

Conclusions and recommendations

I The 'conditions'

94. In considering whether the 'conditions' to which the 1948 Act (as amended and extended)¹ applies prevail we are required by our terms of reference to limit consideration to 'conditions which prevail or may prevail by virtue of arrangements or practices (falling within section 2(4) of the Act of 1965) whereby two or more persons supplying the relevant services accept restrictions on the advertising of such services'. This means that we can find the 'conditions' to prevail if we are satisfied that the supply of accountancy services in Great Britain is, to the extent of at least one third, by or for two or more persons who, whether voluntarily or not, and whether by agreement or arrangement or not, accept restrictions on the advertising of such services and thereby so conduct their respective affairs as in any way to prevent or restrict competition in connection with the supply of accountancy services (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 to whom, services are supplied).

95. We have described in chapter 2 the severe restrictions on advertising which the four professional bodies of accountants covered by this reference advise their members to observe. Although these restrictions are expressed in the form of advice, each of the four bodies has disciplinary powers under its charter which may be used if one of its members is found guilty of misconduct.² Although there are no doubt cases where some accountants fail to observe the precise letter of the advice applicable to them, we are satisfied that in general all suppliers of accountancy services in Great Britain as defined in the terms of reference (see paragraph 9) accept the restrictions on advertising as laid down in the advice given by the bodies to which they belong. The restrictions prevent every such supplier of accountancy services from using advertising as a form of competition to obtain business. It can hardly be denied that the use of that form of competition, if it were available, could be expected to result in some shift of business from one accountant to another; and it is indeed the prospect of advertising being used for this purpose that the four bodies regard as one of the strongest arguments against advertising. For immediate purposes, however, we are not concerned with the question whether the kind of competition that would arise if there were freedom to advertise would be desirable or undesirable. We are satisfied that the restrictions on advertising of accountancy services must have some restrictive effect on competition among the suppliers of those services.

96. We conclude therefore that the 'conditions' prevail as respects the supply in Great Britain of accountancy services by virtue of arrangements or practices of the kinds specified in the reference, as described in paragraph 94 above.

¹Since the reference was made before the commencement of the Fair Trading Act 1973, we are required (by paragraph 7 of Schedule 11 to that Act) to make our report in accordance with the enactments under which it was made, ie the 1948 Act as amended and extended.

²See paragraphs 36 and 42.

II The public interest

97. The matters on which we are required to form a judgment as to their effects upon the public interest are limited to those of which we have taken account in reaching our conclusion as to the prevalence of the 'conditions'. In other words, in considering whether the conditions, or any things which are 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, we are required to limit our judgment to the effects on the public interest of the arrangements or practices restricting the advertising of accountancy services. In forming our judgment, however, we are entitled to take account of the general context in which these services are supplied.

98. The accountancy services with which we are concerned are those provided in Great Britain in the course of their professional practice by persons who are members of the three Institutes of Chartered Accountants and the Association of Certified Accountants (see paragraph 9).¹ It is estimated that about 21,000 of the members of these four bodies are in public practice² in Great Britain, including sole practitioners and partners and their employees. The number of accountancy practices is more difficult to ascertain; it may be 10,000 or more but would be substantially less if small part-time practices were not included.³

99. Accountancy practices vary widely in size and geographical coverage. There are a few very large practices which operate on a national scale and also either directly or through associates, internationally; in many cases their most important clients are likely to be large industrial and commercial corporations; There are many other accountancy practices which operate on quite a large scale, and whose clients include many large and medium-sized corporations, some of them may tend to draw their clients largely from a particular region. though for historical and other reasons such practices may also have clients who are widely scattered geographically. There is a similar diversity among the smaller practices; they may tend to draw clients from the town or suburb in which they are situated but some of them also have clients further afield; their clients include many small businesses and individuals who use their services in relation to taxation. Some practices tend to specialise in providing services for a particular class of client (eg farmers). The larger practices not only have a number of partners who are necessarily qualified accountants but also employ substantial numbers of qualified staff. A small practice, on the other hand, may have only two partners or a single proprietor and no qualified accountant on its staff.

100. Large corporations have ostensibly a very wide choice of accountants, since they are free to appoint as their auditors any firm of accountants whose partners or proprietor belong to one of the four specified bodies and, for most accountancy services other than auditing (see paragraph 101), are free to engage

¹Although other persons can describe themselves as accountants, we use the expression 'accountant' to refer to those accountants with whose services our reference is concerned unless the context clearly indicates otherwise.

²In the accountancy profession the term 'public practice' is normally used in referring to what, in many professions, is called 'private practice'—see second footnote to paragraph 9.

³See paragraph 20. Qualified accountants who are employees may also provide services on their own account in their spare time.

anyone they may choose. For practical purposes, however, their choice is likely to be limited to the larger accountancy practices which are equipped, both technically and as regards size and range of skills of staff, to provide a service on the scale and of the kind required. The choice of accountants by medium-sized and small businesses and individuals is not limited by these last considerations but is likely in most cases to be confined to accountants who are local or at least reasonably accessible. Most accountancy services are rendered from year to year on a regular basis, though services in connection with company flotations and liquidations, new issues of capital and mergers are important exceptions.

101. Under section 161(1) of the Companies Act 1948 and section 13(1) of the Companies Act 1967, no person may be appointed auditor of a company unless (a) he is a member of a body of accountants recognised by the Department of Trade for this purpose, or (b) he is individually authorised by the Department. The only bodies recognised under (a) are the four bodies whose members' services are covered by this reference. Under (b), there are some 4,500 authorised persons who do not belong to any of these four bodies. Some of these are overseas associates of United Kingdom accountancy firms, and the rest are likely, in general, to act as auditors only for small companies (see paragraph 26). Thus the members of the four bodies, as a whole, have a substantial measure of protection under the Act against competition in providing company auditing services except in the case of small companies. And since most companies requiring other regular accountancy services (see paragraph 24) can be expected to look to their auditors to provide them, this measure of protection effectively covers most accountancy services for companies. As regards services to unincorporated businesses and bodies and to individuals, however, the members of the four bodies enjoy no such protection under the Act.¹ The prestige attached to the description 'chartered' or 'certified' accountant may on occasion help them to obtain such business, but in this field they generally have a large number of outside competitors.

102. Each of the four bodies controls its own admissions to membership. The conditions for admission include the passing of examinations, and these, as in other professions, have a limiting effect upon entry. We have no reason to believe that there is deliberate control by any of these bodies of the numbers of persons admitted.

103. Each of the four bodies now has a Royal Charter, and each charter, in effect, authorises the body concerned to regulate the conduct of its members and to set up disciplinary machinery for the purpose.² Where a member is judged guilty of misconduct in the course of carrying out his professional duties or otherwise, he may be excluded or suspended from membership or, in some cases, a practising certificate may be withdrawn or withheld. None of the charters or bye-laws made under them provides any precise definition of acts of commission or omission which are to be regarded as 'misconduct'. Each body, however,

¹They may, however, be protected as regards auditing services to some bodies and some professional or other businesses by the requirements of public authorities or by the rules of the professional or other bodies concerned (see paragraph 26).

²The terms of the charters and of the bye-laws made under them differ from body to body. Some of the terms used in this paragraph may not correspond exactly with the text of any or all of the documents concerned (see paragraphs 12 to 15 and 37 to 40).

issues some written guidance on conduct to its members (see paragraphs 45 to 53). This guidance does not take the form of mandatory rules but sets up standards members are expected to observe if they are to avoid being charged with misconduct. Restrictions on advertising are an integral part of this guidance in each case; and as we have said, we are satisfied that, in general, all suppliers of accountancy services within our terms of reference accept the restrictions contained in this advice.

104. Broadly the effect of the restrictions on advertising of each of the four bodies is to prohibit individual accountancy practices from indulging in any form of advertising, promotion or publicity except for a bare minimum of permitted forms of publicity regarded by the profession as essential for keeping users of the services informed of the existence and location of practices or as desirable in the interests of the profession as a whole. The two basic provisions of the guidance given in the ICAEW's handbook are those which state (i) that 'it is in the interests of the public and the Institute that any appointment or other activity of a member in a matter of national or local importance, or the award of any distinction to a member, should receive publicity and that membership of the Institute should be mentioned', but (ii) that 'it is a recognised principle that a member should not advertise or circularise, or in any other way solicit or seek to acquire professional business or bring his name to the notice of the public in a manner which would bring discredit to the profession or lower the esteem in which the profession is held in the eyes of the public'¹. One or two of the other provisions on advertising in the handbook do no more than apply the general ban on seeking business or publicity to particular circumstances (eg those concerned with members who stand as election candidates, with the appearance of a firm's name on its envelopes, with the presentation of audit reports and with relations with trade associations and other organisations²). The rest of these provisions set out in detail the limited exceptions from the general rule which are regarded as necessary for keeping users informed or as desirable in the interests of the profession. An effect of these is that the only forms of publicity aimed directly at the using public which are permitted for firms of accountants are those arising from entries in directories³. There are, in addition, a number of provisions which permit, subject to strict conditions, circulation of lists of offices, booklets etc to clients or in response to unsolicited requests⁴; the appearance of a member's name in advertisements for disposal or acquisition of property, in documents issued by clients, in reports for publication, or in the literature and advertisements of building societies⁵; advertisements for staff, in the press or (provided a box number is used) on television or in the cinema, of a style and size sufficient to enable them to compete with the advertisements of other organisations requiring staff from the same field⁶; notices of changes in partnership or in address to be sent to clients or published in the accountancy press or (for changes in partnership only) in the general press⁷; applications for

¹Paragraphs 2 and 3 of section E3 of the ICAEW's handbook—see Appendix 1.

²Paragraphs 23–26, 42, 52 and 56–57 of section E3.

³Paragraphs 37–41 and 85 of section E3.

⁴Paragraphs 50–51, 58–68, 70 and 87 of section E3.

⁵Paragraphs 15, 43–49, 53–54, 55 and 86 of section E3.

⁶Paragraphs 75–80 and 91 of section E3.

⁷Paragraphs 18 and 88–90 of section E3.

sub-contract work by advertisement in the accountancy press or by direct approach and responses to advertisements for professional services¹. There are also provisions which permit—again subject to strict conditions whose general effect is to prevent any abuse by way of self-promotion—notices in the press and publicity for examination successes and members' appointments; contributions to the press; appearances on radio or television; publicity in regard to books written by members; and the giving of their firm's name by members attending talks, lectures and conferences². Finally there are a number of provisions relating to ancillary activities of members; in effect these do not relax the normal advertising provisions if such activities are carried out by a firm which is itself providing professional accountancy services, but they permit the formation of associated but separate firms or companies for the purpose which are subject to different advertising restrictions from those applicable to accountancy services³.

105. The ICAS, the ICAI and the Association each provides its own form of guidance to its members. Although these three bodies have not codified their guidance to the same extent as the ICAEW, and there are differences in form and emphasis, the general effect so far as restrictions on advertising are concerned is similar in each case to that given in the ICAEW's handbook, as described in paragraph 104.

Advertising and the accountant's responsibilities

106. Although various other possible advantages of the restrictions on advertising have been advanced in the course of discussion, the view of the three Institutes and the Association that the restrictions are essential in the public interest derives mainly from their, and their members', sense of the special professional responsibilities to clients and to the public interest which every accountant is expected to recognise. The services provided by accountants involve the use of esoteric skills acquired by specialised training. Although this is not an aspect to which any of the bodies has given particular emphasis during this inquiry, accountants, like members of other professions exercising such skills, regard themselves as in a position of trust in relation to their clients. But, over and above the responsibility to the client's interest, accountants believe that they owe a special responsibility to the public whenever they express a professional opinion on financial statements. For their professional opinions are frequently taken into account and relied upon by persons other than the client; and, in the case of audit certificates in particular, it may be said that the Companies Acts have recognised this situation and imposed a duty of impartiality upon every accountant when acting in the capacity of auditor of a company. In the view of the four bodies it is essential that every accountant should maintain an attitude of independence, objectivity and impartiality, even if the consequences may be adverse to the client's view of his own interest or to the accountant's interest. And the bodies argue that advertising, involving the promotion of the accountant's interest, would be incompatible with maintenance of such an attitude.

¹Paragraphs 7–8, 71–72 and 82 of section E3.

²Paragraphs 19–22, 27–34 and 84 of section E3.

³Paragraphs 1–14 of section E6 and paragraphs 2–11 of section E8.

107. The main questions for us that emerge from these arguments are: (1) Do the suppliers of accountancy services assume special responsibilities, and is it desirable that they should do so? (2) If special responsibilities are assumed and it is desirable that they should be assumed, would freedom to advertise be likely to have adverse effects on the suppliers' ability to carry out these responsibilities?

108. With regard to (1) of paragraph 107, the accountant, as we have said, assumes both that he is in a position of trust in relation to his client and that he has an overriding responsibility to the public to express professional opinions which may be relied upon by persons other than his client. So far as the client's interest is concerned, there is in the first place a fiduciary element of a particular kind, inasmuch as the accountant's service may involve holding clients' monies in trust. We do not regard the advertising restrictions as a safeguard in this respect. As to the question of quality of service, the ability of a buyer to judge the quality of the goods and services he is offered varies greatly according to the nature of the goods and services concerned. He has to buy some goods and services largely on trust. In some of these cases it may be possible subsequently to identify defects and hold the supplier responsible; but in other cases this can be much more difficult, even when the consumer is vigilant and takes advantage of the protection increasingly given to consumers by legislation and otherwise. Some users of accountancy services, such as large companies, may be capable of judging the quality of the services rendered to them. But we accept that many users of accountancy services are likely to be so ill-informed about the nature and quality of these services as to make it difficult for them to recognise deficient service and so to protect themselves against its consequences. It is therefore in the interest of users of their services that accountants should assume a special sense of responsibility in their dealings with their clients.

109. So far as the responsibility to the public is concerned, we accept that accountants should be in a position to give impartial opinions which may be relied upon by all those persons, other than the client, who have an interest in the matters upon which they report. This is an important responsibility assumed by accountants; for some purposes it is required of them by law, and we accept that it is desirable that they should assume this responsibility in all cases where the interest of persons other than the client is or may be involved.

110. With regard to (2) of paragraph 107, the Institutes and the Association contend that the attitude of impartiality and integrity is something which is not easily built up but could easily be weakened or destroyed; that advertising, if practised by accountants, must have a weakening effect, since the attitude of an advertiser setting out to promote his own interest must run counter to the attitude of impartiality; and that, if accountants were seen to be engaged in self-promotion, this must in any case have an adverse effect on the public's confidence in their impartiality. As the ICAI has expressed it: 'The restrictions in advertising, as in other forms of promotion and canvassing, are made to underpin and strengthen the public interest aspects of the function of an accountant expressing professional opinions. They are part of the tradition of independence, integrity and professional ethics and competence, one of whose

basic aims is to support the balance between the interests of the public and the commercial interests of the practitioner, which is inherent in the practice of a profession as a means of livelihood’.

111. While the view that there is a direct link between professional integrity and advertising restrictions may well be held sincerely by accountants, we think that the link is tenuous in present circumstances. Accountants are in business to earn a living by selling their services. Every practising accountant is aware of this as regards himself and his fellow practitioners. We think that the public are also fully aware of this. We do not see why it should be assumed that, if accountants were to state overtly that they were seeking business, this should have the effect of weakening either their attitude of impartiality or the confidence of the public in that attitude. The temptation to depart from standards of strict impartiality no doubt exists at present, since every accountant must be aware on occasions that a true statement of a financial situation may be unwelcome to the client who pays his fee. But we cannot believe that accountants would be likely to succumb more easily or frequently to such temptation simply because the existence of competition within the profession was openly acknowledged.

112. It does not follow that there is no kind of advertising which could have the harmful effects envisaged by the profession. We accept that there are some kinds of advertising which might seriously mislead users of accountancy services or have harmful effects on confidence within the profession and on the public’s confidence in the profession; and loss of confidence can itself help to create the conditions in which a loss of integrity becomes more likely. But in our view there are some kinds of advertising that would not have any of these harmful effects.

113. It is not our purpose to pronounce upon the advantages and disadvantages of advertising in the field of goods and services as a whole. We can hardly arrive at a judgment on the effects of restrictions on advertising in one small part of that field, however, without taking account of the fact that freedom to advertise to the extent that it exists at present over the greater part of that field is not universally regarded as being without some disadvantageous consequences.

114. The ICAI has said that the function of promotional advertising ‘is artificially to alter the distribution of work between the practitioners and to influence the choice of potential clients towards the advertiser’. The other three bodies, though expressing themselves in different terms, appear to take a similar view. The ICAI’s statement seems to us, however, to be an incomplete definition of the ‘function’ of promotional advertising. Every advertiser must, if he is to attract demand, try to take some account of the interests of the potential purchasers; and in this sense it is a function of advertising to promote the interests of consumers as well as that of the advertiser. There remains, certainly, a recognised risk that the advertiser may mislead the consumer. In the field of goods and non-professional services this is regarded as an acceptable risk because of potential counterbalancing advantages to the consumer and the public interest, though some attempt is made to minimise the risk by applying

general controls (eg by legislation or by other means of regulation and restraint). We express no view as to the desirability of tighter control of advertising in general. Two points that seem to us relevant to the present inquiry, however, are, first that the present controls on advertising by accountants are severe, and, secondly, that the accountants seem to us to ignore the extent to which the interests of their clients might be served by their own advertisements.

115. In the light of paragraphs 106 to 114 above our position so far may be summed up as follows. We accept that accountants owe a special responsibility to their clients and a further and deeper responsibility to the public more generally. We accept that there are some kinds of advertising which, if permitted and indulged in, could lead to a significant deterioration in confidence within the profession, in the public's confidence in the profession, and therefore in the profession's ability to carry out those special responsibilities which it is in the public interest that it should assume. There is, therefore, a case for the continuance of a degree of restriction of the advertising of accountancy services. But it does not follow that the kinds of advertising that we think should be avoided are those at present forbidden to accountants.

Possible disadvantages of advertising restrictions

116. The principal possible objections to the restrictions on advertising observed in the accountancy profession appear to us to be that (1) they deprive users and potential users of helpful information which might otherwise be available to them; (2) they reduce the stimulus to efficiency, to cost-saving, to innovation, to new entry to practice and the setting up of new practices, and to competition amongst accountants; and (3) by eliminating the use of an overt method of stating competitive claims they enhance the more undesirable effects of less open methods of self-promotion. In the following paragraphs we consider what weight needs to be given to these objections in the actual context in which members of the profession offer their services. We bear in mind in this connection that the accountants whose services are covered by the reference, though they may be said to be in competition with a large number of other accountants who are not members of any of the four bodies, are effectively protected over a large area of the field in which they operate by virtue of the statutory reservation of the auditing function (see paragraph 101).

Effects on information to the public

117. With regard to (1) of paragraph 116, we agree with the four bodies that there is little evidence of active dissatisfaction on the part of the public about the information available to them on accountancy services. It does not follow that this information is as satisfactory as it might be, since the public may tend to be uncritical of existing arrangements because they are unaware of alternatives. We do not think large corporate users of accountants' services are likely to be adversely affected by lack of information about available services. But we do not see why any accountant should be debarred from providing the kind of information about the existence and the particular nature of his practice that could help any users or potential users, including smaller businesses and individuals, not only to find an accountant when they want one but also to choose the particular accountant to consult in their particular circumstances.

118. The Institutes and the Association accept that there is a need for information about accountancy services to be readily available. They contend, however, first, that, apart from the permitted listing of members' names in public directories and from the limited advertising of a new practice which may be allowed in future (see paragraph 54), it would be damaging to the accountant's 'ethic of impartiality' if any such information were provided except on a corporate basis by the bodies themselves, and, secondly, that there is no need on the part of the public for any further information beyond what is now provided. The first of these points is, basically, the one that we have already discussed in paragraphs 106 to 115 above. The bodies argue in this connection that a clear dividing line cannot be drawn between informative and promotional advertising by definition, that any system requiring prior approval of individual advertisements in order to eliminate the promotional element could only be cumbersome and costly, and that virtually all individual advertising must therefore be prohibited. As to the second point, the four bodies contend that a small business or individual requiring an accountant is quite likely to seek advice and obtain a recommendation from a bank manager, solicitor, trade association or chamber of trade, or possibly from a tax office or from an acquaintance. Alternatively he may approach a Citizens' Advice Bureau or other public office, which should be able to refer him to the various published lists of accountants and possibly to other literature published by the accountants' bodies (such as the ICAEW's *See a Chartered Accountant*). Or if he approaches one of the Institutes or the Association or one of their branches direct, he may be referred to a list of members or, in some cases, be given a short list of practising members who might be suitable for his purpose.

119. We agree with the view of the four bodies (which is shared also by the main bodies concerned with the advertising industry—see paragraphs 69 to 73) that no clear distinction can be drawn by definition between informative and promotional advertising. We do not agree, however, that every form of advertising with a promotional content would necessarily weaken the accountant's ability to maintain the required attitude of detachment. While we agree that a system of prior approval for individual advertisements would scarcely be practicable, we think that the kinds of promotional advertising which would be harmful can be identified with sufficient clarity to eliminate the need for any such system. Individual advertising, subject to such a safeguard, could fill a need which we do not regard as fully met at present or capable of being met by corporate methods alone. The ICAEW, while contending that it makes sufficient information 'available', has itself said that it 'would welcome a wider dissemination'; and it adds in this connection that some public offices have declined to accept offers of the Institute's topographical list of members, and that it has been unable to persuade the publishers of the 'yellow pages' to distinguish qualified from unqualified accountants by including professional qualifications. These seem to us symptomatic of the inevitable weaknesses of any attempt to keep the public informed by corporate means and public directories while suppressing any initiative in this respect on the part of individual accountants.

120. We see no reason why individual accountants should be debarred from stating publicly (in, for instance, advertisements or general circulars) not only

that they offer accountancy services and have specific qualifications, but also, if they so wish, that they welcome the custom of particular classes of client (eg small businesses, farmers, individuals with taxation problems), or that they concentrate on particular aspects of the service (eg taxation, book-keeping and accountancy for particular types of business), or indeed that they offer a general service covering all aspects of accountancy. The four bodies make the objection that such advertising by individual accountants could be misleading; they say, in effect, that the existence of genuine expertise in a special aspect of accountancy is something that only fellow accountants can properly assess, and that any user who needs special expertise should ask his existing accountant to make a recommendation. But we do not think that the risk of misleading the public arising from advertisements indicating a willingness or preference to perform certain kinds of work would be any more serious than that which exists at present, where the public may be led to assume that all accountants can be expected to be equally competent and suitable for their various purposes.

121. For the reasons given in paragraphs 116 to 120, we think that it is a significant disadvantage of the existing restrictions on advertising of accountancy services that they deprive the public of information which they ought to have, and which in our view they could be given without undue risk of abuse, about the services offered by individual accountancy practices.

Effects on efficiency and the competitive situation

122. With regard to (2) of paragraph 116, the possible objections to the restrictions in this respect are that, to the extent that they prohibit the use of some kinds of advertising, they deprive the more efficient practices of something which might help them to expand at the expense of the less efficient, and that, by depriving new entrants and practices which wish to introduce new methods or new kinds of service of some part of their means of attracting demand, they discourage both new entry and innovation; more generally, insofar as vigorous competition among suppliers may be expected to stimulate efficiency and so contribute to cost reduction, any inhibition on overt competition may be expected to produce contrary, disadvantageous effects.

123. The submissions of the institutes and the Association on this subject may be summarised as follows: (a) intense competition among accountants compels them in any event to maintain and increase efficiency and provides a stimulus to innovation, and the restrictions on advertising are irrelevant in this respect; (b) innovation is also stimulated by corporate action by the bodies, including studies of particular aspects of accountancy and circulation of information on latest developments; (c) the restrictions have no adverse effects either on the entry of candidates for qualification (for whom the bodies issue special pamphlets and leaflets and who can also obtain information from individual firms) or on the entry into practice of qualified accountants (who can be expected to start with some clients already known to them, can advertise for sub-contract work¹ and, having regard to the existing demand for accountants' services, can usually expand their businesses if they are efficient); (d) the restrictions may deter accountants from entering into 'false price competition'

¹See, eg, paragraph 82 of section E3 of the ICAEW's handbook—Appendix 1.

(such as quoting hourly rates, which by themselves cannot provide an indication of the size of the fee) but are otherwise irrelevant to price competition since there is no standard unit of service for which to quote a price.

124. We know of no method of making any quantitative comparison between the present state of efficiency of accountancy practices and their hypothetical state of efficiency if advertising were permitted. There is at least no obvious reason for supposing that freedom to advertise would lead, on average, to a lower degree of efficiency than exists at present. The bodies have argued that freedom to advertise would simply lead to significant increases in overhead costs, and that even if advertising led to increased business there would be little or no corresponding economies of scale because accountancy is a labour-intensive service. We do not dispute the labour-intensive character of the service in general. Nor do we dispute that some advertising cost might be incurred simply to neutralise the advertising initiated by other firms, thereby raising total costs without causing the re-allocation of business. But not all advertising would be of this kind. Moreover, we think it likely that some practices are more efficient than others (either generally or in some branches of activity), so that re-allocation of some work could improve the efficiency with which the work as a whole was carried out. Finally, it seems to us likely that firms in general would see no advantage in advertising on a lavish scale, though on occasions some firms might wish to spend relatively heavily in an attempt to expand their business (for example, in order to secure such economies of larger scale as might be available to them in the employment of more specialised staff)¹.

125. As regards innovation, we see no reason to dispute the profession's contention that it has, corporately, kept itself well abreast of modern techniques of accountancy. But the decision whether or not actually to introduce innovatory methods or services into an individual practice can depend upon the amount of additional business that they could be expected to bring in, more particularly if the introduction would involve capital expenditure or expansion of staff. Not all practitioners will wish to take the risk; and at present some of the more enterprising who might wish to do so could be deterred by the consideration that they would be unable to set about creating demand for the form of service they wished to offer by advertising it. We see no reason to suppose that, if accountants could advertise for this purpose, they would be any less willing than at present to co-operate in the corporate development of innovations and the dissemination of information on the subject.

126. As regards new entry, despite the representations made to us by the students' associations (see paragraph 65) we doubt whether candidates or potential candidates for qualifications as accountants are deprived by the advertising restrictions of information which would be of use to them. The commencement of new practices, whether by the recently qualified or by mature accountants who have been partners in or employed by established practices, is, however, more likely to be affected. The expansion of a new practice may be

¹The ICAEW discussed the costs of advertising in terms of quarter-page advertisements in provincial newspapers with comparatively large circulations. We doubt whether many accountants would wish to advertise regularly on this scale; and many small firms might be content to insert a 'classified' advertisement in their local (suburban or small town) paper.

delayed by inability to advertise for clients; and this consideration may in turn deter some accountants from taking the risk involved. Although a limited relaxation of the present advertising restrictions is contemplated for new practices, this is not intended to run counter to the general rule that no accountant should seek clients or, above all, do anything which might be interpreted as an invitation to another accountant's client to become his own client. This is a restriction which bears particularly hardly upon the new entrant to practice. In its present form it must discourage some qualified entrants from setting up separate practices in competition with the already established practitioners; and this is an effect which we regard as particularly undesirable in a profession to which entry is restricted by rules of qualification and which is effectively protected by law in some of its activities (see paragraphs 101 and 102).

127. We agree with the four bodies that there is no standard unit of service for which accountants would be able to advertise a price (see paragraph 123(d)). On the other hand, we doubt whether quoting hourly rates would be less helpful than giving the prospective user no information at all about the price he would have to pay for the service.

128. In the light of what we have said in paragraphs 122 to 127, we think that the existing restrictions on advertising of accountancy services have further significantly disadvantageous effects, in that they remove a stimulus which could be expected to have some beneficial effects on the efficiency of some practices and of the profession as a whole, and that they are likely to delay the introduction by some practices of innovatory methods and services and to discourage the setting up of new practices. The effects on innovation and new entry are likely to have further consequential disadvantageous effects on the competitiveness and efficiency of the profession generally.

Effects on the public attitude to the profession

129. With regard to (3) of paragraph 116, there is scope for suppliers of many kinds of services to attract customers by hints or by more explicit 'touting'. Or a supplier may think it worth his while to establish a reputation in public affairs because this may indirectly recommend him to numbers of potential customers. Such methods can vary from the honourable to the disreputable. The scope for using such methods would appear to be greatest where the service is based on esoteric skills and is normally supplied by individuals in business on their own or in partnership rather than by large corporations. This is not to suggest that we believe disreputable methods to be in common use within the accountants' profession; but this profession, like other professions, is aware that no rules can ensure that they will never be used by any of its members.

130. The argument against restrictions on advertising in this connection is not that their removal could be expected to eliminate these other methods of attracting custom. Rather the argument is, in the first place that a limitation on the use of explicit challengeable claims in advertisements may enhance the influence upon clients and potential clients of hints of claims that are hardly open to challenge and may have little bearing upon the client's real need. Secondly, it is that, if the suppliers of a service are known to deny themselves

the use of overt advertising but are believed by the public, whether rightly or wrongly, to be willing to promote their businesses by backstairs methods, the public may be more sceptical of their integrity than they would otherwise be, with effects which are detrimental to public confidence in the profession and ultimately to the public interest. We believe that this last consideration is more important than the accountancy profession, and perhaps most professions, may realise. By over-emphasising the consequences of its 'special' responsibilities, a profession can defeat its own purpose. However devoted the members of a profession may be to the carrying out of their special responsibilities, they are all at the same time in business to earn a living by supplying their service. The public, as we have said, are well aware of this; and we think that if the profession were more frank with the public in acknowledging the supplier's personal interest in conducting a successful and remunerative business, the public might be more rather than less ready to recognise that this personal interest did not mean that other interests were disregarded.

131. For the reasons given in paragraphs 129 and 130 we conclude that an additional significant disadvantageous effect of the existing restrictions on the advertising of accountancy services is that they may enhance the influence upon the public of other, less desirable, methods of attracting custom, and tend to create a false image of the profession which is harmful to public confidence and to relations between the profession and the public.

Advertising in relation to the profession's international position

132. The ICAEW, in particular, has submitted that, if advertising were permitted for accountants in this country, there could be serious adverse effects upon the standing of the British profession abroad and therefore upon its ability to obtain or keep overseas business (see paragraphs 89 to 91). It is said that (a) since in practically all developed countries the professional rules on advertising are as strict as, or in many cases stricter than, those observed in this country, the British position would be quite exceptional if the present rules were relaxed, with consequences which would seriously damage the high reputation of the British profession; (b) in some of these countries it might be difficult or impossible for British firms to operate if they, or their British associates operating under the same firm name, were advertising in British financial or other newspapers which circulate internationally; (c) the British profession at present earns 'several millions a year' annually in 'invisible exports'; and (d) progress towards 'harmonisation' under the Treaty of Rome could lead eventually to a directive on ethical matters applying to the profession in all member countries of the EEC, and any such directive would be likely to include a prohibition on advertising.

133. We are satisfied that it is broadly true that in other developed countries the rules on advertising by accountants are at least as strict as those in this country¹. Since it was the British profession that took the lead in the nineteenth century in establishing a position of independence for itself and in formulating the ethical rules it thought necessary for the purpose, it may well be that the

¹There are minor exceptions in Canada and Denmark (see Appendix 5).

profession elsewhere has tended to follow an imitative course. The present world-wide consensus as to the undesirability of advertising appears to be a professional consensus; and we know of no evidence that the reputation of accountants who advertised would suffer in the eyes of overseas users of the service. We have indicated that we believe public opinion in this country would now find some kinds of advertising by accountants acceptable. It may be that similar movements of opinion are taking place elsewhere.

134. We recognise, nevertheless, that professional opinion in overseas countries, supported as it may be by law in some of those countries, could have a powerful influence upon the ability of British accountants to practise there if they were not regarded as conforming with the local rules or conventions. Accountancy is not, however, the only profession in which practitioners operate in a number of countries; and in some professions the rules on advertising are less uniform from country to country than in the case of accountancy. An accountant who operates internationally must, of course, take account of the likely effect upon his business elsewhere of what he does in this country. If advertising were permitted, no accountant would be compelled to advertise. A British accountant with an associated firm in Paris might decide that it was inadvisable to advertise in this country by any method which could embarrass the Paris firm; this could possibly mean that he would not advertise at all. We would not regard this as a reason why the majority of accountants, who have no overseas interests, should be debarred from advertising in this country. Although the ICAEW has suggested that the mere fact that advertising was allowed in this country might jeopardise the Paris firm's permit to practise, we find it difficult to believe that a firm which itself conformed with local rules could have its permit withdrawn for that reason alone.

135. As to the effects of 'harmonisation' under the Treaty of Rome, the ICAEW's submission ((d) of paragraph 132 above) represents its opinion about the likely course of events. We can neither dispute nor confirm its view. Our present duty is to form a judgment as to the effects of the advertising restrictions upon the public interest within the framework of the United Kingdom legislation. In doing so, we do not think we should allow ourselves to be influenced by speculation about decisions which may be taken later within the EEC and in which the United Kingdom may be expected to play a contributory part.

Conclusions on the public interest

136. We have found that the existing restrictions on the advertising of accountancy services result in significant disadvantages to the public interest, and consideration of the profession's international position (paragraphs 132 to 135) has not led us to modify these views. We conclude, therefore, that:

- (a) The 'conditions' which we have found to prevail (paragraph 96) operate and may be expected to operate against the public interest because the restrictions on advertising by virtue of which those conditions prevail: (i) unduly restrict the information given to the public about the services offered by individual accountancy practices (paragraph 121); (ii) are likely to have disadvantageous effects on the competitiveness and efficiency of the profession generally, on the introduction of innovatory

methods and services, and on the setting up of new practices (paragraph 128); and (iii) may enhance the influence upon the public of other, less desirable, methods of attracting custom and tend to create a false image of the profession which is harmful to public confidence and to relations between the profession and the public (paragraph 131);

- (b) There are no things done by the parties concerned as a result of, or for the purpose of preserving, the 'conditions' which operate or may be expected to operate against the public interest.

III Recommendations

137. It does not follow from our conclusion in paragraph 136 about the disadvantageous effects of the existing advertising restrictions upon the public interest that we think accountants should henceforth be allowed to advertise without any restriction. We have made it clear that in our view there is a case for the continuance of a degree of restriction of the advertising of accountancy services because some kinds of advertising could lead to a significant deterioration in confidence within the profession, in the public's confidence in the profession and therefore in the profession's ability to carry out those special responsibilities which it is in the public interest that it should assume (paragraph 115). As we have said, we agree with the Institutes and the Association that no clear distinction can be drawn between informative and promotional advertising. The four bodies, for this reason, lay down codes which severely limit publicity of all kinds, the only permitted kinds being those with a minimum of promotional content which are regarded as essential to inform the public of the availability of accountancy services or desirable in the interests of the profession as a whole. This, basically, is where we disagree with the bodies. We accept that there are some kinds of advertising which, if permitted and indulged in, could have harmful effects in the context of the accountancy profession and its services, and that there should continue to be a safeguard against the risk that individual accountancy practices might bring disrepute upon the whole profession by the methods or matter of their publicity. But we think that, for these purposes, the line does not have to be drawn where the profession now draws it, and that a new approach, providing considerable scope for advertising, is required. In paragraphs 138 *et seq* we describe the arrangements which would, in our view, substantially remedy the adverse effects, as summarised in paragraph 136, of the present restrictions while providing the necessary safeguards.

138. Subject to certain specific restraints (see paragraph 139) we would see nothing improper or harmful to the relations between the profession and the public in allowing any individual accountancy practice to advertise to the extent and by the methods it thinks fit. Such publicity, whether by way of advertisements in the press or other news media or of circulars or by any other means, could not only draw attention to the existence of the practice and the qualifications of the practitioner and his employees but could also describe the nature of the practice, including allusions to particular classes of client to whom services were offered or to particular kinds of accountancy service which were offered. Nor would we see any objection to the practitioner, should he think it appropriate, drawing attention to any other features of the practice, eg the

convenience of its location, its expedition in dealing with clients' affairs or the level of fees which it charges. An accountant who advertised in such a way would, to an extent, be inviting custom, including the custom of other accountants' clients; and he might, perhaps, be inviting particular kinds of custom. But, as we have said, the public are well aware that accountants are in practice for the purpose, among others, of earning a living. We do not think they will be surprised or shocked if members of the profession invite custom explicitly and informatively. Nor, given the appropriate restraints, do we think such advertising will be likely to create any new risk of misleading the public or adversely affecting the ability of accountants to maintain an attitude of independence and impartiality. We would expect on the other hand that the increased freedom to advertise would be conducive to improvements in communication and relations between the public and the profession and in the general efficiency of the profession, to the introduction of new methods and to the facilitation of new entry to practice.

139. In paragraph 104 we have drawn attention to the two basic provisions on advertising of the ICAEW which, while recognising the desirability of certain kinds of publicity in the interests of the public and the Institute, place a general prohibition on advertising and soliciting business. We consider that these provisions and the corresponding provisions of the other three bodies should be terminated and replaced by a rule which would permit any accountancy practice in Great Britain to use, whenever it thinks fit, such methods of publicity as it thinks fit, provided that:

- (1) No advertisement, circular or other form of publicity used by an accountancy practice should claim for that practice superiority in any respect over any or all other accountancy practices.
- (2) Such publicity should not contain any inaccuracies.
- (3) While advertisements, circulars and other publicity may make clear the intention of the accountancy practice to seek custom, they should not be of a character that could reasonably be regarded as likely to bring the profession into disrepute.

140. Since we do not agree with the ways in which the accountancy profession, through the Institutes and the Association, has exercised its power to regulate advertising, we have considered whether it might be advisable that some independent representation of the public interest should be introduced to play a part in the formulation or enforcement of the advertising code of the profession. For various reasons we have reached the conclusion that this is not practicable. Provided the basic changes we regard as necessary are made in the present code, we see no need for modification of the present disciplinary arrangements within the profession. The restraints proposed in paragraph 139 should, therefore, be enforceable through the existing disciplinary processes of the four bodies.

141. Although we have outlined the substance of the general rule on advertising which we propose, we think that there should be consultation between the Institutes and the Association and the appropriate authorities under the Fair Trading Act before the rule is formulated in precise terms. As we have indicated in paragraph 104, a few of the subsidiary provisions on advertising are concerned to apply the present general prohibition to particular circumstances, while the rest regulate those exceptional forms of advertising and publicity that are at present permitted. Given a general rule such as we suggest, we would see no need for additional provisions relating to envelopes, directories, the circulation of lists of offices or of booklets, the appearance of an accountant's name in the documents, reports, literature or advertisements of other parties, advertisements for staff, changes of address or partnership, contract work, responses to advertisements, publicity in or contributions to the press (other than by paid advertisements), or publicity arising from radio or television appearances, books, talks, lectures or conferences. We doubt also whether special provisions on members who stand as election candidates, on the presentation of audit reports and on relations with trade associations and other organisations would be necessary; but insofar as these may be deemed to reflect ethical principles which are not concerned with advertising and are outside our terms of reference, there may be a case for retaining or modifying rather than abolishing them. Finally there are the provisions relating to the advertising of ancillary services. Although we have thought it relevant to examine these as a whole, they are strictly within our terms of reference only insofar as they apply to the firms which supply accountancy services. Where an accountancy firm itself provides any of these ancillary services, the latter are at present subject to the ordinary advertising rules covering the main services; and we see no reason why they should not continue to be subject to the same general rule as we have suggested should apply to the main services. Where ancillary services are supplied by firms or companies which are distinct from, though associated with, the accountancy firms, these firms or companies are not suppliers of services covered by our reference; it is not, therefore, for us to make any recommendation about the advertising rules that should apply to them in future. Subject to this last point, the consultation referred to above could cover all the matters mentioned in this paragraph. It may also be necessary to bear in mind that the advertising provisions of the three Institutes and the Association are not confined to members practising in Great Britain.

142. When formulated in more precise terms, a rule such as we have outlined need be neither vague nor unenforceable. The disciplinary powers of the Institutes and the Association will remain intact; it will still ultimately be for each disciplinary committee to determine whether a member has been guilty of 'misconduct' and, if necessary, to apply the appropriate penalties, which may include expulsion or suspension from membership or withdrawal of his practising certificate. Our recommendation is made in the expectation that the Councils and all relevant committees, including the disciplinary committees, of the four bodies will accept that advertising, subject to the conditions we propose, will not henceforth be regarded as in any way improper for accountants.

It is in this expectation that we have said, in paragraph 140, that we see no need for modification of the present disciplinary arrangements.

ASHTON ROSKILL (*Chairman*)

ROGER FALK

MARGARET HALL

E L RICHARDS

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E L PHILLIPS (*Consultant*)

25 June 1975