

CONFIDENTIAL

Prime Minister +
Contact for Policy Unit to
increasing boldness of these
proposals?

Yes not

22 NOVEMBER 1988

PRC6
23/11

PRIME MINISTER

RESTRICTIVE PRACTICES IN THE LEGAL PROFESSION

minutes
attached

1. E(CP) agreed in October that the Lord Chancellor should publish a Green Paper on restrictive practices in the legal profession. Colleagues welcomed Lord Mackay's open approach to the subject.

Progress to date

2. Drafting is well-advanced, and the Green Paper will reach you before Christmas. It is turning out less green and more radical than originally suggested. This reflects the development of Lord Mackay's own thinking.
3. The paper will outline proposals which would
 - remove the present limits on solicitors' rights of audience in court;
 - make solicitors eligible for the highest judicial appointments;
 - sweep away a number of other restrictive practices in the legal profession.

It will make it clear that the Government favours such changes.

4. Lord Mackay has developed a new approach to these issues which should take much of the heat out of the old debate between the Bar and the Law Society - a debate which has paid scant regard to the interests of consumers of legal services.

The Green Paper thesis

In essence the Green Paper argues

- that legal issues are becoming increasingly complex and require increasing specialisation on the part of practitioners to deal with family issues, mental health problems, patent and commercial work, and personal injury cases etc;
- that advocacy is a specialism requiring advocates who are properly trained and subject to codes of conduct which maintain standards;
- that the need for increased specialisation should be recognised through the establishment of a standing committee - with a preponderance of lay members - to advise the Lord Chancellor on the training and qualifications necessary for those who wish to practise defined specialisms.

? restrictions The effect of these proposals would be to remove many of the present, on who can, and cannot, appear in this or that court. In future the test would be whether a practitioner had the appropriate training and experience.

In the case of advocacy, the proposals would allow solicitors with experience gained in the magistrates or County Courts to practice in the highest courts. Since the key qualification for judges would be experience of advocacy, the effect would be to widen the pool from which senior judges could be drawn to include solicitors as well as barristers.

Comment

The last major look at the organisation of the legal profession was the Benson Report in 1979. Benson could not face up to the difficulty of changing the divided structure of the profession (now virtually unique to the UK, other major common law countries having gone for unification). More recently, the Marre Committee failed to agree on what to do - largely because solicitors and barristers were equally represented and cancelled each other out.

Lord Mackay's Green Paper will cleverly finesse the controversial issue of fusion of the legal profession. It will be hard for the Bar to argue against proposals which recognise the special skills of advocacy. It will be hard for the Law Society to argue that solicitors without experience or training in advocacy should be allowed to defend or prosecute people in court.

In time these changes should produce a better service for the consumer. Skilled solicitors and employed barristers - who may be the most eminent people in a given field - will no longer be denied audience in court on demarcation grounds worthy of the most benighted trade union. A number of other useful and efficient changes are proposed, such as abolishing the need to use a solicitor to obtain probate.

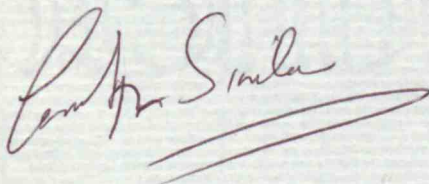
Recommendation

The Green Paper could lead to a radical reorganisation of the legal profession. It is controversial stuff, albeit presented so cogently that opponents of change will find it hard to challenge.

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Lord Mackay was gratified by the warm reception given to his original proposals in E(CP). He is now going further in making it clear that the Government favours changes which would remove the present distinctions between solicitors and barristers.

It would be very helpful if he could be assured of your support for this bold approach before circulating the draft Green Paper to colleagues. If you agree, I could tell his officials at the final drafting meeting on 2 December.

A handwritten signature in dark ink, appearing to read 'Carolyn Sinclair', with a long horizontal flourish underneath.

CAROLYN SINCLAIR