

Conclusions and Recommendations

The 'conditions'

198. The terms of our reference require us first to investigate and report whether conditions to which the Act of 1948, as amended and extended, applies in fact prevail ; in so doing we are to limit consideration to conditions which prevail or may prevail by virtue of arrangements or practices (falling within section 2(4) of the 1965 Act) whereby two or more persons supplying the service charge fees or commission at standard rates.

199. Section 2(4) of the 1965 Act specifies that the two or more persons in question 'are any two or more persons who, whether voluntarily or not, and whether by agreement or arrangement or not, so conduct their respective affairs as in any way to prevent or restrict competition in connection with the supply of services of the description in question (whether or not they themselves are affected by the competition and whether the competition is between persons interested as persons by whom, or as persons for whom, services are supplied) '.

200. The effect of the statutory provisions is that the conditions may be found to prevail if at least one-third of estate agents' services (as defined in the reference) supplied in England and Wales are supplied by persons who charge fees or commission at standard rates and if competition is in any way restricted thereby.

201. We regard as charging at standard rates any agents who normally charge fees in accordance with either the scales published by the national societies or with scales adopted by local associations of estate agents or with other local scales normally followed by all or most agents in a particular area. Analysis of the replies to our first questionnaire shows that in the years 1964, 1965 and 1966 well over 90 per cent of the reference services supplied by respondents (measured by numbers of transactions) were supplied by agents who stated that they normally charged in accordance with national or local scales (see paragraph 76). Even if those who departed from their normal scales in more than 50 per cent of cases are excluded (see paragraph 78), the proportion charging according to national or local scales is still over 80 per cent.

202. The respondents to the first questionnaire (see paragraph 7) do not include all persons who supply the services covered by the reference. No full list of firms in business as estate agents existed ; some of those to whom we sent questionnaires did not send usable replies ; and some persons not in regular business as estate agents may nevertheless supply services covered by the reference on a casual basis. We are, however, satisfied that the figures derived from the answers to the first questionnaire broadly reflect the position in the total supply of the service, and that there can be no doubt that at least one-third of the service covered by the reference which is supplied in England and Wales is supplied by persons who charge fees or commission at standard rates.

203. We are also satisfied that in charging fees or commission at standard rates estate agents are so conducting their affairs as to restrict competition. This finding is supported by the facts that any departure from the standard rates which was made for the purpose of competing for business would conflict with various rules of the national societies and of local associations (see paragraphs 71-73) and that, apart from those agents who do not normally charge at standard rates, such departures from the standard rates as are made are rarely made for the purpose of competing for business.

204. We therefore conclude that the conditions to which the Act of 1948, as amended and extended, applies in fact prevail.

The public interest

205. We are next required to investigate and report whether those conditions and any things which may be done by the parties concerned as a result of, or for the purpose of preserving, those conditions operate or may be expected to operate against the public interest. In brief, the question is whether the avoidance or exclusion of competition in fees operates against the public interest.

206. There can be little doubt what view would be taken of any comparable arrangements or practices which gave rise to a restriction of price competition to a similar extent in the supply of any goods. Because of the undesirable economic effects associated with such restriction—higher price levels, uneconomic use of resources, lack of flexibility, discouragement of new developments, etc.—such practices are generally regarded as being contrary to the public interest unless in the circumstances of a particular case there can be shown to be special and over-riding advantages. This view is reflected in the restrictive trade practices and resale prices legislation. We see no obvious reason why, in general, the same economic effects should not be expected to result from the restriction of price competition in the supply of services. As with goods, such effects may in any particular case be outweighed by special advantages in other respects.

207. It is seldom possible to demonstrate conclusively that existing restraints on competition are having harmful effects, because to do so requires assumptions to be made about the hypothetical situation that would exist without the restraints. In regard to the supply of goods, however, experience has now been gained of the removal of various kinds of restrictions of price competition, and the results are generally regarded as beneficial. There is little experience of the removal of restrictions in respect of the supply of services, and we have therefore sought by an examination of the businesses of a sample of estate agents to investigate whether any of the harmful effects which are likely can be demonstrated. We first discuss what this investigation has disclosed about profits, costs and efficiency, and then consider the arguments put forward by the estate agents' committee to the effect that the exclusion of competition in fees is desirable in the public interest.

Economic effects of standard charges

(1) Profits

208. We have considered, first, whether the absence of price competition has given rise to unduly high profits. The results are described in paragraphs 111-123. For the reasons explained in paragraph 112 it is misleading to consider profits as a percentage either of income or of capital employed; furthermore these ratios would provide no satisfactory basis for comparison with profit rates in other occupations. We have therefore related profits to the number of principals engaged in the business.

209. The rate of profit per principal (as defined in paragraph 113) earned by firms included in the sample covered a wide range; some were making losses, some were earning profits at rates well over £10,000 per principal, and the average for all the firms covered by our sample was £2,894. There is, however, no objective standard with which this can be compared. The estate agents' committee, recognising this difficulty, drew attention to the average figures of partners' remuneration published by the National Board for Prices and Incomes of £4,870 for solicitors, £3,300 for dentists and £4,102 for architects. We see no particular validity in these comparisons, but we accept that there is no ground upon which estate agents' profits are, on average, demonstrably excessive.

210. This finding was to be expected in view of the fact that entry to estate agency is easy. There has, hitherto, been no restriction of entry and special qualifications have not been required (although this may change in future if registration becomes a statutory requirement and if any restriction is placed upon registration—see paragraphs 26 and 46); moreover the capital required is relatively low (if premises are rented), although we were told by the estate agents' committee that new entrants often underestimate the finance required to cover the initial period of unprofitable operation. Consequently the rate of new entry to the business is high and, for example, of 780 estate agents who completed our second questionnaire in the middle of 1967, 104 had started business in 1962 or later.*

(2) Costs

211. Next we have considered whether the differences in estate agents' businesses apparent in different parts of the country illustrate the effect of the absence of competition in fees. A comparison between regions is useful because average house prices differ substantially between regions (partly because the prices of similar houses differ and partly because the average sizes and types of house are different—see paragraph 100 and appendix 11). Since the standard rates of commission are derived from ad valorem percentage scales, estate agents' average income per sale (i.e. their gross receipts on each sale) varies with the average price of houses. In addition the local scales followed in many places in the northern half of the country are often at effectively lower rates than the national scales normally followed

* This does not imply a net increase of this order in the total number of firms, as many will have ceased business during the same period.

in the southern half (see paragraphs 65-70). Consequently, as shown in paragraph 101, the average income per sale differs widely between regions, that in the South being more than double that in the North.

212. However, the higher average income received on each sale in some regions does not lead to correspondingly higher profits on each sale. The costs incurred in relation to the number of sales achieved vary in a manner closely parallel to the variation in income per sale, with the result that average profits are roughly similar in each area. This close correlation between average income per sale and average costs per sale also holds good in comparisons between individual towns (see paragraph 128). This finding appears consistent with the view that, if competition in fees is prevented, where estate agency is more lucrative competition for business will cause costs to rise until average profits are brought back to a roughly constant level.

213. We have sought to investigate, and have discussed with the estate agents' committee, how and why average costs are higher where the average gross income per sale derived from fees is higher. To simplify discussion we concentrate on two of the regions examined, the North and the South, which illustrate the differences to a marked extent (London shows even greater differences but conditions there are unusual). We deal with the variation in average costs per sale under the following headings:

- (a) Variation in prices of cost items
- (b) Differing market conditions
- (c) Sub-agency and multiple instruction
- (d) Numbers and size of firms

(a) *Variation in prices of cost items*

214. In part A of appendix 13 the make-up of average costs per reported sale is analysed in different regions. This table shows that there is only a small difference between North and South in the amount of time devoted by principals in relation to the number of sales negotiated,* but the expenditure on employees' remuneration in the South is nearly three times as high as that in the North. The other main items of expenditure are also between two and three times higher in the South than in the North, leaving a surplus (profit less principals' notional remuneration—see paragraph 127) which is almost the same in both areas.

215. The estate agents' committee suggested as the reason for this that, where house prices were higher, wages, rents and other prices were also higher. This is clearly one factor, but even if all the other relevant prices varied to the same extent as prices of similar houses, that would not account for the differences disclosed in the table because, as we have explained, the differences in average house prices and therefore in average income per sale are not caused solely by differing price levels for comparable houses; the houses themselves are different in size and type. The fact that the average price of the houses dealt with by estate agents in the South is more than twice the corresponding average for the North does not, therefore, imply that prices of goods and services generally can be expected to be twice as high.

* This is shown by the column of figures headed 'Principals' remuneration', which have been calculated by applying a constant notional rate of remuneration to the hours which principals actually spent on reference work as reported in replies to the second questionnaire.

216. For some of the cost items, such as postage, stationery and motor vehicle costs, there is unlikely to be any variation in price levels between areas. Similarly the price of advertising in newspapers with similar circulation and readership does not appear to vary by area, although the estate agents' committee argued that in the South it was generally necessary to advertise houses more widely than in the North. As regards wages, published information suggests that wages of male employees in estate agents' offices are likely to vary by less than 10 per cent between the South and the North, although shorthand typists' wages are said to be 50 per cent higher in the South than in the North (see paragraph 132). The difference in average rents is greater than that in earnings (see paragraph 131) and the rents payable by estate agents in the South may perhaps be as much as twice as high as those in the North.

217. Although there are differences in prices levels, therefore, the much greater differences in average costs per reported sale must indicate a greater expenditure in real terms, that is to say more employees, more advertising, etc., for the same number of sales effected.

(b) *Differing market conditions*

218. The estate agents' committee argued that greater effort was in fact required in the South than in the North in relation to the number of sales achieved because the demand for houses in the South was higher and, because people were more mobile there, potential purchasers were prepared to consider houses over wider areas (from the estate agents' point of view, catchment areas were larger). For these reasons, the committee said, purchasers were liable to make hasty offers for houses which they later withdrew, the chains of transactions on which the completion of a sale depended were likely to be longer, with greater risk that a sale would fall through, and estate agents had to advertise more widely and to see larger numbers of applicants who did not eventually buy houses from them or even in their areas.

219. Such factors as these are likely to be more important in some places than in others, and we can appreciate that they may be particularly apparent in some places in the South, such as the south coast towns popular for retirement. We do not think however that conditions in the South as a whole are sufficiently different from those in the North to account for a large difference in average costs per sale, especially as the higher demand for houses and the larger catchment areas in which an estate agent may hope to find a purchaser both tend to make it easier to achieve sales. We therefore remain of the view that the higher costs per sale in the South result largely from competition for business (other than through charges) causing costs to rise to whatever level is permitted by average income per sale.

(c) *Sub-agency and multiple instruction*

220. We consider that some part is played in the difference in costs per reported sale by the practice which is prevalent in the South, but much less so in the North, of two or more agents being instructed to sell the same house. As explained in paragraph 54, we collected information from estate agents about the numbers of instructions to sell on which they did not effect a sale and so receive a fee. We have expressed these numbers as a proportion of the total numbers of instructions received, and the resulting ratios

differ greatly between regions. In the North, on average, 25 per cent of total instructions received by estate agents did not lead to sales effected by those agents ; in the South the proportion was 80 per cent. In other words, for every three sales in the North there was one instruction which did not lead to a sale or to the payment of a fee ; for every three sales in the South there were 12 instructions which did not lead to sales or to the payment of fees. There is an apparent relationship between this difference and the difference in average costs per reported sale between North and South (see paragraph 135).

221. Instructions to sell may be frustrated because the vendor withdraws the instruction or succeeds in selling the house privately. The commonest cause however is that another agent succeeds in selling the house first, and the agent who has played no part in the sale then receives no fee. This may occur where instructions are received from another agent (sub-instruction), either because the principal agent considers that sub-agents are needed to cover a wider area or because it is the local practice to share all instructions among a group of agents (see paragraphs 51 and 52). It may also occur where the vendor himself instructs more than one agent (multiple instruction).

222. The difference between the South and the North in the proportion of unsuccessful instructions to total instructions arises from the different practices of the two areas. In the South it is common in many places for agents to sub-instruct one or more other agents, sometimes as a regular practice ; it is also the normal practice for vendors to instruct two or more agents, not necessarily in order to cover different areas but simply in order to gain the benefit of competition between them. In the North, on the other hand, the normal practice is for sole agents to be appointed ; in those circumstances instructions may still be frustrated for other reasons, but there is no risk of the house being sold by another agent. There is some ground for thinking that in this respect the North and the South are at different points in a historical development of the practice of estate agency. Sole agency is likely to have been normal when estate agency first appeared as a distinct occupation, and multiple agency in the two forms referred to above appeared later. It has occurred in the South for many years, but some agents have told us that it has been getting commoner. The North has not reached this point, and when sub-agents are appointed there it is usually for the purpose of reaching a specific area ; but a multiple listing scheme (whereby instructions are regularly shared among a group of agents) has recently been organised in Manchester. (Scotland, incidentally, appears to be at a still earlier stage, specialised estate agents existing only in a few areas.) The occurrence of multiple agency may perhaps be related to the differences in the numbers of estate agents in different places (see paragraphs 227-229).

223. We have no way of demonstrating to what extent the higher proportion in the South of instructions on which no fee is ultimately received represents a greater expenditure of effort in total in relation to the total number of sales. The estate agents' committee argued that it should not be assumed that the amount of work per sale rose in direct proportion to the ratio of unsuccessful instructions. One reason was that, in their experience, an

agent receiving instructions on a sub-agency basis from another agent, with the prospect only of a shared fee, did not devote as much effort to them as he did to instructions received direct from vendors. He might not have to visit the house or discuss the sale with the vendor, since he had already been given all the particulars by the principal agent; and he might make no attempt to advertise it, but merely keep the particulars in his list in case a possible purchaser should appear. The same considerations would not, however, apply to multiple instruction, i.e. to instructions received direct, even though they may have been given to several agents; each of the instructed agents then has to deal direct with the vendor, and the fact that other agents have been instructed provides an incentive to try to achieve a quick sale.

224. The estate agents' committee also argued that some of the wasted effort reflected in the high proportion of unsuccessful instructions in the South might equally occur where sole agency was practised. For example, when a sale fell through at a late stage after an offer had been accepted subject to contract, in the South the house would frequently be resold by another agent. In a sole agency area, on the other hand, it would be resold by the same agent, but the amount of wasted effort would be the same.

225. For reasons such as these we accept that there is no clear relationship between, on the one hand, the high proportion of unsuccessful instructions in the South resulting from sub-agency and multiple instruction and, on the other hand, the higher average level of costs per sale. Because, for example, three agents are instructed, it does not necessarily follow that expenditure on the sale will be three times as high as it would have been under conditions of sole agency; the costs of each individual agent incurred on the instruction might be less than those incurred by a sole agent. Nevertheless we are satisfied that the sharing of instructions and, more particularly, the practice of multiple instruction must to some extent involve higher costs per sale, and the estate agents' committee did not disagree (see paragraph 195). Multiple instruction clearly sharpens competition between estate agents in achieving the sale as quickly as possible at the best possible price, which is to the advantage of the vendor; but this competition is bound to involve some duplication and wasted effort as compared with sole agency.

226. This is not to say that multiple agency is necessarily undesirable. It probably contributes to the efficient working of the market in houses, by enabling vendors to reach more potential purchasers and giving purchasers easy access to a wider choice of houses. Multiple instruction, in particular, is clearly a facility which vendors value and, as the estate agents' committee pointed out, solicitors often advise their clients to instruct more than one agent. It can, however, be regarded as an extra service which estate agents offer in competing for business where the average level of income per sale permits them to do so. Like any other extra service, it involves extra cost.

(d) Numbers and size of firms

227. We have also examined the possibility that average costs per sale might be raised because, as house prices rise and the gross earnings available from estate agency rise with them, more firms are attracted into

the business, with the result both that greater competition in services increases the total costs and the number of successful sales is shared among more firms. Costs in relation to each sale would thus be higher.

228. An examination of estate agents' advertisements in local newspapers in one week in each year produced the figures given in appendix 7 of numbers of agents in selected towns in 1951, 1957 and 1965, the period 1951-1965 being one in which house prices, and therefore the fees payable to estate agents, rose substantially. These figures are very approximate because of the method used, but they can be accepted as indicating a substantial increase in the numbers of estate agents in all the regions examined except the North.

229. In order roughly to relate the numbers of estate agents to the amount of business available to them we have used the number of non-local authority dwellings in the towns concerned. (This may to some extent be misleading because estate agents in these towns may be concerned with properties situated outside the towns to varying extents.) On this basis it appears that, although it has not risen much in the period examined, the number of estate agents in relation to the size of the market in the South is much higher than that in the North. This may reflect a higher rate of turnover of dwellings in the South, but unfortunately we have no information about the rate of turnover either in different areas or in different years.

230. Some indication of the size of estate agency offices is given by the annual number of sales negotiated, and on this basis there appears to be no marked difference between the South and the North. Appendix 12 shows that in the South 50 firms in our sample achieved 100 sales or more a year and 85 achieved less than 100 sales; the corresponding figures for the North are 30 and 48, a roughly similar distribution. If it is assumed on this ground that the average annual sales of firms in the South and the North are similar, the figures of employees' remuneration per sale shown in appendix 13 suggest that firms in the South must on average employ more staff on reference business than those in the North.

231. Such information as we have about numbers of firms and annual sales per office, as summarised in these paragraphs, suggests that, where more business is available to estate agents, individual offices do not, on average, achieve higher numbers of annual sales; instead, the business is divided among a larger number of offices. The estate agents' committee argued that this occurred because there was a loss of efficiency if offices exceeded a certain size (in terms of numbers of negotiators), and for this reason the growth of firms usually took the form of opening additional branches. However, we do not think that is the complete explanation; we did not find any concentration of large multi-branch firms in the South, and the growth in the number of offices seems to have consisted in the entry of new firms as much as in the opening of new branches of existing firms. We consider that the fragmentation of business among a relatively large number of offices is also connected with the lack of competition in fees. With all firms charging at standard rates there is no price incentive for clients to go to the firm with lowest costs; consequently all offices tend to have an equal chance of attracting clients, and a firm may attract a larger share of the business with two small offices than with one large office. As in the sale of goods, if price competition is prevented outlets tend to be more numerous.

232. Prima facie, this fragmentation of the business seems likely to involve higher costs, even though scale economies of the kind expected in manufacturing are absent from estate agency. The figures of costs given in appendix 13 appear to show a trend towards lower costs per sale with increasing size (in terms of annual sales), although other differences between firms complicate matters. For example, the firms with less than 40 sales a year include some new entrants and also many large firms in which estate agency is incidental to professional work, so that the allocation of expenses is unreliable; moreover some firms with high annual sales may be engaged on repetitive work on new estates, where expenses would often be less. It is therefore difficult to draw any conclusion from these figures except the obvious one that below a certain level of sales negotiated even the minimum size of office is likely to operate uneconomically if estate agency is its main activity and, up to a point, costs per sale will consequently fall with a rising level of sales. It should also be borne in mind, however, in interpreting these figures that the incentive for the firms with high annual sales to reduce their costs is weakened because competition for business concentrates on service to the exclusion of price. Economies related to size might therefore be more apparent if there was price competition.

(3) Efficiency

233. Thus a variety of factors appear to contribute to the observed rise in average costs per sale where income per sale is higher. To some extent it results from differing circumstances, including prices, in different areas, but there is ample ground for concluding that it is as a result of competition for business other than through price that costs rise to whatever level is permitted by the level of income. As a result, substantially more resources (including people) are employed to effect a given number of sales in the South, for example, than are employed to effect the same number of sales in the North.

234. The estate agents' committee argued that the higher expenditure of resources per sale in the South than in the North did not indicate inefficiency or waste. The committee said that such additional services as an agent might give in competing for business were all relevant to the vendor's interest in achieving a sale as quickly as possible at the best possible price. In other words, estate agents offered little in the way of 'frills' designed solely to attract potential clients. It argued that where costs per sale were higher (apart from the effect of higher wages, rents etc.) vendors were being given a correspondingly better service, and that their interest would not be served by reducing it. The committee also argued that vendors of higher-priced houses reasonably expect a higher level of service in the sale of those houses.

235. We accept that in some respects vendors may be getting a better service in those areas where income and costs per sale are higher. The fact that offices are more numerous and instructions are often shared between them may, for example, mean that more potential purchasers are contacted and it is easier to realise the full market price. In theory it is possible that the level of fees and the level of service which it provides in different areas is that which most vendors would in fact prefer, if they had a choice. The important point, however, is that vendors have no choice. The level of fee to be paid is determined arbitrarily according to the price of the house and, on average, the level of service given depends on the average level of house

prices. If house prices are higher, the level of expenditure on selling houses rises correspondingly. In this way, therefore, the effect of standard charges may be a less than efficient allocation of resources.

236. As regards the efficiency of individual estate agents, the estate agents' committee argued that agents already had every incentive to reduce their costs by using whatever aids or improved methods might be available, and cited examples of aids already in use such as pocket dictating machines and automatic typewriters (see paragraph 155). The committee said, however, that such aids improved the service given but did not, on the whole, make much contribution to reducing costs because estate agency was essentially a personal service. For the same reason doubts were also expressed about the prospect of any reduction in costs or improvement in service through the use of automatic data processing systems (see paragraphs 55-59). The committee argued further that scale economies were lacking and that efficiency was measured by success in selling houses so that, because no fee is normally payable for service given which does not lead to a sale, the inefficient could not survive.

237. We accept that the 'no sale, no fee' arrangement provides some encouragement to efficiency in the sense of getting results, although it is not a unique feature of estate agency and it plays a part of varying importance in many commercial activities where income depends on successful sales. It does not follow, however, that the arrangement also encourages the service to be given economically. It may indeed have the contrary effect, because it introduces an element of risk into the business which is not inherent in the sale of houses; this risk, which is reflected in the high failure rate of estate agents, provides an incentive to the individual estate agent to incur any additional costs that may improve his chances of effecting sales.

238. We have no specific evidence that particular estate agents are unduly inefficient in the conduct of their business in the circumstances in which they are operating. This is not inconsistent, however, with relatively inefficient use of resources in estate agency as a whole for the reasons which we have discussed, especially that, although some firms achieve lower costs per sale than others, the absence of competition in fees means that business is less concentrated on these more efficient agents than it otherwise might be, and less efficient agents are enabled to stay in the business. It is possible moreover that the lack of fee competition reduces the incentive to try radically new methods.

Advantages of competition in fees

239. The estate agents' committee argued on several grounds that no advantage could be expected to result for the public interest or for vendors of houses from removing the present restraints on competition in fees. First, the present method of charging, namely a tapered ad valorem scale on a contingency (no sale, no fee) basis, was the best method from the point of view of vendors because they knew what fees to expect and could budget in advance, the fee was only a fraction of the money received on the sale of the house, and if a sale was not achieved the vendor incurred no expense at all. For these reasons it was unlikely that, if agents were free

to charge fees according to any method they chose, they would in fact introduce any method other than the present one.

240. Secondly, as regards the level of fees, the committee argued that experience showed that there was no scope for any reduction in fees ; lower fees could be offered only by reducing the level of service given, which meant that less effort was put into the sale of houses, and this led only to failure. Such had been the experience of those agents who had offered cut-rate fees ; either they had gone out of business, or they had found it necessary to conform with the standard rates of fee. The committee added that estate agency was essentially a labour-intensive activity in which economies of scale were unimportant ; and that, since they could not raise their prices to cover increased costs, estate agents already had every incentive to reduce their costs. No greater efficiency or economy could, therefore, be expected to result from competition in fees. Local price leadership would, moreover, lead to uniformity of fees within areas in which estate agents were in competition with each other. The committee also referred to the level of fees payable to estate agents in other countries (see appendix 14) as showing that the standard rates charged in England and Wales were low.

241. We do not accept the view that freedom to compete in fees could not bring any advantage. We cannot predict what changes are likely to occur, and it is possible that for a time no changes would appear ; agents would simply continue to charge fees on the basis to which they are accustomed. But we think that over a longer period changes would occur, and that such changes are likely to be beneficial.

242. As regards the method of charging, we have no ground for suggesting that the present method is inherently objectionable or that any other of the methods which have been discussed (such as quantum meruit charges or charges of a fixed sum per sale) would in general be preferable. We think it likely that the great majority of agents would continue to apply the familiar method of charging if standard rates were no longer recommended or enforced, but the way would be freed for experimentation with other methods, which might prove to be more appropriate in particular circumstances.

243. As regards the level of fees, we do not consider that a simple comparison with the rates of commission charged for sales in other countries provides any evidence as to the reasonableness or otherwise of the standard rates in this country. The service of estate agents and the conditions in which it is given differ widely in different countries. Few countries are as densely populated and predominantly urban as Britain ; land and house prices, estate agents' costs in relation to those prices, the standard of living and the consequent demand for estate agents' services all differ greatly ; and differing local practices and legal systems mean that the range of services given by estate agents is unlikely to be the same. It would be difficult to allow for all these differences so as to be sure of comparing like with like, and we have not attempted the task. Moreover, since in all the countries referred to in appendix 14 fees are charged at standard rates,* the fact that the rates in England and Wales are lower than most of them does not mean that they are necessarily reasonable.

* The recommendation of standard charges has been banned in Washington DC since 1950 but no change in fees has resulted—see appendix 15.

244. We do not accept that there is no scope for reductions in fees. The experience of those who have tried fee-cutting in the past, to which the committee referred, is not a reliable indication of what would happen if estate agents in general were free to vary their fees competitively. There have been only few such fee-cutters and they have mostly been newly established firms; the figures which we have collected show that firms are precarious during the first few years of their existence, costs per sale being at their highest and losses usually being incurred; firms at this stage are therefore least able to manage with reduced fees. Moreover such fee-cutters in the past have been regarded as not respectable, have been excluded from the national societies and in many cases have been refused co-operation by local agents. This also may have made their success unlikely. Even so we found one example of a firm which successfully undercut the previously existing local rate and forced its competitors to reduce their charges correspondingly (see paragraph 85).

245. It does not follow from the limited experience of fee-cutters in the past that, if fee competition were permitted, there would be no scope for reductions in fees by well established agents with a high annual rate of sales negotiated, who at present make a relatively high rate of profit per sale. Although there cannot be shown to be substantial scale economies in estate agency under present conditions, there is a wide range in the costs per sale of individual estate agents and, as we have said in paragraph 232, costs per sale would be more likely to fall with higher annual sales if competition in fees provided an incentive. The scope for reduced fees may not be large, in general, and it is perhaps unlikely that competition in fees would lead to a substantial general reduction in levels of fee. But there may be scope for some greater concentration of estate agency into fewer firms with a higher average level of sales and lower costs, which could lead to a somewhat lower general level of fees. Lower levels might also emerge in particular areas. We have been told that this can happen even now, though exceptionally, in a place where firms not belonging to the national societies are in a majority, as in the case mentioned in the previous paragraph. Some of the local scales, which are generally below the national scales for most properties (see paragraph 70), may have resulted from competition in fees at some time in the past.

246. There is, moreover, scope for lower fees to be charged in particular circumstances; firms specialising in particular kinds of business might be able to offer lower fees; for example, clients might be offered a choice of different levels of fee for different levels of service, e.g. a reduced fee as an inducement to grant a sole agency; and in general the possibility of attracting business by reduced fees would give greater incentive to experiment with new methods of estate agency.

Advantages of standard charges

247. The estate agents' committee argued that in various ways the present recommended scales and the rules against competition in fees brought advantages to the public interest which would be lost if fee competition were to be permitted.

248. One argument was that the recommended scales acted as upper limits; vendors of houses were generally aware of the scales or could

easily find them out, and this acted as a safeguard against higher fees. The committee said that because such a high proportion of their costs consisted of labour costs estate agents were under pressure from rising costs, and that if no standard rates were recommended a general rise in fees would be likely in the long term, especially if house prices did not continue to rise as they had done since the war.

249. As long as house prices continue to rise, the use of ad valorem scales automatically offsets rising costs to which estate agents may be subject. It has been suggested that a buyer's market in houses might develop and moderate the rate of increase in house prices, but we think it very unlikely that in the absence of nationally recommended scales competition between estate agents would permit them to raise the rates of their fees. This view assumes, however, that entry to estate agency remains easy, and it is therefore important that the arrangements for the registration of estate agents (see paragraphs 46 and 159) should not be such as to restrict entry.

250. The estate agents' committee also argued that the size of the fee was of relatively minor concern to the vendor, whose principal requirement was to sell his house as quickly as possible at the highest possible price. It would therefore be contrary to the vendor's interest for competition to cause a reduction in fees at the expense of the service given.

251. We accept that the size of the fee is of less importance to the vendor than the price which he gets for his house. This is not to say that it is of no importance, however. Both estate agents and vendors themselves can be expected still to be aware of where vendors' real interests lie; there is no reason to expect that all the emphasis would be put on the level of fees in the competition for business and that the general level of service would therefore fall to such an extent that vendors' interests would suffer. As we have said, we do not think that the removal of the present restrictions would cause widespread competitive reductions of fees; there would, however, be some flexibility and consumers could be given more choice.

252. The estate agents' committee argued that the practice of charging fees at standard rates simplified co-operation between estate agents, that is to say the sharing of instructions on a sub-agency basis with one or more other agents. It made it possible for agents to send particulars of houses to other agents, who were thereby automatically enabled to act as sub-agents, without any correspondence or negotiation over the rate of fee to be charged.

253. Assuming that such co-operation is something which ought to be preserved, we do not accept that it would be seriously impeded by allowing competition in fees. For example, even if agents in a town were charging different rates, it is likely that the rate charged by each would remain constant and there would be no difficulty in reaching a general understanding among themselves about the basis for sharing fees. We have, indeed, heard of one case in which sharing is arranged in this way between an agent charging reduced fees and an agent charging at the standard rates. Other ways would be open to agents for avoiding any difficulty even if rates of fee were varied on different transactions; the rate being charged could, for example, be indicated on the particulars sent to sub-agents. In most cases of course it is likely that most agents in one town will charge similar rates.

254. Apart from these considerations, we are not convinced that there would be any loss to the public interest if such co-operation did become more difficult. Some very successful agents refuse to co-operate even now, and we were told that in general only a small proportion of sales are actually effected through sub-agents, because sub-agents generally do not put much effort into selling houses sent to them by other agents. Separate instructions by the vendor, with the incentive of earning a full fee, are probably more effective in reaching a wider market, if that is what the vendor wants.

255. Finally, the committee argued that, if competitive pressure were to lead to lower fees, agents would be tempted to sell houses at less than their real value in order to achieve quick sales.

256. This, of course, is a temptation to which estate agents are subject even when fees are charged at standard rates. There is no reason to expect that their standards of integrity in this respect would decline simply because competition in fees was permitted. There are also certain safeguards against such undervaluing. Many vendors have a fair idea of the price that they can expect to get for their houses, and the possibility of selling without the use of an agent is a safeguard against any general tendency by agents to undervalue. A substantial proportion of houses are in fact sold without the use of estate agents (see paragraph 24). In addition, if the house prices realised are more important to vendors than the fees charged, as is argued, then the ability to get a good price is likely to outweigh any offer of a reduced fee in the competition between agents.

Conclusion

257. We are not impressed by any of the arguments advanced by the estate agents' committee in favour of estate agents' fees continuing to be charged at standard rates. They appear to us to carry no more weight than arguments which have in the past been advanced in favour of avoiding price competition in the supply of goods.

258. The disadvantages which we see in standard fees are that, at least in some cases, fees are likely to be higher than they otherwise would be ; resources are likely to be wasted ; the incentive to introduce or experiment with new methods is likely to be reduced ; and the customer is denied the option of a lower price if he does not want the full service that goes with the standard price. We consider that the information which we have collected and analysed about individual estate agents' businesses illustrates how some of these disadvantages occur in practice.

259. We therefore conclude that the conditions which we have found to prevail (see paragraphs 198-204) operate and may be expected to operate against the public interest.

Remedies

260. In order to remedy the mischiefs which result from the conditions which we have found to prevail, it is necessary to discontinue the various arrangements which give rise to the practice of charging fees at standard rates. We therefore recommend that :

- (i) the national societies should no longer recommend or publish scales of fees for the services covered by the reference ;

- (ii) the rules of the national societies which restrict their members' ability to compete for business on the basis of fees or to charge whatever fees they think fit (see paragraph 71) should be withdrawn ;
- (iii) any rules of the national societies which might otherwise prevent or discourage the use of rates of charging fees in competition for business (including the rules on unprofessional conduct, supplanting, canvassing and advertising referred to in paragraphs 35-38) should be so interpreted as not to do so and should, if necessary, be amended to achieve this object ;
- (iv) any arrangements by local associations of estate agents having similar effects should also be withdrawn. These include the publication, recommendation or enforcement of common scales of charges, rules requiring members to adhere to the national scales, rules restricting competition in fees and rules debarring members from co-operating with other agents on the ground that they charge fees at different rates.

261. Finally, because estate agents with a long tradition of charging at standard rates and of regarding fee-cutting as unethical may continue to refrain from fee competition, we consider it important, as we have said in paragraph 249, that the proposal that registration should become a statutory requirement should not lead to restraints on entry to the business that would reinforce that tendency.

ASHTON ROSKILL (*Chairman*)

HENRY HARDMAN

T. BARNA

ROGER FALK

W. E. JONES

BERNARD MILLER

T. G ROCHE

(Subject to note of dissent below)

MISS M. DENNEHY (*Secretary*)

18th December 1968

Note of Dissent

by the Hon. T. G. Roche

262. I consider each case should be considered on its own facts and merits and the evidence given in this case does not satisfy me that the practice whereby certain societies recommend standard scales of commission either is or is likely to be contrary to the public interest.

263. Points which I would desire to mention include

- (a) The Commission received singularly few complaints from either vendors or prospective buyers of houses as to the standard of service given by estate agents. In my view there are no grounds for thinking that the existence of standard scales has affected adversely the the standard of service.
- (b) Although the great majority of agents do normally charge in accordance with one of the standard scales yet the evidence showed that nearly all of them felt free, in special circumstances, to charge less. Departures are most common in the case of new houses involving repetitive work but departures also occur in cases where it was felt adherence to the scale would involve hardship. There was no evidence that any of the Societies had at any time since the war taken action against any member on this ground. In my view the recommendations serve to establish a general level of charges which is reasonably appropriate to and is applied in the majority of cases but leave sufficient flexibility to deal with special cases.
- (c) The figures in appendix 15 show that the commission payable under the recommended national scale (which is in effect the maximum) is less than that charged in the majority of other countries. (In Amsterdam the vendor pays all expenses in addition to the commission.) I was also impressed by evidence as to the commission payable on the sale of chattels by auction in the two leading salerooms in London. These commissions (which include all expenses other than insurance) vary from 10 to 15 per cent.
- (d) I agree with my colleagues that there are no grounds for saying that the profits made by estate agents are excessive nor do I consider there is any evidence that the profession do not manage their affairs with efficiency and economy.
- (e) The Commission prepared statistics relating to sales effected by a sample of 78 firms of estate agents in the North of England and similar statistics relating to sales effected by samples of 103 firms in the Midlands, 82 in Wales and the West, 135 in the South and 56 in London. I think these statistics are open to a number of objections but it is sufficient to say that while they may be of use for some purposes I think the samples on which they are based render them an unsuitable basis for comparison as between regions. For example:
 - (i) The northern region does not contain any agents from any of the four biggest cities in the region—Manchester, Liverpool, Leeds and Sheffield—nor from Newcastle which is so important in the North East. Nor are any agents practising in Birmingham included in the Midlands sample. For a variety of reasons

I cannot accept as representative of the North or Midlands samples which exclude these cities. In the London sample on the other hand 23 out of the 56 establishments were situated in Kensington where residential values must be amongst the highest in the country.

- (ii) The difference between the nature of the business being transacted by the agents in the northern and southern samples is illustrated by the prices of the houses sold—see appendix 11. The average price of the second-hand houses sold by the agents in the northern sample was £2,200, by those in the southern sample £4,600 and in the London sample £7,000. Then in the northern sample over 49 per cent of the second-hand houses sold were houses selling for less than £2,000. In the southern sample second-hand houses selling for less than £2,000 were less than 8 per cent of the total.

At the other end of the scale only just over 1 per cent of the northern sample consisted of second-hand houses selling for more than £7,000 whereas the southern sample contained over 9 per cent of such houses.

These divergencies are so great that I consider that in comparing figures relating to the northern sample with that of the southern or London samples one is not comparing like with like.

I do not think there is any reliable evidence of relative costs incurred by agents in selling comparable houses in the North and South nor of whether such differences as there may be are more than one would expect having regard to the differences in the price levels of the rents, goods and services making up an estate agent's expenses and to the differing circumstances.

- (f) Lest the remarks in the last paragraph seem unduly critical of the only statistics available I should add that I appreciate it would have been difficult if not impossible to prepare statistics showing the average cost per sale incurred by agents in the different regions in selling comparable houses. Moreover even if such figures had been available I should have hesitated to draw any general conclusions therefrom. This is because conditions vary very much from place to place and in my judgment these variations are likely to affect the costs which it is necessary for agents to incur. In many cases it seems to me that some of the factors which tend to raise the level of prices of houses in an area are also factors which render it necessary to spend more on finding a purchaser ready to pay those prices.
- (g) In so far as the statistics show that the cost incurred per sale by agents selling expensive houses are higher than those selling cheaper houses this seems to me both natural and proper. If a vendor were seeking to sell two houses one worth £7,000 and the other worth £2,000 or less and to do so without the assistance of an estate agent I think that vendor would if he were wise spend more on the former than the latter transaction. It seems to me entirely reasonable and in the vendor's interest that agents should do likewise.

(h) There is no obligation on estate agents to belong to any of the societies which recommend scales of fees. Those who do not belong could scarcely—for competitive reasons—charge more than recommended scales but they are entirely free to charge less. If the recommended scales were unduly high I consider one would find substantial numbers of highly respectable agencies operating at less than the recommended scales. There are in fact very few. In the view I take of the evidence the reason is that it is uneconomic to do so.

264. I have reached the positive conclusion that if the recommended scales had never existed vendors of houses would now be paying commissions higher than those which now prevail.

265. If recommendations continue in force it will in practice be difficult if not impossible for any agent to charge more. So long then as the scale recommended is reasonable the public can go to any agent knowing that they will not be called on to pay more than is reasonable. Those responsible for the scales are responsible men and I do not think it likely they would seek in the future any more than in the past to maintain a scale that was unreasonable. In any event so long as the present position continues the public is amply protected by the power of the Board of Trade to refer the matter back to this Commission.

266. If the recommendations as to fees are withdrawn I should hope that many agents would still continue to observe the scale for a time. Gradually, however, agents will start adopting different scales. Commissions may vary but in my view the public will on balance pay more than they would if the present position continued. If commissions do vary that would in my view tend to restrict co-operation between agents of the kinds referred to in the report. This in my view would be unfortunate. The availability of such co-operation is often of value to vendors. It is also of benefit to house hunters as it must tend to cut down the number of agencies they have to contact.

267. I appreciate my view as to what may occur in the future differs from the views held by my colleagues.

268. I prefer therefore to express my conclusion in this way. I consider it wrong and unwise to condemn arrangements that are old established, working well and affording the public a reasonable service at a reasonable cost unless it is established by evidence that the abolition of the arrangements in question will produce an even better position. I do not consider that the evidence does establish that the new position will be even as good as the present let alone better.

T. G. ROCHE.