

Law Shops

By Graham Smith

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It is nearly three years since the lawyers were delicensed. They put up the most stubborn resistance of all the professions except for the doctors, who lost the last of their privileges two months ago.

Public Good

The lawyers had made dire predictions of the racket-ridden mess which they said would follow decontrol. They said that the public had to be protected from unqualified practitioners; that otherwise there would be a conman's paradise; that the public interest required a licensed profession. The Law Society was still vociferously invoking the public interest when the Free Trade (Legal Services) Bill became law.

This, incidentally, was one of the last occasions on which any group seriously attempted to call "the public interest" to its defence. It seems incredible now that politicians and monopolies used to be able to get away with almost anything merely by citing "the national interest" "the public good", "the common welfare", or "the good of society".

Deregulation brought changes. The immediately obvious effect was that advertisements for lawyers appeared everywhere on hoardings, in newspapers, on local television and radio, and in free literature which cascaded through letterboxes. Previously there had been occasional institutional advertising by the Law Society, but advertising by individual lawyers was banned. The last thing a solicitor could do was solicit business.

Advertising

The profession claimed that advertising would increase client's costs, would favour established firms, and in any case could have no effect on the supply of professional services; that it was contrary to the dignity of the legal profession; that "shopping around"

was irrelevant to choosing legal services, the quality of which could seldom be evaluated by the client.

With the benefit of hindsight these arguments are unconvincing. A lawyers advice is now cheaper than it was before deregulation. Although the cost of advertising added to overheads, this has been more than compensated for by the increased efficiency and competition which it has produced.

"Shopping around" has proved as relevant to the purchase of legal services as to that of any consumer product. A potential client no longer wastes time approaching firms which do not offer the service he wants. Advertising enables him to choose between firms offering what he wants. Finding a lawyer has become like buying a car or home computer; both of which are products of such complexity that the customer is seldom able to evaluate their quality unaided.

Immediately after deregulation the predictions of the lawyers of a conman's paradise looked plausible. But now the initial spate of crooked and/or incompetent lawyers has virtually disappeared, thanks largely to the popular press. Starved of their old diet of government press releases, the newspapers found that the activities of incapable and bent lawyers made excellent copy. Scoundrels who thought that deregulation would provide easy pickings discovered that it did not. Scandals are now rare, and complaints against lawyers are fewer than before the Bill.

Protection

Credit for the improvement is due also to the Consumer Protection Association, whose authoritative list of recommended lawyers has helped many a potential client avoid a costly mistake. The Association, possibly the most loved and most hated institution in the country, has vigorously maintained its independence in the face of continual attempts to buy it off. Before decontrol the legal profession was divided into two mutually exclusive parts: solicitors and barristers. Roughly speaking, solicitors

engaged in non-contentious business such as conveyancing, drawing wills, probate and commercial work. They also prepared cases for court and could appear in some lower courts. Barristers appeared in court, gave expert opinions on request by solicitors and drafted important documents. A client could approach a barrister only through a solicitor. The division was enforced by the statutory backing given to the rules of the Bar and Law Society.

There was a long-running debate about whether or not the division of the profession was justified. Each side argued that the public interest required division or fusion, as the case might be. Each side constructed theoretical systems, with no means to test its schemes. For a long time no one suggested the now commonplace solution; remove the statutory controls and let the demands of clients determine the best system.

That is what has happened since the Bill. The divided profession has partially fused. Now there is a continuous spectrum of lawyers ranging from pure advocates through semi-businessmen to pure draftsmen. Several new specialist professional bodies demanding extraordinarily high standards of competence have sprung up. The Bar and the Law Society are expected soon to merge and subdivide.

Advice Centres

Liberalisation has had an impact beyond the bounds of the legal profession. Quite the most startling development has been the proliferation of family advice centres. There is now one in almost every shopping street. A family advice centre is a partnership between, typically, an accountant, a lawyer, a surveyor and estate agent, a banker, an insurance broker and a stockbroker. Some of the larger centres also have architects, psychotherapists, doctors, dentists and paramedics. The aim of a family advice centre is to provide every professional service that could be needed by a family under one roof. This was impossible before the Bill because professional rules forbade the sharing of profits with members of another profession.

Now a family advice centre will fix up your health insurance, check your job contract, do your accounts, buy and sell your house or rent you a flat, marry you, divorce you, hold your bank account, set you up in business, deal with your savings, and even bury you and wind up your estate. Most centres run credit schemes or fixed payment insurance plans so that their services are available to even the poorest.

The old Welfare State claimed to support the population from the cradle to the grave but, as we now know, only tended to hasten the process. The new family advice centres appear to be doing rather better. Deregulation has allowed non-lawyers to appear in court. Most clients have preferred to stick with trained lawyers, but there has been a sprinkling of newcomers. Accountants often appear in tax cases and trade union officials in employment cases. As long ago as 1979 the Trades Union Congress asked for union officials to be given limited rights of audience in court. Curiously, most criticism of legal monopolies came then from socialists. A Conservative shadow minister supposedly a supporter of free enterprise, described the legal profession as a self-regulating free market. The minister in question was a lawyer.

Help for Poor

Apart from the advent of family advice centres the greatest boon, especially to the poor, has been the introduction of the contingency fee. This is a method of charging in which the lawyer takes a commission on the damages which he gains for his client. No win, no fee.

Before the Bill the poor found great difficulty in obtaining legal representation, especially after the collapse of the Legal Aid system in the Social Services Bubble. Now no one has any difficulty in finding lawyers. More often than not the lawyers find the client. Such is the competition that many lawyers offer small claims representation in the hope of inducing clients to return to them with a large contingency claim. Free offers, incidentally, were also banned before the Bill.

The Libertarian Alliance is an independent, non-party group, with a shared desire to work for a free society.

The contingency fee was strenuously opposed by the profession. It objected that the lawyer would have a vested interest in his client's litigation which would detract from his objectivity and lead to lowered professional standards; and that the lawyer would be less likely to advise settlement out of court because of his personal interest. The profession did not explain how the lawyer's vested interest in the successful outcome of the litigation would act against his client's interests. Nor was it clear how the client's interests would be prejudiced with regard to settlement out of court when the interests of client and lawyer were identical.

the government abandons the field completely to the private arbitrators.

The profession even put forward as an objection the fact that because plaintiffs would have no costs to pay they would be less likely to settle out of court. Thus the profession apparently favoured artificially influencing the judgement of plaintiffs in favour of settlement by burdening them with costs.

The contingency fee is now a popular and established part of the legal scene. This then is the face of the law today: cheap speedy advice, free offers, discounts, credit schemes, advertising, legal insurance, contingency fees, family advice centres, and charity schemes for the luckless few. By general consent standards are higher than within living memory.

Future

What of the future? Most interest centres on the court system itself. Since the Bill there has been an explosion of private consent arbitration. This has happened because the State courts have looked increasingly unattractive by comparison with the free market alternative. A common complaint is that the courts still only work from 10am to 4pm, in contrast to the round-the-clock service provided by most law firms and private arbitration services. The most capable judges have deserted the state system.

The Law Courts in the Strand have begun to look distinctly down at heel. Proceedings there have a decayed air. Informed sources believe that it is only a matter of time before