumstances, the Committee agreed that they might have until early next week to consider whether they could accept that proposals on the lines proposed by the Lord Chancellor should be the basis of early legislation, or whether they wished to insist that the search for other arrangements should be pursued with the consequence of postponing legislation until the 1985-86 Session. I will report further to you and colleagues when I have their views. In the meantime the Lord Privy Seal agreed that drafting of legislation on the basis of the Farrand Report recommendations might be put in hand so that no time would be lost.

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7. Turning to conveyancing by employed solicitors, the Lord Chancellor reported to us the outcome of his consultations. The main point emerging was that the potential conflict of interest between an employed solicitor's duty to his employer and his duty to the house buyer was even greater than had earlier been expected. It arises not primarily in respect of establishing the claim to title but in giving the buyer advice in respect of the nature and conditions of the loan which the solicitor's employer is likely to make and on which he is also advising them. A further and equally difficult conflict will be introduced if we legislate in due course to enable building societies to undertake estate agency functions, so that the same solicitor could be acting for both buyer and seller. The Lord Chancellor's advice, and that of the Law Officers attending the meeting, was that while they did not conclude that the problems over conflicts of interest could not be resolved, they believed it essential to consider the problems further before framing legislation.

8. The Scottish Minister urged that legislation on employed solicitors should be postponed not only for these reasons but also so as not to inhibit discussions with the Law Society of Scotland about greater competition between solicitors eg on advertising and quotations. It appears very likely that if legislation on conveyancing by employed solicitors is introduced in Scotland, these discussions will be broken off.


9. The Committee concluded that legislation on conveyancing by employed solicitors should continue to be the Government's objective but that, given the further work that needed to be done on the potential conflicts of interest and the need to take account in this of the future role foreseen for building societies, such legislation should not now be brought forward

in the 1984-85 Session. This conclusion reinforces the importance of early decisions, as reported above, that will enable legislation to be brought forward quickly on non-solicitor conveyancing.

10. To summarise, H Committee considers that to retain the initiative on conveyancing for reward the Government should, subject to further consideration by the Treasury and the Department of Trade and Industry, bring forward legislation on conveyancing by non-solicitors broadly on the lines recommended by the Farrand Report early in the 1984-85 Session. Provisions on conveyancing by employed solicitors should, however, be deferred until a later Session so that further consideration can be given to the severe problem of conflict of interest which seem likely to arise.

11. I am sending copies of this minute to Cabinet colleagues, other members of H, the Attorney General, the Solicitor General, the Lord Advocate, the Paymaster General, and Sir Robert Armstrong.

WJW



8 October 1984

LEGAL PROCEDURE: Conveyance

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