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Courts and Legal Services Bill *HC Deb 18 April 1990 vol 170 cc1442-518* 1442

§ Order for Second Reading read.

§ *Mr. Speaker*

I must announce to the House that I have selected the reasoned amendment in the name of the Leader of the Opposition. In view of the somewhat late start to this debate and the pressure to speak, I ask right hon. and hon. Members to make brief speeches, please, so that all who wish to participate may do so.

4.27 pm
§ *The Attorney-General (Sir Patrick Mayhew)*

I beg to move, That the Bill be now read a Second time.

In the opinion of the Government, going to law in civil cases is all too often unduly complex. All too often it is needlessly inconvenient, takes too long, and can be disproportionately expensive. Therefore, part I of the Bill is intended to make the public's access to justice simpler, quicker and more convenient. It is a shame that the Bill upsets the Labour party, whose motion declines a Second Reading to the Bill.

The objective of part II of the Bill is the development of legal services for the public, in particular in advocacy, litigation, conveyancing and probate. It opens the door to new ways or better ways of providing these, while maintaining always the proper and efficient administration of justice. It, therefore, seeks to stimulate competition and foster high standards of professional service to the public. Again, it is a shame that those objectives seem to find insufficient favour with the Labour party. The Bill is apparently beyond amendment. Labour Members would refuse it a Second Reading. I must, therefore, take a little time to explain what they suggest the House should vote against.

I will begin by recalling the civil justice review. In 1985 the review body was established by a Conservative Lord Chancellor, my right hon. and learned Friend Lord Hailsham, who charged it to improve the machinery of civil justice in England and Wales and in particular to reduce delay, cost and complexity.

The review body reported in 1988 with recommendations that were widely applauded at the time. Its report was only the second in this area to propose major changes since 1869, when the creation of the Supreme Court of Judicature was proposed, so the proposals were extremely important. Most of the review's recommendations requiring primary legislation are given effect in part I of the Bill. The main thrust of part I is to allow all civil cases to be dealt with at the appropriate level and no higher.

The key conclusion of the review was that relatively few of the cases now being handled in the High Court need to be handled there because they are not of sufficient weight or complexity to justify that. Therefore, the major change made possible in part I is the reserving of the High Court for judicial review cases, for other specialist cases, and for general cases of

unusual substance, importance or difficulty. That follows the key recommendation of the civil justice review. The result will be to speed up the handling of cases remaining in the High Court, and to make the cheaper, speedier, and more convenient 1443 procedures and service provided by the county courts available now for those cases which are smaller and less complex.

The road leading to that reform will have to be travelled by stages. The county courts do not as yet have all the procedures or the resources that the increased work load will require. The Lord Chancellor has said that the transfers of work will not be made until the proper resources are available in the county courts to deal with them. However, a large amount of the necessary work is already under way—for example, the preparation of new procedures for the handling of payments following a court judgment, known as suitors' cash. From this month most payments will pass directly from debtor to creditor without having to be handled by the court. That should make the equivalent of some 300 posts in the court service available for other work. The work already under way includes the centralised issuing, from Northampton, of county court summonses at the suit of major creditors. The saving there should be the equivalent of another 50 full-time posts by late this year.

The work already under way also includes the establishment, on a much greater scale than presently, of county courts where long trials can receive a continuous hearing, and avoid that bane of the county court practitioner, to say nothing of the judiciary and the parties concerned, of having one adjournment after another. Already there are nearly 50 such continuous trial centres, and it is hoped that within two years most trials of any significant length will be dealt with in those centres.

As for resources, in any event there is need already for an increase, and so this year extra funds are available which should provide for the court service as a whole an increase of around 350 staff over and above those already in post. Changes to be effected may require up to 100 further posts themselves, so I emphasise that the Government intend first to recruit the staff that the changes will require. The Opposition's motion to convey the idea that the Government are neglecting to provide the resources that the reforms in the Bill will demand therefore cannot be justified. To rely on that notion as a reason for inviting the House to vote against the Bill, with all the benefits that it will achieve for the public in terms of cost-effectiveness, competition and convenience in the provision of legal services, is an excuse that falls some way short of being persuasive.

We must travel the reforming road in stages. The changes in the jurisdiction of the county courts, and in the system of allocating cases to them, will be achieved not all at once but by a series of orders to be made by the Lord Chancellor. My right hon. and noble Friend the Lord Chancellor envisages that the first order would require that all but the most substantial of personal injury cases would have to begin in a county court, and all general actions below a financial limit to be set by the order and proceeding to trial would have to be heard in a county court, unless they were exceptionally complex or important. It is intended that the Lord Chancellor's first such order will not take effect before January 1991. Full consultation about it is about to begin and it will be subject to the affirmative resolution procedure.

Before leaving part I of the Bill, I should mention, at the other end of the scale, the small claims procedure. The House may recall that the civil justice review examined that procedure and found that it had proved its worth. Cases are automatically dealt with as small claims if their 1444 value is £500 or less. The Government intend that the limit should be increased to

£1,000 by rules of court, to implement one of the review's recommendations. Additionally, part I of the Bill makes new arrangements for representations by lay persons, both for litigants in small claims and for those in debt cases and housing cases proceeding in the county court. Litigants can be represented, but not necessarily by a lawyer.

That part of the Bill certainly justifies the Government's claim that it will make public access to justice simpler, quicker and more convenient. It will also make it more cost-effective. That will be in the interests of everyone—not least the legally-aided litigant. Because legal aid has been the subject very recently of substantial legislative reform, and as work arising from that reform is already proceeding separately, the Bill rightly does not contain a major element dealing with legal aid. However, legal aid is, of course, central to the Government's overall aims because it is an essential service for people who cannot themselves pay, whether in part or in full, for access to legal advice and legal representation.

It is estimated that 259,000 civil legal aid certificates will be issued in 1989–90, compared with 190,000 certificates 10 years ago. In November, the Lord Chancellor introduced a package of improvements to eligibility arrangements which will confer real benefits on three important classes of people—children, pensioners living off their savings, and those involved in personal injury cases. That change brings 5 million children into the scope of legal aid. Already under way is a full review of the financial conditions for legal aid across the board, both civil and criminal. The Lord Chancellor has given assurances in another place that people currently eligible for legal aid will not lose when the Bill comes into force.

When so much is already in train under the Legal Aid Act 1988 and by way of the review for the development of legal aid services, it is idle to criticise the Bill for not dealing additionally to the large extent that it already does with matters relating primarily to legal aid. To vote against the Bill on that ground does not seem awfully respectable.

§ *Mr. Keith Vaz* (Leicester, East)

Does the Attorney-General accept that 15 million fewer people are eligible for legal aid this year compared with 1979? Does he acknowledge that, no matter that he is changing the structure of the court system and transferring cases from the High Court to the county court, if people are unable to bring their cases before the court because they fail legal aid eligibility criteria there is no point in changing the structure?

§ *The Attorney-General*

As to eligibility, the Lord Chancellor has said that by one calculation it does appear that a smaller percentage of people—56 per cent. today rather than 70 per cent. a few years ago—may be eligible for legal aid. However, it is difficult to be satisfied as to the right basis for making that calculation. One calculation is based on the family expenditure survey, which adopts a different definition of a household from that adopted for the purpose of eligibility for the legal aid scheme. I suggest that it is more important to concentrate on identifying which particular types of litigation cost and candidates for legal aid really need to be assisted from public funds, in order to provide access to the courts for different, specific purposes. That is one of the most important functions of the review now being undertaken.

1445 Part II of the Bill particularly concerns the provision of legal services. Under our statute and common law in England and Wales, the authority or right to provide legal services for

reward is generally restricted to those who hold professional qualifications. In general, our courts have no investigative powers of their own and therefore rely, perhaps to a unique extent, on the quality of the legal profession that serves both courts and public.

Obviously the qualities of integrity and fearlessness are pre-eminent, but it is also highly important to ensure that the profession remains responsive and sensitive to the needs of people who require the services of lawyers. It must never give the appearance of being remote.

§ *Dame Elaine Kellett-Bowman* (Lancaster)

Is not the cab rank principle extremely important in this connection, ensuring that cases are taken by counsel and by solicitors?

§ *The Attorney-General*

I entirely agree, and I shall say more about that later.

In recent years the legal profession has undergone and absorbed many great changes, a number of which it has instituted or introduced itself. Solicitors and barristers can now advertise their practices—and, what is more, their charges—and they do so. The Bar allows its members to accept instructions in certain kinds of work from professionals who are not solicitors; a new profession of licensed conveyancers has been created, and solicitors now charge highly competitive prices for conveyancing work. Training within each branch of the profession has been completely transformed.

No less important than those changes, however, is the need to help the evolution to continue by ensuring that there are no unnecessary restrictions to hinder the public in their attempts to obtain legal services. If competition, for example, were unnecessarily restrictive, so that new or better ways of providing legal services—or a wider choice of people to provide them—became needlessly shut out, that would be a good example of what I mean. The Government believe that the general test should be whether a restriction is appropriate to maintain the proper and efficient administration of justice—if it is not, it should go.

For example, the Government understand very well the need to ensure that legal services continue to be of high quality if the public are to be protected. Those who provide them must therefore be properly qualified and properly accountable—accountable to the client, to their professional body and to the courts.

§ *Mr. Ian Bruce* (Dorset, South)

I agree very much with what my right hon. and learned Friend is saying about the quality of the service provided, particularly by barristers, and by solicitors representing clients in the higher courts. Can he not say, even at this late stage, that the Government will introduce a provision to allow clients to claim against their barrister if he is negligent—if he does not turn up in court, for instance, or does not do his homework? Surely, if we are to guarantee quality and give certain people a monopoly to represent clients in court, we should allow those clients to obtain legal redress if their representatives are negligent.

§ *The Attorney-General*

The immunity from actions for negligence which has long been accorded to barristers by 1446 common law, and which the Bill extends to all advocates, is very closely confined. It deals only with the conduct of a case, principally in court. It was confirmed in two House of Lords judgments—Rondel v. Worsley 1967, and another in the following decade. The Bill preserves that narrowly confined immunity in the public interest. It is important, for example, that an action for negligence based on the way in which an advocate conducts a case "on his feet" in court does not lead to a retrying of the whole issue. Without the immunity, that would be almost inevitable and very much against the public interest. In many instances, however, a breach of duty by advocates —including barristers, of course—at present gives rise to a liability in relation to negligence, and that will continue.

§ *Sir Anthony Grant* (Cambridgeshire, South-West)

As I am sure my right hon. and learned Friend will accept, immunity at the Bar is not the only immunity. Witnesses giving evidence in the box are immune from action—as, most notably, are hon. Members in the House.

§ *The Attorney-General*

My hon. Friend makes an apt and accurate point.

The Government propose that in future rights of audience before a particular court should depend solely on whether advocates can demonstrate that they have received the appropriate education and training, and are bound by the appropriate codes of conduct. The Government consider that that fitness to practise is best established by professional bodies and other organisations whose members provide legal services, and that it is for such bodies to satisfy the courts and the public that their members can meet the high standards of competence and conduct required for the exercise of rights of audience.

Those requirements are at the heart of the Government's intentions, and are secured by the statutory objective and the general principle for which clause 15 expressly provides. The statutory objective is the development of legal services in England and Wales through provision for new or better ways of providing those services and a wider choice of people providing them, along with the constant maintaining of proper and efficient administration of justice. The general principle is that the question whether a person should be granted a right of audience in relation to any court or proceedings, or should be granted a right to conduct litigation, should be determined only by reference to certain specific factors.

First, it should be established whether that person is qualified in accordance with the educational and training requirements appropriate to that court or those proceedings. Secondly, it should be established whether he is a member of a professional or other body that has rules of conduct governing the conduct of its members, has an effective mechanism for enforcing those rules and is likely to enforce them. The rules—in relation to the particular court or proceedings—must be appropriate in the interests of the proper and efficient administration of justice. It will not be enough if they are simply appropriate to preserving the interests of the body concerned.

In relation to rights of audience in any of the superior courts, a fourth factor was added by amendment in another place. That brings me to the point made by my hon. Friend the Member for Lancaster (Dame E. Kellett-Bowman). The fourth factor is the question whether

a professional body's rules of conduct include provisions embodying what is loosely called the cab rank 1447 principle, subject to reasonable exceptions. The amendment—now contained in clause 15(3)(d)—excluded from its ambit the rights of audience in the superior courts that solicitors currently enjoy.

The question in another place was whether that principle needed to be spelt out in the Bill. I can now tell the House that the Government have decided to accept it, and to include it in clause 15. It may be generally described as the principle of non-discrimination by a practitioner between prospective clients in any area of law in which he practises as an advocate. Provision will, however, be needed to ensure that employed advocates may be allowed, by the operation of the machinery set up by the Bill, to act only for their employers in whatever court or proceedings in which they may have a right of audience.

The Government support that principle, considering it to be in the general interests of prospective clients and the administration of justice. For that reason, having consulted the Law Society and the Bar Council, they propose that clause 15 should provide for a wider application of it than is achieved by subsection (3) (d). They propose that it should apply to all rights of audience granted by a professional body, in whatever court or proceedings.

The Government will introduce their own amendment to give effect to that policy in due course. What is more —consistent with the principle of non-discrimination—they will introduce amendments to apply to the Bar the Race Relations Act 1976 and the Sex Discrimination Act 1975 to cover discrimination in professional relationships, both at the Bar and between barristers and those instructing them.

Advocacy, litigation, conveyancing and probate services are the main services covered by the relevant part of the Bill.

§ *Mr. Alex Carlile* (Montgomery)

Can the Attorney-General confirm that the principle of non-discrimination will ensure that there is no discrimination against those potential clients who are in receipt of legal aid?

§ *The Attorney-General*

It would not be right for me to anticipate the formulation of the amendment that the Government will introduce to give effect to the principle of non-discrimination. When it is introduced, there will be ample opportunity for the Standing Committee to discuss it and I trust that the Committee will be graced by the presence of the hon. and learned Member for Montgomery (Mr. Carlile).

The four categories—advocacy, litigation, conveyancing and probate—are very different in character, their only common feature being that under our law they can be undertaken for reward only by a professional with specific qualifications. Part II of the Bill provides three separate ways to permit development in those areas. The first covers advocacy and the conduct of litigation, which are the two categories of work upon which the administration of justice by the courts crucially relies. That first way employs a process by which an appropriate body may be authorised to grant to its members the right to undertake advocacy and litigation rights. That process is developed from the present statutory and common law arrangements, in which the judiciary is involved, whereby such rights are granted.

Although the Bill provides the mechanism as well as the impetus for change, it also preserves the position of solicitors and barristers by providing that the Law Society 1448 and the Bar Council shall be deemed to have granted to solicitors and barristers the rights that they respectively hold at present. They will be deemed to have been authorised to do so consistently with the requirements of the Bill by virtue of their existing regulations and rules.

If a new body were to seek authorisation to enter that area or if the Law Society or the Bar Council wished to grant an extension or alteration of existing rights to their members, there would be a need under the new arrangements to secure the approval of the Lord Chancellor and the designated judges in accordance with the new procedure. The road which may lead to such approval is mapped out in schedule 4. It leads first to the Lord Chancellor's advisory committee on legal education and conduct. That committee will be established under clause 17, and it must first consider the matter. There will be a lay majority on the committee, to illustrate the importance of the public's interest. A Law Lord or a judge of the Supreme Court will be in the chair. The committee will have the general duty of assisting in the maintenance and development of standards in the education, training and conduct of those offering legal services.

The second stage will be for the Lord Chancellor to consider, with the advice of the committee and of the Director General of Fair Trading, whether in connection with the proposals the members of the applicant body will be suitably qualified and whether they will be subject to appropriate codes of conduct, which will be enforced.

The third stage will be for the Lord Chancellor to inform the four most senior judges of the Supreme Court either that he proposes to give his approval to the application or alteration, or alternatively why he proposes to withhold it. Those judges, called in the Bill the designated judges, are the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor. If the Lord Chancellor or any of the designated judges is satisfied that approving the application would be incompatible with the statutory objective or the general principle established in clause 15, he must refuse his approval. If, on the other hand, each of the judges concurs with his proposal to give approval, approval will be given.

The Government consider that those arrangements continue, in an appropriate way, the long-established involvement of the judiciary in the control of proceedings in the courts in which they sit. However, the arrangements regulate the exercise of judicial involvement in that area by reference to the statutory objective and the general principle established in the Bill. For example, if a designated judge were to refuse to concur with the Lord Chancellor's proposal to approve an alteration to the rules of conduct of, say, the Law Society, his refusal would have to be compatible with his specific duty, imposed by clause 16, to act in furtherance of the statutory objective and in accordance with the general principle. If it were not so compatible, it would be subject to judicial review.

The Government believe that the establishment of safeguards for the public, by the means that I have described, is a proper and important function of the Bill. It is intended to secure, as a result, that only those who are adequately trained, experienced and regulated will become newly authorised to exercise rights of audience or rights to conduct litigation.

Advocacy is not only a particular skill; it is a particular service to the courts and to the public, and one upon which the courts implicitly rely. It is important that all those 1449 wishing to appear in the higher courts should be appropriately trained and qualified. It is important also

that the courts can always rely upon an advocate placing his duty to the court before his duty to his client.

The framework in part II of the Bill permits change to evolve in the light of all those considerations, and subject always to the over-arching safeguard that the proper and efficient administration of justice must be maintained. The safeguards rightly embodied in the Bill in no way detract from the aim of removing unnecessary restrictions, which is the policy which part II is intended to implement. Yet they are wholly compatible also with the great importance that the Government attach, as the Lord Chancellor has said, to the continued existence of a vigorous and independent Bar.

The second way of permitting development to be created by part II of the Bill concerns the right of financial institutions and others to do the conveyancing work that is currently restricted to the legal profession, notably solicitors and licensed conveyancers. The Bill sets up an authorised practitioner scheme. The proposals will supersede those of the Building Societies Act 1986, which have not been implemented and which will be repealed.

The proposals in the White Paper would have enabled the Lord Chancellor to recognise professional and other bodies as suitable to grant their members the right to provide conveyancing services to their borrowers, subject to appropriate standards of competence and conduct. However, when more detailed development of this proposal was carried out, it led the Government to conclude that, on balance, it was better to set up a single regulatory body responsible for the authorisation, supervision and discipline of the new authorised practitioners.

The Bill therefore establishes a new and independent Authorised Conveyancing Practitioners Board to take on those functions. It will have the duty to seek to develop competition in the provision of conveyancing services. Its constitution, procedure and powers can be found in schedule 5. The board may make rules providing for a compensation scheme for clients who have suffered loss through dishonesty by authorised practitioners or their employees. Conveyancing work by solicitors and licensed conveyancers in private practice will continue to be regulated by the Law Society or by the Council for Licensed Conveyancers. The board will be required to set up a conveyancing ombudsman scheme, to which all authorised practitioners must belong. The conveyancing ombudsman, not the board, will deal with the individual customer's complaints.

The Government recognise that, for most people, the process of buying and selling their homes is the most important financial event of their lives and accordingly the Government take consumer protection issues in that area very seriously. A mainstay of consumer protection under the authorised practitioner scheme will be the regulations on competence and conduct to be made by the Lord Chancellor under clause 39. The matters which may be included in those regulations are based on those set out in the code of practice, whose main principles were published in the Green and White Papers last year.

As the Lord Chancellor has said in another place, those regulations will be the subject of wide consultation and 1450 they will be subject to the affirmative resolution procedure. It will be one of the functions of the board to make arrangements designed to ensure that authorised practitioners are complying with those regulations. The Lord Chancellor has wide powers under clause 39 to make regulations covering not only matters relating to competence

and conduct, and the protection of the interests of clients, but also the maintenance of fair competition between authorised practitioners and others providing conveyancing services.

Those provisions are designed to develop, with proper safeguards, further competition in the conveyancing market. The Bill will prevent the tying-in to a mortgage of an obligation to purchase other services.

The Government do not believe that the existing national network of independent solicitors will be undermined by these initiatives. We are well aware of the importance of ready access to legal services for the public, and of the importance of local solicitors' firms in all our constituencies to secure that. But I think that solicitors will be well able to compete to retain conveyancing business in the future. A survey carried out by the National Consumer Council showed that over half the population would prefer to have conveyancing done by an independent solicitor rather than by a lending institution, and that confirms the findings of a separate Law Society survey.

I am sorry to take so long, Madam Deputy Speaker, but the Bill covers a wide ambit and I hope to cover the main provisions. I have nearly finished.

The third way to permit development which is established by the Bill consists of new arrangements about probate work. The Bill proposes that banks, building societies, insurance companies and their subsidiaries should for reward be able to prepare applications for a grant of probate. At present that work is restricted to solicitors, barristers and notaries. Institutions will be required to belong to a suitable complaints scheme.

There is also provision for the Lord Chancellor to extend to professional or other bodies, having consulted the advisory committee and the President of the Family Division, the right to authorise their members to do this work if they satisfy statutory standards of conduct and of competence.

The Government attach much importance to the need to maintain the present high standards of competence and integrity in the provision of legal services. We believe complaints procedures that are truly effective are an important way to achieve that. The Bill accordingly provides for the creation of a new legal services ombudsman, with a significantly wider jurisdiction and greater powers than were given to the office of the lay observer, which it replaces.

The ombudsman will be able to investigate the handling of complaints by professional bodies that relate to solicitors, barristers, notaries and licensed conveyancers; to investigate the original complaint; and, where a complaint is found to be substantiated, to recommend that compensation be paid by the practitioner or by the body concerned.

The Law Society has also put forward to the Government proposals to amend the legislation governing its own complaints handling powers and procedures, and in particular to allow it to direct solicitors to pay compensation to clients who have received inadequate 1451 professional services. The Government have welcomed that initiative and they intend to bring forward the necessary amendments as soon as possible.

The Bill also removes or clarifies a number of miscellaneous, statutory or common law restrictions on the organisation and practice of the legal profession.

Practitioners will no longer be stopped by law from making even limited kinds of conditional fee arrangements, and barristers will be able to enter into contracts for their services.

The statutory ban on solicitors entering into partnerships with other professionals will also go. That will not, however, stop the Law Society adopting professional rules to deal with such matters if it wants to do so. The point is that the Government see no justification to retain such a provision in main legislation.

The Law Society would also be enabled to make rules regulating the formation of partnerships with lawyers from other jurisdictions. Secondary legislation under the Companies Act 1985 will also be brought forward to allow such partnerships to be formed with more than 20 partners, provided that the majority of the partners are subject to regulation by an appropriate professional body in the United Kingdom. That would remedy a concern raised in another place about the practical scope for such practices to be established.

Further provisions in part III of the Bill amend the qualification criteria for judicial appointments to reflect the changes in the arrangements for grants of rights of audience, and they revise the judicial pensions legislation, primarily to provide more fully for widowers' pension rights. Part IV amends the Solicitors Act as regards the regulation of the solicitors' branch of the profession and part V amends the law governing arbitration to permit an official referee to act as the sole arbitrator with the approval of the Lord Chief Justice.

Finally, there are a number of miscellaneous amendments which, for example, make provision in connection with the liability of magistrates and their clerks in actions for damages, and the award of costs in magistrates courts.

Heaven knows what tortuous transactions within the shadow Cabinet led to the decision to invite the House to vote against the Bill. It is a decision of which the right hon and learned and, I suspect, rather unhappy Member for Aberavon (Mr. Morris) on the Opposition Front Bench is the mournful inheritor. He will find it an inheritance of the kind that the Romans called hereditas damnosa—because he cannot get rid of it, and yet for all his considerable eloquence it will cost him his credibility to defend it.

As Mr. Marcel Berlins asked in The Guardian last week: Just what is the Labour Party's policy towards the Lord Chancellor's Bill on the legal profession? Does anyone know? For this is a Bill which simplifies going to law, and makes it quicker, more convenient and more cost-effective. It widens the choice of practitioner—whether advocate, litigator or conveyancer; it stimulates competition; and it fortifies the client who has a grievance by creating an ombudsman for conveyancing and an ombudsman for legal services.

By all those measures and more besides the Government intend and believe that the public will have better access to justice. The Opposition wish the House to vote against the proposals, but I commend them to the House.

1452

§ 5.7 pm

§ *Mr. John Morris* (Aberavon)

I beg to move, To leave out from "That" to the end of the Question and to add instead thereof: this House declines to give a second reading to the Courts and Legal Services Bill *[Lords]*, which proposes substantial changes in the organisation of the courts and legal profession, but which fails to ensure sufficient resources for the efficient administration of the county courts; which fails to make the financing and administration of the courts and legal system accountable to this House; which neglects to deal with the denial of eligibility for legal aid, and fails to address itself properly to ensuring wider opportunities for legal representation; and which misses the opportunity to modernise the system of selection and appointment of the judiciary.

It was interesting that in his last few remarks—perhaps it was a Freudian slip—the Attorney-General was conceding that the Bill would be the interitance of an hon. Member on this side of the House; we noted that with glee. Perhaps he had not thought out the matter, because he was not looking at his notes at the time, but we take that concession and we shall use it fully, perhaps in a reasonably short time before the next election comes. We thank the Attorney-General.

Hardly anyone would quarrel with the Government's aims, as expressed in the Green Papers, to ensure that the public has the best possible access to legal services and that those services are of the right quality for the needs of the client.

The quarrel, which goes wider than the political spectrum, as the Attorney-General knows, is whether those aims will be achieved, in particular since the Government rely on free competition and the discipline of the market to achieve them. The writer of the Lord Chancellor's Green Papers and the White Paper is the handmaiden of the Department of Trade and Industry. They reek of the furnaces of that Department. I suspect that the fire had been lit before the present Lord Chancellor took office, probably unbeknown to his predecessors. It is against that background that we should judge whether the philosophy of market forces is appropriate for achieving the best for the consumer in an area where so much is taken on trust, and where integrity and independence are so vital.

It is sad and wrong that this is the first opportunity that the House, as the provider of supply, has had to discuss any of the proposals, which were first published as far back as January 1989. That underlines the need to transfer accountability for those parts of the Lord Chancellor's Department that deal with administration and finance, now that it is a significant spending Department, to the House.

The purpose of the Queen's courts, meeting as we do but a stone's throw from Westminster hall, is to serve the state and the citizen and in so doing to hold the balance between the Queen's peace, her Government and her subjects and between subject and subject.

The legal profession is the servant and the agent of those needs and exists for that purpose. It must be independent and fearless. The judiciary, drawn from that profession, and in whom is entrusted the holding of the balance, must of necessity be independent. Too frequently these days it is a popular cry to attack the judges. From time to time, I fear that individual judges deserve criticism. However, where there is a need for independence and 1453 integrity no one can be better trusted than judges, hence the need for them to exercise the greatest care when making extra-judicial comment.

However well-merited a proposal may be, it is of the utmost importance to weigh it against the background of whether it undermines the independence of the profession or of judges.

Labour Members do not disagree with the Government's proposals to open up advocacy to those who are properly qualified; hence, perhaps to the disappointment of the Attorney-General, we shall not vote against the Bill. We are concerned about its implementation and what is omitted from it—in the time-hallowed way of objecting to proposals as a whole because of omissions.

I make quite clear where our starting point is, in case it has escaped the attention of the Attorney-General. We shall not take up the cudgels on behalf of any part of the profession for the sake of obstructing the increased availability of talent in advocacy where it is of benefit to the client. I have no intention of defending over-restrictive practice for the sake of it. I fear that I am old enough to remember as a young circuiteer the restrictions on appearing off-circuit. Over the years, the Bar has rightly dismantled those restrictions.

Fears have been expressed about some of the present proposals and certainly about some of the original proposals. Some of those fears have been reduced, and the present proposals are an improvement on the Green Papers. With a little more groundwork and consultation, some of those fears might have been avoided.

I wish to ensure that the independence of the judiciary, which I hope we all treasure, is not undermined by a bureaucracy which owes itself to the favour of a Minister, who after all is a political figure. The Lord Chancellor's advisory committee must be funded through the Consolidated Fund to mark its independence and staffed to ensure, so far as practical, independence similar to that of the judiciary. Lord Rawlinson, a distinguished former Attorney-General, said in a dramatic part of his speech in the other place that nowhere outside a Marxist state does a Minister appoint judges and have the ultimate say in who may appear in courts before those judges.

The Lord Chancellor is therefore right to distance himself from too direct an involvement in the latter. It is right that he at least shares the ultimate responsibility with senior judges. Any attempt to water down the collective responsibility of judges, who have exercised such rights since time immemorial, would be wrong. We shall consider how the collective wisdom of judges is exercised. It is important that they are perceived not to be obstructive to the aims of the Bill if it is approved by Parliament. As the Attorney-General said, they will have to take account of the Act, and the advisory committee, with its lay majority, will be open to judicial review of their actions. To many, it is inconceivable that they would be obstructive, but it has been said and we should face up to it. I do not share that view.

Why do I lay such stress on the distancing of the licensing role of the Lord Chancellor compared with judges? For the administration of justice, Labour intends to create a Department that is directly answerable to the House. We are all aware of the anger of many hon. 1454 Members when a judge makes imprudent remarks, perhaps in a particular type of case. With a Minister directly answerable to the House, one can imagine a similar outcry when an advocate is denied his right to practise. It will therefore become even more important for the Lord Chancellor or his successor to minimise his involvement.

How important it is to have fearless and independent advocates when the Executive must be challenged in, for example, the process of judicial review, which involves many immigration

cases, or where the cause is so odious that it is only because advocates are independent and fearless that the client can be satisfied that his case is being properly fought and that popular belief does not attach to the advocate the odium of the cause.

§ *Sir Hugh Rossi* (Hornsey and Wood Green)

I am sorry to interrupt the right hon. and learned Gentleman, but I am not certain that I have correctly understood him. Having stated the importance of an independent legal profession, he seemed to suggest a diminution in the independence of the judiciary by making their pronouncements subject to criticisms and overview in the Chamber. That would lead to political interference in judicial independence. That appertains in some systems, but I hope not in a parliamentary democracy such as ours.

§ *Mr. Morris*

If the hon. Gentleman looks carefully at my remarks he will discover that I said nothing of the kind. I underlined the Attorney-General's commitment to judicial review of any licensing in which judges are involved. I pointed out that, unhappily, judges are criticised inside and outside the House. When a Minister is directly involved in licensing, it will be not the judges who are criticised but the licensing and the actions of the Minister. That is the point that I was seeking to make. I hope that the hon. Gentleman will understand if I made it badly.

It would be a sad day if the finest advocacy were not available for odious cases to ensure that in the dispensation of justice every argument had been advanced in the exercise of every man's right under Magna Carta.

§ *Dame Elaine Kellett-Bowman*

On a point of order, Madam Deputy Speaker. Am I wrong in believing that it is not possible to criticise judges in this House other than on a motion of both Houses?

§ *Madam Deputy Speaker (Miss Betty Boothroyd)*

The hon. Lady is quite correct, but I have not heard the right hon. and learned Member for Aberavon (Mr. Morris) criticise a particular judge.

§ *Dame Elaine Kellett-Bowman*

The right hon. and learned Gentleman was saying that judges can be criticised in the House, which is not so.

§ *Mr. Morris*

The hon. Member for Lancaster (Dame E. Kellett-Bowman) misunderstood my point. I am saying that, unhappily and regrettably, judges are criticised, whether one likes it or not. It is no good the hon. Lady shaking her head. I have been here long enough to know the correct processes. The hon. Lady has also been here a long time and knows that, rightly or wrongly, judges are criticised. I was not criticising judges but saying that when a Minister is directly answerable to the House, taking over some of the responsibilities of the Lord Chancellor's Department and being involved in licensing, more 1455 criticism will be made of him than

when a judge occasionally makes an intemperate remark that does not find favour with people inside and outside the House. I hope that I have made my point abundantly clear. I thought that I had made it clear the first time, but I certainly made it clear the second time. I hope that I carry the hon. Lady with me now. [Interruption.] If I have not made it clear, I am prepared to repeat it.

§ *Madam Deputy Speaker*

Order. That would be tedious repetition.

§ *Mr. Morris*

I bow to your wisdom, Madam Deputy Speaker. I thought that I had made my point clear, but I am quite prepared to repeat it for the hon. Member for Lancaster.

It would be a sad day if odious causes did not have the availability of the finest advocacy to ensure that in the dispensation of justice every argument had been advanced in a particular cause. During debates in another place, the cab rank rule became more a matter of concern. Today the Attorney-General called it non-discrimination.

If enshrining that rule was expected to, and would, undermine the widening of advocacy rights in the Bill to qualified people, I would have no truck with it. It should not do that. As the Lord Chancellor said some years ago, wearing his hat as leader of the Scottish Bar, this obligation is an important constitutional guarantee from the point of view of a citizen's freedom of access to the courts. The rule does not exist for the sake of the Bar. It must be improved upon so far as it is exercised by the profession. It is not perfect and I welcome what the Attorney-General said about that this afternoon. The rule is part of the price that the Bar, as advocates, has paid for its monopoly of audience in the superior courts.

What should the rule mean? A practising advocate must be prepared, in the interests of enhancing access to justice, to take instructions from anyone, however odious his cause, in the field in which that advocate practises. Advocates cannot pick the popular as opposed to the odious causes or the easy as opposed to the difficult cases.

If we extend the privilege of advocacy, with it must go the burden of the cab rank. The client will know that he will have an advocate of his choice, subject of course to availability. The judge and jury will know, because of the nature of the advocate's duty to appear, that he is not identified with his client's cause. It would be short-sighted if the consumer failed to comprehend the magnitude of his loss in the long term if the rule was not maintained. It would be a grave restriction of the client's right of choice if the rule disappeared and all advocates were able to pick and choose.

§ *Mr. Austin Mitchell* (Great Grimsby)

There is an anxiety here in that barristers, by introducing the clause about cab ranking, have tried to restrict competition from solicitors. As we are talking about the cab rank rule, is there not a case for saying that, as with black cabs, there should be a restriction on trade if there is a monopoly? If the principle is to be applied to two professions, should we not recognise that there are minicabs as well as black cabs and that there must be two systems instead of one?

§ *Mr. Morris*

My hon. Friend is wrong. If the rule disappeared or was not maintained or improved the client would lose. The rule matters not one iota to the profession. It is a burden on the profession, but a burden that it is 1456 prepared to carry, and has carried from time immemorial, as part of its privileges. I know that my hon. Friend the Member for Great Grimsby (Mr. Mitchell) has done much for the consumer and the client, but they would lose out if there was no one left in the profession prepared to de fend them. That is the important point.

The Yorkshire ripper must be defended and there must be a defender for the odious cause. The defence of an individual's liberty would be weakened if advocates were not available to defend that odious cause. We will have to examine the Attorney-General's proposals with great care to see what practical difficulties arise and then try to ensure that there is an effective solution that protects the consumer and the individual, because the principle exists for him.

I want now to refer to the extension of the rights of audience to all Crown prosecution service employees in the Crown courts. I fear that I envisaged Treasury pressure for that some years ago when I addressed a conference organised by Justice on the future of the profession. I surmise that it is the Treasury's belief that prosecutions by in-house advocates would be cheaper. The CPS employees believe that that practice will enhance their career prospects. All that is understandable, although it goes against assurances given by Lord Hailsham when the CPS was set up. However, we should examine that point.

In the immediate future, and perhaps for quite a few years, the CPS has enough work to get its house in order in relation to its existing functions. I do not blame the CPS for that. Rather, I blame its Treasury masters for under-funding and under-establishing the service. I believe that CPS employees receive inadequate salaries for their work and the responsibilities that they carry.

My hon. Friend the Member for Newcastle upon Tyne, East (Mr. Brown), who assisted me in the House at the time of the creation of the CPS, warned the Attorney-General of the price that the service would be paying in its inability to attract the required number of staff because of the salary scales. Despite the improvements, my hon. Friend has been proved right.

Frankly, the Law Officers lost their battle with the Treasury over pay and they either badly under-estimated staffing levels, or they lost that battle, too. The service has still not recovered. I suspect, therefore, that the exercise of an extension of the right of audience is not an immediate prospect. I am concerned about the long-term effects.

A distinguished Treasury prosecutor, Mr. Roy Amlot QC, wrote a most challenging letter that appeared in The Times on 23 February last year. He underlined the importance in any serious crime of the independence of the prosecutor owing no allegiance to the Government or Government Department, not motivated by results, advancement or the approval of his superiors.

He ended his letter stating: The Green Paper has ignored a principle which ought to be of fundamental importance—the guarantee of an independent element in the State machinery of justice. We must decide where the greater gain lies. Would independence be less or more with

in-house prosecutors at Crown court level? Do serious and difficult cases require the independence that exists today? What would be the effect on the junior criminal Bar? What would be the effect of polarising advocates at the high level into prosecutors and defenders even more than they are sometimes today? 1457 What would be the dangers if judges in future were drawn more from the ranks of prosecutors who had never defended?

The immediate gains of possible Treasury savings and enhancing career prospects should be weighed carefully against probable weightier disadvantages. It is curious that the Government, who are bent on privatising anything that moves, or anything that does not move, should consider further nationalisation of prosecutions. That has happened already. I wonder whether the Government's Right-wing think tanks have been consulted. The Prime Minister has an interest in the Bar and I have just read that she has become an honorary fellow—whatever that means —of the American Trial Lawyers. Does she know what the Attorney-General is about?

I want now to consider the importance of the high street solicitor. He or she is the public's point of access to the law. It would be a grave disadvantage to the public if his or her role was made more difficult of if services were made less comprehensive. The small firm will look carefully at the development of the City mega-firm with its in-house advocates who may be coralling all the work at its expense. I share some anxiety about institutions undertaking conveyancing work. We all want to make conveyancing as cheap as possible, particularly when the most important commercial transaction in most people's lives is buying a house. Certainly, over the years that process has become very much cheaper. My hon. Friend the Member for Great Grimsby has played a notable part in that process.

Safeguards regarding the independence of advice have been written into the Bill. As I said, the purchase of a house is the most important commercial transaction of people's lives. There have been massive developments in recent years with financial institutions taking over estate agencies. It is therefore even more important that the consumer is safeguarded and that the advice that he obtains is independent. Hon. Members will examine that part of the Bill more carefully.

There are two outstanding omissions from the Bill. The Attorney-General has dealt with them in part. First, there is a failure to ensure that adequate resources are provided for our county courts. Despite the Attorney-General's words, we certainly welcome the institutionalisation of the civil justice review in part I. Great progress has already been made by judges in redistributing work from the High Court to the county court under section 40 of the County Courts Act 1984, and masters and registrars have also transferred cases down. I was glad to hear of the number of county court centres where continuous trials can be heard. Nevertheless, there are horrendous tales of a lack of resources in county courts. Before the system in the Bill works, there must be adequate resources, and staff will need to be paid at a rate that will retain them. The state has taken their dedication for granted for far too long. What is the current rate of resignations by court staff in the Lord Chancellor's Department? Are the figures double those of comparable sections of the civil service?

I was shocked to read accounts in the other place about courts running out of their allocation of postage money, about a five-month delay of a 10-minute hearing in Birmingham, about a four-month delay in Bromley before a petition could be issued, and about a six-week delay in Swindon to get an injunction to protect a woman from her 1458 violent former boyfriend. If they are right, such tales mean that it is a pretty awful situation. The general public are

probably under the impression that all trials continue from day to day until a case is finished. As the Attorney-General said, there is an increase in the number of places where there are continuous trials, but they may be the exception rather than the rule. What proportion of cases not finished on the same day must wait weeks before they are allocated another day to continue the hearing? The increase in costs is enormous, the strain for the litigant is unacceptable, and the pressure to settle in the meantime is considerable.

It is not only in county courts that penny-pinching rules the day. The other day, I was told of a court where the phone had been taken out of counsels' room because takings did not meet charges. In other courts, incoming calls are not allowed because there is no money in them for the Lord Chancellor's Department. I do not know of a court in which phonecard telephones are installed. In a profession in which communication is of the utmost importance and when the public and the profession need to be kept in touch, one marvels that the courts run as smoothly as they do. That telephone instance is just the tip of the iceberg. One hears horrendous tales of cash limits on courts and immense delays until more cash is made available merely to reply to correspondence. The Law Society has stated the problems in some detail in its memorandum to the Lord Chancellor.

There is strong evidence that the present county court system is working under great disadvantages. I welcome the increases envisaged and reported by the Attorney-General. If the Lord Chancellor's Department were properly accountable to this House for its finance and administration, as Opposition Members envisage in our motion, we would have examined matters long ago, either through a Select Committee or through other means. In the absence of a Select Committee, the Department has been able to avoid proper scrutiny. Until adequate resources are available part I of the Bill should not come fully into operation. Although the Lord Chancellor has accepted an amendment relating to an annual report on the business of the High Court and county courts, we must ensure that resources are available. It should be a statutory requirement to provide adequate resources for the courts.

I now refer to the Government's failure to provide adequate resources for the operation of the legal aid scheme and, in particular, the failure to extend legal aid to tribunals. Legal aid has been allowed to wither on the vine. It has been estimated that in 1979, 80.9 per cent. of householders were eligible for legal aid. By 1989, the figure had declined to 57 per cent. In 1979, 79.1 per cent. of individuals were eligible. Ten years later, the figure had declined to 53 per cent. Mr. Michael Murphy of the London School of Economics' department of statistical and mathematical science stated: The assertions by successive Lord Chancellors and their Department, either that eligibility has remained unchanged or questioning whether previous estimates demonstrating a considerable fall are accurate, are inexplicable on rational grounds. The Lord Chancellor, to meet widespread criticism, held a press conference shortly before the Queen's Speech, announcing "a new approach", which included this Bill. As the Attorney-General mentioned, that new approach included a general review, which will take up to three years, and a package of improvements for pensioners, children and personal injury cases. No comparable 1459 changes have been made in green form eligibility. The Attorney-General estimates that the changes will increase eligibility from 56 per cent. to 74 per cent. in personal injury cases.

But what of other matters in which assistance may be required? The president of the Law Society, Mr. David Ward, and the chairman of the general council of the Bar, Mr. Peter Cresswell QC, recently wrote a joint letter to the Lord Chancellor because of the profession's concern about declining eligibility. They share that concern with the Lord Chancellor's legal

aid advisory committee. They pointed out that the basic uprating of about 5.2 per cent. will not even keep eligibility limits in line with inflation, let alone reverse the savage cuts in legal aid made over the past few years. They are concerned with the formula, the scope and the time scale of the review. They endorse the Lord Chancellor's advisory committee's view that the downward drift of eligibility levels might gather momentum over this time.

They also pointed out that better targeting—this was mentioned in the Attorney-General's speech—might result in fewer people being eligible and might mean that those who are just above the eligibility level could be prevented, on financial grounds, from pursuing their legal rights argument. It is disingenuous for the Green Papers to suggest that the no win, no fee proposals will allow greater access to the law and somehow compensate for the lack of any extension of the legal aid system.

The president and the chairman have misgivings about the review being conducted behind closed doors and suggest that there should be an independent review, reporting within six months. I entirely agree. Not only is the existing legal aid scheme being allowed to wither, but there appears to be no hope of extending it to tribunals. The Bill's long title includes the challenging words to make provision with respect to legal services". Unhappily, the opportunity to spell out the path forward has not been grasped.

I wonder how many hon. Members have had to deal with case after case in their surgeries of constituents who are to appear before a tribunal in the following week with claims for mobility allowance, constant attendance allowance or unemployment benefit, for example. Although hundreds, if not thousands, of pounds are at stake, we know that many people go to those tribunals unrepresented. There must be something wrong if someone can get legal aid for a comparatively minor action in the county court, worth perhaps less than £2,000, yet a worker with 20 years' service, aged 54 and earning £200 per week, who alleges that he has been unfairly dismissed, receives no help whatsoever in presenting his case. He may not have the support of a trade union, whereas his employers may have in-house lawyers and will certainly have recourse to solicitors and barristers to represent them at the industrial tribunal, if they so wish. That employee might have a claim of up to £12,000 on the facts, but within the framework of the present legal aid system, no matter how strong his claim and no matter how large his potential award, he cannot get legal aid to assist him at the industrial tribunal. What is the logic—

§ *Mr. Alex Carlile*

rose—

§ *Mr. Morris*

No, I shall not give way because I have almost finished.

1460 What is the logic of drawing a distinction between those two cases and how can that distinction be maintained? Mr. Ward and Mr. Cresswell have expressed their concern about the lack of progress on tribunal representation. They suggest, first, that an order of priority should be worked out for extending legal aid to certain tribunals, starting with appeals to the social security commissioners. Secondly, they suggest that consideration be given to funding a national network of agencies for tribunal representation. That could at least be a start and we all await the Lord Chancellor's reaction.

In the absence of a positive reaction and in the light of the omissions that we have identified in our motion, while I do not recommend my right hon. and hon. Friends to vote against the Bill's Second Reading, I urge them to support our motion in the Lobby.

5.43 pm
§ *Mr. Michael Jopling* (Westmorland and Lonsdale)

I imagine that the debate will be dominated by lawyers. Indeed, I see around me in the Chamber predominantly hon. Members who are lawyers. The House knows that I am no lawyer, so I hope that I shall be forgiven if I make a few comments about the Bill from the point of view of the general public and their more mundane dealings with the legal professions.

I begin by giving the Bill a general welcome. I am especially glad that it has come to the House with a good deal more support from the various parts of the legal profession than it looked as though it would enjoy at one stage. That is to be welcomed. I pay tribute to the Law Officers who, I know, have worked hard to try to bring to Parliament a Bill that is not as contentious as at first appeared. If my right hon. and learned Friends on the Front Bench will forgive me, I want to pay a special tribute to the Lord Chancellor, for whom I have had the greatest possible admiration during the 11 years since he joined the Government.

However, I am concerned at some of the Bill's implications for some of the more mundane legal services. I am all for competition between lawyers and anybody else who is capable of performing competently the legal services that we are accustomed to solicitors performing. However, in the welcome move to opening up this area, I am concerned that, in fairness, we should not put solicitors at a disadvantage. Over the years, I have played my part in criticising solicitors and I do not suppose that I shall stop now, but they perform a great service to the public and it would be wrong to throw out the baby with the bath water, as the Bill does in certain respects. The principal purpose of my remarks is to draw attention to some of those instances and, in so doing, I acknowledge the advice that I have received from Westmorland Law Society.

Clauses 46 and 47 deal with probate. The Bill proposes to extend, under strict controls, the groups of people who are able to carry out legal work on deceased people's estates up to the point of a grant of probate. I have no quarrel with that. Until now, such work has, in practice, been confined to solicitors and to the trustee departments of the banks because, under the existing rules as I understand them, only solicitors can apply for a grant of probate. If that work is to be extended to wider groups, as the Bill proposes, we must ensure that those groups are competent and properly regulated. I am content that that seems to be being done. However, why is there no 1461 provision for regulation of the next stage, the administration of estates after the grant of probate? That work is enormously important, but I cannot find any proposals in the Bill to regulate the way in which solicitors —who in the past have been closely regulated in such matters—should administer estates after that point. Why have the Government not gone the whole way beyond the point of the grant of probate and applied regulations similar to those that already exist for solicitors to the new groups of people?

§ *Sir Anthony Grant*

We should bear it in mind that those other bodies, such as banks, charge on average two or three times as much as solicitors for administering estates.

§ *Mr. Jopling*

I do not know whether that is still the case, but my hon. Friend used to be a solicitor, so I am sure that that is a heartfelt point.

Creditably, the Bill puts right an anomaly in relation to mortgages. As things are at the moment, if a solicitor who arranges a mortgage for a client also arranges insurance cover, by arranging an endowment policy to cover the mortgage, as I understand it, the solicitor must account to his client for any commission of more than £10. In the past, that rule has not applied to a building society, so the present situation is fundamentally unfair. I am glad that the Bill puts it right to an extent. I notice that it will be put right by a regulation by the Lord Chancellor under clause 39, after the Bill has received Royal Assent. It is essential that, in clause 39, the regulations under subsection (2)(g) ensure that all authorised practitioners operate on a level playing field with regard to the disclosure of commission. That is an important consumer protection and I hope that that undertaking can be given.

My last point is about conveyancing. Both my right hon. and learned Friend the Attorney-General and the right hon. and learned Member for Aberavon (Mr. Morris) said how important conveyancing is. It is perhaps the most important single transaction that many people undertake in their whole lives. I welcome the setting up of an independent body, the Authorised Conveyancing Practitioners Board, to make sure that those who will deal with conveyancing, apart from lawyers, are properly policed.

The Bill does not adequately deal with the onus on authorised conveyancing practitioners to give what the Financial Services Act 1986 describes as "best advice" on the financial services which are on offer. I say that because the position now is that many building societies are tied to a single insurance company. Here lies the problem. While a practitioner who is not tied to an insurance company must give that best advice on the whole of the insurance market, that is not so for the practitioner who is tied. I was surprised to discover that.

I received a letter dated 23 October last year from the Lord Chancellor on this point. He said: In the case of the tied agent, however, this 'best advice' will be restricted to the range of products which are available from the company to which the adviser is tied. As I understand it, that means that advice from an untied practitioner should never be worse but could often be better than the advice from a tied practitioner such as a building society tied to an insurance company. That is a 1462 most unsatisfactory position, and I hope that the Government will consider ways of surmounting the problem.

I suggest three ways in which the problem could be overcome. First, it might be possible to insist that the term "best advice" cover the whole of the insurance field, not, in the case of tied practitioners, simply the field available from the insurance company to which the practitioner is tied. Secondly, practitioners who are tied to an insurance company could be forced to provide more than one quote for insurance covering a mortgage. Thirdly, no practitioner could be allowed to place, say, a third, half or two thirds of his firm's life policies with any one company. Those are just three ideas that I throw out for consideration by my right hon. Friends.

I began by saying that the issues that I wished to raise were mundane. However, they are of crucial importance to a vast proportion of the general public. It is on probate, conveyancing and mortgages that the great majority of British people come across lawyers. I hope that those

matters can be considered, and that, as the Bill continues through the House, it can be improved in order to deal with them.

5.54 pm
§ *Mr. Peter Archer* (Warley, West)

The right hon. Member for Westmorland and Lonsdale (Mr. Jopling) is under no obligation to apologise for speaking in the debate. This lawyer not only forgives him but welcomes him. Too many of our debates on legal subjects are confined to lawyers. If I may, I shall develop that theme in a few moments.

It is not every Bill that I wish to see initiated in another place and arrive in this House after an eventful career elsewhere. Most Bills of a controversial nature are better if they emerge from this House, where we can decide on principle whether they should survive or be mercifully dispatched, and proceed to another place for more careful scrutiny. Whether there is a better way of scrutinising Bills is not a theme on which I wish to embark in this debate. We have troubles enough for today.

But with this Bill our task has been facilitated by the careful examination that it received in another place. In deciding on its general principle, we know what is in the Bill, what is in the package, how it is wrapped, how it is likely to be presented and how and when we shall see it unwrapped. When we go through the Lobby tonight we shall know what is on offer. Perhaps uncharacteristically, I express gratitude to the other place for the careful scrutiny that the Bill has received.

I do not wish the Attorney-General to get the wrong idea. We shall not be entirely idle in Committee. I understand that the Lord Chancellor has taken up certain themes from another place which he wished to reconsider. It will be in the interests of constructive discussion and of the Government's business managers if they are introduced in good time in Committee.

Then again, the Attorney-General introduced a wholly new matter into the Bill today. I imagine that we shall probably welcome it, but I should have preferred to hear it for the first time from the Attorney-General rather than from my contacts in Fleet street. But let us not introduce a sour note into the debate at this early stage.

We shall not be entirely idle in Committee. We may have the odd improvement to suggest. I do not think so ill 1463 of the Attorney-General and the Lord Chancellor as to believe that they will all fall on deaf ears. However, it would not be realistic to hope that we can change this into a different Bill. When hon. Members go through the Lobby tonight they will know pretty well what is on the stall.

At the outset I declare an interest. I am a practising member of the Bar and I have been so continually for 37 years with an interruption of only five years when the Crown was my only client. It is true that for much of that time the Bar has not been my principal activity. But it has been one of my activities and whatever the other advantages of practising at the Bar, it has made me a better-informed, if not necessarily a wiser, parliamentarian. So I am sure that the House will make due allowance for whatever I say, and rightly so.

When an activity assumes the name and rank of a profession, practitioners are under numerous constraints to observe faithfully the standards of that profession. The original

professional training, the opinion of the practitioner's peers, the social and cultural influences and, after a time, sheer habit are important protections for the consumers of those services. But what those standards are and the way in which they are expressed must be examined from time to time by people who are outside those influences.

I welcome the intervention of the right hon. Member for Westmorland and Lonsdale because any profession may be tempted to adopt practices and to persuade itself that they are in the public interest when they really stem from the advantages that they confer on practitioners. That is one reason why I welcome the provisions in the Bill for the ombudsman.

There should be no complaints from the Bar when we are occasionally subjected to an inquiry by a royal commission, even if it transpires that ultimately its recommendations are ignored, as in the case of the Benson commission. The Lord Chancellor's Green Papers have impelled the Bar to look again at some of its own practices and itself to initiate some important changes.

I hope that other lay Members will participate in the debate and I shall try not to inhibit them by continuing for too long—[HON MEMBERS: "Famous last words."] Popularity is a wonderful thing.

I hope that I shall be forgiven if I take a moment of the time of the House on Second Reading to raise two questions of general principle. The first is the form of the Bill. It is largely an enabling Bill, which means that it does not say what will happen if it is passed into law, but it confers powers on various people to decide what will happen and when. We are asked to delegate powers to the Lord Chancellor to alter the allocation of business between courts and decide what is an authorised body, to the rules committee to decide on procedure and to the advisory committee to advise on the whole field of legal services and the work of the courts.

Some anxieties were rightly expressed in another place by Lords Rippon and Simon that Parliament is not being asked to examine the position to discover whether this is an appropriate time to open the floodgates for a vast increase in the work of the county court and assess whether the county court is in an appropriate condition to absorb and process it. We are being asked to empower the Lord Chancellor to decide when, and under what conditions, that will happen.

1464 I need hardly say that I cast no reflections on and intend no disrespect to the present distinguished occupant of that high office. Indeed, it would be churlish not to place on record that his accessibility during the discussions on the Bill, and his generosity with his time, should serve as a model for all Ministers. However, there are judgments and assessments to be made as to whether that transfer is an appropriate step to take and, if so, whether this is an appropriate time to take it. Those are the responsibilities of Parliament. We cannot decide everything. Some of our problems relating to the length of our sittings, and the difficulties of including every hon. Member in our business, relate to our reluctance to delegate decisions which other legislatures find it sensible to delegate. You, Mr. Speaker, know that better than any of us.

But some of these decisions require a balance to be struck between different considerations and interests. They are political decisions, although probably not party-political ones in this case. They are decisions about how best to conduct the affairs of the body politic and they should be decided by the political process, after political debate by those who have to answer

to their constituents at weekends and, probably, explain them in the British Legion club at 10.30 pm on a Saturday—[Interruption.] Perhaps my hon. Friend the Member for Leicester, East (Mr. Vaz) does not have a British Legion club in his constituency. My hon. Friend indicates that he does, so I am receiving a sympathetic response.

It is not a complete answer to every question raised in the Bill to say that the Bill leaves the decision to the Lord Chancellor or distinguished senior judges or the advisory committee; we must assume that they will apply the right criteria and reach sensible conclusions.

If the Bill makes it possible for someone with no legal qualifications to acquire a right of audience in the High Court—I am not talking about barristers and solicitors, but people with no legal qualifications—and, having acquired that right of audience, to move from there to be appointed to the highest ranks of the judiciary, it is not enough to say that those who will advise on such matters will use their common sense and will not recommend unsuitable appointments. If we do not think it appropriate for those without legal qualifications to be appointed Lords of Appeal in Ordinary, we should not give anyone, however distinguished, the power to make such an appointment.

I venture to warn the Attorney-General, if he will forgive me, that if there is the power to appoint a surveyor as a High Court judge, in five years' time an hon. Member will ask the Attorney-General of the day how many surveyors have been appointed High Court judges. Someone will say, "If Parliament conferred the power, why has it not been exercised?".

It should not afford us great comfort to reflect that the delegates who take those decisions may be open to challenge. That merely introduces a further degree of uncertainty. If the rules relating to rights of audience are to be delegated to the Law Society and the general council of the Bar, it does not greatly cheer me to reflect that the Director General of Fair Trading may disagree with them and challenge what they decide. The considerations which may be uppermost in his mind, and which he is required by statute to have in mind, are not necessarily the considerations that we believe should prevail. That raises the second issue of principle which I want to introduce into the debate. 1465 The avowed purpose of the Bill is to extend to consumers of legal services a wider choice. I do not quarrel with that as an aspiration. Indeed, we shall wish to explore in Committee how far the proposals are likely to achieve that purpose. We shall wish to explore how far siphoning off some of the ablest law students into large law firms will extend the choice of advocates for lay clients—particularly if those firms are multi-disciplinary ones—and how far pressures on the high street solicitor, about which we have heard from the right hon. Member for Westmorland and Lonsdale, will maximise the choice available to house buyers.

However, even as an ambition, this is subject to two qualifications—I say that in all friendship to my hon. Friend the Member for Great Grimsby (Mr. Mitchell). First, not all measures for the protection of consumers consist in maximising their freedom of choice. The purpose of food hygiene regulations is to restrict consumers' freedom of choice to those foods guaranteed not to poison them. It is important that the range of consumer choice should be restricted to those capable of doing a proper job. It is tempting for someone in the process of buying a house to leap at the prospect of a single-stop package to include finding the house, arranging the mortgage, providing the insurance and carrying out the conveyancing, particularly if it seems that some of those services will be offered at cut rates. Sometimes, consumers are better protected by eliminating some of the options.

Secondly, in the sphere of litigation it is not invariably true that the interests of the consumer coincide with the public interest. The interests of an unmeritorious plaintiff or a guilty defendant consist of winning the case at all costs. The interests of justice require that the consumer's choice does not extend to those prepared to bend the rules in order to win.

I recognise that the Attorney-General is subject to some constraints as a member of a Government who believe that the solution to almost every problem lies in a free market. But I am sure that even he, with his usual fairness, will agree that this sector of the free market has its limitations.

May I add an observation on a further theme which has sometimes intruded in debates in another place? When it has been suggested that a particular formal safeguard would be sensible, it has been asked, "Are you suggesting that a person is necessarily dishonest just because he is not subject to the disciplinary code of the Law Society or the general council of the Bar? Do you believe that because someone may owe a loyalty to those who employ him, he is incapable of giving objective advice? Are you saying that because someone does not have a professional qualification, it follows that he is a jabbering idiot?" It is easy to ask that sort of question, and it can be asked in the right context to great effect. Of course, the answer in every case is no, but because people may be honest in the absence of regulation and capable in the absence of qualifications, it does not follow that all formal regulations are a waste of time. Even in the absence of a cab rank principle, an eccentric, an exponent of an unpopular cause or someone accused of a vile criminal offence may find a capable advocate to argue his cause. But, as my right hon. and learned Friend the Member for Aberavon (Mr. Morris) said, it is much easier for an individual advocate to do the right thing if there is such a rule, partly because it creates 1466 an atmosphere, a general expectation that he will behave properly, and partly because it is much more difficult for anyone to misunderstand his motives.

I am not an unqualified admirer of Thomas Hobbes; it does not follow that in the absence of institutional safeguards everyone will behave like a brute, but such safeguards add a bit of stiffening to the social constraints that we sometimes all need if original sin is not to take over.

§ *Mr. Gerald Bermingham (St. Helens, South)*

Does my right hon. and learned Friend agree that discussion so far has centred on the rights of professional bodies, but that it should centre on the rights of the individual, the protection of the public and ensuring that they are given the best possible services?

§ *Mr. Archer*

I cannot always reply to my hon. Friend with an unqualified affirmative, but on this occasion I have no qualifications to add to what he said.

It is a pity that, with the machinery of law reform now at our disposal, the Government did not initiate a wider discussion and, in particular, did not provide more time for bodies, which themselves needed to carry out wide consultation, to respond to some of the proposals. It might have helped if the Government had begun by seeking a consensus on what is wrong with the legal system. What are the complaints of those who use legal services? I believe that any such consensus would have identified two major areas of complaint. The first would have

been that referred to by my right hon. and learned Friend—about hearing dates in the county courts, unanswered letters, under-provision for continuous hearings, unrealistic lists and sharing clerks in the Crown court. Anyone told that the answer to those problems was to transfer more work to the county court could then at least have judged the proposal in the light.

The other area in which there would almost certainly have been consensus was also referred to by my right hon. and learned Friend the Member for Aberavon—the provision of legal aid. The last speech that I was privileged to make from the Dispatch Box in 1979 was to introduce the Legal Aid Bill of my late right hon. and learned Friend Lord Elwyn Jones. I am sure we all agree that his absence from our debates on this Bill is much to be regretted.

The Legal Aid Act 1979 brought between 70 per cent. and 80 per cent. of the population within the ambit of legal aid. After all the statistical sophistries to which we have been subjected over the past two years, as my right hon. and learned Friend said, it is now generally accepted that that figure has fallen to about 50 per cent. We know that in whole areas of litigation legally aided representation is not available, and that levels of remuneration and delays in payment are persuading increasing numbers of firms of solicitors to refuse to offer—because they feel unable to —a service to those who depend on legal aid.

A further problem is becoming increasingly apparent. There were references in another place to those who have the resources to finance a moderate action, including perhaps a day in the High Court, but who would be bankrupted if they had to pay for a long hearing or a series of appeals. If justice is to be available to all, including the middle-income groups, we need to replace the present cut-off point with a sliding scale, so that everyone may have access to legal aid if confronted by actions that are beyond his means. 1467 The Society of Labour Lawyers has persuaded the Labour party that there is a need to take a much wider look at the network of advisory services, to ensure that proper arrangements are made for referrals within the system, and to seek out those geographical areas where some essential services are missing. We need an advisory services commission to oversee the present shambles which is spread out across seven Government Departments. Such proposals are referred to in the response of the Society of Labour Lawyers to the Green Paper—a response that I commend to the Attorney-General.

Both in the courts service and in the provision of legal services there is a need for a more substantial commitment of public resources. In the absence of that, the proposals in the Bill are pointless. Given that, some of them deal with problems that will have ceased to exist. There is, for instance, no need to embark on contingency fees if we have the resources to provide legal aid and representation. It is easy to ask for more money; it is just as easy to reply that one does not solve a problem by throwing money at it. We have heard that antiphon many times, but it is certain that the problems of our courts and legal services are those of inadequate resources.

If we want a legal system that will continue to receive compliments from America and commendations from foreign lawyers, we shall have to pay for it at the going price. We are conning the public if we pretend that our debates on this Bill are a substitute for that.

6.15 pm
§ *Mr. Ivan Lawrence* (Burton)

Anyone happening to drop by the Chamber and being privileged to hear my right hon. and learned Friend the Attorney-General opening the case for the Bill would have been forgiven for thinking that nothing very important was happening here this afternoon, except for some very good and sensible improvements to the legal system. Such is the consummate skill of my right hon. and learned Friend as an advocate that he has persuaded himself that the Bill is universally good and universally welcomed and that anyone attempting to criticise it subjects himself to an inheritance of damnation.

I wish that that were so, but the casual listener would have been shocked to discover the immense opposition and heat that the legislation has engendered. He would, for example, be shocked to realise that the major element of the Bill was considered by the Benson royal commission in 1979. In 1983, this very Government said that it was not necessary to give solicitors the right of audience in the higher courts; in 1985, they repeated that assertion; and in 1987 they repeated it again. Yet overnight, with no change in the circumstances of our legal system, this Bill has introduced precisely such a change.

The casual observer would also be shocked to know of the packed meetings of barristers and solicitors up and down the country, of the hours of vituperative though often brilliant speeches and debates in the other place, and of the hours of negotiation, discussion and amendment behind the scenes.

Why has this happened? It is because it is widely feared that the Bill, even in amended form, will be the beginning of the end of the independent Bar and of the separate branches of the legal profession, which have been among 1468 the greatest protectors of the liberties of the individual in our free society, which continues to be admired the world over—and envied in many countries.

I declare an interest as a practising barrister—when my political duties allow—but I want to make one point clear: contrary to what is apparently thought about the opposition to the Bill from the Bar, members of the Bar have little self-interest in opposing the Bill. Certainly, the strong objections of the Law Lords have nothing to do with self-interest. The Law Lords have no career structure to maintain which might be threatened by the Bill and no financial advantage from opposing it—their interest is purely the good of society. Most barristers would, be financially much better off if the Bill were passed. I have no doubt that I would be better off both as a Member of Parliament and, in the unlikely event of my leaving this place at the next election, if I were to become a full-time solicitor advocate. So let us hear no more ill-informed nonsense of the kind that has led some Members to say that lawyers were bound to oppose the Bill anyway. If self-interest only were at stake, the Bar would support the Bill.

The Government's intention in the Bill is wholly excellent. It is to improve access to justice for all who need it by making the court system simpler, more efficient and quicker and by providing sufficient legal services to meet clients' needs. That is terrific—everyone can sit back and admire the intention. The trouble with the Bill is not simply that it cannot and will not attain that intention, but that many of its provisions will achieve the very opposite.

Almost the entire legal profession, which at least enjoys the advantage of knowing how the legal system in England and Wales works, fails to understand how this of all Governments can believe that if solicitors in villages and small towns—71 per cent. of solicitors operate in firms of four or fewer partners—have their conveyancing bread and butter taken from them and are thus driven to practise in larger towns and cities, that will somehow make their

services more available to ordinary people. Ordinary people will have to get into trains, taxis and cars, travel to the big towns and cities and go to the new big firms of solicitors which will charge people immense sums for the minor items of advice which formerly they could have received in the local solicitor's small practice. This is because the operating overheads of large city firms will be substantial. It is manifest nonsense to assume that such a step will provide ordinary people with greater access to legal services.

It is impossible for many of us to understand how it can be an advantage to make the Bar wither away and encourage every young lawyer to become a solicitor. Youngsters leaving university will be given the choice. If they want to become a barrister, they will have to spend some time earning little or nothing and at the end of the day they will compete in the market for jobs all over the country, which they may or may not want to do. The work will come in dribs and drabs and most of it, particularly in the criminal sector, will be legally aided and therefore without substantial remuneration. Work has been done on the average income of members of the Bar and it is much lower than is generally believed. On the other hand, the youngsters may become solicitor advocates with the right of audience in the higher courts and the right to become a Queen's Counsel and a High Court judge, just like barristers. They will have a roof over their heads, constant work, a car, a pension and holidays with pay. Few 1469 university graduates will choose the uncertain career of the Bar in preference to the far more secure and certain career of solicitor. After a time, fewer people will go to the Bar, nearly all graduates will become solicitors and the Bar will wither away.

Solicitors cost much more than barristers. That is why in the courts in which solicitors may now operate they often prefer to use barristers, because they are cheaper. The Crown prosecution service in London has to pay twice as much for a solicitor as for a barrister to do a day's work. It is difficult to see how anybody can believe that the provisions in the Bill and the withering away of the Bar will make legal services cheaper. That is yet another manifest nonsense.

Nor do the majority of the legal profession see how the introduction of the win-at-all-costs philosophy, which means that one may not be paid much or at all if one loses a case, as half the litigants in our courts usually do, will as though by magic improve the quality of justice in our courts. We do not have that incentive to win now, so there is a greater belief in the integrity of our lawyers, and justifiably so, than if we had the American system where winning is important if one is to be paid. That is not just nonsense, but dangerous nonsense.

The three objections to the fundamental concepts of the Bill are therefore that it will make justice more and not less expensive, that it will make legal services less and not more available to consumers lower down the income scale, and that it will diminish the quality of justice itself. It will do those things not because they are in the consumer's interest, nor because there has been an enormous increase in public demand for those changes, but because some bureaucrats, politicians and perhaps some lawyers from another planet simply do not understand the legal system in England and Wales because they have neither knowledge nor experience of it.

Obviously, some things are wrong with the legal system, and the Government's Green Papers have put a good deal of momentum behind some of the changes. The Bar has produced an excellent response to the Green Papers. Considerable changes have been made and my right hon. and learned Friend the Attorney-General has acknowledged and commended them. That has been a positive result of all of this.

Let us face up to the true facts and not pretend in order to justify some diversionary, tactical changes, about what consumers find wrong with the legal system. It is not that they do not get enough legal aid or legal aid for enough legal actions and that they therefore do not have enough access to the courts. The Government would have to spend much more money to satisfy that demand. Will they do so? They will not. I do not pretend that I am in favour of the Government spending massively more money, but ordinary people complain about the need for more money for more legal services, not about the matters provided for in the Bill. Next they complain that they have to wait too long for their cases to come to court. We need more computerisation, more judges, more courts and more court staff if we are to satisfy that demand, which will cost much more money. Again, some may want the same lawyer always to be available for their case, but that costs much more money because the lawyer has to be paid to be out of court for the days or weeks until the case appears in 1470 the list. It is therefore difficult to believe that the genuine anxieties of the British people about the deficiencies of our legal system come down to anything other than money, genuine efficiency and the improvement of the court system. It is difficult to think of any major improvement in our legal system that the British people feel is necessary which the Bill will achieve, and we should be wrong to pretend otherwise.

The Bill is to some extent different from the original one and the Green Papers. We must recognise that and thank the Lord Chancellor for listening because that is precisely what he did. For that reason, certain crazy ideas—such as the certified advocate becoming more qualified the more flying hours he had clocked up—have gone out of the window. We must thank their Lordships for at least one important and necessary improvement which has been much welcomed in the House today—the insertion of the cab rank principle into the Bill for solicitor advocates—and we must thank the Government for their wise acceptance of that amendment. One of the main contributions of the Bar to the efficiency and availability of legal services is the cab rank principle. Just as the customer can pick any taxi cab from the cab rank, so any defendant or plaintiff, however mean and rotten his cause, can book the services of any barrister who may be available. Marshall Hall himself was available to defendants all over the country, and the same principle holds true today even if all that a defendant can offer is a measly legal aid fee.

As with the taxi driver, the experienced barrister knows the quickest, most efficient and, therefore, the cheapest way to his client's destination and, as with the taxi cab rank, the client usually does not have to wait so long for his case to arrive in court as he would if there were no taxi rank. That is why it is so important that that principle be maintained for all to whom it now applies, particularly the advocate in the higher courts, and I am pleased that there will be no question of removing the principle from the Bill before it becomes law.

Of course, that will be a burden for solicitor advocates who might prefer, for example, to go on taking work from insurance companies at fees which are much higher than legal aid fees, but, as the Opposition spokesman in the other place, Lord Mischcon, himself a most distinguished solicitor, and others on the Opposition Benches today have said, those who acquire the privileges of advocacy rights should be required to undertake the burdens and obligations which go with them and, I would add, particularly when the consumer will benefit.

Some years ago my noble Friend the Lord Chancellor described the cab rank rule as an important constitutional right. Nothing has changed. It still is, and he has recognised it as such.

Even with that addition to the Bill retained, however, there is still too much wrong with the Bill. I give some examples. First, if a high street financial institution—the bank or the building society—needs to lend money for the purchase of houses to stay in business, what kind of objective legal advice about buying a house will the customer really be given by the in-house solicitor? Complicated and expensive bureaucratic safeguards can be built in until the cows come home, but we cannot avoid the conclusion that such legal advice will not be independent and may not be disinterested.

Secondly, by all means let us transfer work from the High Court to the county court, but first let us ensure that the county courts have enough slack and surplus capacity 1471 to deal with that work. What do we have today? The figures have been given by one hon. Member after another. We have overworked county courts, staff changes and shortages on an unbelievable scale, awful cramped buildings and inadequate back-up facilities. Since many county court and circuit judges do High Court work anyway, by all means let us bring litigants to local courts and not to London, but funds will first have to be made available to stop them being overworked and understaffed. What undertaking can my right hon. and learned Friend the Attorney-General give that such finance will be forthcoming? Without it, what on earth is the point of the change?

Thirdly, multi-disciplinary partnerships create another problem. This is an incomprehensible element of the Bill. What independent advice will a solicitor be able to give to a client who needs to sue a firm of accountants which has let him down badly if his solicitor is a partner in the accountancy firm? It is nonsense.

Fourthly, under the Bill, incredible as it may sound —we are talking about the Bill being welcomed by ordinary people—a person with no legal qualifications at all will have the right to practise in any court and, once he has that right, to become a judge in any court, and even to become a Lord of Appeal. Under the Bill, a person with no legal qualifications can become a Lord of Appeal and lay down the laws of the land. That is manifest nonsense.

Fifthly, the legislation's main intention was to break the monopoly of the Bar to conduct cases in the higher courts and to allow solicitors to be appointed as High Court judges. Although few institutions are as competitive as the Bar, it was thought that more competition was required. But solicitors can already become High Court judges—all that they have to do is to become barristers, so no great legislation or expensive bureaucracy is necessary if that end is desired. It is now easy for a solicitor to become a barrister. If solicitors want the right of audience in the higher court, they can become barristers. That is much easier than it was in the past.

If further changes are considered so necessary, it could all be done cheaply and efficiently, without expensive bureaucracy and costly administration, if senior judges were allowed to consider the qualification of advocates and to grant rights of audience subject to the cab rank principle. Why is it necessary to have this complicated, bureaucratic and expensive machinery, with clauses 17 to 31 and schedules 1 to 4 laying down the process by which all that has to be done?

If we have that kind of money to spare, why on earth are we not spending it on improving the courts or extending legal aid? I could go on, as the House well knows it is within my power to do, to dwell on the many unsatisfactory aspects of the Bill, but others wish to speak.

I appreciate that the opportunity of the Bill has been taken to make a number of improvements in the courts and legal services and I accept those without taking time to enumerate them. Sadly, however, the Bill may well be the beginning of the end of the Bar as we know it, and a fused profession, which nobody on either side wants—solicitors, barristers or the public—will be the inevitable conclusion of these unnecessary labours.

I realise that such is the unpopularity of the lawyer—ranking only marginally higher than that of the journalist and politician—that there is little likelihood that this unhappy, unfortunate, unnecessary and expensive Bill will not get its Second Reading, so our only hope will be to 1472 improve it. If, during the Bill's passage through the House, I am fortunate enough to be invited to participate in the Standing Committee proceedings, I hope that I shall be able to play some small part in making those improvements.

Several Hon. Members

rose—

§ *Mr. Speaker*

Order. It is not the responsibility of hon. Members who are now in the Chamber that we had a rather late start to the debate, but at this rate all those hon. Members who wish to speak will not be called. I ask hon. Members to ensure that their speeches are not over-long so that as many as possible may be called.

6.36 pm
§ *Mr. Alex Carlile* (Montgomery)

First, I declare an interest as joint secretary of the all-party barristers' group of both Houses and, more particularly, as a practising barrister for nearly 20 years. I mention that not only to declare my interest but also to try to lay a myth, which exists particularly at the Department of Trade and Industry and in certain quarters of the House, about the Bar.

It is nearly 19 years ago that I entered, as a tenant, the set of provincial chambers where I practised for some years. I had no prior connection with the legal profession and I was lucky to be accepted there. When I entered those chambers, the overheads were kept at a low level. I was given one eighth—there were eight of us in the chambers —of a piece of paper on which my head of chambers had written that my chamber expenses for that year would be £127. Thus I started my career at the Bar.

As a member of the Bar in those chambers, I was not subjected to any sort of hierarchy. I was fortunate to be outside any hierarchical structure, because it meant that, if solicitors chose to send me cases which appeared to be beyond my years, I was permitted to do them.

Thus, in Department of Trade and Industry terms, the Bar is the ideal profession. It is entirely market-oriented. Every barrister works for him or herself. They are eventually paid, often by recalcitrant solicitors and sometimes many years in arrears. I was recently paid £4.50 for drafting a divorce petition some 12 years earlier. Our overheads have kept at a low level throughout the years.

It helps if one's father, or even one's grandfather, was the Lord Chancellor; it helps even more if one's father is the senior partner in a busy firm of solicitors with lots of litigation. Nevertheless, the fact remains that the Bar is an extremely egalitarian profession—as a procession of Lord Chancellors over the years serves to prove, if one examines their backgrounds. I am proud to be a member of such a profession.

I accept the need, as do all sensible barristers, to cut away unnecessary undergrowth from the profession. It is in the interests of lawyers to modernise their profession —and if they do not do so themselves, they can only expect others to do it for them. The question which must be asked is whether the Government have approached this matter in the right way; the answer, as one would expect, is partly yes and partly no.

The Bill's legitimacy depends on two criteria. First, and above all, it must seek to improve the position of the consumer. Secondly, it must not weaken the independence of the judge or lawyer, for to do so would weaken the position of the client, to allow challenges to be made 1473 against decisions of the Executive; where necessary, of the police; of local government; and of the increasing number of bodies in which are vested significant resources of power over the citizen.

In the context of those criteria, I should like to raise a great many points. However, accepting the constraints of time, I propose to address only four issues of major concern. If I am fortunate—or unfortunate—enough to serve on the Committee considering the Bill, I foresee a great many more issues which will require detailed debate.

The first issue is the ready access by the citizen to the courts and tribunals of the land when the occasion arises. That means having ready access not only to the courts themselves but also to competent advice from which he can gain confidence in deciding whether or not to go to court. The Bill merely touches the edges of that problem. I acknowledge that the Government have invested more money in the legal aid system, and I welcome the current review to which the Attorney-General referred when opening this debate. However, it is fair to point out—as did the right hon. and learned Member for Aberavon (Mr. Morris)—that an increasing proportion of the population falls outside the limits of legal aid, which are too low and too selective.

Every monthly increase in inflation means that a smaller percentage of the public is eligible for legal aid. Far too many people have experienced wrongs that should have been righted, but they cannot afford to go to law, despite the fact, which should be put on the record, that the cost of litigation in England and Wales—I cannot speak for Scotland—compares reasonably favourably with anywhere else in the European Community, and makes us seem like a bargain basement by comparison with even some of the remoter jurisdictions of the United States of America.

The Bill and the Government's motives would be more convincing if they were accompanied by an immediate widening of certain aspects of the legal aid net. There are obvious gaps in legal aid that do not require a review before introducing remedies. I listened with care to what the right hon. and learned Member for Aberavon said about tribunals. I believe that he agrees —though his remarks were a little impenetrable—that legal aid should be extended immediately to industrial tribunals. The last Labour Government took the deliberate and shameful decision to exclude it. That decision was not taken on the merits of the case but in response to the disgraceful bleatings of a few trade union leaders, who thought that their

membership figures might drop if legal aid were available for industrial tribunals. That omission should be put right, and I do not have confidence in waiting for a Labour Government to do so because I am not convinced that they would. After all, Labour had plenty of opportunity to introduce such a provision before.

Consumer access to justice depends also on judges and courts being available to hear cases that cannot be settled out of court. I welcome the commitment to take many cases out of the High Court, whose sittings—despite significant improvements in recent years—are delayed and whose places of jurisdiction are often many miles from the scene of a legal dispute. I welcome the decision to bring many disputes down to the county court. The civil justice review has much to commend it—at least in concept.

1474 The county court is intended as a local and, above all, as a summary court. As such, it should provide reliable, speedy justice. It has often been said that justice delayed is justice denied. The aim of the county court is to provide justice while events are still fresh in the memories of witnesses. Unfortunately, delays in some county courts have reached absurd proportions.

Loyal county court staff around the country have expressed to me their extreme frustration at the ridiculous amount of work that they are required to undertake, in a way that sometimes subjects them to abuse from the public —who do not understand the difficulties under which court staff have to work. The Government have made a commitment to provide extra resources to ease the transition through the civil justice review, but their commitment is far less than that needed to make the review work.

Over the past 11 years, county courts and Crown court offices have faced successive staff inspections pursuant to Government economic policies and designed to cut staffing —which is what happened. An entirely opposite approach will be needed to ensure that the review works. I hope that the Government will give an assurance that whatever resources are required to make it a success will be available —even if they amount to a great deal more than is currently anticipated. We do not want to see the Crown prosecution service fiasco happen all over again with the civil justice review. We do not want the Attorney-General coming to the House, as he did recently, to admit that initial resourcing—as in the case of the CPS—was insufficient.

Another important aspect concerns the cab rank rule, or what the Attorney-General called the non-discrimination rule. I welcome the Government's acceptance that that principle should be enshrined in the Bill. It will benefit the consumer, but it offers no advantage to the lawyer, as was emphasised by the hon. and learned Member for Burton (Mr. Lawrence). It is much better to pick the best-paid case, but the cab rank rule means that the lawyer will have to undertake the case that comes in first.

§ *Mr. Austin Mitchell*

Tell us another one.

§ *Mr. Carlile*

I say to the hon. Member for Great Grimsby (Mr. Mitchell)—whom we would have allowed to enter our chambers despite his lack of qualifications, and who would have benefited from

some training in interview techniques in the early part of his career—that there is very little evidence of abuse of the cab rank rule, other than anecdote. The Bar regards breaches of that rule as a serious disciplinary offence, and if the hon. Gentleman has evidence that people have broken it, he should report them.

§ *Mr. Mitchell*

There is an enormous weight of anecdotal evidence, but to impose it on solicitor advocates is a restriction of trade and an attempt to maintain the monopoly of the Bar.

§ *Mr. Carlile*

Since the hon. Gentleman became a television star, he has abandoned his attachment to the consumer.

I made an important point during my intervention in the Attorney-General's speech, and I shall make it again: the Government must accept that the rule against discrimination should apply to legally aided clients. 1475 Advocates must be required to represent clients within their areas of competence, whether they are privately paying or legally aided; otherwise, the rule will not apply on a level playing field and the consumer will not benefit from it.

Thirdly, the independence of judges, lawyers and regulators of the profession is single and indivisible. There are serious objections to the Bill in its present form, which threatens that independence. Inevitably, the Bill politicises the appointment of the designated judges. It ducks out of a radical and much more clearly understandable approach to the appointment of judges, such as the establishment of a judicial appointments commission. Worst of all, it creates a politically appointed advisory committee—another politically appointed committee, subject to all the problems of patronage. Thus it brings into the political arena the rules of conduct applied to practitioners—something that should be abhorrent to those committed to independence among lawyers.

It is extremely surprising to see a Conservative Government seeking a power with such a dangerous potential for misuse in perhaps less happy future times. There is no significant evidence that either the Law Society or the Bar has failed to modernise its professional codes; indeed, the Bar's revised code of conduct is a model of progressive thinking and adjustment to the modern age.

Another aspect of independence needs to be highlighted and protected—the independence of the advocate from undue influence or involvement. Of course the advocate should be involved, even devoted—in the professional sense—to the client's case. However, the scope for mistakes—and much worse than mistakes—is narrowed significantly if the advocate is not the person who interviews witnesses prior to conducting a trial, especially a serious trial in the criminal courts.

It is equally valuable for those who prosecute serious cases to have considerable experience of defence work to secure the objectivity that is necessary if justice is to be done. One of the most difficult decisions that a prosecutor makes is to abandon the prosecution—to offer no evidence. It is the experience of defending cases—perhaps as many as he prosecutes—that enables an advocate to make that decision more correctly and skilfully.

Finally, let me deal with local legal services. In my large rural Welsh constituency, there are firms of solicitors operating in Guilsfield—my predecessor as Member for Montgomery practises there—in Welshpool, Newtown, Llanidloes, Llanfyllin and Machynlleth. I doubt whether real intellectual justification can be found for the privileged position of solicitors if conveyancing is seen as an isolated activity or skill.

However, there seem to be two sound if pragmatic reasons for retaining much of the present position. First, there is the great pressure that financial institutions and some estate agents are likely to impose on financially innocent home buyers. An independent voice is essential in what is the largest transaction in most people's lives. Secondly, local legal services in the form of solicitors—for example, in the places that I have mentioned—are heavily dependent upon, and in reality subsidised by, conveyancing.

Those firms in such areas as Llanfyllin and Machynlleth will not be compensated by rights of audience; that is the last thing that they want. They like to obtain expert advice 1476 from counsel in chambers elsewhere, and would be embarrassed by their clients asking them to appear for them in the Crown court or the High Court.

If conveyancing goes, large numbers of small firms of solicitors are likely to go to the wall. At best, they are likely to be subsumed in much larger firms, with a smaller fund of local knowledge and a consequent reduction in choice. As any practising solicitor in the House knows, local knowledge is crucial in negotiating the settlement of local disputes. People will become more litigious if a solicitor comes in from a city elsewhere and merely advises them on the legal issue under consideration, without having regard to local conditions. The Government have not addressed that problem adequately.

The Committee stage promises to be a lively affair. We hope for considerable improvement in the Bill, which has the right to go to Committee: and I shall vote for that if necessary, and advise my right hon. and hon. Friends to do the same. With my mind closely on the two criteria that I cited at the beginning of my remarks, I shall see how the Bill looks in relation to those criteria after its Committee stage. They will be our litmus test; I hope that the Bill will pass that test.

6.57 pm
§ *Sir Hugh Rossi* (Hornsey and Wood Green)

I must declare some interests. First, I am chairman of the Lords and Commons solicitors group. Secondly, I have held a solicitor's practising certificate for 40 years—although for the past 15 of those years the demands of the House have obliged me to retire from active practice, perhaps enabling me to take a detached view of these matters. Thirdly, I am the chairman of the London board of a building society, a position that some might consider could give rise to a conflict of interest with some provisions of the Bill, but which helps me to consider the matter objectively.

The House will not be surprised if I do not follow many of the right hon. and hon. Members who have already spoken, as all but one have represented the Bar. There is a contrary view for the House to consider. The Bill is clearly in the mainstream of the Government's desire to tackle restrictive practices—a policy that has brought immense benefits to our economy and to the consumer. The professions—especially the legal profession—cannot stand aloof from that, nor has the legal profession done so. Scarcely a firm of solicitors has not either merged

with others or considered merging; they are evaluating themselves and planning their futures in the way that efficient enterprises do. With the restrictions on advertising and marketing gone, firms can now direct themselves towards the markets in which they plan to expand.

In central London, the legal community serves the private client—more particularly, the corporate or commercial client—better than ever before, not only by our standards but by international standards. London is now recognised as the legal centre for Europe. Where else can a team of specialists in banking, shipping, aviation, insurance, financial futures or mergers and acquisitions be put together within hours, ready for a major international transaction? That could happen in New York, but nowhere else in Europe. Our legal firms in London and our other major cities are now the envy of nearly every other country in Europe. Our firms are poised to take full advantage of the European internal market, with the Law Society's 1992 awareness campaign leading the way. 1477 Of course, those firms are not representative of the whole profession. There are 55,000 practising solicitors in offices throughout the country. There is scarcely a high street in any town that does not have a sole practitioner or a two or three-partner firm, affording a network of accessibility to the legal processes and to justice. Speaker after speaker has recognised that that should not be undermined or destroyed. If the Bill unfortunately does that, it will be a sad day for this country and its people.

While solicitors can be proud of their response to the spur of competition given by the Government, they are also proud of the solid foundation on which they rest, especially the consumer protection afforded by the regulatory system that we have inherited, in Solicitors Act after Solicitors Act, laying down the responsibilities that the profession has willingly adopted and accepted in self-regulation through the Law Society.

A client dealing with a solicitors' firm can do so with confidence, knowing that that firm is insured up to £1 million for every claim that may be made against it. Clients' money is underwritten by unlimited compensation. Nowhere else in the country does anyone offer that sort of protection to the consumer. We need only to contrast it with the financial services industry, where there is no overall insurance system. Indeed, FIMBRA came near to collapse over the proposal to institute one. If a client's money is missing, he has to await bankruptcy proceedings before he can get a penny, and then the most that he can expect is £48,000, regardless of the size of his loss.

The profession values, and attaches the greatest importance to, its independence and its ability to give impartial advice without fear or favour. The advice given by a lawyer who one suspects does not understand one's interest or is not fully committed to one's representation is virtually valueless. However, independence of mind, independence to give impartial advice, cannot be bought at the snap of a finger. Professional independence is underpinned by a tradition and a code of ethics that are regularly upheld. By the same token, that independence can be easily undermined. In the solicitors' profession, it is maintained by ensuring that only solicitors bound by the same code of ethics own the firms that employ solicitors who offer services to the general public. In the protection of the public, proper regulation and the profession's independence are linked.

As has already been implied by a number of right hon. and hon. Members, at the end of the day the independence of the legal profession is the bulwark against too great an encroachment by the state upon the lives of individuals. That is why I questioned the right hon. and learned Member for Aberavon (Mr. Morris) when he suggested control over the

judiciary by this House. God forbid that politicians ever influence or affect the judicial independence of our courts. I hope that that is not the way that the Labour party wants to lead us.

I must refer to the Bar and the need for it to maintain its traditional independence. Solicitors have good and warm personal relations with members of the Bar. However, if the divided profession works in practice, it cannot be said to be based on a secure, modern foundation. While the solicitors' profession has adapted and modernised itself, the Bar collectively often gives the 1478 appearance, if not necessarily the substance, of being rooted in the past. Its monopoly of business in the higher courts and its resultant hold on all senior judicial appointments could, for the most part, be retained by common consent if the Bar did not persist in demanding a legal monopoly.

I do not believe, and nor does any solicitor whom I know, that the giving of audience to a specially trained and qualified solicitor in the High Court would destroy or cripple the Bar. That has certainly not been the case in Australia or New Zealand. I do not believe that the right of audience in the lower courts has adversely affected the Bar to any extent. I am sure that only a minority of the 55,000 solicitors will wish to have the right of audience to the High Court and then it will be mainly for clients with whom they have developed a special relationship. The vast majority of solicitors—the general practitioners of the profession—would still need the specialisation offered by the Bar. The partners of the large City practices involved in mergers with international companies could not afford the time to be tied down in court, away from their desks and telephones.

It is in that context that we welcome the Lord Chancellor's brave attempt in the Green Paper to set out a framework for reform. He had to withstand a withering, sustained and almost personal campaign from those opposed to reform. That campaign is far from over, as is clear to anyone who has followed the proceedings of the Bill in another place.

What was his proposal on the reform of the profession? It was that solicitors and barristers should undergo further training after initial qualification and before exercising the rights of audience to the higher courts. To the credit of the Law Society, it accepted that a level playing field was not appropriate and that it was not necessary to require barristers to undergo further training. Nevertheless, it accepted the need for solicitors to have that training. That was a major concession, which has enabled the Government to introduce reforms in a much more simplified form than originally envisaged. The Law Society should be given full credit for that.

The latest—and, I hope, the final—manifestation of the campaign by those opposed to reform was the amendment, carried in another place—proposed and supported by the Bar and the judges, against the advice of the Lord Chancellor—to impose what has already been referred to by member of the Bar after member of the Bar in this House as the cab rank rule on solicitors wishing to exercise the rights of audience in the higher courts. We shall study carefully what my right hon. and learned Friend the Attorney-General said in opening the debate. We shall have to consider carefully the amendment that he proposes to put down. If I understood him correctly, he said that the Law Society was reconciled to the cab rank rule. If that is the case, then he is mistaken. That is not so.

The Law Society understands and would wish to participate in a system whereby there is no discrimination against an individual wishing to have access to justice, but that is entirely

different from the cab rank rule as practised by the Bar. Whatever the merits that rule may have for the Bar, it is entirely another matter for the solicitors' profession. Barristers take work on referral only. That is part of their terms of business. They accept cases in their field of practice, and that helps to spread the work around for the benefit of the Bar in general and for newly called members in particular. The rule also provides useful 1479 protection for advocates who can rightly claim that it is not necessary for them personally to be associated with the cause that they advocate in the courts.

However, I do not say that that means that every barrister has to take on every case that is put in front of him. There is a rule of the Bar which states, if I remember the wording roughly, that no member is obliged to take on any work for a fee which is inadequate in his view having regard to the complexity of the matter and to his knowledge, experience and standing. If that is not a coach and horses through the so-called cab rank rule, I should like to know what is.

I shall give the House some anecdotal evidence. In my younger days I experienced great difficulty in negotiating fees with counsel's clerks, or securing the man I wanted for my client, because of that rule or something similar. No cab rank rule was applied in those cases. I cannot bring those papers before the House now, as they are more than 20 years old, but they are engraven on my memory as a young solicitor trying to represent clients through the courts. [Interruption.] Paragraph 502 of the barrister's code of conduct stipulates what I have just recited. Therefore, let us not have so much of this holier-than-thou attitude that member of the Bar after member of the Bar has entertained the House with.

By large, solicitors do not operate on referral and the cab rank rule would be an unacceptable imposition. Some solicitors have built up practices by specialising in particular fields of work. In doing so, they have had to decline to represent certain classes of defendant. For example, some provide a service by specialising in housing work on behalf of tenants, and others have built up a relationship of trust with rape crisis centres. The business of those firms would be endangered, and the sensitive relationship between solicitor and client undermined if they—[HON. MEMBERS: "Rubbish."] Members of the Bar are talking who have no experience of running a solicitor's office.

In some parts of London. to accept a landlord as a client would make it difficult for a firm to build on its reputation of representing tenants' interests. Similarly, to represent a defendant in a rape case is considered by firms which work closely with rape crisis centres as something that would cause problems for them, and would make it more difficult for their clients to accept that the firm is on their side and would do the best for them.

The House has to bear in mind the fact that the Bar, which is always one step removed, has the solicitor as a buffer between the client and himself or herself, and it can afford to take a more detached view of the way in which it approaches the lay client, in a way that the solicitor cannot. If the cab rank rule, in its present form, proceeds, it would also prevent solicitors from offering advocacy simply as an additional service to existing clients, rather than to the world at large.

Why should solicitors not be able to offer advocacy to existing clients? I should have thought that that would be in the interests of the consumer. Most solicitor advocates would not wish to be committed to advocacy all the time. If they did, as my hon. and learned Friend the Member for Burton (Mr. Lawrence) suggested, they could join the Bar. They want to stay

solicitors and they want to give a better service to clients. Why introduce into another situation a rule that is appropriate to the. Bar?

1480
§ *Mr. Bermingham*

The hon. Gentleman will remember that I have been both a solicitor and a barrister. If one has 1,000 cases a year, all of which require Crown court advocacy, which one does the solicitor advocate choose to do? Will he not be picking and choosing the most juicy cases on his list? Is that not the danger, unless there is a cab rank rule?

§ *Sir Hugh Rossi*

That is a matter for his client. The client would insist that the solicitor represents him or her in court. They would say, "That is why we came to you, because we heard that you are very good at this and we want you to represent us." The solicitor cannot afford to have the word go round that he is refusing business. He would soon have little business.

§ *Mr. Bermingham*

That is not the case.

§ *Sir Hugh Rossi*

That is the case, and the hon. Gentleman knows it. Because a solicitor does not accept some work referred to him, that does not mean that those clients are without a remedy, because the Bar is still there. We are only saying that that right should exist in certain circumstances.

The hon. Member for St. Helens, South (Mr. Bermingham) may appreciate that, if he builds up a reputation as a solicitor advocate and his firm accepts the cab rank rule, down the road, some rivals may say to themselves, "This is a nasty vexatious litigant, who will drive everyone mad." They will recommend him to go to the hon. Member's firm. They will say, "He will look after you." The vexatious madman will come along and the hon. Gentleman will be stuck with him under the cab rank rule. At least solicitors act as a filter for members of the Bar in such situations.

The cab rank rule is neither necessary to ensure proper representation nor effective to ensure high quality representation. To impose it on solicitor advocates would unnecessarily obstruct the way in which solicitors could offer their services to the public. The Bar is well aware of that. The amendment was introduced in another place simply as a wrecking amendment, to ensure that solicitor advocates would not wish to exercise the right of audience in the High Court. That was the beginning and the end of this proposal. I hope that, when the Law Officers consider the amendment and bring forward their own form of wording, they will bear that carefully in mind.

Conveyancing has been a live subject since the hon. Member for Great Grimsby (Mr. Mitchell) introduced his private Member's Bill some seven years ago. The solicitors' profession did not react well at that time. Its reaction may well have helped the Bill on its way.

The Law Society did not accept the advice that hon. Members offered at that time, but it has reflected on it and it is not making the same mistake today. Whatever misgivings it may have about the results of the proposals, it does not seek to stand in the way of the Government's clear determination to allow institutions to provide conveyancing. It has confined itself to attempting to ensure that the safeguards necessary to protect clients are put in place. The mechanism that the Government now propose —a regulatory board—is an improvement on the previous proposal for a mix of regulatory authorities.

If house buyers have the right to choose between an institutional conveyancer and a solicitor in private practice, they will have to exercise much caution when making that choice. The massive advertising budgets of the 1481 major institutions will stimulate and create demand. The one, two or three-man solicitor practices cannot begin to compete with that. Let us hope that the motives of the institutions are as they say they are—simply to offer a conveyancing service for the convenience of their customers. Can we be sure that that is true?

The aim of the institutions may be to ensure that the house buyer, having been sold a mortgage and a life policy, does not realise that he has been oversold and does not need the expensive policies that he is proposing to take. Disturbing reports have recently appeared in the press of people being obliged to surrender their endowment policies on the advice of those selling them a house, offering them a mortgage and getting them to take on another endowment policy. The Institute of Insurance Consultants estimates that home buyers lose £680 million a year by unnecessarily surrendering endowment policies. We also know from those reports that agents do not always put forward the best offer to vendors because they will lose their commission if they do not persuade the vendor to do business with someone who is taking out an insurance policy through their agency.

Independent financial advice for householders is more important than ever before. It is interesting that my right hon. Friend the Member for Westmorland and Lonsdale (Mr. Jopling)—the only non-lawyer who has taken part in the debate—said that this was one of his greatest concerns. He gave a formula whereby the consumer could obtain independent advice on different insurance policies. But it does not end there, because modern thinking is that a mortgage could be better linked to an investment trust arrangement rather than to an endowment policy. Who will give that independent advice other than a solicitor who is streetwise and knows his way around the financial world and is in business simply to advise his client impartially?

If the result of the Bill is that fewer house buyers have their eyes opened about the commitments and investments that they are taking on, that will be a cause for concern. It will be a sorry day if the House eventually accepts a Bill that does exactly that.

I hope that the Bill will receive a fair wind on Second Reading. Much of it is long overdue and necessary, but there are some concerns which I hope the Law Officers will bear in mind in its final stages.

§ *Mr. William Cash* (Stafford)

On a point of order, Mr. Deputy Speaker. Is the 10-minutes rule being applied today? Many hon. Members wish to speak.

§ *Mr. Deputy Speaker (Sir Paul Dean)*

The 10-minutes rule is not being applied by Mr. Speaker today, but I repeat the appeal that he has made at least twice for shorter speeches; otherwise, many hon. Members will be disappointed.

7.24 pm
§ *Mr. Denzil Davies* (Llanelli)

I shall endeavour to respect your comments about short speeches, Mr. Deputy Speaker. For that reason, I shall not follow the hon. Member for Hornsey and Wood Green (Sir H. Rossi), although I shall deal with some of the points that he made.

Once upon a time, before the great Thatcherite revolution, which is supposedly encapsulated in this Bill 1482 and in many others that we have debated in the past 10 years, there were barristers and solicitors. Barristers argued cases in court and wore wigs. Solicitors sat at desks, interviewed witnesses, shuffled bits of paper and generally prepared the case. That was not the reality because barristers also sat at desks, wrote opinions and drafted pleadings, and some solicitors argued cases in court without wearing wigs.

That was the position before the Bill. Let us consider now what will happen when the Bill becomes law. As I read the Bill, there will be a great metamorphosis. Barristers will become advocates, and solicitors will become litigators. Advocates will still argue cases in court wearing wigs and will draft opinions and pleadings. In the main, litigators will still sit in offices and prepare cases and litigation.

The original attempt at a great revolution came up against the reality that there are two different functions —preparing a case for court and putting it to the court. Usually, barristers carry out one function and solicitors the other. One function is not superior to the other and the people who carry them out are not superior to one another. One is glad to see that those different functions appear in the Bill, because the public often think that employing a barrister and a solicitor is a conspiracy to extract more money from the populace and that it is some kind of restrictive practice for which there is no justification. We should commend the Government for the fact that in clauses 15 and 16 the Bill enshrines in statute for the first time the fact that there are two different functions—the function of advocacy and the function of the litigator.

What happens when the great Thatcherite revolution comes up against the reality that generally it is better for the advocate to be an independent contractor and not subject to a contract of employment or a partner in a firm? The result, as we have seen before, is that a new quango is set up. Quangos were set up following privatisation of the telephone and electricity industries and most other privatisation measures and here again—lo and behold—there is to be another quango. It is a very good quango with 14 members and a chairman. No doubt they will be worthy people; some will be barristers, some solicitors and others worthy lay people. We all know how the Government appoint quango members. They do not do as the Labour Government tried to do—they do not try to be even handed. We all know how lay members to quangos are appointed under this Government. If they are friends of the Government, they are appointed. If they are not, they do not have a chance.

What is the quango supposed to do? Schedule 2 tells us that it is meant to oversee legal education. We should all agree that that is a worthy objective. I have practised at the Bar on and off for the past 20 years, and one criticism of the Bar is that legal education does not

provide the kind of training in advocacy that students should have before they sit their final exams. Years ago I lectured at the university of Chicago law school. I was very impressed with American law schools, although I accept that they are different institutions. In the American law schools, advocacy—training in the courts—counts towards the final examination marks. If the quango can improve legal education in that respect—I accept that there have been improvements over the past 10 years—nobody will object to that. 1483 What else is the quango supposed to achieve? Somehow it has to try to resolve the Green Paper's original intention to do away with the so-called restrictive practices. However, that intention came up against reality. The quango is supposed to bridge the gap between the advocate and the solicitor who wants to be an advocate occasionally, as the hon. Member for Hornsey and Wood Green put it so well. The quango must deal with the litigator who wants to do a little hobble as an advocate, but the Bill does not explain the criteria. I suppose that that is par for the course. This great Thatcherite Bill tells us nothing—everything is left to Ministers and to the quango.

As the hon. Member for Hornsey and Wood Green said, what will happen to the litigator who does not want to advocate all the time, but who has an old and valued friend—perhaps a landlord—for whom he has. been working for years and for whom he goes to court and does a case? Will he be able simply to walk into the court and put a wig on his head? What about the company lawyer who may have spent 30 years advising companies and who knows the theory of company law backwards? What if he decides to go to the companies court for an old and valued company? Can he simply drop into that court? Will he have to have a licence for that particular right of audience or will licences be granted to groups of solicitors?

§ *Mr. David Sumberg* (Bury, South)

indicated dissent.

§ *Mr. Davies*

It is no use the Parliamentary Private Secretary, the hon. Member for Bury, South (Mr. Sumberg), shaking his head. The Solicitor-General should tell us what criteria will apply and how the licences will be granted. I do not object, but I should like to know how the process will operate. I should like to know whether a one-off application will be allowed or whether the litigator will have to prove a track record over a period or an intention to have such a track record.

The Attorney-General skated over the question of partnerships. I hold an old-fashioned view in that I believe that an advocate should not be a partner but should be a sole practitioner. I am not casting aspersions, but a partner is contractually bound to his fellow partners. He is almost a trustee in that there is almost a trust between partners. Should advocates enter into partnerships with other advocates? Should advocates enter into partnerships with litigators, and should litigator advocates be allowed to enter into partnerships with litigators? What happens in the multi-disciplinary partnerships which are now in vogue in the City and the west end?

I do not believe that litigator advocates should be partners with litigators. I understand that there are firms of solicitors which practise in the county courts where there are partners and I do not believe that that can be changed. However, I should like the quango to lay down rules so that if a litigator wants to become an advocate, that is fine, but that the litigator should not

remain a partner with his fellow partners because that could lead to a conflict of interest between the partners, the courts and the clients. The position is even worse when one considers multi-disciplinary partnerships.

Let us suppose that a large firm of solicitors which specialises entirely in building and construction work decides to bring into partnership three or four surveyors who have worked for that firm in litigation over a 1484 considerable period. That would then be a multidisciplinary partnership of litigators and surveyors. Let us suppose that one of the litigators wishes to become an advocate. The partnership would then comprise litigators, a litigator advocate and surveyors. A case may come before the High Court in which the expert witness is a surveyor partner, the case is presented by the litigator advocate partner and the case is prepared by the litigator partner. I do not believe that the Office of Fair Trading would believe that that was in the interests of the consumer and in the interests of justice or that it would lead to greater efficiency or lower costs. There are great dangers in allowing such partnerships. In Committee I hope that the Government will tell us more about their thinking in respect of partnerships and how they see the quango developing the rules for partnerships between different parts of the profession.

Everyone apart for the hon. Member for Hornsey and Wood Green believes that the cab rank principle is a good thing. It has not worked perfectly and the rules are now being tightened. The answer is to tighten the rules again and apply them to all advocates and litigator advocates. It was ridiculous for the hon. Member for Hornsey and Wood Green to argue the example of a firm of solicitors which specialises in landlord and tenant work and has always worked for landlords. He argued that, under the cab rank rule, that firm would have to work for tenants as well. That is an appalling and immoral attitude. Most solicitors would not agree with the hon. Gentlman. As David Napley pointed out in his article in The Times earlier this week, most solicitors would be happy to abide by the cab rank rule.

§ *Sir Hugh Rossi*

I had in mind particular firms which pride themselves on their Left-wing views. Some firms in London concentrate on representing the interests of the tenant and will not consider a landlord if one should cross their premises. We must consider whether we are prepared to force those firms to do what they do not want to do.

§ *Mr. Davies*

That is not a defensible argument if they wish to become litigator advocates. If they do not wish to do so, the problem does not arise. We are considering only those who wish to become litigator advocates, and the corollary of that is that they should accept the cab rank principle.

In principle, I welcome part I of the Bill and the civil justice review. I welcome the eventual transfer of cases to the county courts, if funds are available and legal aid is approved. It is extraordinary that 70 per cent. of Bar members practise in London. If we could have an efficient county court system and a transfer of power, that would be a very efficient devolution of power in terms of costs, but it will take time and it will need money.

Personal injury cases can now be transferred to the county court if the claim exceeds £5,000 and for claims up to £25,000 according to the intentions of the civil justice review. Very often those cases are very difficult and important because they affect human beings. It is important

that funds should be available to the county courts to enable them to hear such cases properly and efficiently. I do not believe that the Bill will reduce costs or lead to more efficient justice, and it may endanger an independent Bar. The Government should state exactly 1485 how they intend to operate rules relating to applications for licences by those who are not barristers but who wish to become litigant advocates.

7.29 pm
§ *Mr. Peter Temple-Morris* (Leominster)

I hope that the right hon. Member for Llanelli (Mr. Davies) will forgive me if I do not follow him directly, but hon. Members are coming under increasing pressure of time. However, I shall mention various matters to which the right hon. Gentleman referred. I hope that he will be grateful for that at least.

Hon. Members have begun their orations with a declaration of interest. We even heard the triumphant declaration, "I am not a lawyer," from my right hon. Friend the Member for Westmorland and Lonsdale (Mr. Jopling). I, too, must make a declaration of interest. At least it is unique in that I am the first of the hybrids who have been called to speak, although the hon. Member for St. Helens, South (Mr. Bermingham) has intervened briefly. For more than 15 years I was in active practice at the Bar. I am now a practising solicitor in so far as a solicitor can practise and be a Member of the House. I am proud to have a practising certificate. I think that I am the only hybrid who has gone from being a barrister to being a solicitor. Three Opposition Members have gone the other way. I hope that they are not frightened by my sudden presence in the midst of their former profession.

I assure my hon. and learned Friend the Member for Burton (Mr. Lawrence) that I did not change over to go rushing off to set up an advocacy practice. I am only too relieved—this remark has more serious significance than a flippant comment—that I no longer need to run round keeping judges waiting as well as be a Member of this House. That comment applies to the vast number of people who have chosen, at whatever stage of their careers, to opt for the solicitors' side. One does not become a solicitor to become an advocate.

A further part of my declaration of interest is that, if the Committee of Selection so wills it, I hope that I shall serve on the Standing Committee and move various amendments on behalf of the Law Society, which I shall make plain when I move such amendments. Therefore, the pattern of this abbreviated speech is to set the scene for the information of Government Front-Bench Members and others of certain points that will be taken, some of which have been touched on in the debate.

We are a divided profession—that is accepted in the Bill. Various horror stories and images have been raised in previous discussions on this measure and have crept into our generally sensible discussions tonight. I have no doubt that the profession will remain divided, that it has worked well, that it is as good as other legal professions anywhere, and that its standards are of the highest. That applies to all elements of the profession. Therefore, it follows that the system should be changed only very carefully. The Bill does that. I do not regard it as an extreme measure nor, with all respect not only to hon. Members but to Members of the other place, as an insidious gateway to matters such as fusion of the profession. Nevertheless, the profession must react to modern needs. It cannot resist all change.

I spent a brief part of my Easter looking at some of the debates in the other place. Even in the calm serenity of the 1486 past few days, some judicial apoplexy seemed to occur in the otherwise sedate columns of Lords Hansard. It must be noted that some members of the judiciary and others went over the top in their initial reaction to the measure. As a barrister turned solicitor, I am most anxious that that does not happen in our debates and that we may be calm and constructive throughout our proceedings.

By no means does the Law Society like everything in the Bill, and various aspects of that dislike will come out subsequently. I like to think that hon. Members have been constructive and that we shall seek to improve the Bill in the national interest, not in a sectional interest. Hon. Members and members of the Bar are mutually and generally concerned with high professional standards and the preservation of those standards by the necessary long-established controls. That point was made most eloquently by the right hon. and learned Member for Warley, West (Mr. Archer), a former Solicitor-General.

It is with pleasure that I note that this is not a party-line occasion. I hope that the two sides of the profession will come together on certain matters. Although we might get away from Government versus Opposition and vice versa attitudes, there is a danger that we might encounter solicitor versus barrister and vice versa attitudes. That would not be good for the overall outcome of the Bill when it leaves this place. Therefore, I expect some strange alliances in an effort to improve the Bill to the maximum.

There are some specific concerns about rights of audience. There has been a lot of fuss about very little. As I said earlier in jest, the vast majority of solicitors have no interest in professional advocacy. With experience of both sides of the profession, I have no doubt that the Bar, with its obvious skilled practice and tradition in this regard—that is, the fact that it practises on a regular basis, which is necessary in court work will remain pre-eminent and necessary. The central point is that if, in maintaining those values, it makes itself out to be a bastion which in some way—with which I totally disagree—is so weak that it cannot survive without forms of privilege and what some would call restrictive practice, it will point the way to its own demise much quicker than anyone who has had anything to do with the Bill would have dreamt of.

One would obviously want to look at the role and power of designated judges under the schedule 4 procedure; those matters were examined in the other place and they will be discussed again. Their role has not, to say the least, been inactive. Whether it goes to the extent that the judiciary should have powers of actual decision rather than a more consultative and interpretative role is something that we shall wish to consider against whether it is for the legislature, the Executive or both whether hon. Members should have the power of decision and whether judges should be kept in their normal, traditional and extremely distinguished place.

Another matter of specifics is the number of judges on the advisory committee while preserving the lay majority. It might be rather nice if a circuit judge managed to get on to the committee, in so far as there might be an extra judge on it. It would be even nicer if that circuit judge just happened to be a former solicitor. One doubts whether that could conceivably happen, such would be the array of the establishment against such an idea. If solicitors can be sufficiently qualified, talented and able to be judges, perhaps they might have a place and an active role 1487 together with the other half of the profession and the

judiciary generally on the advisory committee. I do not think that such a role should ever be resisted.

Hon. Members have made considerable reference to the cab rank rule. What my right hon. and learned Friend the Attorney-General has already said—and will doubtless say again—was not the same as the attitude taken by the Lord Chancellor in Committee in the other place, when the proposal was defeated, or on Report in the other place when, against the advice of the Lord Chancellor and the Government, the proposal was narrowly passed. From what has been said, it is clear that the cab rank rule has gained an almost hallowed status. In all honesty and humility and with all respect, in my legal career I cannot remember people going up and down the steps of my chambers, damning the cab rank rule and saying that their careers had been ruined because they could not take this or that case. Perhaps it was with such thoughts in mind that the national press used phrases such as, "a wrecking amendment", and that the amendment was promoted "by self-interest", and to "preserve the status quo" and even that it was "hypocritical in nature". Although it goes too far, that was the reaction of the outside world.

My hon. Friend the Member for Hornsey and Wood Green (Sir H. Rossi) more than addressed himself to the detail of the provision. The cab rank rule was very much in evidence in the early stages of my career. I appreciate that it is the ethos of the Bar that at five o'clock in the evening when one goes to the clerk's room in chambers, it is a case of "Cambridge for you", Ipswich for you", "London sessions for you" and of goodness knows where else. Subsequently in one's career, not only do the sort of rules and regulations that have already been referred to come into the fray, but availability also comes into the picture. I have never yet encountered a clerk who was not good enough at least to protect in general the careers of those for whom he was responsible.

Under the veneer of so-called competition, we should not block out one of the Bill's central aims, which is the freedom of the poor old consumer, who sometimes comes less and less into the discussion when lawyers get going. As it stands, the clear purport of the provision is to put a solicitor off becoming an advocate in the area where he is most likely to be asked to become an advocate, which might be a case in which the client wants him to act and that he knows all about.

Therefore, while I note the Government's present position, I must advise my right hon. and learned Friend the Attorney-General that that position is not wholly accepted. Although I noted down his words, I shall not remind my right hon. and learned Friend of them except to say that I know that he is talking about a principle rather than about the specific phraseology and drafting of that clause. The Law Society and many others will listen to all the arguments on this issue. The Government's change on this matter means that I must firmly register with my right hon. and learned Friends on the Treasury Bench the fact that those discussions will go further.

A related question with which I hope we shall not have to bother—I regret that it has crept in—is the far-fetched argument that was raised in the other place that the separation of the preparation of a case from the advocacy of it is a hallowed principle that precludes a solicitor from becoming an advocate. I hope that we can avoid that 1488 argument. I am all for the objective role of the advocate, but it is wrong to use that as a hallowed principle to prevent the Bill's purpose.

I hope that the following matters will be raised in Standing Committee. First, there will obviously be several amendments and matters to be considered in relation to conveyancing and to probate law, especially with regard to professional standards and the independence of advice. When it comes to the last word, perhaps the market place is not everything, and professional standards are something—[HON. MEMBERS: "Oh!"] I have always been a moderate member of the Government party, as Opposition Members should know, and I am now making a legal rather than a political speech.

Secondly, I hope that the issue of conditional fees will be considered. I have always had great personal reservations about conditional fees. I know that within the profession there is broad acceptance of the Bill as it stands on this matter, but I wish to register this point of concern that I expect will arise again.

My third point relates to multi-disciplinary practices. The Bar and the Law Society have a mutual concern about this. As such practices are being considered, at the very least we need to establish some tight rules.

Fourthly, there is widespread concern about the performance of the courts, especially the county courts, which have already been mentioned. The Bill must address this concern satisfactorily, and in so far as it does so, that must be satisfactorily explained by the Law Officers.

Fifthly, I welcome the proposals on the Parliamentary Commissioner. He must effectively cover court staff, who must not hide behind too wide an interpretation of what is or is not judicial or the result of some form of judicial action.

A final important point that will need to be considered in Standing Committee is the fact that, just because the Lord Chancellor's Department is responsible for judicial appointments, it does not mean that that function should be removed from being the responsibility of a Select Committee of this House.

Whatever happens from now on, may the result of it be a better Bill.

7.56 pm
§ *Mr. Chris Mullin* (Sunderland, South)

As a non-lawyer, I hesitate to intrude in these deliberations, but as the hon. Member for Leominster (Mr. Temple-Morris) mentioned fleetingly, the consumer must be considered. in all this. The Bill is welcome only to the extent that it is a long-overdue shake-up of a profession which, with honourable exceptions at every level—I acknowledge that —has managed to combine appalling levels of service, outrageous fees and a degree of self-satisfaction unmatched by any other profession. To the extent that the Bill does not achieve that, that job will remain to be carried out on another occasion.

I am a socialist, but I must say that if ever a profession urgently needed a dose of market forces, it must be the legal profession. In saying that, I acknowledge the reservations expressed by my right hon. and learned Friends the Members for Aberavon (Mr. Morris) and for Warley, West (Mr. Archer). The extent to which the Bill rises to the occasion must be measured by the outrage that it has provoked in the higher levels of the legal establishment. The Lord Chancellor made a promising 1489 start and provoked a vintage performance in the

other place from the Lord Chief Justice, which provided a valuable insight into the judicial mind when the wig is off. I regret that the Lord Chancellor has been leaned on to some extent and that the original proposals have been watered down.

Any measures designed to increase rights of audience in courts are welcome, as are measures to reduce delays, to break lawyers' conveyancing monopolies, to provide effective redress against incompetent lawyers and to widen the charmed circle of those who become judges—a glance at the latest edition of the "Freemasons Handbook" shows that there is some scope for improvement.

In the brief time allotted to me in the debate I shall concentrate on a couple of omissions from the Bill. Judges have had quite a lot to say about the Bill in the other place and elsewhere so I hope that they will not mind if we have a thing or two to say about them. The retirement age of appeal court judges should be lowered as a matter of urgency to, say, 65 for a start. I believe that it was only in the last decade that the retirement age was lowered to 75, and even that failed to catch Lord Denning. Some attention should be paid to filling any vacancies that arise with persons whose horizons extend beyond the saloon bars of Surrey.

The major point that I wish to make is that there is a major omission from Bills such as this which will have to be rectified. The Bill is wide ranging and it would have been appropriate for it to provide some remedy to deal with persistently alleged miscarriages of justice. It is becoming something of a legend in Britain that it is extremely difficult to persuade the Court of Appeal or, indeed, lawyers in general—with honourable exceptions —to own up to the possibility of serious mistakes. That is one of the more enduring features of our legal system.

I was reading only this afternoon Ludovic Kennedy's introduction to "10 Rillington Place". He described the campaign that it was necessary to pursue before it was conceded after 16 years that Timothy Evans was innocent. That difficulty has become topical again in recent years as a result of a handful of celebrated cases. The Carl Bridgewater case is one of them, and the Broadwater Farm case is another. The best known are those of the six people convicted of the Birmingham pub bombings and the total of 10 people convicted in connection with the Guildford and Woolwich bombings.

Everyone knows that one of the principal difficulties in those cases is that senior lawyers are unwilling or extremely reluctant to face the possibility that mistakes have been made by other senior lawyers. In the case of the Birmingham pub bombings, it is obvious that one of the major difficulties was that Lord Bridge, who was the original trial judge and is now one of the most senior judges in the land, went overboard in his original trial judgment and his going overboard was endorsed in January 1988 by the Lord Chief Justice. It is clear that before any progress can be made on that case, which is beginning to blight the entire legal system, the resignation or retirement of the Lord Chief Justice will be necessary.

Before anyone cites the case of the four people convicted of the Guildford pub bombings as an example of the willingness of the judicial system to own up to mistakes, I remind the House that the convictions were 1490 quashed only because the Director of Public Prosecutions —an honourable man, for whom I have the greatest respect —went to the Court of Appeal. I was there and had the pleasure of seeing the Lord Chief Justice's face as he was forced, with clenched teeth, to quash the convictions. The DPP went to the Court of Appeal and asked for the convictions to be quashed in terms which left the Lord Chief Justice no discretion whatever.

Many of those who were present on that occasion, including many eminent lawyers, were in no doubt that if the DPP had allowed the Lord Chief Justice the slightest discretion the Lord Chief Justice could have talked his way even out of the new evidence. I say that because I also sat through the Lord Chief Justice's disgraceful judgment in the case of the Birmingham Six when he performed intellectual gymnastics of a spectacular variety.

Probably the most persistent miscarriage of justice, which most clearly demonstrates the great problem with our legal system—it will have to be addressed sooner or later and it is a pity that this issue is not addressed in the Bill—is the Cooper and McMahon case. In 1970 two men were convicted of murdering a postmaster in Luton. By about 1974 it became clear to the Home Secretary of the day that something was seriously wrong in that case. Four successive Home Secretaries between 1974 and 1980 referred the case to the Court of Appeal. On each occasion the judges sat, stonyfaced, and said, "We have heard nothing new —take them away." In 1980 it became so embarrassing that the Home Secretary of the day, William Whitelaw, because he could not devise a way to persuade the judges to own up, simply ordered the gates of the prison to be opened, gave the men a railway ticket each and sent them home without so much as an apology for the decade that they had spent in gaol.

I fear that the same will happen eventually in the case of the six men convicted of the Birmingham pub bombings. There are people of good will at every level and in all parties but no one can devise a way of persuading the Court of Appeal to own up.

§ *The Attorney-General*

I have listened to the hon. Gentleman's fairly familiar record, but the last phrase calls for some explanation, even from him. He said that there was no other way of persuading the Court of Appeal to own up. I hope that he will reflect on what he has just said. The Court of Appeal is obliged to deal with references from the Home Secretary, which take the form of appeals, on the evidence put before it. The hon. Gentleman will recall that the Court of Appeal sat for some five weeks, that it considered all the evidence that the applicants sought to put before it and that it came to its decision in a judgment which is in the Library of this House, on the basis of that evidence. I hope that he will reflect on what he said about owning up.

§ *Mr. Mullin*

I have had a great deal of opportunity to reflect on the matter. I was present throughout most of the 30 days of the appeal hearing. It is clear to me that many people in high places, although not necessarily the Lord Chief Justice, know that a mistake has been made—they knew for years that a mistake had been made in the Timothy Evans case—but they have great difficulty in finding a way out, as has been remarked on by commentators of the same political persuasion as the 1491 Attorney-General. The right hon. and learned Gentleman comes from the merciful wing of his party and he knows the problem as well as I do.

I am pleased to see that the Chairman of the Select Committee on Home Affairs is present. In 1982, the Select Committee came up with a potential solution to the problem. It examined the matter in detail and made a good report. It unanimously recommended that some form of court of last resort should be set up with power to consider, among other things, evidence which was inadmissible before the courts. It is important to note that there would have been several non-lawyers on the panel. That was rejected out of hand by the Government, but after

some negotiation the Lord Chief Justice—who, even then, was Lord Lane—promised more flexibility in taking references back from the Home Office. If he ever made that promise, he reneged on it. One of the most interesting paragraphs at the end of his judgment in the Birmingham case was uttered in the knowledge that the Guildford and Woolwich cases were in the pipeline. He said: As with so many of these cases referred to us by the Home Office, the longer it went on the more convinced we became that the convictions were safe. In other words, "Don't waste our time by sending Guildford". The Department did send Guildford and we now see what happened.

In 1988 the hon. Member for Harborough (Sir J. Farr) and I attemped to amend the Criminal Justice Bill and implement some sort of court of last resort. We modelled our amendment carefully on the wording that the Select Committee had unanimously recommended in 1982. We attracted all-party support for the amendment. I regret that the hon. Member for Westminster, North (Sir J. Wheeler), who was on the Committee in 1982 and was present during the discussion of the amendment, did not support it. Indeed, he sat in silence and made a dash for the No Lobby at the appropriate moment. I hope that he will now reflect on the matter and come to a different conclusion.

The result is that we are now faced with further scandals which are corrupting the whole judicial system. Sooner or later a way out will have to be found. There is another possibility. Sir John May, a distinguished judge, is conducting an inquiry into what went wrong in the Guildford case. I have the highest expectations of Sir John May's inquiry, but the precedents are not all that good. The Brabin inquiry into the Evans case concluded, after he had been pardoned, that he probably had murdered the baby and not his wife. Sir Henry Fisher's inquiry into the Confait case concluded that the people who had just been released and had their convictions quashed were probably guilty. That had to be repudiated when the real killer was found. Lord Hunter's inquiry into what went wrong in the Meehan case concluded that Meehan probably had done it. He had to be repudiated when Meehan had to be given a large amount of compensation.

The precedents are not good, but I approach Sir John May's inquiry with an open mind. I noted that in his opening statement he made it clear to the police representatives that if anyone attempted to persuade him that the purpose of the exercise was merely to reconvict people who had just had their convictions quashed, he would not hear evidence designed solely for that purpose. I hope that he sticks to that.

It is interesting to note that the General Council of the Bar and the Law Society both submitted evidence to the 1492 May inquiry calling for some sort of court of last resort. A personal letter which I received from a Law Lord—I shall not embarrass him by naming him—states: The case for a 'Court of Last Resort' is a strong one. We need an independent court of review freed from the burden of routine work and with no track record to defend, which can review fact and law and is charged to consider the whole case. That is an idea for which the time has come. I regret that the Bill has not seized the opportunity, but it will have to be done at some time because this scandal is beginning to infect the whole of our judicial system. I hope that eventually it will be put right, if not by the present Government, then by a future Labour Government.

8.12 pm
§ *Mr. Humfrey Malins* (Croydon, North-West)

I begin by declaring an interest as a practising solicitor, and I shall try to make my speech brief. I have practised for nearly 20 years in a provincial firm of solicitors in the sphere of litigation, dealing with divorce, crime, licensing and civil work in the county courts and High Court.

If anyone had asked any of my clients their principal worry, apart from the quality of my advice, he might have heard about three principal concerns: first, why does everything take so long; secondly, why does it cost so much; and thirdly, why cannot we get legal aid? Therefore, legal aid, legal delays and the costs of law are the three great worries of the average client. Any Bill on legal services should address those particular issues because they are the ones that worry the public. I hope that my right hon. and learned Friend the Attorney-General is entirely happy that those three key issues are being addressed.

I shall mention but two matters in the Bill: first, access to the High Court. Hitherto, we have been entitled to take our cases to the High Court. There has been no restriction, and anyone can begin a case there, whatever the case. That has been good. It is excellent to increase the jurisdiction of the county court, but I wonder why we are proposing to restrict access to our High Court. Might we not consider introducing competition into the court system, giving litigants the choice of which court in which to begin—county or High Court—and then directing resources to those courts that prove the most popular? The ability to go to the High Court, unfettered, is an important one.

I sometimes worry that our High Court is monopolised by the big, corporate clients and foreign multi-national concerns, which have the ability to use our High Court system without paying a penny for the privilege, apart from their lawyers' fees. The more that such multinationals end up in our High Court, the less individuals from this country have the opportunity to take their case there.

The second aspect of the Bill is the cab rank rule, referred to so frequently tonight. In the past, it has been applied by the Bar. I agree with the hon. and learned Member for Montgomery (Mr. Carlile) that, by and large, the Bar has applied it pretty well. In my experience during 20 years, the Bar has been good in that respect. Solicitors, however, have not had to abide by the cab rank rule, although in my practice I tried hard to do so. I have occasionally had to turn a client away, but by and large I took each case as it came, whether I liked the nature of the alleged offence and whether or not the client had legal aid. 1493 It is important that solicitors practising advocacy should take cases, whether they be legally aided or private, and give a consistent and high standard of service to all.

I am glad that the cab rank principle has been inserted as a condition of obtaining new rights of audience. It is right that those who are granted the privilege of High Court rights should accept the burdens as well. I believe that I heard my right hon. and learned Friend say that he was considering exempting employed lawyers from the cab rank principle. If he did, I venture to suggest that this might be a mistake. I hope that in winding up my right hon. and learned Friend will develop that point.

I am concerned about the state of the solicitors' profession in 1990, compared with the profession 20 years ago. I am not sure that, today, a council tenant gets the same quality of advice as he or she would have had 20 years ago. I am not sure that the elderly lady on moderate means gets the same quality of service as she received 20 years ago. I am not sure that the best advice is still available to the poorest. Why is that?

There must be a variety of reasons. One may be that we are living in the days of the big battalions of law practices. I am worried that the big, slick city firms trawl round the universities, creaming off the best brains with the promise of corporate and commercial work in our big cities at treble the salaries of country firms. I am also worried that small firms in small towns amalgamate, and sometimes move out of town to create bigger organisations for the lure of corporate and commercial work. Other firms tend to concentrate more on the profitable work and delegate legal aid work to junior clerks or, worse, turn it away.

I say these things not by way of criticism, because everyone is human, but as something which makes me sad. I do not think that we are moving towards a system in which the poorer people in our society will retain the best quality of service. About 20 years ago, people tended to join a solicitor's practice because they wanted to serve the community. They knew they would have to do some unpaid work for the public good, but there was a certain dignity in the profession. Now, I am sorry to say, at the end of the year too many partnerships look not so much to the service for their clients, but to the service for their fleet of BMWs.

I conclude on that sad note. I mean it as no criticism of my brother solicitors. It is partly due to the world we live in, which is not a world I particularly like. Our duty in this House is to ensure that we pass a Bill that will result in the same quality of service for rich and poor alike.

8.18 pm
§ *Mr. Gerald Bermingham* (St. Helens, South)

I congratulate the hon. Member for Croydon, North-West (Mr. Malins) on his speech, which I wholly endorse.

I declare an interest as having been a solicitor in the past and a barrister now. When the hon. Member for Croydon, North-West talks about service in firms of solicitors 20 years ago, I know what he means. It was what I was hinting at during the speech of my right hon. and learned Friend the Member for Warley, West (Mr. Archer), when I suggested that we were approaching the matter from the wrong end.

We should consider how it feels to the man in the street —the chap who lives in the rural village who has a modest 1494 job, modest home and modest means. Several fates may befall him. His wife may walk out or he may get thrown out—it matters not because the principle is the same—and he will need matrimonial advice. Where will he go? Twenty years ago, when I practised as a solicitor in Sheffield and served the rural areas around, if that happened in Bakewell, Alfreton or another small village or town, a man could go to the local solicitor who had been in the village for 20, 30 or 40 years and knew the area and the problems. That solicitor, with the solicitor acting on the other side, could efficiently, and often at little cost, resolve the matrimonial problem.

The Bill will go to the statute book in its present form because those who thought it through, on issues such as conveyancing, forgot a crucial point: rural practices die without a conveyancing element. In the old days conveyancing carried many a private practice through the winter, so to speak. It was the financial backbone of a practice. Rural practices did not charge people who came in to make wills. Charging people for wills at commercial rates such as those charged in the City would involve hundreds of pounds, and what pensioner could

afford that? So the service was provided by the Law Society in the old days, and I hope that the society will continue to offer it.

The person in the village who wanted to buy a house, to get divorced or to make a will had a local solicitor. We shall rue the day when we say that commercialism and efficiency should supersede the element of service in the Law Society of yesterday. I must tell the Attorney-General in the kindest possible way that if he allows himself and the Government to be railroaded down this route he will be making a grave mistake.

Let us imagine that the man in the village runs over someone or is run over himself. Once again, he will need a lawyer, a specialist. In the old days he went to the rural solicitor, who sent him on, perhaps, to the town solicitor, who, in those days, knew about these matters—[Interruption.] My hon. Friend the Member for Bradford, South (Mr. Cryer) does not know much about these matters, and I must tell him that we are discussing an issue that matters to the vast majority of people in this land.

There comes a moment when a person needs good advice. In the old days he went to the local solicitor, in the village or the town. He could sort out what expertise was needed, which is where specialisation comes in. I concede that big London firms of solicitors have special expertise, but some of what we have heard recently in the Fayed case and others makes me wonder whether commercialism brings with it a price in terms of loss of integrity. We must be careful least money become a god in the profession. The moment that happens, professionalism will start to go.

For many years I was a local solicitor and when a local person came to me for advice I looked round for the man or woman who was expert in the relevant field, and sent briefs to this or that counsel because he was independent and good. Counsel knew what they were doing; they survive only one mistake. Thereafter, the word goes out and they are finished.

If the Bill is passed, if the cab rank rule goes and if the solicitor advocate who does not know these disciplines is allowed to pick and choose—as I pointed out in an intervention in the speech of the hon. Member for Hornsey and Wood Green (Sir H. Rossi)—the customer may not get the best possible advice. 1495 When I became a barrister I did not look on it as a change of profession. I saw it as another step in specialisation, because that is all the criminal Bar is—specialised advocates who know what a case is all about, who know the rules and who are efficient. That is the only way to survive. The profession is fiercely competive and we should not underrate it or write it off. On the contrary, we should remember its value and compare it with the American system. The Government should be careful: they are beginning to walk a dangerous road by allowing commercialism to override professionalism. Of course, we can resolve the problems of solicitor judges and so on, but let us always remember the man in the street. It is he whom the professions seek to serve and it is his interests that the House should be debating the Bill.

The Bill includes many mistakes that must be rectified. If, at the end of the day, a Bill emerges that will serve the man in the street with the best possible professionalism we shall have done a good job. We must cast aside our prejudices and think with open minds if we are to serve that man.

8.24 pm
§ *Sir Anthony Grant* (Cambridgeshire, South-West)

I had not imagined that I would find myself almost wholly in agreement with everything that the hon. Member for St. Helens, South (Mr. Bermingham) has just said.

I cannot claim to be a layman, but it is 20 years since I practised as a solicitor. Before that, I practised for some years in the City, and I am still a member of the Law Society. I think that I am unique in being the only Member to have been opposed at a general election—in 1970—by an official anti-solicitor candidate, the redoubtable Mr. Carter, who was one of the first to do freelance conveyancing. He made some nice remarks about me in his election address, and he lost his deposit, so all was well in the end. It was a bit hard on me, because I did not do much conveyancing at the time.

I want to speak first about advocacy and rights of audience. When I was practising, the last thing that my colleagues or I wanted was to appear in the High Court as advocates. We have plenty of other matters to occupy our time, and we wanted to use the best expertise we could find from the Bar. That was commonly true of the City of London and of other parts of the country; the system seemed to serve my clients and the interests of the country very well. That is why I wholly support the need to preserve an independent Bar. The last thing I want is that its members should become muddled up in the American style with attorneys here, there and everywhere.

The maintenance of an independent Bar is essential, and the amendments that my right hon. and learned Friend the Attorney-General has made to the Bill would make that possible, whereas the original Bill would not have. However, the Bar must recognise that, in Gallup polls—in so far as one ever pays attention to such polls —80 per cent. of people say that they want solicitors to have the opportunity to appear in court if necessary. It is ridiculous that solicitors cannot appear in certain instances which probably do not require the greatest expertise. That it why it is necessary to open up the rules and rights of audience.

I shall not go over all the arguments about the cab rank rule again, except to say that it is obvious that the clause imposed in another place, which was a wrecking proposal 1496 by their Lordships, needs careful reconsideration. I think that it was clear from what the Attorney-General said that that will be rectified in Committee. I certainly hope that it will be.

I want to say a word in favour of the Bar in relation to liability. The consumer associations are wrong to imagine that complete liability can be imposed on the Bar when it is carrying out its work. It is perfectly proper that it should be liable and not have immunity if it makes obvious errors, such as failing to turn up in court or acting in a grossly negligent way outside the court, but in court it is essential that the Bar enjoy immunity in the same way as witnesses and we in this House do.

If we were to be sued and dragged into court all the time, what sort of debates would we have here? The same applies to the advocate in court; he must enjoy immunity if he is to give uninhibited service to his client. We do not need to copy the United States or any other country slavishly in this respect. There is a tendency to think far too much in transatlantic terms. I have always been wholly opposed to the contingency free racket that prevails in the United States. Far too many litigants are dragged into all the traumas of court by over-exuberant American Perry Masons or people like him. It would be appalling if that came about here.

I am a little uneasy about the proposal for taking cases on spec, as it were. Anyone who is a Pickwick fan will recall how angry it made Mr. Pickwick that the odious firm of Dodson and Fogg was discovered taking the case of Mrs. Bardell on spec. A fat lot of good it did poor Mrs. Bardell, as it turned out. In Committee, we must be careful to ensure that the fees that a lawyer can charge for taking a case on spec should not bear a remarkable resemblance to a percentage of the damages obtained. I am not at all happy about that, but if we consider it carefully, we can probably reach a compromise. What we really need is not more but less litigation.

Conveyancing is the aspect of the law with which the vast majority of people come into contact. As has been said, it is the most important thing in their lives. I whole-heartedly agree with my hon. Friend the Member for Croydon, North-West (Mr. Malins) and the hon. Member for St. Helens, South about rural practices. The basis of small rural firms has been their conveyancing work. They have rendered a good service to their clients and have often provided other services free. Sometimes, even litigation has been subsidised by conveyancing work. That will disappear unless we are extremely careful.

I am disturbed that banks and big financial institutions will take over conveyancing. I hope that careful checks will be placed on them. Several banks have been acquiring estate agents. The standards of the estate agents' profession are much lower than those of the Bar, of solicitors or of any other profession. Many examples of abuses and conflicts of interest have been brought to light which have been to the great disadvantage of clients and humble citizens. It would be sad if the service rendered by traditional solicitors in rural areas to humble people was lost in a mass of gigantic conglomerates which operate on a purely financial basis. Therefore, the Lord Chancellor's regulations in clause 39 must be considered carefully.

In general, this is a good Bill, which moves in the right direction. I am surprised that the Opposition oppose it, and I cannot understand why. Much remains to be done in Committee. Most of the work will have to be done there. I ask the House, especially the Law Officers, to remember 1497 that cheapness is not always best. The old phrase "cheap and nasty" is as applicable today as when I learned it from my grandmother.

In recent years, the trend has been to treat conveyancing as a purely commercial activity. It is nothing of the sort. We have likened the profession's activities to selling bananas and second-hand motor cars. They certainly are not. They are different. If we are to make the legal profession effective—the Bill will help—we must bear in mind the need to preserve and enhance the lawyer-client relationship of trust, fearless support and independence. That is how clients and society will get the justice and redress which they deserve.

8.33 pm
§ *Mr. Eric Illsley* (Barnsley, Central)

I am a non-lawyer, so my remarks will be extremely brief. So far, most of the debate seems to have been something of a domestic dispute between the Bar Council and the Law Society about the relative merits of each profession. I do not want to enter into that, as I have no experience of it, but I wish to make one or two points about the Bill.

It is proposed that most future litigation will be commenced within the county courts. I am worried how that will affect personal injury cases. I have some limited experience of them

because I negotiated many settlements before I was elected to the House. My right hon. and learned Friend the Member for Aberavon (Mr. Morris) told us of the problems of the county court system and my local law society has related to me the problems and workload of various county courts throughout the country. It is worried that the Bill's provisions will not be backed up with adequate resources to resolve the delays and problems.

Again, it has been related to me that some litigants in personal injury cases may be disadvantaged by being required to commence their case in the county court rather than the High Court, especially if the case is serious or if the potential damages could be substantial. They will be disadvantaged by delays. Some negotiators and solicitors may be disadvantaged in negotiating a settlement, as the insurance company or defendant will know that the plaintiff has recourse only to the county court and not to the High Court, so has access to county court costs only. Some solicitors and negotiators believe that they will be disadvantaged in negotiating a high proportion of settlements because of that. Moreover, as all personal injury cases will fall on the county court system, it will be further clogged up, and there will be many more delays.

Potential conflicts of interest could arise when financial institutions, such as building societies and insurance companies, rather than solicitors, undertake conveyancing. I am no particular fan of the solicitors' monopoly on conveyancing, but I am aware of the dangers for the ordinary man in the street of changing it. An estate agent may advise him to take on an endowment mortgage, which will not be in his best interests if in a few years he moves house, as it will not have had a chance to mature.

The estate agent who provides the mortgage may recommend the in-house solicitor who can do the conveyancing at a reasonable or cut-price rate. The primary purpose of a building society or financial institution, which is to sell a financial package or a 1498 mortgage, could conflict with the best interests of the client. That is made worse when a tied practitioner is involved. As I understand it, he can give only best advice over the range of financial packages of products which he may sell.

Individuals in such circumstances will face considerable pressure. If an individual can be provided with all the elements of his house purchase at one office, he is unlikely to seek advice elsewhere. The basic principle is independent advice. Many people who enter into the largest purchase that they will make in their lives may not get that advice.

The hon. Member for Cambridgeshire, South-West (Sir A. Grant) also mentioned estate agents. On 1 March 1990, the consumer magazine Which? in an investigation of estate agents showed that some buyers were handicapped because they chose not to use the financial services of the estate agent. For example, a lower offer was accepted because the bidder agreed to take an in-house mortgage and to use in-house financial services. It is essential that such people are given strictly independent advice, and I hope that that section will be widely debated in Committee.

Clause 85 deals with the limitation period for the commencement of actions, on which I have been involved in some correspondence, again with regard to personal injury cases where the time limit appears to be being reduced to three years. Previously, a protective writ could be issued within three years, which would then allow an extra 12 months for a case to be prepared by solicitors. Proceedings will now have to be commenced within the three-year limitation period, apparently because the Government are seeking to reduce delay in such

actions. That is unlikely to be the effect. Indeed, delays could be increased. Moreover, many people may be denied access to the law in cases of personal injury simply because they have particular problems in preparing their case.

There are considerable arguments for extending the limitation period rather than reducing it —for example, in cases of serious injury, where the plaintiff may take a long time to recover; where the prognosis could not be established until some years after the accident, particularly in the case of a progressive industrial disease such as pneumoconiosis; or where knowledge of the claim or the right of action does not become apparent for some considerable time—for example, where a specialist engineer's report might reveal that there was cause of action where previously solicitors did not think that there was.

Under the new circumstances, proceedings could be commenced hastily to protect a claim within the three-year limitation period, and shortly afterwards the practitioner could find that, because of a rapid improvement in the medical situation or a technical report, the cause of action was dramatically changed. In such a case the solicitor might be liable for costs for commencing a case too early or in the wrong court. Recently, a solicitor wrote to me saying: Vast sums of money are wasted issuing writs most of which are never served against defendants who may perhaps be guilty but of whom many no doubt are completely innocent. It is an idle exercise: a scandalous waste of time and money which serves no useful purpose whatsoever. Reducing the limitation period will not solve the problem.

The clause will deny many claimants access to the law. Many people have come to me three years after the date of 1499 their accident and I have had the unhappy duty of telling them that they have no case to pursue simply because they are out of time because of limitation periods of which they knew little if anything.

The reduction in the limitation period will not reduce delay in cases; it will simply complicate matters. The civil justice review body said that the limitation period was to prevent defendants facing old cases, not to reduce delay. It did not say that proceedings should be commenced within that limitation period. That does not address the particular problem.

I welcome the creation of a legal services ombudsman. I have been pursuing a case for more than two years, but within 30 seconds of walking into an interview with the Law Society I was informed that the legal practitioner with whom I was dealing was negligent, that there was nothing that could be done about it, and that the individual concerned would have to sue. Two years later, I am no further forward with that case, despite considerable correspondence and many meetings. I hope that the legal services ombudsman will address that problem.

8.44 pm
§ *Mr. William Cash* (Stafford)

I have been the legal adviser of the Institute of Legal Executives for about 15 years, but not once during this Second Reading debate have legal executives been mentioned. Yet all who practise, either at the Bar or as a solicitor, will know the debt that they owe to legal executives. I am glad to see the former Solicitor-General nodding in agreement. It is important to acknowledge and to recognise the work that they do. They prepare instructions for counsel, they brief counsel and they are experts in procedure, probate, litigation, advocacy and so on. The Bill provides a unique opportunity to give them the recognition that they have earned over the years.

The Institute of Legal Executives was formed in 1960, but it owes its origins to the 1920s and the Managing Clerks Association and, in turn, to a former organisation which was founded in the late 19th century. Its record goes back almost 100 years. It has 20,000 members who take four general papers in law practice and four further papers. In 1989 no fewer than 15,000 members took the examinations. That gives some idea of the kind of work that legal executives do and the qualifications that they achieve.

In education, training and discipline legal executives play an immensely important role in the service of the law. They are well qualified, and the lack of recognition that they have received is extraordinary when, under the Bill, a person who is in no way qualified in the law could end up as a member of the Bench—an extraordinary state of affairs.

There are one or two clauses in which legal executives have a particular role to play. For example, clause 15 deals with whether a person should be granted a right of audience or a right to conduct litigation in relation to any court or proceedings. The criteria listed include

1. "(a) whether he is qualified in accordance with the educational and training requirements appropriate to the court or proceedings;
2. (b) whether he is a member of a professional or other body which—

1. (i) has rules of conduct … governing the conduct of its members;

2. (ii) has an effective mechanism for enforcing those rules of conduct; and

1500

3. (iii) is likely to enforce them".

In all those respects, important as they are, the member of the Institute of Legal Executives would expect to be granted a right of audience and the right to conduct litigation. I sincerely trust that that will be implemented when the time comes in the context of the advisory committee.

Clause 17 states that there will be 14 members of the advisory committee, excluding the chairman, making a total of 15, of which two must be practising barristers, two practising solicitors and two persons with experience in the teaching of the law. Eight other persons are to be appointed after consultation with such organisations as the Lord Chancellor considers appropriate. There is an overwhelming case for including at least one representative of the Institute of Legal Executives in that list.

As persons with experience in the teaching of the law are included, and as the institute has a crucial role in legal education, given its disciplinary code and the manner in which it runs its affairs, the time has come to give the institute the recognition that it deserves. That would be conferred not exclusively upon the institute, but upon its members. Such recognition would ensure also that they could enjoy the confidence that comes from knowing that they are recognised for performing the first-rate work that they have carried out in the public service for a very long time.

8.49 pm
§ *Mr. George Howarth* (Knowsley, North)

I, too, have no interests to declare, other than the fact that, in common with many right hon. and hon. Members, I deal from time to time with the consequences of legal cases and with solicitors and barristers.

I welcome, together with my hon. Friend the Member for Barnsley, Central (Mr. Illsley), the concept of a legal services ombudsman. Any right hon. or hon. Member who has dealt with a case against a firm of solicitors or a barrister knows of the appalling difficulties presented by the existing procedures of the Law Society and Bar Council. That is not to be critical of either body, but the existing arrangements and the relationships between both bodies, and between members of the legal profession and their clients, are so complex as to make it very difficult to secure a positive outcome. The result is, perhaps inevitably, always something of a fudge. My experience of the legal profession is that there is a need for an ombudsman, and I am pleased that the Bill makes provision for one.

No right hon. or hon. Member has yet welcomed the extension of the role of the Parliamentary Commissioner. There has long been a need to clarify the relationship between the commissioner's department and that of the Lord Chancellor in investigating the actions of court officers in relation to administrative matters in general. I congratulate the Lord Chancellor on addressing that issue. The provisions in the Bill mean that anyone who has waited for some time for money from the courts, for example, will be able to look for some redress from the ombudsman.

My final and most important point concerns compensation for those who are bereaved as a result of an accident. I particularly have in mind correspondence that I have received from members of the Liverpool Law Society following their experiences in dealing with the aftermath of the Hillsborough tragedy 12 months ago. The 1501 Criminal Justice Act 1982 provides for compensation of up to £3,500 where the deceased person was under the age of 18 or was a husband or wife of someone over that age. The experience of the consortium of Liverpool solicitors dealing with the bereaved families of those killed at Hillsborough is that neither category deals with all cases satisfactorily. They point out that the age limit is not the best way of assessing the relationship between a young person and his family. The youngster who continues receiving education at college or university after the age of 18 is a classic example of someone who is still, to some extent, dependent on his or her parents. The solicitors argue that the age limit is too arbitrary a criterion and that each case should be considered on its merits.

The 1982 Act does not provide for common law husbands or wives and thus reflect society as it is. The existing legislation creates much hardship and certainly a great deal of heartache in dealing with the aftermath of tragedies such as Hillsborough, Zeebrugge and King's Cross. The view of the Liverpool Law Society is that the amount of compensation should be increased. I suggest a figure such as the £10,000 proposed by my hon. Friend the Member for Leigh (Mr. Cunliffe) in a private Member's Bill.

The question of age as a key criterion for eligibility should also be re-examined, taking more generously into account the circumstances of the individuals concerned. Finally, in the context of compensation, common law partnerships should be recognised as being equally as valid as marriage. I hope that those important issues will be pursued in Committee. If such proposals are adopted, I am more likely to vote for the Bill at a later stage than I am tonight.

Several Hon. Members

rose—

§ *Mr. Deputy Speaker*

Order. The winding-up speeches are expected to begin at 9.20 pm. Four hon. Members who have been in their seats for a long time wish to speak, and I trust that they will share the remaining time available among themselves.

8.55 pm
§ *Mr. Ian Bruce* (Dorset, South)

Having listened to much of the debate, I feel that I need some relief from the constant chorus from the legal profession as to its wonderful nature. Frankly, if one talks to the individual who has used a solicitor for conveyancing or in litigation, one begins to realise that belief in the high quality of the legal profession is not well-founded.

Many believe that the legal profession is a delicate but perfect flower and that it may be damaged by market forces and the abolition of restrictive practices. That is a load of tosh and nonsense. I can think of no less efficient, less effective or slower profession than this country's legal profession. By and large, it would be difficult to find individuals having better intellectual abilities. However, they should be able to organise their affairs in a far better way. There is something very wrong with the ethos of the profession—which, despite the self-congratulatory facade that has been presented tonight, needs a thorough shake-up. I am not sure that the Bill goes far enough, but it goes some way to that end.

1502 It was incredible to hear right hon. and hon. Members in all parts of the House suggest that people buying houses should subsidise litigation by accident victims or divorcees. That is absolute bunkum. It was also claimed that solicitors give financial advice. I have bought five houses, but no solicitor ever gave me financial guidance, or said, "I know better than you, young man. Why not do this, that or the other?"

It is nonsense to suggest that a primary function of solicitors is to protect their clients from buying the wrong property. In the rising market of last year, I should like to know how many solicitors asked their clients, "Do you realise that house prices can fall as well as rise, and that interest rates might increase?" It is also claimed that solicitors are sensitive to local conditions and know what their clients should do, but that is largely untrue. It is certainly not my experience with the legal profession. The preservation of the legal profession's privileges is not in the public interest. The more that we can do to open up the profession and introduce competition the better.

I have been looking back at the amounts that I have paid for the conveyancing of my houses over the years. I first bought a house in 1969, and paid more in cash terms for a solicitor than I paid just the other year. I stopped using solicitors and first used the National Association of Home Owners, which was one way of getting round the solicitors' monopoly. Then I used an unlicensed conveyancer. Recently I have gone back to using a solicitor, simply because competition is such that solicitors offer a package that is too good to miss. The quality and the speed with which they get on with the job has gone up and up. The less money they charge, the less time they can take and the more efficient they must be. That must be good for the consumer—and we have heard so little about the consumer, other than the self-congratulatory remarks of the lawyers who are looking after them so well.

The idea that we should put any restrictions on the way in which the market for conveyances has opened up, or on the one-stop shopping for people to go in, obtain a mortgage and financial advice and get their conveyancing done, should be strongly resisted. We need regulations that protect the consumer but do not protect the monopoly of the legal profession.

Let me give a few examples. I bought a house in Huddersfield, along with 200 other people on our estate; after several years it turned out that the sewers had collapsed. Almost every solicitors' practice in Huddersfield, and in many surrounding towns, was involved in conveyancing houses on that estate. We are all told that if we use a solicitor we shall be protected against anything going wrong, but what did we find? All the solicitors had sent a Law Society form to the local council, asking whether the houses were connected to a public sewer. The local authority's answer was yes. What the form did not ask was whether it was the public sewer in the road immediately outside the house or the one two miles down the road. According to the Yorkshire water authority, the sewers in question were not adopted sewers.

All 200 house owners went back to their solicitors and said that they had not looked after their interests. The solicitors said, "We sent the form saying that the houses were connected to a public sewer, but you did not ask whether the sewer was in the road outside the house. We had to find that out for you." The problem went on for years. Eventually, a senior solicitor in one of the firms in Huddersfield got together with all the authorities, banged 1503 their heads together and finally sorted the problem out. The local authority and the water authority put money into a kitty, and the householders did not have to shell out anything. The solicitors all denied liability. None of them wanted to know when we asked whether it was possible to sue a solicitor for not protecting his client properly. All the humbug about solicitors protecting people is so much hot air.

Because the builder of that estate had gone bankrupt, I decided to go to an auction to buy the freehold reversions of the leasehold properties and put them out to tender so that people could buy them individually. I hoped to use only two solicitors—one for myself and one for the people wanting to buy. The solicitors said that all those wanting to buy could not use a single solicitor; they had to use separate solicitors. Two years later, not one freehold reversion had been conveyed to those people, because of the delay caused by solicitors saying that it was not worth their while to do the work. We gave them a three-month deadline to complete the work, but only half met it. I still own most of those freehold reversions today, and they provide me with a reasonable income.

I congratulate whatever Government brought in the small claims procedure. As a small business man in Yorkshire, I found that solicitors were not interested in going to court on my behalf to chase up debts of £200 or £300. I was able to find out from a helpful solicitor's clerk that it was possible to use the small claims procedure on my own. Because I was self-employed, I could go in and litigate against people who did not pay their bills. In the 10 years for which I did that, I probably handled 200 or more cases, most of which were settled out of court.

It is a simple procedure. When we went to an arbitrator, as long as there was a solicitor on the other side I knew that I had won, because they were never properly briefed by their clients and they never had enough information to fight the case properly. I lost only twice—to two little old men who were so befuddled that the arbitrator felt sympathetic towards them.

The maximum limit of £2,000 to take someone to a small claims court is ridiculously low. It would go nowhere if a builder came to build an extension, for instance. The amount should be raised to £10,000, £20,000 or even higher. Why should not people use the county court procedure, which is so simple? The arbitration procedure is easy and it allows the arbitrator to ask proper questions. It is a good and informal way to sort out disputes. It is essential that directors of small limited companies have right of audience in a county court. Currently, unless they are self-employed they do not have that.

Contingency fees are another way of shaking up the legal profession and of giving rights of access outside the legal aid system, and we should try to do that more and more. The freeing of rights of audience would help by providing competition. It would allow the winds of change to blow through the legal profession.

I have rapidly read through my notes because time is short. I am glad that the Bill has been introduced because it helps the consumer. However, consumers are far from satisfied with the legal profession. I am referring in the main to solicitors, as I am glad to say that I have not had to go to litigation with barristers looking after my interests. I have heard scare stories from people who say that their barristers have been badly prepared, do not have a proper brief and therefore do not represent them properly. I urge the Government carefully to consider the 1504 possibility of a barrister being negligent—not that he had poor judgment or that he has not done the job as well as another barrister might have done it. It should be possible to prosecute for negligence. We must ensure that people can get lawyers to fight cases against fellow lawyers.

§ 9.6 pm

§ *Mr. Keith Vaz* (Leicester, East)

I wish to declare an interest as a former law centre solicitor, although I have not practised since the general election. I join other hon. Members in paying tribute to the radical nature of the Lord Chancellor's proposals. I broadly support them and I congratulate him on his courage in walking through the minefield of the unseemly row between solicitors and barristers. Nothing becomes the profession less than the way in which they squeal as they fight to retain their diminishing monopolies.

The proposals may founder not because of the self-interest of the profession, but because it lacks the resources necessary to carry them through. I welcome the extension of the rights of audience for solicitors. I was persuaded a long time ago of the necessity for a fused profession. It is wrong that members of the public must pay twice for representation. It is wrong that they must pay twice when their representatives switch halfway through the case. Solicitors are specialised in certain areas and it is right that they should be allowed to represent their clients in the highest courts of the land. I welcome the establishment of an advisory committee, which will have a lay majority.

On the cab rank principle, I am convinced of the need for a principle that allows solicitors to take on any case that comes their way. That is especially important for legal aid work. However, I was a little confused by what the Attorney-General said about the sex discrimination and race relations legislation. I am not sure whether he meant to include his reference on the cab rank principle. I hope that when he replies to the debate he will say whether it is possible to use any of the exemptions in that legislation. For example, could a

woman solicitor represent only women clients if that was what she wished? I should like the cab rank principle to be represented in a code of practice rather than in the Bill. I am a little concerned about the way that it has been advanced by the Bar to coincide with the fact that solicitors are to have an increase in their rights of audience.

I welcome the changes during the last few years that have allowed people to use licensed conveyancers, and have resulted in a reduction in the cost of conveyancing. I have yet to meet many starving solicitors as a result of those changes. We should pay tribute to the work of my hon. Friend the Member for Great Grimsby (Mr. Mitchell), who was one of the first people to propose such legislation through his private Member's Bill. The law has been changed, but my fear is that it will go too far.

I am not convinced that big financial institutions will be able to draw the line on conflicts of interest. I have been convinced by the arguments of my local law society, especially by Peter Smith, the honorary secretary of Leicestershire Law Society, who sent me a number of cuttings from local newspapers, and one from Today dated 26 February 1990. I do not wish to say that I believe everything that appears in Today but the article seems to highlight a particular case, in which the Halifax Building Society, acting as estate agent, was able to convince people 1505 of the need to accept a lower offer by saying that by accepting that offer it would be able to arrange a mortgage. Those hidden costs of borrowing will become a feature if conveyancing is extended to financial institutions using in-house solicitors.

I like the idea of multi-disciplinary practices, but I think that they are unworkable in practice. They will threaten the independent and impartial service which solicitors now give. They will threaten client confidentiality and will make it more difficult for clients who are concerned about proceedings to pursue a complaint.

I wholeheartedly endorse the comments of my right hon. and learned Friend the Member for Aberavon (Mr. Morris), which I am sure my hon. Friend the Member for Norwood (Mr. Fraser) will repeat, on the county courts. I and other hon. Members support the transfer of cases from the High Court to the county courts because we believe that that will enable them to be dealt with under the small claims procedure or other procedures at a local level far more effectively. However, I remind the Solicitor-General, who sat on the Committee that discussed the Children Bill, as I did, that when put into effect the Children Act 1989 will place a greater burden on the county court system. It has been remarked that the county court system makes a profit of £6 million a year. I do not see why some of that money cannot be used to lessen the present delays in the county court system and to make it easier for people to litigate before it. If the attention that we seek is not given to the county courts, the system will collapse.

I should have liked to have seen something more in the Bill about training for solicitors, but perhaps that will come later. I should also have liked to have seen some reference to the creation of family courts. During the passage of the Children Act, the Solicitor-General promised that at some stage he would come back to the House and report on the rolling programme that he has instituted to establish family courts. I believe that the Bill provides an excellent vehicle for a family court system, and I hope that we shall have some assurances in his winding-up speech that he will accept that.

I welcome the establishment of a legal ombudsman. I am concerned at the refusal of the Government and of some hon. Members to enable consumers, should they wish, to sue their

advocates if they make a mess of cases. It is ludicrous that solicitors and barristers are immune from litigation if they do not conduct their cases properly.

In the past 10 years, Parliament has legislated for rights which cannot be enforced because citizens cannot pay. The legal aid system is in severe crisis. The Attorney-General has just returned to the Chamber. He will recall that on 12 February, when I initiated a debate on legal services, I pointed out to him that I would not like justice to be cash-limited—I referred to it as justice-capping. I gave him some figures which he has not countermanded today. In the past 10 years, 15 million people have lost the right to legal aid, and last year 8 per cent. fewer people were granted legal aid than in the year before and there was the second largest drop in use of the scheme from 1,700,054 to 994,066. There has been a 3 per cent. drop in the granting of civil aid certificates. The Attorney-General himself used the figures when he spoke about the percentage decline and the number of people eligible for legal aid.

1506 At local authority level, law centres, advice centres, citizens advice bureaux and other agencies that provide necessary advice for local people are being squeezed.

Our system of justice does not exist merely to feed barristers and solicitors or to provide employment for court clerks. The courts and the professions exist to enable ordinary people to obtain justice. Justice must never be seen to be cost-effective, but it must be administered effectively. There is still genuine anger that the law is expensive both in time and money, inaccessible, favours the privileged, conducts itself in jargon, supports monopolies, is remote and is conducted by lawyers for lawyers. Our duty as legislators is to put an end to those excesses. That will not happen with this Bill, but given good will in Committee we may set out on the right road. I warn the House at this early stage that without the proper resources the journey will not even begin.

9.15 pm
§ *Mr. Michael Irvine* (Ipswich)

I decline to follow my hon. and learned Friend the Member for Burton (Mr. Lawrence) in his doom-laden and over-lugubrious approach to the Bill. I want every bit as much as he does to maintain an independent and strong Bar, which is the key to the Government's intention of providing more choice to the litigant. Without a strong and independent Bar, the litigant's choice will be diminished. With it, it will be enhanced.

Where I differ from the diagnosis of my hon. and learned Friend the Member for Burton is that I believe that the Bar is robust enough to stand up to the extra measure of competition that the Bill will bring. Of all the professions, the Bar is probably the most competitive. There is competition to get good pupillages, competition to get into good sets of chambers, competition between sets of chambers and competition between members of chambers. The Bar is a robust profession and is well able to take care of itself.

However, I have one anxiety that is shared by many fellow barristers. It relates to the recruiting activities of the major City firms of solicitors. They are anxious to recruit the brightest and the best from the Bar, and they have deep pockets with which to do so. Indeed, they are already doing so to a considerable extent. When the Bill is enacted they will be in a position to recruit from the Bar in-house lawyers who will still be able to continue to practise in the High Court and the principal appellate courts. It will be more tempting for members of the Bar to leave and to join those firms.

That is a fear with some substance, but the approach of many at the Bar is too pessimistic. Although there are certainly advantages in being an in-house lawyer, there are also disadvantages and frustrations. The Bar will be able to surmount that competition and will continue to attract many of the best and brightest. I also foresee that many people who leave the Bar and join the large City firms as in-house lawyers will in time return to the Bar as independent practitioners.

A further anxiety about the Bill relates to contingency fees. It is crucial to the effective and efficient administration of justice that there is absolute trust between the judge and the advocate appearing before him or her. A barrister has a duty to the court which may conflict with the interests of his client. He has a duty to draw the judge's attention to cases that go against the 1507 argument being put forward. There is a duty to disclose documents that are unhelpful to the case. There is also a duty not to harass unduly or unfairly the witness who is being cross-examined.

My main anxiety about the contingency fees—I am glad that we are adopting the Scottish rather than the American system—is that, because the barrister's financial advantage is caught up to a much greater extent with the outcome of the case, there will be greater pressures brought to bear on our current high professional standards.

I believe that the Bar will be able to withstand those pressures, as will our friends the solicitor advocates who will be joining us before the High Court, the Court of Appeal and other appellate courts, but there are some risks in the Bill. Good reforming measures often carry risks. On the whole, the Bill is a good one and I commend it to the House.

9.20 pm
§ *Mr. John Fraser* (Norwood)

We have had a fair, critical and open-minded debate. There has been no difference about the Bill between the two sides of the House. The debate has not been dominated entirely by the legal profession, and there has been no unanimity between Labour and Conservative Members. In all, we have had a good, stimulating debate and the Bill has had a healthy start before it enters Committee.

The debate vindicates the Opposition's decision not to vote against Second Reading tonight. We support many parts of the Bill, but it was right for us to table a reasoned amendment, for which we will ask the House to vote. Our amendment fills out the frame for the Bill and provides performance standards by which we shall measure the way in which the Government provide both for the reform of the legal profession and for the access to law for people throughout the country.

The Bill cannot be described as having a single theme. On the one hand, it deregulates part of the profession, and on the other it introduces at least five quangos. It is a Bill for the English courts and the English legal profession.

§ *Mr. Alex Carlile*

And for the Welsh.

§ *Mr. Fraser*

And for the Welsh—I beg the hon. and learned hon. Gentleman's pardon. It is a Bill for the English and Welsh legal professions, and it was introduced by a Scots lawyer. This must be the first occasion on which legislation, in its early stages at any rate, has led to threatened industrial action by the judges and the threatened resignation of the Attorney-General.

With one hand, the Bill gives rights and opportunities for solicitors to become judges or have rights of audience in the higher courts, yet it almost takes those rights away with the other hand. In Committee we will want to consider the possibility of a single designated judge exercising a right of veto over the extension of the rights of audience. We want to get that balance right when we examine that matter in Committee.

The Bill reforms the courts system, but it does absolutely nothing about the obscurities surrounding the selection, training and appointments to the judiciary—and by judiciary I mean both the High Court and the magistrates bench. In the light of what the Attorney-General said in his opening remarks about equal 1508 opportunity and avoiding discrimination, it is even more important that we should open up that area of the legal profession to reform as well.

As I have said, we will not vote against Second Reading tonight, because there is a great deal in the Bill that we can support. However, we would have had a better Bill and the progress of legal reform and the reform of the courts would have been assisted if we had had such a debate a year ago, when the Government produced their Green Paper and then their White Paper. The quality of today's debate sustains the argument that this is the kind of subject on which the House should be consulted at a much earlier stage and on which we could have made a constructive non-party contribution to the development of policy. It is a pity that the House has come to the matter so late in the day.

What should be our attitude to the reform of the legal profession and the provision of services? I declare an interest, in that I am a lawyer. From time to time, we are not popular either as lawyers or as Members of Parliament, even among our colleagues until—as all hon. Members will be aware—someone actually wants advice. One is reasonably popular on those occasions, but one is not always universally popular at other times.

There is great danger in confusing qualifications with monopoly. Competition is not distorted by those who offer services being trained, having high standards and being competent to practise—indeed, rather the reverse. Competition is helped by having a common set of specifications and qualifications. Competition is distorted only when access to a qualification is not open to all, or when a qualification provides restricted entry to doing something for which it is not necessary to have the qualification at all, or when anti-competitive behaviour is imposed as a condition of holding the qualification—for instance, prohibitions on advertising and price display. There would have been less criticism of the professions if the Law Society and the Bar had revised their rules, particularly in respect of advertising and making information known about services provided, much earlier.

The trend of consumer protection has been in favour of tests of competence—for instance, the control of conduct of estate agents, house builders, insurance brokers, investment business, doctors, dentists, nurses, teachers and so on. It would be short-sighted if we were to reverse that process for lawyers, because their practice becomes more complicated all the time and demands more, not less, training and more qualifications. We meet the needs of the

consumer if we make sure that people are properly qualified. We shall certainly want an even playing field and proper regulation when we deal with these matters in Committee.

Although protection of the consumer is important, it is not the only consideration when it comes to regulating legal services. There must also be an ethical commitment to an ideal of truth, trust and fairness, even if the lawyer suffers in the short term by obeying it. If the professional ethic is lost, in the long run the consumer will lose as well.

There are two classic examples, one of which will appeal to my hon. Friend the Member for Sunderland, South (Mr. Mullin). One occurs when a defence lawyer is asked to plead innocence of a crime to which the defendant has unambiguously confessed to the lawyer. Lawyers are constantly asked, "How can you defend somebody who has told you that he has done the crime?" Of course he cannot. The second example is not the defence lawyer but 1509 the prosecuting lawyer who suppresses evidence which, if made available to the defence, would lead to the acquittal of the defendant. Those are two examples in which the duty of the lawyer, whether to the client or to the state, must override the instructions that are given to him by the client. If he otherwise overcomes his professional scruples, he is in effect taking money to tell lies knowingly or to suppress the truth from the court or from his colleagues.

I mention those points not because I think that lawyers are particularly self-righteous or better than other professions. I do not think that they are. Many professions have an ethic. It is not right to say that, as a member of the legal profession, one treats these matters on a higher plane than people in other professions. I mention those points to underline the fact that one simply cannot have purely competitive, market, money-making considerations as the only basis for this legislation.

We do not want a Bill that will create injustice. I am glad that my hon. Friend the Member for Barnsley, Central (Mr. Illsley) mentioned that clause 85 will create a real injustice. At the moment, everybody knows that, if they have a claim for personal injury, with some exceptions the writ must be issued within three years. That is a certain period and it allows for a solicitor to have three months afterwards within which to serve the proceedings. Many people will suffer major injustice if clause 85 remains as drafted. When matters go to court, there will be arguments about whether service of the proceedings took place.

There are many examples. A company may change its registered offices and writs may be sent to the wrong place. There is a great possibility of creating uncertainty and injustice if clause 85 remains in the Bill. We shall return to that point in Committee.

The Bill gives new rights to conduct legal services, such as probate and conveyancing and, to a small extent, litigation. In Committee, we shall try to ensure that the Bill works even-handedly between practitioners, and follows the principle that independence of advice to the client should be preserved. There are too many temptations and imperfections for this matter to be left to market forces. My two examples have already been touched on. The first relates to probate. We do not oppose, the Law Society does not oppose and no one in the profession opposes in principle the extension of the ability of non-lawyers to take probate cases. If a bank or an insurance company has been appointed as an executor, it is right that it should be allowed to get probate itself, provided it is properly qualified to do so. However, at the moment, solicitors are under an external supervision in terms of the amount of money that

they can charge for probate cases and it is well known that banks and insurance companies charge about three times as much for carrying out probate services.

In another place, the Government said that that matter should be left to the market, but we must remember whom we are talking about and the people who pay that three-times-higher bill, should that occur. First, those concerned will not be the executors of the will. They will not be in charge of the administration of the assets of the estate. Secondly, the original customer is dead—otherwise the will would not go to probate. Thirdly, those involved may well be widows or children who do not have any legal capacity. One cannot say that that class of consumer—on 1510 the one hand, the dead consumer and, on the other hand, the vulnerable consumer, who is perhaps a minor—will be properly protected by the operation of market forces. Although I do not oppose the provision in principle, there must be an appeal to a third-party authority about the level of charging because the scale of charges might have been fixed long after the testator made the will or even after the will has been probated.

My second example relates to conveyancing. Again, there is no opposition in principle, because Labour Members have been instrumental in widening the choice of conveyancing services, while maintaining standards of competence and behaviour. I am sorry that my hon. Friend the Member for Great Grimsby (Mr. Mitchell) was not called to speak in the debate. If financial institutions carry out the conveyancing, the question that arises is whether they will perform that work primarily for the consumer's benefit or for their own. The problem is whether they will undertake what is known in other trades as "cherry picking"—that is, taking those parts of the work that are attractive and remunerative and leaving those that are unremunerative.

I shall summarise my point by considering the amounts of money involved in a conveyancing transaction. Let us assume that a house is sold for £100,000 and, for the sake of argument, that the conveyancing charges will be £500. In the same transaction, the commission for the sale of the house will be £2,000—about four times higher than the conveyancing fees. I repeat that we are talking about a financial institution that may earn £2,000 in commission for the sale of the property as opposed to about £500 in legal and conveyancing fees.

However, we must then add another factor. Let us assume that the property is sold on a mortgage of £60,000 backed by an endowment policy. The commission on that endowment policy might be worth about £1,000. Therefore, on the one hand, there is the consideration of making £3,000 in commission on the sale and the endowment and £500 for the so-called "independent" advice that is being given to the person undertaking the conveyance. Under those circumstances, one must consider whether, unless there are countervailing rules, completely independent advice will be given to the person undertaking the conveyance.

There is a simple way out of that, especially in relation to the endowment. As the hon. Member for Hornsey and Wood Green (Sir H. Rossi) has pointed out, it is reckoned that about £680 million per year is lost by people surrendering endowment policies that they would otherwise have been well advised to maintain. The answer probably lies in the Lord Chancellor exercising his powers to compel the financial institutions to disclose the commission that they receive as a result of the sale of an endowment policy. Solicitors have to do that now. They must not only disclose the amount but account for it to the customer. There must be an even playing field if we are to ensure that the first consideration, which is independent advice, is achieved and that there is fair competition between the professions.

The deficiencies in the Government's approach to these matters form the subject of our reasoned amendment. The first deficiency is the failure to deal with the inadequacy of legal aid. My hon. Friend the Member for Leicester, East (Mr. Vaz) gave some telling figures. The truth of the matter is that, although expenditure on legal aid has increased during the past 10 years, in the past two or three 1511 years, the number of people who obtained legal aid advice and assistance has fallen off. More worryingly, there is now a falling off in the number of firms undertaking legal aid work. That has never happened before. The reason why it is happening is that the Government have geared the reward to people undertaking legal aid—both solicitors and barristers—at a figure well below the real costs and the inflation rate for conducting legal work.

The reward this year is about 7 per cent., compared with a real rate of inflation in legal costs and the costs of running a legal practice or barrister's practice of about 12 per cent. That has had a cumulative effect over the past few years. The consequence is that people are increasingly getting out of legal aid work. If we carry on giving third-class rates of reward to people who do legal aid work, we shall at least finish up with a second-class practice. That is not right. Access to the law and quality of representation should be commensurate with the case. The way in which legal aid has been drifting is militating against that.

The second deficiency in the Bill relates to the conduct of county courts. There was some attraction in the suggestion of the hon. Member for Croydon, North-West (Mr. Matins) that there should be competition between one county court and another. Indeed, there is some such competition. In some county courts, people submit voluntarily to their jurisdiction because they know that in court X an application under the Landlord and Tenant Act 1954 will be dealt with in seven days, whereas in court Y it will be dealt with in about six weeks or two months. There should perhaps be some competition between one county court and another.

The Government should think about a second practical matter—the difficulty of a litigant coming up against the same judge time and time again. In the High Court, at least there is the advantage that, unless one is unlucky, one will not get the same judge twice. Especially in country jurisdictions, there is often the possibility that, if either the advocate or litigant upsets the judge on one occasion, they will upset him on every subsequent occasion. That is a perfectly serious point. If we are to push more work down to the county courts, the judges should move around as well as the litigants.

Our greatest fear is that, on present performance, the Government are delegating work to a pretty ramshackle structure. I have just looked through a brief list of claims of maladministration against county court staff. It makes horrific reading. At Braintree county court, the list was overloaded and a case was adjourned. The same thing happened at Bromley county court and at Edmonton county court. At Exeter county court, the judge did not turn up. The registrar did not turn up at another county court. Cases have been incorrectly listed for a registrar —and so on.

Anyone who has any passing aquaintance with the operation of the county courts will be deeply worried about the standard of performance and the possibility of loading a huge amount of work on to a structure that cannot cope with the business now. The Attorney-General said that some staff would be released because the county courts will no longer operate payments systems. I am not sure that that change will operate to the advantage of

some smaller litigants, who will say that they paid their money directly to the plaintiff. The bailiff will come in and find no independent record of whether money has been paid or not.

1512 Our last criticism is that nothing in the Bill modernises except in the slightest detail, or makes transparent our system of recruiting, training and selecting the judiciary, or puts into statute any criteria for that exercise. That is in stark contrast to a Bill that sets out the criteria for the duties of the advisory committee.

The way in which judges and magistrates are selected or permitted to apply for the bench should be open and transparent and placed outside the control of political appointments. They should be the subject of the Judicial Appointments Group and take into consideration the elimination of prejudice or operation of discrimination through sex or race. As far as possible, the judges should reflect the composition of the community upon which they sit in judgment. These should not be secret matters, subject to political control. We were accused of trying to ensure political control of the appointment of judges, but we want to see that removed entirely from the political arena. I can think of one case in which the Prime Minister operated a political veto in respect of a judge's appointment.

As my right hon. and learned Friend the Member for Warley, West (Mr. Archer) said, this is an enabling Bill, the final shape of which is not known. In our reasoned amendment, we try to sketch in a framework in which the change will take place and provide, in the course of our Committee discussions, for a comprehensive legal service in which the quality of and access to representation before the courts and tribunals are not dependent on wealth, privilege or advantage, but provide equal access to the law throughout the country. The Bill will not do that, which is why we have tabled our amendment. If our amendment is not passed, we shall try to achieve those goals in Committee.

9.42 pm
§ *The Solicitor-General (Sir Nicholas Lyell)*

This has been an interesting and valuable debate with varied contributions from both sides of the House. If we had shut our eyes it would often have been difficult to know from which party or interest any particular contribution had come.

The Bill tackles and sets out to resolve major issues which have required attention for many years. The hon. Member for Norwood (Mr. Fraser) made a number of detailed comments which I look forward to taking up, considering and discussing further in Committee. The hon. Gentleman has a great deal of knowledge, having practised as a solicitor in London, and it has been a pleasure to work with him on previous Committees.

The comments made in the debate covered the key topics in the Bill. First, there is the civil justice review, which the Bill implements and which provides the first major structural reform of our system of civil justice since the judicature Acts of 1873. That aspect has been generally welcomed. The only point made about it was that it required adequate resourcing. That point has been firmly made by the Lord Chancellor and, in so far as it forms part of the criticisms underlying the Opposition's reasoned amendment, I shall return to it in detail later.

The second key aspect is the creation of a framework —I emphasise that word—to enable the structure of the legal profession to develop through a process of evolutionary change. That has been welcomed, but it was also questioned by the right hon. Member for Llanelli (Mr.

Davies), who asked how it would work in the Bill. It is 1513 important to emphasise that the Bill creates not the result, but the framework for producing the result. It will initially be a matter for the profession, or parts of the profession, or for other professions, to come forward with proposals which will be examined by the advisory committee under clauses 15 and 16, by the Lord Chancellor and by the judiciary, through the four senior designated judges. Their combined wisdom will come forward and their combined agreement will be necessary before changes can be made.

It must be recognised that the Bill follows years of difficulty, particularly between the two parts of the legal profession—barristers and solicitors—which has been to some extent reflected in the carefully considered arguments put forward from either side of the debate. It was evident that the arguments were advanced not from either side of the Chamber but from the two points of view. I think of the eloquent arguments on behalf of solicitors advanced by my hon. Friend the Member for Hornsey and Wood Green (Sir H. Rossi) and the eloquent arguments on behalf of barristers put forward by my hon. and learned Friend the Member for Burton (Mr. Lawrence), the hon. Member for St. Helens, South (Mr. Bermingham) and the hon. and learned Member for Montgomery (Mr. Carlile). All those arguments were reflected in the responses of barristers and judges to the Green Papers—the "quality of justice"—and they will have to be combed through and evaluated by the professionals themselves in the first instance to see what kind of structure they come up with. It will then come to the Lord Chancellor and the judiciary for approval, or the lack of it, as the case may be. In that way, what has often been an agonising debate, which has properly been passionately discussed by those on both sides, should find a way of making progress, and a system which had not shown much capability of gentle evolution should find a way of effecting evolutionary change.

The third key point in the debate concerned the creation of a framework within which to encourage wider competition in conveyancing and probate services. The other sensible reforms relating to the appointment of the judiciary, allowing solicitors to make progress up the judiciary, judicial pensions, the power of the Law Society to regulate solicitors, and the extension of the jurisdiction of the Parliamentary Commissioner for Administration to cover court staff were also mentioned. The extension of the commissioner's powers was widely welcomed, not least by the hon. Member for Knowsley, North (Mr. Howarth), one of the laymen who played a significant part in the debate—with his hon. Friend the Member for Barnsley, Central (Mr. Illsley) and my hon. Friend the Member for Dorset, South (Mr. Bruce).

In its major aspects, the Bill tackles problems that have been the subject of serious debate for as long as I have been in Parliament—almost 11 years—and for which there has been a growing need for resolution for all the 25 years I have been in practice as a barrister.

Like my right hon. and learned Friend the Attorney-General, I was taken aback to learn that the Opposition appeared to be seeking to oppose the Bill as a matter of principle, but it has become clear from the speeches of the right hon. and learned Member for Aberavon (Mr. Morris) and of the hon. Member for Norwood that the Opposition do not oppose the Bill itself 1514 but are putting down a marker with regard to two aspects of it—resources for the county court, and legal aid—by means of their reasoned amendment.

First, I wish to rebut as strongly as I can the comment by the right hon. and learned Member for Aberavon that legal aid is withering on the vine. That is nonsense. When the right hon. and learned Gentleman's party left office, legal aid was being funded to the tune of £119

million per year. It is funded now at about £589 million—almost a fivefold increase in value and about 150 per cent. over and above inflation. That can hardly be described as withering on the vine. Nor do I refer to monetary value alone. The aspects of legal aid which are important to this Bill include the fact that the number of civil legal aid certificates has increased from 190,000 10 years ago to 259,000 today—an increase of about 30 per cent. That is a picture of steady growth.

The right hon. and learned Member for Aberavon and the hon. Member for Norwood criticised the Lord Chancellor because he has set in train a review of legal aid, coupled with the careful administrative review that the Legal Aid Board is carrying out, and because he is seeking how best to target the money on legal aid. That is not a matter for criticism. It is a matter of good government. I do not know what impression the Opposition wish to give the country about legal aid. I have peeped into their policy review to see what they say. [Interruption.] I see the hon. Member for St. Helens, South scowling. He would no doubt wish nobody to look into that document and probably shrinks from looking at it himself. It states: Over time and as resources become available we intend consistently to improve access to legal aid. That is the kind of general statement which will thrill everyone in Knowsley.

The realistic step to take is exactly that which the Lord Chancellor is taking—to look carefully at where best to deploy the money. As he has said, he will not wait three years to come forward with sensible proposals—he will introduce them as and when his scrutiny throws them up. I remind the House that as recently as 9 April the reforms that the Lord Chancellor announced in November came into effect. Under those reforms, children's means are to be assessed separately from those of their parents, pensioners dependent on a small capital nest egg will get additional protection and all litigants in personal injury cases will have the benefit of an increase in the upper limit. That will help many people to gain better access to legal aid.

§ *Mr. George Howarth*

Will the Solicitor-General give way?

§ *The Solicitor-General*

I hope that the hon. Gentleman will forgive me, but I have several points to answer and not much time in which to do so.

The Opposition have argued the need for adequate resources for the county courts. The Lord Chancellor has recognised that there have been problems in the county courts. The hon. Member for Norwood scratched around his notes to pull together some rather disparate problems from individual county courts. I do not deny that those problems exist or that there may be more, but the Government are tackling them. Expenditure is being increased. The Lord Chancellor has made it clear that the civil justice reforms will come in stages and not before the courts are ready.

The number of circuit judges has increased steadily from 353 five years ago to 408 now. That is a significant 1515 increase. As a result of the last autumn statement, the number of staff in post is to increase by 350 this year to carry out the administrative work of the courts. This year there are to be up to an additional 100 staff for the civil justice review and the Children Bill, which was mentioned by the hon. Member for Leicester, East (Mr. Vaz). The need to

handle suitor's cash will be ended. It may lead to one or two difficulties, but it is a sensible way to relieve county court staff of a job which plantiffs and defendants can do better themselves. That will release some 350 staff for other work. The summons production centre at Northampton is imaginative thinking. Large users of the county court can issue summonses, which some do in large quantities, highly efficiently. That will result in a saving of 50 staff.

Under present administrative procedures some 1,500 trials a year come down from the High Court to the county court and are handled by 50 trial centres. In my early days in the county court, if a case went over more than one day, one would stand back and go away for three to five weeks. Cases dribbled on for months. That will not happen. An additional 25 trial centres are in the pipeline. That is the proper and, dare I say it, the Conservative way to manage the system, to get it working better so as to meet the needs of the day.

I want to try to answer one or two points raised in the debate. My right hon. Friend the Member for Westmorland and Lonsdale (Mr. Jopling) spoke as a layman, and laymen are to play an important part in the advisory committee where they are to have a majority. It is in the interests of the public and users of legal services that the reforms are rightly being brought forward. My right hon. Friend made three points about probate, mortgages and tied practitioners. The answer to his point on probate is that at the moment there are no provisions for the administration of estates after grant of probate because there are none in the present law. The Government have improved the position by introducing a complaint system to cover such matters, which my right hon. Friend will find in clauses 46 and 47. Clause 39 enables the Lord Chancellor, if appropriate, to make regulations on accounting for commissions. The financial services regime deals with tied practitioners, but we shall have an opportunity in Committee to consider how that works in practice in relation to the providers of mortgages.

My hon. Friend the Member for Croydon, North-West (Mr. Malins) asked why we do not let any case go to the High Court. Here again it is a question of proper management of resources. There will no longer be any upper limit in the county court. If one let any case go to the High Court, the great temptation for the client would be to say that his was a terribly important case and that if it could go to the High Court it should. That would be a wasteful use of resources.

My hon. Friend also asked about employed lawyers and why they should not have to abide by the cab rank rule. It is impractical to think that an employed lawyer carrying out work for his employer in a particular area can in any realistic sense hold himself open to all comers. He would become an employed solicitor. We must hold that position open.

The hon. Member for Barnsley, Central was worried about wasting money on issuing writs. I understand the point because I was involved in that debate long before I was a member of the Government. There has always been a problem about whether to clamp down on the length of 1516 time available in which to start proceedings and get them up and running or whether to get them moving. There has been a consistent complaint that cases have hung around for three years, the writ is then issued and the next year has dribbled by. To answer a point made by the hon. Member for Norwood, that period will come down to four months. Writs will have to be issued and served and proceedings got under way. After several years of complaints, we believe that that will be a wise approach, but we can discuss that further in Committee.

The Bill lays the ground for major reforms to our system of civil justice. It opens the way to a balanced, carefully thought out evolutionary development of our legal profession. It provides a structure for properly controlled development of competition in conveyancing. After years of debate and not a little anguish, the Bill will come to be seen as a landmark in the sensible, evolutionary Conservative approach to reform and I commend it to the House.

§ Question put, That the amendment be made:—

§ The House divided: Ayes 101, Noes 203.

1518

Division No. 162] [10 pm

AYES

Allen, Graham	Henderson, Doug
Anderson, Donald	Hood, Jimmy
Archer, Rt Hon Peter	Howarth, George (Knowsley N)
Armstrong, Hilary	Hughes, Roy (Newport E)
Barnes, Harry (Derbyshire NE)	Illsley, Eric
Beckett, Margaret	Jones, Barry (Alyn & Deeside)
Bennett, A. F. (D'nt'n & R'dish)	Jones, Martyn (Clwyd S W)
Bermingham, Gerald	Kaufman, Rt Hon Gerald
Bidwell, Sydney	Leighton, Ron
Boateng, Paul	Lewis, Terry
Boyes, Roland	Livingstone, Ken
Brown, Gordon (D'mline E)	Lofthouse, Geoffrey
Buchan, Norman	McAllion, John
Buckley, George J.	McAvoy, Thomas
Callaghan, Jim	McCartney, Ian
Campbell, Ron (Blyth Valley)	McFall, John
Campbell-Savours, D. N.	McLeish, Henry
Clark, Dr David (S Shields)	Madden, Max
Clarke, Tom (Monklands W)	Mahon, Mrs Alice
Clelland, David	Marshall, David (Shettleston)
Clwyd, Mrs Ann	Meale, Alan
Cook, Frank (Stockton N)	Michael, Alun
Cook, Robin (Livingston)	Michie, Bill (Sheffield Heeley)
Cryer, Bob	Mitchell, Austin (G't Grimsby)
Cummings, John	Morgan, Rhodri
Cunliffe, Lawrence	Morris, Rt Hon A. (W'shawe)
Cunningham, Dr John	Morris, Rt Hon J. (Aberavon)
Dalyell, Tam	Mullin, Chris
Darling, Alistair	Nellist, Dave
Davies, Rt Hon Denzil (Llanelli)	Oakes, Rt Hon Gordon
Dixon, Don	Patchett, Terry
Dobson, Frank	Pike, Peter L.
Doran, Frank	Powell, Ray (Ogmore)

Duffy, A. E. P.
Dunwoody, Hon Mrs Gwyneth
Eadie, Alexander
Ewing, Harry (Falkirk E)
Field, Frank (Birkenhead)
Fields, Terry (L'pool B G'n)
Fisher, Mark
Flynn, Paul
Foot, Rt Hon Michael
Foster, Derek
Fraser, John
George, Bruce
Griffiths, Win (Bridgend)
Hardy, Peter
Hattersley, Rt Hon Roy
Heal, Mrs Sylvia
Prescott, John
Radice, Giles
Redmond, Martin
Reid, Dr John
Robertson, George
Rogers, Allan
Rooker, Jeff
Ross, Ernie (Dundee W)
Ruddock, Joan
Skinner, Dennis
Smith, Andrew (Oxford E)
Spearing, Nigel
Strang, Gavin
Vaz, Keith
Watson, Mike (Glasgow, C)
Welsh, Michael (Doncaster N)

1517

Winnick, David
Wise, Mrs Audrey
Young, David (Bolton SE)

Tellers for the Ayes:
Mr. Ken Eastham and
Mr. Jimmy Dunnachie.

NOES

Alexander, Richard
Alison, Rt Hon Michael
Amess, David
Amos, Alan
Arbuthnot, James
Arnold, Jacques (Gravesham)
Arnold, Tom (Hazel Grove)
Ashby, David
Atkins, Robert
Atkinson, David
Baldry, Tony
Banks, Robert (Harrogate)
Batiste, Spencer
Beggs, Roy
Bellingham, Henry
Bennett, Nicholas (Pembroke)
Benyon, W.
Bevan, David Gilroy
Bonsor, Sir Nicholas
Boswell, Tim
Bottomley, Peter
Bottomley, Mrs Virginia
Bowden, Gerald (Dulwich)
Bowis, John
Dorrell, Stephen
Douglas-Hamilton, Lord James
Durant, Tony
Dykes, Hugh
Eggar, Tim
Evans, David (Welwyn Hatf'd)
Evennett, David
Favell, Tony
Fearn, Ronald
Fenner, Dame Peggy
Field, Barry (Isle of Wight)
Fishburn, John Dudley
Fookes, Dame Janet
Forman, Nigel
Forth, Eric
Franks, Cecil
Freeman, Roger
French, Douglas
Fry, Peter
Gale, Roger
Garel-Jones, Tristan
Gill, Christopher
Glyn, Dr Sir Alan
Goodhart, Sir Philip

Brazier, Julian
Bright, Graham
Brooke, Rt Hon Peter
Brown, Michael (Brigg & Cl't's)
Bruce, Ian (Dorset South)
Bruce, Malcolm (Gordon)
Buck, Sir Antony
Budgen, Nicholas
Burns, Simon
Butterfill, John
Carlile, Alex (Mont'g)
Carlisle, John, (Luton N)
Carlisle, Kenneth (Lincoln)
Carrington, Matthew
Cash, William
Chapman, Sydney
Chope, Christopher
Clark, Dr Michael (Rochford)
Clark, Sir W. (Croydon S)
Clarke, Rt Hon K. (Rushcliffe)
Coombs, Anthony (Wyre F'rest)
Coombs, Simon (Swindon)
Cope, Rt Hon John
Cormack, Patrick
Couchman, James
Currie, Mrs Edwina
Davies, Q. (Stamf'd & Spald'g)
Davis, David (Boothferry)
Day, Stephen
Dicks, Terry
Goodlad, Alastair
Goodson-Wickes, Dr Charles
Gorman, Mrs Teresa
Gow, Ian
Grant, Sir Anthony (CambsSW)
Greenway, Harry (Ealing N)
Greenway, John (Ryedale)
Gregory, Conal
Griffiths, Peter Portsmouth N)
Grist, Ian
Ground, Patrick
Hague, William
Hamilton, Hon Archie (Epsom)
Hamilton, Neil (Tatton)
Hampson, Dr keith
Hanley, Jeremy
Hargreaves, Ken (Hyndburn)
Harris, David
Haselhurst, Alan
Hawkins, Christopher
Hayward, Robert
Heathcoat-Amory, David
Hill, James
Hind, Kenneth
Hogg, Hon Douglas (Gr'th'm)
Howarth, G. (Cannock & B'Wd)
Howell, Ralph (North Norfolk)
Howells, Geraint
Hughes, Robert G. (Harrow W)
Hughes, Simon (Southwark)

Hunt, Sir John (Ravensbourne)
Irvine, Michael
Jack, Michael
Janman, Tim
Jessel, Toby
Jones, Gwilym (Cardiff N)
Jones, Robert B (Herts W)
Jopling, Rt Hon Michael
Kellett-Bowman, Dame Elaine
Key, Robert
Kilfedder, James
King, Roger (B'ham N'thfield)
Kirkwood, Archy
Knapman, Roger
Rossi, Sir Hugh
Rowe, Andrew
Ryder, Richard
Sackville, Hon Tom
Shaw, David (Dover)
Shepherd, Colin (Hereford)
Shersby, Michael
Skeet, Sir Trevor
Smith, Tim (Beaconsfield)
Smyth, Rev Martin (Belfast S)
Spicer, Michael (S Worcs)
Squire, Robin
Stanbrook, Ivor
Steel, Rt Hon Sir David

Knight, Greg (Derby North)
Lloyd, Peter (Fareham)
Lyell, Rt Hon Sir Nicholas
McCrindle, Robert
Maclean, David
Maclennan, Robert
McLoughlin, Patrick
Malins, Humfrey
Martin, David (Portsmouth S)
Mayhew, Rt Hon Sir Patrick
Miller, Sir Hal
Miscampbell, Norman
Mitchell, Andrew (Gedling)
Moate, Roger
Molyneaux, Rt Hon James
Monro, Sir Hector
Montgomery, Sir Fergus
Morris, M (N'hampton S)
Moss, Malcolm
Moynihan, Hon Colin
Mudd, David
Neubert, Michael
Nicholls, Patrick
Nicholson, Emma (Devon West)
Norris, Steve
Onslow, Rt Hon Cranley
Patnick, Irvine
Patten, Rt Hon Chris (Bath)
Pattie, Rt Hon Sir Geoffrey
Price, Sir David
Raffan, Keith
Redwood, John
Renton, Rt Hon Tim
Ridley, Rt Hon Nicholas
Rifkind, Rt Hon Malcolm
Roe, Mrs Marion
Steen, Anthony
Stern, Michael
Stevens, Lewis
Stewart, Allan (Eastwood)
Stewart, Andy (Sherwood)
Stradling Thomas, Sir John
Sumberg, David
Summerson, Hugo
Taylor, Ian (Esher)
Taylor, John M (Solihull)
Taylor, Matthew (Truto)
Tebbit, Rt Hon Norman
Temple-Morris, Peter
Thompson, D. (Calder Valley)
Thompson, Patrick (Norwich N)
Thurnham, Peter
Viggers, Peter
Waddington, Rt Hon David
Walker, Bill (T'side North)
Waller, Gary
Ward, John
Wardle, Charles (Bexhill)
Watts, John
Wells, Bowen
Wheeler, Sir John
Widdecombe, Ann
Wilkinson, John
Winterton, Mrs Ann
Winterton, Nicholas
Wood, Timothy
Young, Sir George (Acton)

Tellers for the Noes:
Mr. David Lightbown and
Mr. Nicholas Baker.

§ Question accordingly negatived.

§ Main Question put forthwith pursuant to Standing Order No. 60 (Amendment on Second or Third Reading), and agreed to.

§ Bill accordingly read a Second time, and committed to a Standing Committee pursuant to Standing Order No. 42 (Committal of Bills).

Back to Orders of the Day

Forward to Courts and Legal Services Bill [Lords] [Money]