

## "History of Estate Agents Registration"

by Francis Bennion

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For over half a century the profession of the land has pursued the object of statutory registration. The type of registration has varied; the only constant factor has been lack of success. Now, as an all-embracing register of estate agents is at last being compiled - though not as yet under the provisions of an Act of Parliament - it may be opportune to review this long struggle which has been carried on by a profession anxious to rid itself of undesirable elements, to protect the public against fraud and incompetence, and to raise its prestige in the eyes of other professions and the world at large.

The struggle to register a profession follows a similar path, whether it ends in success or failure. There is always opposition between those at the lower end of the scale who see advantage for themselves in an official system of recognition and those at the other end who shrink from allowing less well-qualified brethren to join their ranks. Mingling with these at all levels are the public-spirited practitioners whose main aim is to serve their clients above all. All of these know that Parliament will withhold statutory registration unless two conditions are satisfied. One is that no existing practitioner of good character shall be excluded and the other is that practitioners in general are united in desiring a particular scheme of registration. All know that the first condition inevitably leads to dilution by admitting to the ranks of qualified practitioners those who may have taken up practice only a short time previously and with no training. All know equally that after a generation these differences will have vanished and the profession will be on a secure footing, there to remain. For many, however, the attractions of the latter state are outweighed by the drawbacks of the former. In short they cannot bear to surrender their pre-eminence even for the well-being of the next generation; and so they drag their feet, impetus is lost and one more attempt is doomed to failure. In a different context, the situation was vividly portrayed by Macaulay:

"Was none who would be foremost  
To lead such dire attack;  
But those behind cried 'Forward!'  
And those before cried 'Back!'"

Other factors which have caused difficulty in securing statutory registration include the large number of representative bodies operating within the field of the profession, the constant shifts in policy caused by changes in leading figures, particularly presidents who change annually, and the enormous difficulty and expense of securing the passage through both Houses of Parliament of a Private Member's Bill. At the time of the latest attempt to secure legislation in 1965/6, there were no fewer than 10 representative bodies in England alone, and even this did not include such bodies as the Federation of Local Associations of Estate Agents. The organisation of a professional body in any case makes decision-taking difficult. Multiply this by 10 and an almost

impossible situation is reached.

By and large the profession has been united in seeking the system of registration known as registration of function, rather than that of registration of appellation. The architects were content with the latter, and even they did not find it easy to achieve. Within the estate profession however there are a number of appellations, and none of them has so clear-cut a meaning as that of architect. Registration of function is more difficult to obtain, since it involves debarring unregistered persons from practising, a state of affairs only reached so far by the legal profession.

The chronicle which follows is one of false starts and continuous frustrations. When one thinks of the enormous efforts made by people such as John Stevenson, Secretary of the Incorporated Society of Auctioneers and Landed Property Agents for 20 years, through the whole of which he devoted his energies to promoting registration; when one considers the enormous expenditure of money by professional bodies out of their scanty resources; above all when one thinks of the fact that through it all, for half a century, crooks and swindlers have gone on defrauding the public, as they still may today, without any effective check, one longs for the day when the tale is finished and at long last the Royal Assent is given to a registration Act.

### **The Duncan Bill**

There have been many attempts to set up machinery for the registration of estate agents. If one includes attempts which go wider and include other aspects of the work of a general practice surveyor as well, one may trace the earliest attempt to secure registration by legislation as far back as 1888. In this year a body known as "Architects', Engineers' and Surveyors' Registration Committee" arranged for the presentation of a Bill for the registration of architects, engineers and surveyors. Colonel Duncan, the Member for Finsbury, who moved the second reading of the Bill, said that there was nothing at present to prevent a man calling himself an architect, surveyor or engineer; while the public had no means whatever which would enable them to distinguish between those who were competent and qualified persons and those who were not. The promoters of the Bill desired to afford facility for distinguishing between men who had been trained to the profession of architects, civil engineers, and surveyors, and those who had not received such training.

The Bill encountered wide opposition. Among its opponents was the President of the Surveyors' Institution, Mr. Beadel, who was the Member of Parliament for Chelmsford. He said:

"The provisions of the Bill constitute an attack upon the influence for good which the Surveyors' Institution, incorporated by Royal Charter, exercises.... The House will be careful in allowing a Bill to pass the second reading the purport of which is... to allow those who have not gone through the necessary ordeal of passing through [the professional institutions] for the purpose of getting the stamp of ability placed upon them, to arrive at a position which would enable them to compete with those who had passed that ordeal.... To pass the Bill would be to throw odium upon institutions which have stood the test of time.

In the face of the almost unanimous opposition to the Bill by Members speaking in the debate, Col. Duncan was forced to withdraw it.

### **The Boyton Bill**

The first attempt to provide for the statutory registration of estate agents as such was the Auctioneers and Estate Agents Registration Bill introduced into the House of Commons in March 1914. The Member introducing the Bill was Mr. James Boyton (later) Sir James Boyton), a partner in the firm of Elliott, Son & Boyton, of Vere Street, London, W.1. Mr. Boyton was a member of the Auctioneers' and Estate Agents' Institute, and the Bill was indeed promoted by the Institute. It was a length to provide for the statutory registration of estate agents as such was the Auctioneers and Estate Agents Registration Bill introduced into the House of Commons in March 1914. The Member introducing the Bill was Mr. James Boyton (later) Sir James Boyton), a partner in the firm of Elliott, Son & Boyton, of Vere Street, London, W.1. Mr. Boyton was a member of the Auctioneers' and Estate Agents' Institute, and the Bill was indeed promoted by the Institute. It was a length to be exercised by a registered auctioneer or registered estate agent. Curiously, the Bill did not in terms restrict the practice of negotiating sales by private treaty or lettings. In addition to prohibiting a person from falsely describing himself as a registered auctioneer or registered estate agent, the Bill also made it an offence falsely to describe oneself as a member of the Auctioneers' and Estate Agents' Institute or the Surveyors' Institution (now the Chartered Auctioneers' and Estate Agents' Institute and the Royal Institution of Chartered Surveyors respectively). The Institution and the Institute were given a dominating role on the registration board proposed to be set up. It would have consisted of six members appointed by the Institution, six appointed by the Institute and three appointed by the President of the Board of Trade. The registration board had power to co-opt three or six additional persons. In view of the uneasiness felt by some members of the profession in more recent times at the prospect of the regulating government department being the Board of Trade (which they regard as being more concerned with commerce than professional activities), it is interesting to observe that the Board of Trade was the department originally selected by the Institute as most appropriate for this purpose.

It is of some interest also to note the definition in the Bill of an auctioneer or estate agent, which ran as follows: "Any person who on behalf of any other person and for or in consideration of any payment or other remuneration whether monetary or otherwise (a) values, sells, buys, lets, takes on lease or otherwise deals with or disposes of land of any tenure or any buildings, or any estate or interest in land of any tenure or buildings, or (b) negotiates for the sale, purchase, letting or taking on lease or for any other dealings with or disposition of land of any tenure or buildings or any estate or interest in land of any tenure or buildings."

The Bill provided for three categories of persons qualified for registration. These were professionally qualified members of the Institution or Institute, any person applying for registration within three years of the passing of the Bill who, at the date of its passing, was an auctioneer or estate agent practising in the British Isles, and any person who was successful in passing examinations held by the registration board itself, or by the Institution or the Institute as delegates of the board. Except for existing practitioners, no person could be entered on the register if he was following any profession, business or occupation other than that of an auctioneer or estate agent and a registered person who began to follow any such other profession, business or occupation could be removed from the register. Other grounds for removal were the usual ones of conviction for felony or misdemeanour, professional misconduct, bankruptcy, etc. Registration fees had to be approved by the Board of Trade, and a curious provision was one requiring the Institution and the Institute to retain their own organisations. An appeal against refusal to register or removal from the register lay to the High Courts of Justice. Exemptions from the provisions of the Bill were made in favour of solicitors, accountants, architects and engineers.

It is not clear why the only professional acts restricted by the Bill were those of valuation and auctioneering. The memorandum accompanying the Bill explained that, subject to this restriction, "the principal purpose of the Bill is to provide for the keeping of a record or persons possessing such a knowledge of the subjects appertaining to the business as to qualify them for registration." This was the aspect stressed by the President of the Institute in his address for the year 1914 when he said that it was only right that the public should have some assurance that the men they employed were qualified to do the work they undertook. Although the Bill gave the Surveyors' Institution an equal voice with the Institute it was not in fact supported by the Institution.

The Boynton Bill made no progress in Parliament, and lapsed at the end of the session. The first world war delayed any renewal of the attempt to secure legislation, although the subject was not forgotten even during the war. In his Presidential address to the Institute, Sir William Wells said: "Proper control of those practising in a profession is absolutely essential, and is, indeed, the characteristic which distinguishes a profession from a mere money-making business..... We should therefore aim at the establishment of some controlling body such as exists in the legal and medical professions."

### **The Clarke Bill**

In 1921 a special conference was arranged between the Institution and the Institute on the subject of registration. This was done "with the object of protecting the profession and the public against the activities of the irregular practitioner." In a leading article earlier in the year **The Estates Gazette** had remarked that "Registration would be at least as much in the interests of the public as of the profession, since it would give assurances that the client was dealing with a practitioner who had not only been stamped with a hall-mark, but was known to be subject to strict discipline. This is a matter in which the public interest must always come first." The editorial considered the chances of statutory registration for surveyors to be poor, and considered that the immediate object must be to raise the qualifications and status of both the Institution and the Institute so that non-members would see the necessity for coming in.

At the end of the war the Auctioneers' and Estate Agents' Institute persuaded the other two leading professional bodies, the Surveyors' Institution and the Land Agents' Society, to join in promoting a further attempt to secure statutory registration. This led to the introduction of a Private Members' Bill into the House of Commons on February 16, 1923. The Bill was entitled "The Landed Property Practitioners (Registration) Bill", and it was introduced by Sir Edgar Chatfield-Clarke, M.P., who had a connection with the profession because his father and brothers were members of the Surveyors' Institution.

The Bill provided for the setting up of a body corporate to be called the Landed Property Practitioners' Registration Board. This would consist of 20 persons, of whom 15 would be appointed by the three professional bodies promoting the Bill. Of the remaining five one would be appointed by each of the five Government departments, namely the Ministries of Agriculture and Health, the Board of Trade, the Commissioners of Works and the Commissioners of Inland

Revenue. The wide range of the Bill is shown by the fact that it was made a criminal offence for anyone not registered under the Bill to use any of the following designations: Land Agent, Estate Agent, Surveyor, Quantity Surveyor, Valuer, House Agent, or Auctioneer. Those entitled to register were existing members of any of the three promoting societies, persons who had passed a qualifying examination of a standard recognised by the Registration Board, and existing non-professional practitioners. The last mentioned could only register if they had been engaged in any of the activities covered by the Bill for five years as principals or for seven years as assistants, or for six years partly as principals and partly as assistants.

The Registration Board could refuse to register, or strike off, any person who had the usual disabilities in the form of criminal conviction, bankruptcy, etc., or "is proved to the satisfaction of the Board to be following or to have entered into any profession, business or occupation which in the opinion of the Board cannot properly be carried on in conjunction with the performance of the specified duties." This provision was directed particularly to agents who carried on their function in conjunction with the business of selling furniture, and was to give rise to bitter opposition. There were the usual exemptions for other professions such as solicitors, accountants and engineers, and an interesting provision stating the unregistered persons should not be entitled to recover fees for work falling within the scope of the Bill.

In an editorial comment **The Estates Gazette** welcomed the Bill and stated that "the Ministers principally concerned are agreed in approving it in principle and are willing to give it their sympathetic support although they are naturally unable at present to recommend its adoption as a Cabinet measure." The editorial went on:

"The Bill requires no justification. That any man, or woman, may practise as a surveyor, auctioneer, land or estate agent without the smallest professional training merely by taking out a licence is a scandal which has long called loudly for removal. There still many of these unqualified practitioners, and the public does not always find it easy to distinguish between them and men who have undergone a long and extensive training and have become members of one of the recognised professional bodies.... As things are, a client may run very serious risk of loss by placing himself in the hands of an incompetent adviser. We do not suggest that any man is incompetent because he has received no professional hallmark; but it is intolerable that a great profession with large and serious duties to the public should be liable to be raided by men who are not in the least likely to raise it in the general estimation."

The licence referred to in this editorial comment is the excise licence which was granted freely to any applicant.

### **Failure of Clarke Bill**

The Bill led to an outburst of opposition and two bodies were formed to represent agents who felt they would be prejudiced if the Bill came into force. These bodies were the National Society of Landed Property Practitioners and the Auctioneers' and Estate Agents' Association. The former, which developed into the Incorporated Society of Auctioneers and Landed Property Agents, was founded by E. K. House of the furnishing firm of William Whiteley, Ltd. Mr. House invited "all auctioneers, estate agents and valuers of repute, who are not at present admissible to the professional institutes by reason of their association with other businesses to join unless this clause in particular [i.e. that enabling registration to be refused in the case of inconsistent occupations] is amended so that there is protection for all practising or assisting in carrying out

these specified duties.....in a reputable manner, or in other words - given a square deal and a guarantee that their legitimate interests in business shall not be threatened."

Another critic, Mr. F.W.Balch, said of the Bill: "It seems to be saturated with medieval ideas as to the value of guilds, and while no doubt it will be of considerable advantage to old-established firms who have a large business which they desire to protect against competition, it apparently will make it more and more difficult for a young beginner to launch out into business.... One would have thought the present day evil of trade unions and business and professional combines was sufficiently grave without further attempt to add to their number, and whole Bill seems to be based on the idea that there are more 'black sheep' in our profession than any other.

The flood of correspondence published in **The Estates Gazette** was almost entirely hostile to the Bill. The only voice effectively raised in its defence was that of E.H.Blake, Secretary of the Auctioneers' and Estate Agents' Institute. Several attacked the provisions under which existing practitioners would be allowed to register, stating that the periods laid down were much too long. The outcry seriously disturbed the promoters, led by Sir William Wells, and at a meeting with the opposition important concessions were made by which existing practitioners would have been able to register regardless of the length of their practice.

These concessions were unavailing. The Bill had failed to secure a high position in the Private Members' ballot, and when the day for its second reading came (April 27, 1923) it was not reached. This meant that its prospects of passing in that session of Parliament disappeared. In commenting on this, Sir Edgar Chatfield-Clarke, the Member of Parliament who had introduced the Bill, said:

"We have accomplished a great deal; we have got the principle of the measure accepted. The main position is not contested. For a long period it has been recognised that the community must be protected from the injury, bad repute and damage caused by the employment of unqualified people in matters so closely affecting the health and welfare of the State and individuals. If next session an agreed Bill can be presented after conference with those who now oppose we will then go to the noble Lord who represents the Minister of Agriculture and ask him to use every endeavour to get the Government to give every facility for it becoming the law of the land at an early date."

### **Formation of the Incorporated Society**

The formal incorporation of the Incorporated Society of Auctioneers and Landed Property Agents took place towards the end of 1924. Its first President was Sir R.Woodman Burbidge of Harrods, Ltd., and Mr. House, the founder of the society's predecessor the National Society of Landed Property Practitioners, remained as Chairman of the Council. The Registration Bill was not in fact introduced into the next session of Parliament since the existence of a fully organised opposition in the shape of the Incorporated Society of Auctioneers and Landed Property Agents made the promoters of the Bill feel that the time was not opportune for renewing the struggle for its enactment. Apart from the Incorporated Society, an attempt to reintroduce the Bill would have met with the continued opposition of the Law Society, who had also been determined opponents of the previous Bill. It was the Law Society's opposition which, in an announcement made at the end of 1926, was given as the reason for a decision by the professional societies that no steps should be taken to reintroduce a registration Bill at that time.

Although the Incorporated Society of Auctioneers and Landed Property Agents had been formed to combat the Registration Bill of 1923, it was not opposed to the principle of registration but only to the exclusion from practice of the tupe of agent represented by the Society, i.e., the agent whose practice was annexed to a furniture store or other commercial venture. The Incorporated Society indeed began soon after its formation to attempt to work out a system of registration which would not be open to this defect.

### **The Harney Bill**

The resulting Bill was sought to be introduced into the House of Commons in February, 1928. Mr. Harney, in seeking leave to introduce the Bill, said that it provided for compulsory registration of all persons acting as agents for the letting or sale of land or houses, and that its object was to protect the public against the consequences that may follow from the employment of unqualified agents. He added, somewhat inaccurately, that the house and estate agents themselves were unanimously in favour of this proposal.

The Bill proposed to set up registration board, to be composed of nominees from each of the recognised bodies. The functions of the board would be to compile and maintain a list of qualified persons, and the nature of the qualification would be determined by the board, but the rules laying down the qualifications would have in the first instance to obtain the approval of Parliament. There were exemptions for solicitors, accountants, architects and others under professional control. Registration would be permissive for the first two years, but would thereafter become compulsory and at that stage no person would be entitled to carry on the work of a house or estate agent unless he had qualified and become registered.

The three senior bodies opposed the Bill, and procured Col. Sir George Courthorpe to voice their opposition. He did so briefly but effectively, pointing out that although there was much in the Bill with which the three bodies could agree there was also much of which they did not approve. He added: "I hope the House will not allow legislation dealing with the discipline of a profession to be introduced into this House unless it has the approval and authority of the representative organisations of that profession,"

The motion for leave to introduce the Bill was lost by 132 votes to 122.

In 1929 the Incorporated Society published in the national Press and sent to each Member of Parliament, a statement appealing for the registration of a number of professions and businesses. The Society also tried to get up a collective organisation representing the professions generally.

Attempts were also being made to secure registration by a new body called the National Association of Auctioneers. After canvassing Members of Parliament to this end, the Association concluded that "a Registration Bill pure and simple will not pass a modern House of Commons, and something more than mere registration is probably necessary, by the incorporation of concrete proposals to guarantee the public against defalcations." Meanwhile the Incorporated Society of Auctioneers and Landed Property Agents was busy opposing proposals for the statutory registration of architects and accountants.

In the early part of the 1930's the running on registration continued to be made by the Incorporated Society of Acutioneers and Landed Property Agents and the National Association of

Auctioneers. The latter body prepared a Registration Bill providing for facilities to be given for the registration of all existing practitioners, whether belonging to existing professional bodies or not. The Bill placed all organisations on an equal footing, and for the protection of the public included provision for a statutory scale of charges and the establishment of a "fiduciary guarantee fund." Contributions into the fund would be required to be made by all registered practitioners, the proceeds being used to compensate a member of the public who suffered loss as a result of the default or malpractice of a registered practitioner.

### **Registration abandoned by Surveyors**

Early in 1934 the Presidents of the three senior bodies, The Chartered Surveyors' Institution, The Land Agents' Society and the Auctioneers' and Estate Agents' Institute, issued a statement to the effect that the societies had reached the conclusion that no useful purpose either to the public or the profession would be served by pursuing the object of statutory registration of surveyors, land agents, auctioneers, estate agents and valuers. The text of the statement is as follows:

The councils of the Chartered Surveyors' Institution, the Land Agents' Society and the Auctioneers' and Estate Agents' Institute of the United Kingdom, the three senior societies representing the professions of the land have recently reviewed the question of the registration of those professions by Act of Parliament. They have each reached the unanimous conclusion that any measure which Parliament is at present likely to grant for the regulation and control of the professions of surveyor, land agent, auctioneer, estate agent and valuer will on balance bring no benefit either to the public or to those professions.

Compulsory registration could only be secured, if at all, on condition that every person who was making, or was claiming to make, a living as a landed property practitioner was in the first instance eligible to be registered without regard to his professional qualifications. Thereafter a qualifying test imposed by the Registration Board would be a condition precedent to entry on the register. Only registered persons would be permitted to practise, to describe themselves as surveyors, land agents, auctioneers, etc., and to recover fees at law. Registered practitioners who were guilty of felony, misdemeanour, or of conduct disgraceful to their profession would be liable to be struck off the register and deprived of their livelihood.

No policy of statutory registration can succeed, nor indeed can be justified, unless it can be shown to be necessary on public grounds in order to protect the public not only from the dishonest practitioner, but also from the dangers of unskilled advice. The case for registration of medical practitioners was unanswerable, but only because the uncontrolled activities of the quack doctor were a danger to human life.

It might have been thought that a strong case on public grounds could be made out for statutory control of the professions of civil engineering and accountancy as well as of the particular professions which we represent. All these professions have attempted, within the last 20 years, to obtain Registration Acts which would give them power to regulate their practice in the manner outlined above; but they have failed.

The architectural profession, after five years of effort, obtained in 1931 a Registration Act which is purely permissive in character and prevents nobody, qualified or unqualified, from practising as an architect. Registration on this voluntary basis would appear to afford no protection to the public. The recent history of registration in so far as it affects professions other than those

concerned with the care of life and health, points to the difficulty which faces the Legislature in granting anything approaching the powers which are required for proper and effective control. These are facts which must be faced. We believe that statutory registration is of no value unless it gives full protection to the public. As we see no hope of Parliament passing a compulsory measure which will ensure that result, either now or in the immediate future, we think it idle to indulge false hopes that an effective Registration Act is within the realm of practical politics.

So much for the public aspect of statutory registration. The question of how far iThese are facts which must be faced. We believe that statutory registration is of no value unless it gives full protection to the public. As we see no hope of Parliament passing a compulsory measure which will ensure that result, either now or in the immediate future, we think it idle to indulge false hopes that an effective Registration Act is within the realm of practical politics.

So much for the public aspect of statutory registration. The question of how far ie to enforce the standards of professional conduct which we and other professional societies are endeavouring to build up for the protection of the public.

### **Incorporated Society Wants to Go On**

Counter-statements disputing the validity of the conclusion reached by the senior bodies were issued by the Incorporated Society of Auctioneers and Landed Property Agents and the National Association of Auctioneers respectively. The President of the Incorporated Society said:

"In the important letter signed, on behalf of their councils, by the President of the Chartered Surveyors' Institution, the Land Agents' Society, and the Auctioneers' and Estate Agents' Institute of the United Kingdom, these bodies are rightly stated to be the three senior bodies representing the profession of surveying, estate agency, auctioneering and valuing.

"The Incorporated Society of Auctioneers and Landed Property Agents, of which I have the honour to be President, has, however, also attained a recognised status. While exercising considerable care over acceptance of applications for membership, we have now, within less than 10 years from incorporation, reached a total of nearly 3,000. Last June H.R.H. Duke of York became our patron. We have provided funds for our students to study for the degree of B.Sc. (Estate Management) at the London University, and our examinational system has long been recognised, not only by the College of Estate Management, but by a variety of educational authorities throughout the country.

"Within the past year also we have joined forces with the above three senior societies in framing a Code of Conduct which it is proposed shall be binding on all our members, and we are still in conference with them relative to a joint scale of charges and regarding a number of other matters of mutual interest....There are two principal points of policy on which we do not see eye to eye with them. They are these;

(1) We do not think it fair or practicable to exclude from membership those practitioners who are either employed with the estate departments of important commercial firms, or who are similarly employed with firms of similar importance that, added to other interests, conduct a reputable business in one department or another of the land profession.

(2) Firmly convinced that neither codes of conduct nor scales of charges can be fully effective

unless there is statutory force behind them, we are advocates for a measure of equitable, but compulsory, registration.

"In 1923-24 a main reason for the formation of the Incorporated Society was the Registration Bill introduced by the three senior societies. Then they saw, as clearly as we have throughout seen, the need for public protection against the unqualified, unscrupulous, or financially unstable practitioner. But they clouded the issue by directing a great deal of their fire against the "commercial" firm. Such naturally objected to interference with their livelihood. In the result the Registration Bill was dropped.

"Six years later we prompted a Registration Bill, drawn up in a manner that we thought would make for public protection, while disclaiming any professional monopoly. The senior societies opposed our Bill, and it had a similar fate to their own.

"I should here like to emphasise that in nearly every country save Great Britain the equivalent of a Registration Act for the landed profession is in force. In practically every British Dominion it is necessary, before practice can be begun, for the would-be estate agent or auctioneer to convince a constituted authority that he is a fit and proper person. In the Irish Free State a Bill on these lines is before the Dail. In Great Britain, however, not only is there no need to belong to any recognised professional society, but the Revenue authority issue licences with as little inquiry as they sell postage stamps!

"How, therefore, can there be any justification for the statement... that 'the public can already shield themselves effectively, if they will, from the dangers which registration seeks to remove?' Nearly the whole of the [sta Bill on these lines is before the Dail. In Great Britain, however, not only is there no need to belong to any recognised professional society, but the Revenue authority issue licences with as little inquiry as they sell postage stamps!

"How, therefore, can there be any justification for the statement.... that 'the public can already shield themselves effectively, if they will, from the dangers which registration seeks to remove?' Nearly the whole of the [sta whatever against frauds upon the public by the unqualified or disreputable, and although it may be true that the legislature regards as of more importance the protection of health rather than home, of person rather than pocket, we are certain that one day compulsory registration will become an agreed policy, and will be carried through Parliament. Only a few years back it was said that neither the general body of electors nor the farmers would ever consent to compulsory marketing. They have done so. Certainly we have a hard row to hoe, but just because it is hard is no reason whatever for shirking the task and resting content with mutual admiration and the gilt scrolls of Royal charter or coats of arms."

### **N.A.A.'s View**

The National Association of Auctioneers said that there was in the new review of the matter by the three senior bodies "a change of spirit."

Their statement went on:

"If the criticism of the N.A.A. has had the effect of bringing about the change of spirit shown in the new review of the situation, then the Association has reason to be proud of the fact that it has

made an important contribution to the views now expressed. The pity, however, is that all organisations - particularly the N.A.A. with a membership of 2,500, 25 active London and provincial branches, and its own system of education and examination - were not called into a general and properly representative conference on registration, so that the profession as a whole, and not a mere section of it, could consider matters, and perhaps contribute other and more progressive ideas than are disclosed in a renunciation of registration. "My Association deplors the admission of defeat contained in the paragraph of the letter reading: "These are facts which must be faced. We believe that statutory registration is of no value unless it gives full protection to the public. As we see no hope of Parliament passing a compulsory measure which will ensure that result, either now or in the immediate future, we think it idle to indulge false hopes that an effective Registration Act is within the realm of practical politics.'

"It is true that Parliament granted only voluntary registration of architects, but architects believe that it is a step in the right direction to a compulsory measure when it will definitely prevent unqualified persons from practising. All such matters take time, but general co-operation is necessary.

"Without registration it will be impossible to work an effective code of practice. Solicitors may be taken as a good example; they have registration, and they are definitely better able to secure the public from malpractice and default.

"...The N.A.A. has for years tried to create a statutory 'fiduciary guarantee fund' which would be a true protection to the public, in that yearly contributions of registered practitioners would be earmarked for compensating the public against individual default or malpractice.

"Why should not all organisations throw aside petty internal ideas, and join a great crusade for that real protection of the public which only registration can give?"

### **Incorporated Society Attacks Licensing System**

The Incorporated Society did not rest under the veto of the senior bodies. In July, 1934, the Society drew up a memorandum which was presented in its behalf by Mr. W. Craven-Ellis, M.P. (a member of the Society's Council) to the Home Secretary. The memorandum ran as follows:

"At the present time in Great Britain and in Ireland, any person can become an auctioneer by paying #10 for an annual licence to the Customs and Excise. Such payment exempts him from the need for taking out an appraiser's licence or a house agent's licence. These latter can also be obtained for still smaller sums of money (#2 in each case).

"All are issued without any inquiry whatever to all and sundry who may desire them. This is not the case in the various British Dominions overseas, nor in most of the states of the U.S.A. An Auctioneers' Registration Bill is now before the Dail (Irish Free State Parliament).

"Those following the calling of auctioneer and estate agent, particularly the practitioner dealing in real estate, should be regarded as having a considerable public responsibility. Annually their turnover exceeds #10,000,000 while the deposits entrusted to them and similar sums coming to them in their fiduciary capacity, probably exceeds one-tenth of the above figure.

"Apart from the work in buying, selling and letting land or houses for clients, the majority of

estate agents include in their practice the duties of surveyors and valuers. Their connection with government departments and with local authorities is close and continuous. Rating valuation, probate valuation and valuations for insurance purposes are quoted as three of the most important activities while the agriculture valuer is essential to agriculture itself.

"For practically every industry there are firms of expert valuers whose services are in demand whenever a business is about to change hands.

"While no excise licences are required by surveyors, the amount annually paid to the Inland Revenue for auctioneers' licences ranges between #70,000 and #80,000. Between #13,000 and #14,000 is similarly paid for appraisers' (valuers) and house agents' licences.

"No sort of special protection in return for these payments is given to licensees by the Government, but there are considerable penalties for failure to take out the necessary licences.

"On a number of occasions during the past 20 or 30 years, efforts have been made to improve the position without success. The impasse is mainly due to:

(1) the attitude of the Treasury, which, regarding itself mainly, if not entirely, as a revenue-collecting body, is apparently nervous lest any measure of registration or control of licences should result in a falling off of the total sum received;

(2) the attitude of the professional societies serving auctioneering, estate agency, surveying and valuing. Avoiding unnecessary delving into history on the subject, the majority now agree that a measure of a purely voluntary character (such as the Architects' Registration Act, 1931) would be of no real use, and they are not convinced that Parliament would assent to an Act compelling all auctioneers and estate agents to be registered and submit themselves to the authority of a body comparable with the General Medical Council or the Law Society;

(3) generally the initiation of any reform breeds agitation and opposition. Hitherto, with Government adopting a negative attitude, or even actively or tacitly opposing Registration Bills, Mock Auction Bills, etc., and with the profession itself divided, achievement has been impossible.

"One practical objection put forward against control of auctioneers' licences (an objection that might be extended to certain classes of valuers also) is that a large number of the licensees are not, and cannot be, members of the professional societies. For example, there is a considerable difference in the status of real estate auctioneers and estate agents and of the individuals who auction fruit or fish at the docks.

"Small technical difficulties of this nature should not, however, be allowed to cloud the whole issue. The main need is to secure that only persons of integrity, financial stability and possessing the requisite degree of knowledge should be allowed to practice as auctioneers and estate agents proper....

"While a comprehensive measure of compulsory registration would undoubtedly be in the best interests of the public and of the auctioneering profession alike, the situation can in part be remedied by a measure effecting control of licences.

"As to the latter, two points are emphasised:

(1) As regards the Treasury, it is as illogical for them to take up a purely revenue standpoint as it would be for them to argue that motor licences should be issued to all and sundry and no powers to be given to magistrates to take them away when licensees show themselves unfit to have them.

(2) As regards the professional societies, their Code of Conduct is of limited value. At most offenders can be expelled from membership. They cannot be stopped from practising. For example, an auctioneer who serves a sentence of imprisonment for fraudulent conversion of deposits entrusted to him, can, the day of his release from prison, obtain a licence without any inquiry, and start in practice again. This has in fact occurred in a number of cases.

"Again there is no compulsion to belong to a professional society. Rather under three-fourths of the total of practitioners in Great Britain are members of the Chartered Surveyors' Institution, the Auctioneers' and Estate Agents' Institute, the Land Agents' Society, or the Incorporated Society of Auctioneers.

"The fact should also not be lost sight of from the employment standpoint that annually at least 2,000 young men and women take the examinations of the four above-named professional societies. These, when they start in practice, have to compete with the unqualified. As the number of examinees increases without restriction, their position in the labour market becomes correspondingly worse.

"It is therefore requested that His Majesty's Government will give this matter consideration with a view to appointing a Departmental Committee with the necessary terms of reference.

### **The Mersey Committee**

The presentation of this statement to the Home Office led to the setting up of a select committee of the House of Lords chaired by Lord Mersey to inquire into the question of whether changes in the law were needed to give the public greater safeguards against malpractices by auctioneers, valuers and house agents.

In moving for the setting up of the select committee Lord Eltisley cited instances of abuses:

"A licence is taken out by an applicant in July; he is convicted, perhaps of fraudulent conversion of his client's money, and receives, we may say, six months' imprisonment for his offence. He is Lord Mersey to inquire into the question of whether changes in the law were needed to give the public greater safeguards against malpractices by auctioneers, valuers and house agents.

In moving for the setting up of the select committee Lord Eltisley cited instances of abuses:

"A licence is taken out by an applicant in July; he is convicted, perhaps of fraudulent conversion of his client's money, and receives, we may say, six months' imprisonment for his offence. He is in business. In other countries, and particular in our great Dominions, like Canada and Australia, action is taken to curb the activities of these individuals and the grant of a licence to practice as an auctioneer or valuer is made subject to certain conditions. We apparently stand almost alone as a nation in the way in which we issue our licences.

The first witness before the select committee was a representative of the Home Office, who said that the Home Office had no particular views as to the ways in which the present law relating to auctioneers', house agents' and valuers' licences needed amendment. The evidence given on behalf of the Home Office was singularly unhelpful, and the Committee had to rely mainly on representations by the professional bodies. A representative of the Auctioneers' and Estate Agents' Institute pointed out that although much of the work of agents and auctioneers was of a fiduciary character licences were now granted indiscriminately to any person who might apply without the slightest regard to credentials of any kind. Licences might thus be obtained by undischarged bankrupts or ex-convicts who had served a sentence for fraud or embezzlement. Where the holder of a licence was convicted of fraudulent misappropriation there was no provision by which a licence could be forfeited or even suspended. The witness went on:

"We are strongly of the opinion that it is, from every point of view, entirely undesirable that persons proved to be dishonest should be able to hold licences. On the other hand, we are apprehensive lest more strict regulations for the issue of licences, which regulations may be altogether desirable in themselves, may give the licence an exaggerated significance in the eyes of the public. The Institute's view of the matter is that the business of the estate agent and auctioneer should be restricted to men properly qualified to carry out the responsibilities and duties pertaining to it. We recognise, however, that no tribunal adequate to impose compulsory tests to achieve this object is possible in existing circumstances, for the reasons that, as shown by the experience of other institutions in recent years, Parliament is entirely disinclined to favour the proposal. Moreover, it is only fair to add that if Parliament could be induced to legislate for an agreed scheme, there is no likelihood of such a measure of agreement between the senior and junior organisations of our profession as will enable us to establish a satisfactory basis for the proposal." The witness added that he thought evidence of financial stability or solvency should also be required from applicants for licences.

The need for a change was stressed by a witness on behalf of the Incorporated Society of Auctioneers and Landed Property Agents. In this evidence, an extract from the journal "Truth" of May 8, 1935, was quoted as follows:

As the law at present stands any person, be he minor, bankrupt or convict just released from prison, may dub himself auctioneer, valuer or house agent, according to taste, by the simple process of paying a fee over the counter of a Customs and Excise Office. There are no questions asked, either before or afterwards, and no powers exist providing for cancellation in any circumstances whatever. An auctioneer's licence, costing #10 per year dates from July 5. Supposing on July 10, John Smith, so-called auctioneer, is sent to gaol for six months on a charge of obtaining money by false pretences... when Smith, having earned his remission, comes out again about Christmas time he may still carry on with the unexpired portion of the licence granted to him the previous July! What justification there can be for this state of affairs it is difficult to imagine, and some 200 Members of the House of Commons, at any rate, have pressed on... the Home Secretary the desirability of putting a stop to it forthwith."

The Society pointed out that evasion of the appraiser's licence was widespread. It was in law payable by "every person who shall value or appraise any estate or property, real or personal," but in practice this was not always observed.

### **Attack on Business Transfer Agents**

The Society's evidence continued"

"We would also like to draw your attention to the increased number of persons and firms who specialise as 'business transfer agents,' many of whom, besides possessing no experience of valuation work, frequently also have no financial standing or responsibility. Unsuspecting persons are led to pay deposits upon businesses often of an unprofitable character, but sold at exorbitant prices. No attempt is made to make a fair valuation as between vendor and purchaser, and the provisions of the Stamp Act are in the main evaded."

The Society drew attention to the growing number of small shop-keepers, insurance agents, builders' clerks and others who regularly sold and let premises of all kinds without being licensed. "In many instances, quite apart from the loss of income and damage to the practices of bona fide agents, their fees and commission are frequently treated as casual profits and the revenue no benefit therefrom under the Income Tax Act."

The Secretary of the Society, Mr. John Stevenson, pointed out that until the law was changed in 1845 auctioneers had not only been required to take out licences but each licence holder had to produce two sureties to enter into bonds jointly with him for the due settlement of sales and payment of the Auction Duty. Inquiries were made into the responsibility of the applicant and his sureties before the grant of the licence.

In its report, the Committee recommended that in future licences should only be issued to the holder of a certificate granted by a magistrate certifying that the applicant was of good character and adequate financial position. These matters would be testified to the magistrate by references signed by two responsible persons. The report also recommended the keeping of a central register open to the public and the provision of power to endorse, cancel or suspend a licence on conviction of any offence connected with the exercise of the licence holder's profession. The Committee made no special recommendations as to business transfer agents other than suggesting that it be made quite clear that persons who practised as business transfer agents must take out valuers' licences. This would in effect subject them to the same more stringent check as valuers and house agents.

### **The Clarry Bill**

The four senior professional bodies immediately began work on the preparation of a Bill to give effect to the report of the Mersey Committee. A similar Bill was also independently prepared by the National Association of Auctioneers. While these preparations were going forward yet another Bill was being prepared and was indeed presented in the House of Commons by Sir Reginald Clarry. This was the Auctioneers and House Agents (Protection of Public Against Abuses) Bill, introduced in the House of Commons on April 1, 1936. Since none of the professional bodies had been consulted about the drafting of the Bill they naturally opposed it, especially since in addition to giving effect to the Mersey Committee's recommendations it also provided for the setting up of an Auctioneers, House Agents and Valuers Registration Authority and provided for establishing a board of estate education. It also provided for a guarantee fund. The Secretary of the Incorporated Society, Mr. Stevenson, who was a leading light in registration politics at this time, was very scathing about Sir Reginald Clarry's Bill, and risked proceedings for breach of privilege by expressing doubts, "as to why such a Bill was ever allowed to appear in print at the public expense." The National Association of Auctioneers sought to make capital out

of the situation by supporting Sir Reginald Clarry's Bill and describing Mr. Stevenson's comments as "carping criticism and irresponsible remarks." The Bill made no progress.

The Incorporated Society invited the Institution and the Institute to take part in a mutual conference, with the object of securing agreement and then action to implement the Mersey report. The Institute accepted the invitation and the Institution expressed willingness to attend the conference "mainly as observers," though emphasising their view that the legislation contemplated was principally the concern of the auctioneering organisations. There ensued a number of meetings, and finally the conference agreed to 10 basic principles, directing that they be embodied in a Bill with a view to its detailed consideration by all the interests affected. Within a month of securing this measure of agreement the Institution withdrew its observers, stating that in their Council's opinion the conference had moved too far away from the recommendations of the Mersey report. While viewing their withdrawal with great regret, the Institute and the Incorporated Society continued to co-operate in the work of preparing a Bill. The same Parliamentary agents who had prepared the Bill of 1923 were instructed to draft a measure based on the 10 principles. Before work could begin on this, however, the Institute decided that in view of the attitude of the Institution they could see no useful purpose in continuing the discussions.

Up to the outbreak of war in 1939, the issue of registration continued to be a lively one. The Incorporated Society continued to lead the way in pressing for registration at every opportunity. The bone of contention continued to be the need to include all practitioners in a registration scheme, including those carrying on practice in connection with a commercial undertaking such as a furniture store. The Valuers' Institution, formed in 1928, was particularly keen on defeating a scheme of registration which would have allowed such commercial agents to rank equally with those carrying on no other business than that of professional surveyors and valuers.

Members of the profession had other things to think about during the war, but behind the scenes the subject of registration was not forgotten. Both the Chartered Surveyors' Institution and the Auctioneers' and Estate Agents' Institute appointed committees to examine the question in readiness for further action, if thought desirable, at the end of the war. Statements on the results of these inquiries were published in 1945 and are given below. While both bodies came to the conclusion that no action was possible at present, their basic approach to the subject was somewhat different.

### **Surveyors Again Give Up Registration**

The following statement was made by the Institution:

The Council of the Chartered Surveyors' Institution considers it desirable to inform members that the question of statutory registration of the profession has been referred to a special and representative committee, who, after a lengthy consideration, presented a detailed report on the subject.

The material part of the Committee's report, which was adopted by the Council is published below for the information of members. The part not published consists of a historical summary of registration efforts in the past.

1. The Council will not need to be reminded that the primary object of statutory restrictions

upon the practice of a profession is the protection of the public interest; the safeguarding of professional interests is another, but secondary, object. In general, the objects of registration are to facilitate distinction between the qualified and unqualified practitioner; to secure, as far as possible, that a profession is practised only by competent persons; to prevent practice by criminals or ex-criminals; to prohibit acts which, though legal in themselves, may be detrimental to a client's interest; to enforce rules of professional etiquette within the profession and to raise the status of the profession in the public estimation.

2. These are worthy objects, and if, in the abstract, it be asked whether registration is a desirable thing, an affirmative answer is the obvious one. That answer, however, leads nowhere in particular. The form of registration most appropriate to the conditions of our profession must first be considered, and the chances of securing it be assessed.

3. We are of the opinion that the chances of securing any form of registration either now or in the immediate future are remote. The R.I.B.A. took 12 years to secure any worthwhile form of registration, and that was in time of peace, when private members' business was allowed in Parliament. No time for Private Members' Bills is allowed at present, and it only by that means that the required registration could be promoted.

4. We have, however, considered the question on the basis that it will be possible, at some time, to promote the necessary legislation if it should be thought advisable to do so. On that supposition we now begin our examination of the problem.

5. There are, we think, only two forms of registration which need be considered. They are:

(a) Control of appellations by which the use of the recognised professional descriptions, such as "surveyor", "quantity surveyor", "valuer", etc. would be forbidden except by registered persons. This is the principle of the Architects' Registration Act, 1938.

(b) Control of function, by means of which the performance of certain professional duties, specified in the Act, would be forbidden, unless performed by registered persons. Control of function would (as in the Solicitors' Acts) include control of appellation.

6 We have been specially careful, in considering this important question, to avoid paying too much attention to its short-term aspects. On the short view, over, say, a period of 30 years or less, its disadvantages, whether from the public or the professional standpoint, are obvious. Every person making a living from the profession, however ill-qualified, would have to be given a chance to register on "practice" qualifications and thus secure a recognition which he did not before possess. Until this class died out the position, if anything, would be worse than now.

7. I would be wrong, however, to decide against registration on that ground. In the long run, admission to the register would, presumably, be by examination only and the profession eventually would be brought under a form of control, both as regards technical education before commencement of practice and the regulation, with statutory backing, of practice itself. The question must be considered on that footing rather than on any short-term view.

### **Drawbacks of Appellation Control**

8. It is also necessary to consider whether the registration of surveyors and the allied professions

is desirable; first, in the public interest; secondly in the interests of the professions themselves. If Parliament cannot be satisfied on the first point, attempts at legislation will fail. On the second point, there must be unanimity, indeed enthusiasm, within the professions in the cause of registration. It there were even a modicum of opposition from within the profession, Parliament would not waste its time on any Bill which might be promoted.

9. Against this general background we have examined with great care the application to our profession of the principle of the Architects' Registration Act, 1938, namely, control of professional appellations. There is little doubt that there would be a better chance of obtaining a Bill on those lines than on the principle of restricting performance of professional functions to registered persons. The Architects' Act of 1938 places no restriction on the performance of functions, but forbids the description of "architect" to be used by any but those who are registered. Parliament agreed that that was in the public interest, and the architect's profession presumably considered that such an Act was also to its advantage. Would the same apply in the case of our profession?

10. We are of the opinion that it would not. We are informed by the quantity surveyors members on our Committee that the Quantity Surveyors' Committee is of the same opinion so far as their branch of the profession is concerned.

11. The Architects' Act has only to protect one word - "architect." Ours would have to protect several - "surveyor," quantity surveyor, "land agent," "valuer," "auctioneer," "estate agent," "house agent," and, in Scotland, "estate factor" and "valuator" as well. An unregistered man suffers an obvious disability if he attempts to practise as an architect without being able to call himself one; We do not think that the same would apply, at any rate to the same extent, to our profession. "Surveyor", in itself, is almost a generic rather than a specific term; an unregistered estate agent or house agent could continue to sell or let land and houses under some other description, or without any description at all, and not suffer much disability. The public, we think, would continue to employ him, whatever he called himself, so long as he appeared honest and competent at his work. In the same way, the protection of the word "valuer" could be broken up by the phrases such as "appraiser," "rating specialist," etc., with the insinuation of even more specialised knowledge than the term "valuer" implies.

We think, therefore, that in our profession registration on the principle of the Architects' Acts would be too full of loopholes to be effective; that it would not change the present situation very much (in which, be it noted, the public is well able to protect itself, if it wishes, by employing qualified persons); that an Act on these lines would fail to control those practitioners who are most in need of control, and would cause great disappointment to those who most desired registration. We can think of nothing more disheartening, or ridiculous, than that a registered practitioner should be removed from a statutory register for professional misconduct, or even for some criminal act, and be able afterwards to continue making a livelihood from his profession under some other designation.

12. We are agreed, therefore, that control of professional appellations by Act of Parliament would be of little or no benefit either to the public or to the profession. It remains to consider registration on the principle of controlling functions, viz., that it should be made illegal for unregistered persons to perform certain professional duties, to be specified in the Act.

13. This is the strongest and most effective type of registration. It is enjoyed by solicitors by a

series of statutes and by barristers not under statute, but by the traditional practice of the courts. The Medical Acts specifically control functions only to the extent of prohibiting to unregistered persons the signing of death certificates and the treatment of venereal diseases in areas which have adopted the Venereal Diseases Act, 1917.

14. If the Institution should ever decide to pursue a policy of registration, we think that the only effective type of registration for the surveyor's and allied professions would be on the principle of control of functions. We consider it should be that or nothing. But whether or not a satisfactory scheme of functional registration can be devised is a question which could only be determined after further investigation.

15. The prospect, however, of obtaining an Act on that principle seems too remote for practical consideration. By all indications available up to now, we cannot encourage the Council or the members of the Institution to pin their hopes on control of functions in our profession. A Bill on that footing would arouse immediate and weighty opposition in Parliament from all kinds of interests; and if the Bill were to survive, it would have to be weakened with all sorts of compromises and savings (in favour of solicitors, for example) which would do anything but confine the performance of surveyors' functions to surveyors. Therefore, though we think that if any form of control were desirable this form would be the best for our profession, we can see no chance of pursuing it at present with any useful results.

16. We would point out in this connection that the post-war period may see the prescription of standards in land management, planning, etc., which would tend to encourage the employment of those who possess the qualifications required by those standards. If so, a degree of control of professional function will be achieved in another way. Whether that will be sufficient in itself, or whether it will improve the prospects of direct control of professional function, remains to be seen. Until then we should certainly not recommend the encouragement of false hopes about registration. At the same time, if in the future it should appear that there were any chance of an Act which would control the performance of functions in our profession, we feel that the Institution would have to think again.

17. For the reasons given, we recommend that it would be inadvisable for the Council of the Institution to pursue a policy of registration at the present time.

### **Auctioneers Resolve to Continue the Fight**

The Auctioneers' and Estate Agents' Institute's statement was as follows:

1. One of the principle subjects which was considered by the Reconstruction Committee after its appointment by the Council in 1942 was the question whether statutory control of the profession, or registration as it is more commonly known, was desirable and practicable. It is clear from inquiries made by various Branches that this a matter which is very much in the minds of members, and the Reconstruction Committee devoted much time and thought to the subject before coming to their conclusions. These were briefly that statutory control of the profession is in the interests of both the profession and the public; that for some time to come it would be impossible to obtain statutory control of functions; but that statutory control of the use of professional names, such as "surveyor," "auctioneer," "valuer" or "estate agent," on the lines of the Architects' Act, might be obtainable, and the ground should therefore be explored. These

conclusions were subsequently endorsed by the Council. Some of the matters to which the Reconstruction Committee and the Council gave consideration when the subject was under review are summarised in the following paragraphs.

2. [Historical review].

3. After reviewing the whole position, the Council of the Institute have come to the conclusion that, in most of the earlier papers or discussions on the subject of registration, undue weight has been attached to the disadvantages and difficulties. They also think that conditions have changed so much since 1934 that what may not have been practicable then may well be practicable now. For instance, the Architects' Registration Act, 1938, although it does not give complete protection to the public and the profession against unqualified persons doing architectural work, does go far beyond the earlier Act of 1931, and gives much of the protection which in 1934 the Presidents of the professional societies thought that Parliament would be unwilling to give. If an Act were obtained under which no one but registered persons could use such well-known titles as "surveyor," "auctioneer," "valuer" or "estate agent" it would in course of time ensure that, with few exceptions, those engaged in the profession held at least the qualifications prescribed by the Act; and it might in due course help the profession to obtain an Act prohibiting any but qualified persons from doing professional work.

4. It has sometimes been said that Parliament will never pass a measure which would prevent a man from earning a living in the profession. No practicable measure of registration would prevent those already in the profession from continuing to earn their living in that way, and registration would not prevent anyone thereafter from doing so provided he qualified himself to give the service which the public are entitled to expect before he begins to practise.

5. Indeed, the war has underlined the need for sound organisation of the profession and has brought to an end the business of a good many unqualified firms. Another consequence of the war is that there will be many men who will need to find a way of earning a living after the war, and unless there is some means of regulating entry into the profession of auctioneers, valuers and estate agents, many unqualified and unsuitable men are certain to open offices, and this would be against the interests both of the profession and of the public.

6. New conceptions of the relationship between the State and the individual, the task of reconstruction, and the development of town and country planning will make the work of estate management more complex than ever; and in view of the responsible part which the profession will have to play, it will be increasingly important to limit entry into the profession to those who are properly qualified.

### **Benefit for the Public**

7. The Council of the Institute believe that registration would benefit the public because some control would be exercised over the qualifications and conduct of practitioners who are not attached to any professional institution. The profession would benefit by registration because the fact of this statutory control would eventually raise the general standard of qualification and increase the status of practitioners in the eyes of the public generally. It would also afford in due course a means of securing a wider observance of professional etiquette than exists at present.

8. In the opinion of the Council of the Institute the disadvantage which is inherent in any form of

registration is that at the outset anyone who is already in practice, whether qualified or not, must be allowed to register. This, however, is a disadvantage which has had to be faced at one time or another by every profession which comes under statutory control. In course of time the unqualified practitioner would disappear. Registration is a first step towards a goal which it may take a long time to reach, but until the first step has been taken no progress at all can be made in the task of controlling and gradually eliminating the unqualified practitioner.

9. The Council of the Institute would not contemplate registration if they thought it would weaken the leading professional institutions. This is not from any selfish desire to strengthen the institutions at the expense of other professional bodies or at the expense of the public. It is because they are convinced that these institutions are essential to the well-being of the profession and should be strengthened in every possible way so long as they have the right ideals and seek to lead the profession in the right direction.

10. The Council of the Institute can sum up their views in the words that statutory control, however limited it might be at first, would in due course prevent unqualified persons from entering the profession; it would raise the status of the profession; it would not harm either established members of the profession or the leading professional institutions; and it would be in the interests of the public.

11. The Council, having reached the conclusion that statutory control is desirable, made thorough inquiries during the years 1943 and 1944 on the prospects of introducing a Bill. As a result of these inquiries the Council find with regret that it is impracticable to introduce a Bill at the present time. They remain of the opinion that it is desirable to obtain statutory control as soon as possible, and they are keeping the matter under review, so that a Bill may be introduced when there is an opportunity of doing so with a reasonable prospect of its becoming law.

Interest on the topic of registration, never far below the surface, was revived by the passing in 1947 of the Irish Auctioneers and House Agents Act. Under this Act no person was permitted to practise or set up as an auctioneer or house agent unless he held a licence, which would be granted only to applicants who held a specified certificate of qualification and had made a deposit or entered into a guarantee bond in the sum of #2,000. In the following year the President of the Incorporated Society of Auctioneers and Landed Property Agents again urged the need for registration of the profession in Britain notwithstanding the disadvantage that there would be some temporary lowering of the standard at which the professional bodies aimed, the effects of which might be felt for a generation. The President of the Royal Institution of Chartered Surveyors, as it had now become, thought that there was some reason now to suppose that there might be support in high quarters for the registration of quantity surveyors and valuers, and urged that this should be pursued. Having, as he said, served for some years as a representative of the R.I.C.S. on the Admission Committee of the Architects Registration Council, he was convinced that the policy of registration was in the public interest and that of the profession as well.

### **Pressures for Registration**

In 1949 the National Association of Auctioneers, Rating Surveyors and Valuers, which had throughout its existence strenuously sought to promote registration, was amalgamated with the Valuers' Institution, which had also supported registration, though on the restricted pattern which would have excluded estate agents operating in conjunction with trading concerns. The same year saw the abolition of valuers,' auctioneers' and house agents' licences by the Finance Act

1949.

The theme of dilution of standards was returned to by Mr.H.P. Hobbs, President of the R.I.C.S. in 1950, when delivering his Presidential address. Pointing out that it would be quite unthinkable to attempt to devise registration in such a way as to exclude the many persons who had practised for years as surveyors but had never taken professional examinations, he said that although there would initially be some dilution of standards the position should eventually right itself. In doubting the efficacy of appellation as opposed to function, Mr. Hobbs quoted as an illustration a British architect who practised his profession in the U.S.A. where, in most states, there is registration of the appellation-control type. This architect never registered, since he was not qualified to do so. His professional note-paper was printed with his name in the left-hand corner and underneath it "Large Operations." He retired whilst still comparatively young, having made a fortune as an architect - not as a surgeon, as might have been supposed! Pointing out that registration involved a great many problems, Mr. Hobbs suggested that a possible solution might be found in registration of only certain sections of the profession, for example, estate agency or valuation.

A legal opinion in favour of registration was heard in 1951, when Mr. Justice Slade (as he then was) said:

"I wonder whether the condition existing at the present time is not rather like two boxers being in the same ring only one of whom is bound by the Queensbury rules. Will you be able even to maintain the status of the profession whilst this free-for-all persists or do you not think that sooner or later you will have to decide the question of registration..? It does seem to me that at the present time the qualified man is in a most difficult position." This prompted Mr. John Stevenson, who had been Secretary of the Incorporated Society of Auctioneers and Landed Property Agents from 1925 to 1945, and had played a very active part in the attempts to secure registration during that period, to write from his retirement urging the profession to take action. In fact intensive discussions between the senior bodies were well under way.

The following year a Conservative Member of Parliament, Sir Geoffrey Hutchinson, raised a debate in the House of Commons on the subject of fraudulent letting agencies.

In the course of the debate he said:

"I must say that our task would be a good deal easier if all these persons who are carrying on the business of surveyors, auctioneers and estate agents were members of the professional bodies or were registered by their professional bodies as is done in other professions. This is something that these professional associations have had under consideration for a long time, and it may be that the appearance on the scene of this undesirable type of competition will hasten the success for their efforts... Another solution might be that they should be required to register with a local authority. Registration of this kind is not a new thing. In London, employment agencies and lodging houses are required to be registered in this way."

In replying to the debate, the then Minister of Housing and Local Government, Mr. Harold Macmillan, said: "So poignant a need as the shortage of housing opens the door to fraudulent or semi-fraudulent behaviour of this kind." He pointed out that: "The work of the professional societies can be of the greatest use. They can build up a great tradition of practice and rules of practice, which, perhaps, in one way or another, may some day become enforceable, either by

public opinion or by law.

Towards the end of the year 1952 the President of the R.I.C.S., Mr.J.Cassels Pinkerton, roundly condemned registration and reaffirmed the Institution's opposition to it. This stirred up correspondence in THE ESTATES GAZETTE from estate agents who felt that the evils of unqualified practice could not be brushed aside so easily. A newspaper advertisement was quoted which read as follows:

"Salesmen of Initiative required to undergo short intensive training and then act as SURVEYORS, calling on higher income group householders; the position available is especially suitable for ex-detectives who live in the Leeds, Bradford, Harrogate area."

Nevertheless the opposition of the R.I.C.S. President was shared by his Council, and indeed by that of the Land Agents' Society. This was made clear in a joint statement issued in November, 1952, by the four societies. Reporting that, following three years of discussion, a joint conference of the societies had been held on October 15, the statement made it clear that there was a split. The other two societies, the Chartered Auctioneers' and Estate Agents' Institute and the Incorporated Society of Auctioneers and Landed Property Agents, were in favour of registration. In reaching its decision the Council of the Chartered Institute had been assisted by a referendum of its members, in which of those who voted 88 per cent were in favour of registration.

Sir Geoffrey Hutchinson renewed his efforts to deal with letting agents in the following session of Parliament, and was successful. The area dealt with by what became law as the Accommodation Agencies Act, 1953, was, however, somewhat restricted. The Act made it an offence to receive payment for registering the needs of a person seeking the tenancy of a house or for the supply of addresses for houses to let. It also penalised advertisements for describing a house as being to let without the authority of the owner or his agent. For the purposes of the Act the word "house" included any dwelling, but even so the ambit of the Act was narrow and scarcely affected the practice of the ordinary estate agent.

Sir Geoffrey Hutchinson, in moving the third reading, said: "The evil at which this Bill strikes is, I believe, more widespread than many hon. Members had imagined." The evil, be it noted, could not have arisen if a statutory system of estate agents' registration had been in force. The public had, from these accommodation agencies alone, been defrauded from sums amounting, so Sir Geoffrey said, to about #100,000.

In 1954, following a plea by a solicitor for estate agents to establish a compensation fund for the victims of dishonest practitioners, there was a lengthy correspondence on the topic in THE ESTATES GAZETTE. The solicitor had asked to be relieved of the "unpleasant duty of advising clients of the risks involved in paying moneys to estate agents in a small way of business." He went on: "There must be many solicitors who, like myself, have had the unpleasant experience of seeing a client lose a deposit representing a large part of his savings through the dishonesty of an estate agent, and I do not think we can be blamed for advising that, unless the agents concerned are obviously of good standing, any deposit should be paid to the vendor's solicitors." The estate agents who took part in the correspondence favoured the establishment of a compensation fund, though it was felt that this could only come about as part of a system of registration. One correspondent, however, observed that there was nothing to stop the chartered bodies setting up their own compensation fund, which could provide an additional ground for advising persons to

consult only the highly qualified practitioners.

The Council of the Chartered Auctioneers' and Estate Agents' Institute, fully supported by their members, continued to press the two senior chartered bodies and made headway in converting them to the need for registration.

In 1959, THE ESTATES GAZETTE reported that Mr. Dennis Howell, Labour M.P. for Birmingham, Kings Norton, had been pressing for some time for legislation to control the estate profession, and said: "He estimates that in 12 months about 2,000 Birmingham families have been defrauded of deposits to a total of more than #200,000." THE ESTATES GAZETTE went on to comment as follows:

"What might be called a moral case for registration is very strong. Here is a profession which is involved in the great majority of property deals that take place every day. Behind almost every conveyance there is an estate agent, and in that agent's hands there is a deposit. The solicitor who carries the conveyance through is bound by tight regulations, but the agent may quite well be bound by none. The only sanction against misbehaviour is the risk that in the long run the man who tinkers with deposits will crash and fall foul of the law. Practical people in the profession know very well that there are so-called estate agents who are not deterred by that prospect. It is too easy for a man to take an office, put up a board and finance his 'practice' by means of deposits. Furthermore, an astute rogue can use the law's complexities and delays to put off the people who have trusted him, and it may take years to catch him out. We have in mind a case where such a man was involved in more than a hundred actions about deposits - the estimate was his own- before going to prison for fraudulent conversion. These are the arguments which back the case for registration, so far as the public is concerned and they are pretty strong."

### **Chartered Bodies Reach Agreement**

In November, 1959, a letter appeared in The Times signed by the Presidents of the three chartered bodies and the Incorporated Society of Auctioneers and Landed Property Agents stating that an agreement had at last been reached on the provisions of a registration Bill. The letter added that the Council of the R.I.C.S. wished to consult members before supporting the promotion of the Bill, and in conclusion it was said that a statement setting out the general proposals with a covering memorandum by each body would be sent out shortly to all members of the four bodies.

In commenting that the new Bill would necessarily involve the setting up of some kind of Council to administer the new system, THE ESTATES GAZETTE said: "This will undoubtedly involve extending to the whole profession something of the benefits of corporate status, at present enjoyed in full force only by the members of the senior bodies, and such a step must be the foundation of a rigorous and well-governed organisation." The announcement was greeted by the smaller professional bodies with some degree of unbrage. Representatives of the Building Surveyors' Institute, the Faculty of Architects and Surveyors, the Guild of Surveyors, the Institute of Quantity Surveyors and the Vaulers' Institution suggested "that it might have been more appropriate, generous, and indeed sensible, if before making their announcement the chartered bodies had consulted all those interested." While congratulating the chartered bodies on having achieved such a major step forward, the representatives, speaking as they said for some 12,000 members, indicated that they expected to be brought into consultation by the Government or any other professional body before legislation was introduced.

The Council of the R.I.C.S. sounded the opinion of its members by a questionnaire sent out in February, 1960. The result was an overwhelming vote in favour of registration. The questionnaire was sent to all corporate members in the United Kingdom and was returned by 42.2 per cent of them. This amounted to 5,776 returns, of which 5,373 were in favour of registration.

The promised statement was sent out to members of the four senior bodies in February, 1960. It recapitulated the current position, and explained why, of the various possible types of statutory control, registration of function was considered most desirable. The statement said that a Bill for the registration of estate agents had been drafted, and went on to explain the nature of the Bill's provisions. It was stressed that the scope of the proposed control would extend to all persons who, on behalf of others, undertook the sale or purchase of land or buildings of any kind or the letting or taking on lease of land or buildings.

In August, 1960, a Parliamentary question was asked as to whether the Government would introduce legislation to prohibit house agents from accepting more than one deposit on the same property on a sale subject to contract. Mr.R.A.Butler, as he then was, replying as Home Secretary, gave the curious answer: "I have no evidence to suggest that this is a widespread practice, but it is not one which is very suitable for legislation."

### **L.C.C. Report**

Consultations by the senior bodies with the London County Council led to the publication of a report on estate agents by the Council's General Purposes Committee. The report stated the problem as follows:

"We understand that the social workers are concerned that some less well-informed people are vulnerable to unfair treatment at the hands of some agents who have accommodation at their disposal. Examples brought to our notice include that of an agent who demands and then retains for several months a substantial deposit for a property although there is no undertaking to purchase in writing and the purchaser declines to proceed; of an agent who persuades a client, before the client consults a solicitor, to sign a document which turns out to be a binding contract resulting in the client's being committed either to a purchase at an excessive price or to forfeit his deposit; of misleading information being given about shared facilities, e.g., bathroom, garden, fuel store; of an agent who sends a tenant notice to quit in terms so ambiguous as to mislead him as to his right to due notice. Unfair deals may of course be arranged directly between principals..." [The references to a client in the foregoing are presumed to be references to an applicant.]

Pointing out that neither the legislation proposed by the professional organisations nor licences by public authorities could govern principals negotiating directly, the report commented that the benefits of any proposed legislation would probably be enhanced by publicity directed towards one or two of the elementary safeguards in property deals, and that such publicity would be to the advantage of purchasers or lessees either acting through agents or negotiating directly. The report concluded by recommending that support should be given to the principle of the legislation then being considered by the professional organisations and the Council endorsed the findings of the report.

In April 1961, a well-known correspondent of THE ESTATES GAZETTE, "Samuel Whiskers" urged the professional institutions, in working out the terms of their Bill, to include business transfer agents. He went on:

"It may be that many of your readers are unaware of the scandalous manoeuvres of some of these men. What is scandalous about their conduct of business is that the terms of the commission contracts are oppressive beyond belief. The contracts which I have in mind stipulate for a minimum commission of say #200 een when the value of the business for sale may be as low as #600. These agreements are on printed forms. This commission is, by the terms of the contract, payable on the introduction of a person regardless of whether the purchase actually goes through. The contracts have, of course, been drafted by lawyers. It is known that persons using this type of contract advertise on a national scale and employ 'representatives' to obtain signatures to these contracts. These extortionate activities have caused much distress among little people who have little businesses to sell."

Later in the same month Mr.W.R.Williams, M.P., asked the government whether they would introduce legislation to compel the registration of estate agents to protect the public from exploitation. He said there was great concern at the grossly undesirable practices operating in the purchasing and renting of houses. "Will you get a move on and try to stop these unscrupulous people?" he asked. The reply on behalf of the Home Office said that the Home Secretary would prefer to wait the results of the negotiations then proceeding between the professional bodies.

Although the professional bodies had caused a Bill to be drafted by Parliamentary agents, the drafting did not find favour with the Government. While not committing themselves to support the Bill in Parliament, the Government, as normally happens in such cases, felt that since it was possible that the measure would find its way to the Statute Book it ought to be drafted in an acceptable way before introduction. The services of the Parliamentary counsel were therefore called upon and the present author was entrusted with the task of redrafting the Bill. This process took a considerable time, since successive drafts had to be discussed with the interested parties, and the Bill was not ready for publication until the autumn of 1962.

### **The Legge-Bourke Bill**

The Bill, entitled the Estate Agents Bill, was presented in the House of Commons by Sir Harry Legge-Bourke on November 21, 1962. The Bill applied to any person acting as an estate agent in relation to the sale or letting of land or buildings of any type. It provided for the setting up of an Estate Agents Council to be responsible for securing adequate standards of competence among estate agents. The composition of the Council was somewhat complex, but since the Bill mainly foundered because the Council was felt by many to be unfairly weighted in favour of the chartered bodies, it is necessary to go into some detail about this.

The basic membership of the Council consisted of 28 persons, of whom four were to be nominated by the Home Secretary from among persons not included in the register. Of the remaining 24, eight were to be nominated by the Royal Institution of Chartered Surveyors, eight by the Chartered Land Agents' Society and eight by the Chartered Auctioneers' and Estate Agents' Institute. For the first three years of the Council's life, it would also include a further six persons nominated by the Privy Council from among the membership of the Incorporated Society of Auctioneers and Landed Property Agents, the Incorporated Association of Architects and Surveyors, the Rating and Valuation Association and the Valuers Institution. Finally, during the initial three years, there would also be persons, not exceeding three in number, nominated by the Privy Council to represent estate agents who were not members of any of the bodies previously

mentioned. The total membership of the Council in the initial three years would therefore have been 37 assuming, as was probable, that the maximum number of three agents would have been nominated to represent the unattached. The Bill included provision whereby the three chartered bodies were deemed to be recognised professional bodies for the purposes of the Bill, and any other body could apply for recognition, which would be accorded if the Council were satisfied that it was of good standing and required of persons admitted to it the standard of competence requisite for the proper practice as an estate agent. After the initial three-year period a maximum of ten members representing recognised representative bodies would be added to the basic 28 members of the Council. Also added would have been not more than four persons representing unattached agents under a scheme to be drawn up by the Council and approved by the Privy Council.

Under the Bill full members of the recognised professional bodies would have been entitled to registration by virtue of that membership. Other estate agents could apply for registration on a practice qualification within a period of two years. Thereafter such applicants would be required to satisfy such conditions as to character and professional qualification as were provided for by rules drawn up by the Council and approved by the Privy Council. These rules would have been subject to annulment by Parliament. Other provisions of the Bill provided for disciplinary procedure, and a code of conduct to be drawn up by the Council subject to the approval of the Privy Council. The professional bodies promoting the Bill were anxious to avoid argument as to the power of the Council to outlaw touting and advertising in the code of conduct. Accordingly the Bill expressly stated that the code might specify as disgraceful "the doing or permitting by a practising estate agent of any act of a kind mentioned in the statement as constituting touting for business or as being calculated to attract business unfairly." The statement, or code, could also specify as disgraceful "the use by a practising estate agent of particular methods of giving publicity to his activities.

The Council was required to make rules relating to the keeping of accounts by registered persons, to the opening of separate bank accounts for client's money and to the checking by accountants that the rules had been complied with. The Council was also required to draw up a scheme for a compensation fund out of which grants could be made for mitigating loss caused by the dishonesty of a registered person or his employee. The Bill contained exemptions for solicitors, architects and accountants.

### **Case for the Bill**

In a statement issued to all Members of Parliament and to the Press, the four senior bodies, supported by the other three societies named in the Bill, said: "It is important that all who earn their living by professional practice as estate agents ... should be honest and competent, and that they should be freely chosen on merit without regard to specious self-advertisement." After pointing out that examinations were compulsory for entrants to the four senior bodies, the statement added that their rules of professional conduct were accepted not only by their own members but also by many members of local associations of estate agents. The total number of estate agents who accepted these rules of conduct was thought to exceed 20,000. The statement went on: "There are however, other estate agents (though no precise number can be given) who have no rules of professional conduct nor any tests of competence. The majority are honest, and many have become competent by practice. Yet the lack of any form of statutory control over the profession as a whole has made it possible for much harm to be done to the public." The statement said that this harm might arise in three ways, by dishonesty, by incompetence or by the

use of unprofessional methods. An analysis of press reports from 1947 to 1957 revealed 187 convictions for fraud by estate agents and 265 bankruptcies. Undoubtedly there were many other cases of fraud or dishonesty where no prosecution was made or reported.

On the question of incompetence, the statement remarked: "With the increasing complexity of property legislation, an estate agent who is to be in a position to give proper advice ought to have some knowledge of (among other things) valuation, building construction, rating, taxation, rent control, tenancies, mortgages, contracts, compulsory purchase, and town and country planning. Estate agents who have not the necessary knowledge of these subjects may, and often do, inflict severe losses on their clients. Business acumen by itself is not a sufficient protection for the public."

In dealing with unprofessional methods, the statement listed: inducing parties to enter into a contract without obtaining legal advice; inducing a client to agree to unreasonable instructions, perhaps promising excessive remuneration; and unrestricted touting and advertising. Dismissing allegations that professional rules were restrictive, the statement said: "There is nothing in the rules of conduct to restrict either the agent's service to the public or his right to use every honest means in promoting the interests of his clients." The statement went on to mention support given to the Bill by the National Chamber of Trade, the London County Council and the Law Society.

### **Opposition Grows to the Legge-Bourke Bill**

Meanwhile, opposition to the Bill among agents not belonging to the professional societies was growing. Almost exactly a year before the Bill was introduced a letter was published in the *ESTATES GAZETTE* which led to the formation of what came to be the main body opposing the Bill, the National Association of Estate Agents. The letter was by Mr. John Davis, who later became the Secretary of the Association, and invited unattached agents who were concerned at the moves towards statutory registration to get in touch with him. The Association was formed very soon afterwards, on March 6, 1962. In a recruiting leaflet entitled "Why Another Estate Agents Association?" the Association expressed anxiety at the prospect of statutory control operated by the professional societies. They felt this would mean restrictions on advertising and other commercial practices which, they felt, could not be in the interests of the public. "What the public requires is competition and a speedy and efficient service. They also require to be assured that money will be safely handled and that individuals will not be cheated. It should be within the bounds of possibility to draft legislation to ensure these points without in any way restricting the commercial activities of a very essential part of estate agency.

In a memorandum published later in the same month, the National Association advocated a system of compulsory licensing for estate agents. This was based on the requirements in a number of Commonwealth countries, which had been studied by the Association. Although it had at first suggested that local authorities should act as licensing authorities, the Association now suggested that the licensing authority should be the Board of Trade. The reason for this change was that many firms of estate agents operated in more than one local authority area, and a central authority was therefore considered essential. In order to obtain a licence applicants would have had to produce an insurance bond or other security in the amount of #5,000 for a principal, together with a certificate of freedom from conviction for dishonesty during the preceding 10 years and evidence that "he is a suitable person to practise as an estate agent, either by evidence of competence, experience or character." Attacking the professional societies' Bill, the pamphlet argued that the commercial function of selling property was essentially different in character

from the professional functions connected with surveying, land valuing, architecture and the like. "Qualification by study and examination, as required by the professional bodies, is in itself no criterion of selling ability, which calls for business experience and acumen."

A further pamphlet by the National Association, published later in the year, but still before the appearance of the professional bodies' Bill, was entitled "Beware Monopoly: The case against restrictive practices in estate agency." This was a sustained attack on the rules of the professional bodies, which the Association feared would be reproduced in the code of conduct to be drawn up by the proposed new registration council. Particularly savage was the attack on the rules against advertising. This passage made a particular impact on the Members of Parliament to whom the pamphlet was circulated, and is therefore worth reproducing in full:

"The extent to which the restrictions in (*sic*) advertising are carried border (*sic*) on the ludicrous. For example:

*It is forbidden to advertise at a bus stop*

**but permissible at a coach station.**

*It is forbidden to advertise in a telephone kiosk*

**but permissible on a telephone directory cover.**

*It is forbidden to advertise on a map*

**but permissible in "works of reference."**

*It is forbidden to advertise on a transport ticket*

**but permissible of a timetable.**

*It is forbidden to advertise on the jackets of library books*

**but permissible on the covers of periodicals,**

*It is forbidden to advertise on sandwich boards*

**but permissible on poster boards.**

*It is forbidden to advertise on public transport*

**but permissible in the Press.**

A comprehensive attempt to rebut the allegations in this pamphlet was made in two articles in THE ESTATES GAZETTE for March 9 and 16, 1963, which form a fascinating account of the justifications put forward by the professional side of the estate agency for its rules of conduct. The passage relating to the origin of the rules against touting and advertising is of particular interest:

The picture the N.A.E.A. draws expressly or by inference, of attached agents gathering the strings together to protect their established selves at the expense of the competition the public interest so urgently requires is a strange one to those who remember the pre-war conditions from which the code sprang. Those were the days when a board appeared on a property at 10 a.m. in the morning and by tea-time the last agent on the scene had difficulty in finding an uncovered space for his own announcement, so he probably nailed it over the first man's. The entire estate profession incurred public odium, because anybody minded to sell his house found himself inundated with telephone calls, visits from men with the manners of a free-lance reporter smelling out a peer's mistress, and letters promising an immediate sale at more than the asking price the first agent had advised. People complain quite frequently to-day because they receive the occasional polite canvassing letter with saving clause properly included and little harm done anyone; in the twenties and early thirties, however, the volume of complaint was loud and sustained, and estate agents were the butt of music-hall jokes, along with fat ladies and mothers-in-law. The social

historian is recommended to examine the files of "Punch" for excellent illustrations of the canvassing wars which were then to be found wherever there was a rapid population growth or an exceptional rate of turnover of property. Even today, it is possible to find modified throat-cutting going on, for example in seaside towns with considerable retired populations or a big turnover in businesses, but by and large the professional bodies and the local associations have succeeded in stamping out the vicious skirmishing which was once a feature of every suburban landscape. By unremitting efforts they have brought a great degree of order into the estate world's affairs, and not only have they diminished the canvassing nuisance, but in the process they have minimised, so far as they were able, the risk of lost deposits, which is always at its highest in the middle of a canvassing struggle.

The reason for this may not be altogether clear to the layman. The point is that to needy men from certain ranks of society the estate profession looks like money for old rope. On the face of the matter, all one has to do is open an office and look as if one's busy, and presently vendors, applicants and sales fall into one's hands like ripe medlars. But the truth is, of course, that vendors invariably prefer to instruct firms which have established leading positions, have been there for a long time, have got wide and valuable connections, know values down to the nearest #50 or so, and attract (or select) applicants whose requirements are effective rather than speculative. The result is that the newcomer finds things not nearly so easy as he imagined, and so he is driven out to get custom by main force, as it were, by putting his foot into doors and selling himself to housewives with a load of talk about a quick deal at a high price, and so forth. Probably there are other marginal firms all trying the same thing, and a canvassing war develops in a moment. The existence of the established men together with the competition from the new rivals presently drives some of the marginal firms to the edge of bankruptcy, and here, of course, is where the temptation to dip into the few deposits the firm's account boasts (there never is a clients' account, of course) becomes all too pressing for the public good.

The man who tries to get into estate agency without qualification or connection is always the one who is tempted or driven to make away with clients' money. Either he does not quite know how much he can safely draw on the firm's account, or he recklessly fails to check; or he simply does not care, and uses deposits to pay the office rent and so forth, hoping and trying desperately to believe that a few more house-to-house visits will see him straight again. Of course, the expected commissions never come in, and presently he is faced with a situation in which he cannot meet all the competing claims for deposits and cannot find any more excuses for default. The root cause of this sort of trouble is the fact that the estate world lies open to anyone, however inexperienced, however negligible in property affairs, and however untrustworthy, coupled with the obvious attractions of systematic canvassing. Because of the canvassing option, people think it worthwhile trying the estate agency profession with no genuine expectation of doing the vendors a real service; that is the kernel of the problem, and of course, the problem must remain so long as the canvassing option exists.

#### **Further Pamphlets by N.A.E.A.**

In a further pamphlet published after the introduction of the Legge-Bourke Bill, The National Association gave the results of inquiries they had caused to be made into the respective number of estate agents represented by the professional bodies and unattached. They found that there were about 11,000 firms or individual practices "in this country." (It is not clear whether Scotland is included.) The inquiry found that about a third of the firms or individual practices

were operated by unattached persons and two-thirds by members of one or other of the bodies named in the Legge-Bourke Bill. The pamphlet criticised the composition of the proposed Estate Agents Council in providing for a permanent majority (24 seats out of 37) for the three chartered bodies when, according to the Association's calculations, they had only a minority of practising estate agents, namely about 30 per cent.

In yet another pamphlet, entitled "Fifty Years of Futility," the National Association gave a very attenuated account of previous attempts to secure legislation. The only points of interest in this brief and incomplete survey are the two reasons given for the failure of previous attempts at legislation, as follows:

"Firstly, the proposals were prepared with more real concern for the status of the sponsoring bodies than for the requirements of the public.

"Secondly, the proposals for registration were formulated with very limited consultation with those likely to be affected. Then, as now, the sponsoring bodies set out to seize complete control over all practitioners, with the inevitable consequence that they alienated those whom they failed to consult."

Apart from circulating no fewer than five different communications to all Members of Parliament, the National Association sent an open letter to all estate agents attacking the Legge-Bourke Bill and putting forward alternative proposals of their own. All this activity had its effect, as was shown when the second reading debate on the Bill was held on March 22, 1963.

In moving the second reading, Sir Harry Legge-Bourke gave examples of misconduct by estate agents. A solicitor who was struck off the register in 1940 for unprofessional conduct opened an estate agents in Knightsbridge and within five months had without the authority of the owners obtained #21,500 from 71 different people in respect of the same two flats which he let over and over again, each time taking a rake-off of between #250 and #500 for furniture and fittings. In another case 88 people lost more than #20,000 as a result of the activities of an estate agency. The same sort of thing had recently happened in Bristol, Rugby, Manchester, Cheam, Rhyl, Westcliff-on-Sea, Sheffield and many other places. In Sheffield the Assistant Recorder in sentencing a man for fraudulent conversion said he had found it incredible that an almost illiterate man who had no knowledge of estate agency could not be stopped from setting himself up as an estate agent.

The Bill was generally welcomed by speakers in the debate although points of detailed criticism were raised. The main target for criticism was the preponderance of the chartered bodies on the proposed Council, the attempt to restrict advertising and touting, the uncertainty about the date of the coming into being of a compensation fund sufficient to protect the public against dishonesty, and the possibility that the case put forward by the National Association for licensing rather than registration had not received the attention it deserved from the promoters of the Bill. Several members expressed doubt about whether the public interest would be served by restricting advertising. Sir Frank Soskice gave an example of touting which he regarded as being in the public interest: "A few years ago a London business man was desirous of obtaining a house in one of two roads in a certain area some 20 miles from central London. He was actively in touch with the most prominent local estate agent, who was a member of a chartered institute. For 12 months the search was in vain, as apparently no one living in those two roads wished to move. The London business man then asked a firm of independent estate agents, known for their integrity and speedy service, for their help. They at once wrote personally to each resident of the

proposed two roads saying that a London business man was seeking a house in their road and he undertook to visit them within 24 hours of the independent agent receiving a 'phone call. The London business man secured his house within the first 24 hours."

### **Why House Agents Need Qualifications**

Sir Colin Thornton-Kemsley, himself a chartered surveyor, gave reasons why even an ordinary house agent needed professional qualifications. He said a working knowledge of the law of property was needed and went on: "He has to know a good deal about the law of landlord and tenant. He certainly has to know about building construction, because one of the things he is asked to do right at the beginning is to give advice to the vendor, who is his client, as to what price he should ask for the property. When he inspects the property, he has to be very careful that he has spotted any inherent structural defects. He has to be able to assess the cost of remedying any defects so that he will know that the purchaser ought to allow a proper sum for putting the defect right. It may be dry rot. It may be woodworm in the roof timbers, or in the floor timbers, something quite serious which would not be apparent to somebody without that expertise. He has to be prepared to advise his client that the purchaser will give a lesser sum than the vendor might have desired, because the purchaser has to make good these defects.... The vendor, who is the estate agent's client, requires advice on the price. To be able to give this, an estate agent must have a knowledge of local values, an ability to assess the cost of carrying out the work, and so on. In all these things, in order satisfactorily to perform the commercial activity of selling a house, an estate agent has to exercise a professional skill in relation to his client.

Mr Shepherd, Conservative M.P. for Cheadle, said that he considered that professional status was not a matter of technical knowledge so much as integrity. Without integrity an agent could do great damage to his client and profit himself considerably at the expense of his client. Mr. Shepherd felt that it was this feature of the matter which made necessary some effective form of registration. He went on to attack estate agents, sometimes of the highest repute, who themselves dealt in property on their own account.

The Government's view of the Bill was given by the Joint Under- Secretary for the Home Office, Mr.C.M.Woodhouse. After commenting that the earlier Bills promoted by the profession did not make much progress "because the estate agents themselves were unable to agree on the best method of control," Mr. Woodhouse said that the Government would welcome a Bill for the control of estate agents which was agreed by estate agents generally. Until this state of affairs came about, and until the House of Commons had made up its own mind, the Government's attitude remained one of neutrality.

The Bill failed to obtain a second reading because of a technicality. When the time came for the debate to end there were still members who wished to speak. This would have involved the Bill being "talked out," and to prevent this happening Sir Harry Legge-Bourke moved that the question be now put. Although this was carried by 54 votes to 6 it was insufficient to close the debate because the standing order required the motion to be supported by at least 100 members. The Bill was therefore lost, and one more attempt to secure registration had failed.

### **Continuing Parliamentary Activity**

The failure of the Legge-Bourke Bill did nothing to bring to an end the general feeling in Parliament and elsewhere that some legislative steps should be taken to deal with abuses in estate agency. The London County Council passed a resolution urging the Home Secretary to take action to regulate estate agency if the professional bodies failed to achieve any results in this direction. The advent of the Labour Government in 1964 led to moves for promoting municipal house agency, and the Minister of Housing and Local Government asked a selected number of local authorities to operate registers of low-priced houses for sale as an experiment. In the same year Mr. William Clark, M.P., introduced a Bill providing for regulating professional practitioners (including estate agents) who were in the practice of receiving moneys belonging to clients. This made no progress.

In March, 1965, Mr. Clark asked the President of the Board of Trade what was the number of bankruptcies among estate agents for each of the past five years, and was given the following figures:

Year	Bankruptcies
1961	15
1962	9
1963	19
1964	10 (provisional)

In June, 1965, Mr. William Hamilton, Labour M.P. for Fife West, initiated a debate on estate agents in the House of Commons. He said that estate agents in general were all being tarred with the same brush, and went on: "Their image is not as good as possible, because a minority of them are unscrupulous - I do not know whether it is a minority or a majority, because I cannot prove it one way or the other." Mr. Hamilton complained of overcharging by estate agents, and misleading advertising. He said: "The claims of the manufacturers of washing powders and detergents are models of accuracy, reticence and modesty compared with estate agents' advertising of houses. The seller of the house does not object if his house is described in the most outrageously glowing terms, and the estate agent who is keen to get the highest fee possible is a very willing partner in this duplicity. The terminology which they use has become a music-hall joke. 'Rural aspect' very often means that it is miles from anywhere, with mud up to one's knees. 'Two minutes from shops and station' means anything up to half a mile or a mile; an Olympic runner could not do it in the time. A 'kitchenette' means that there is not enough room to swing a cat. 'Quaint old-world cottage' means that it is a mystery how it stands up at all.

The spate of Parliamentary interest continued, with questions to Ministers and, in July, 1965, the introduction of another Estate Agents Bill by Mr. R.E. Winterbottom, Labour M.P. for Sheffield, Brightside. This was introduced under the Ten Minute Rule, and had as its main object the encouragement of the carrying out of estate agency functions by local authorities, and the limitation of the amount of fees which could be charged by private estate agents. In moving for leave to introduce the Bill, Mr. Winterbottom said it was directed against "the get-rich-quick merchants who have been masquerading as estate agents." He added: "In Sheffield, during the past six months, people have lost thousands of pounds in lost deposits to these bogus operators.... According to the letters I have received.... I gather that the Sheffield experience is repeated in almost every part of the country."

The Bill was opposed by Mr. Paul Hawkins, a chartered surveyor, but leave was given to introduce it without a division. Nevertheless, it made no progress.

The constant activity in Parliament made the professional societies concerned with estate agency very conscious of the need to retain the initiative. They therefore resolved to make yet one more attempt to secure the passage of legislation, and in order to broaden the basis of their representation, invited the Institution of Business Agents to join them. This brought within the scope of the projected legislation business transfer agents, whom many felt to be in particular need of statutory control. The number of societies on the representative committee dealing with the matter was thus increased to nine, and this committee produced a draft Bill based on the Legge-Bourke Bill but embodying some radical amendments designed to meet criticisms made of the Legge-Bourke Bill and to command the support of the great majority of estate agents. In a statement published by the nine society committee on October 26, 1965, the committee said:

"In a further attempt to obtain unanimity among practising estate agents the committee are prepared to recommend to their constituent societies:

- (1) That rules of conduct laid down by the Estate Agents Council should not prohibit any act unless in the opinion of the Council the doing of the act is contrary to the public interest.
- (2) That a future member of a professional body should not by virtue of his membership be qualified for registration as an estate agent unless he has the competence requisite for practice as such..
- (3) That until an adequate compensation fund exists each person carrying on business as an estate agent should be required to take up an 'Honesty Bond' covering losses up to #10,000.
- (4) That provision should be made, on lines similar to that recently enacted for solicitors, to deal with interest on money held by an estate agent otherwise than as stakeholder."

These were major modifications not previously proposed by the committee. Another change from the 1962 Bill, which had however been previously proposed, was that the three chartered bodies would have no special position on the Estate Agents Council, and that its members (apart from Government nominees) would be drawn from all the representative bodies in accordance with the number of their members who went on the register.

Although these modifications meant major concessions to critics of the 1962 Bill, inquiries at the Home Office indicated that Government support would still not be likely to be effectively forthcoming unless the proposed new Bill could be shown to have the support of *all* the representative bodies of estate agents, including the National Association of Estate Agents. This body still remained outside the Committee although several meetings between the Committee and the Association had taken place. The Committee thereupon extended to the National Association an invitation to join them and take a full part in their efforts to secure the passage of an Estate Agents Bill in the forthcoming session. The invitation was accepted, and on November 9, 1965, the Committee became the Ten Societies Committee. In a statement issued on that day, three additional principles were inserted at the instance of the National Association. These were:

1. That the test of competence for future admission to the register should be related to the specific functions to be controlled without creating artificially high academic barriers.
2. That in determining representation on the Estate Agents Council, a registered agent who was a member of more than one representative body should be counted only once.
3. It was recognised that estate agency is not a purely professional function, and such restrictions as were imposed should not be designed to favour one type of business as against another and should prohibit only those practices which were prejudicial to the public. In particular, care must be taken that rules should not inhibit new techniques and the provision of an efficient and

up-to-date service to the public.

### **The Jones Bill**

The promotion of the Bill was entrusted by the Ten Societies to a steering group consisting of: W.E.A.Bull (Chairman, Ten Societies Committee), H.W.Wells (President, R.I.C.S.) (later Sir Henry Wells), J.Brendon George (C.A.E.A.I), H.H.Davies (I.S.A.L.P.A.), (E.B.Coleman (I.B.A.), Col.H.C.Phillips (V.I.), P.W.Arbon (N.A.E.A.), R.S.Borner (Secretary, C.A.E.A.I.), and the present writer, who acted as secretary to the steering group, being also secretary of the Ten Societies Committee. It was the intention to procure the introduction of the Bill in the House of Commons by a Private Member successful in the ballot for Private Members' Bills, which was about to be held. It is usually assumed that only the first half dozen or so Members in the ballot have much chance of getting their Bills on the Statute Book, and accordingly determined efforts were immediately made to secure the interest of one of these Members. They were successful and Mr. Walter Monslow, a Labour Member who had come fifth in the ballot, agreed to promote the Bill. It was then discovered that by a curious chance the first Member in the ballot was himself an estate agent and a member of the Valuers Institution, one of the Ten Societies promoting the Bill. This was Mr.Arthur Jones, a Conservative M.P. The steering group had some misgivings about the prospects of an Estate Agents Bill introduced by one who was himself an estate agent, and a member of the Opposition party. Nevertheless in the event Mr Monslow withdrew and Mr.Jones introduced the Bill. The following is a detailed outline of the provisions of the Bill as introduced:

1. The Estate Agents Council would consist of:

- (a) Four persons nominated by the Home Office to represent the public;
- (b) Persons nominated by the estate agency bodies (being bodies corporate organised on a national basis, some, but not all, of which would be "recognised representative bodies"), at the rate of one nominee per thousand members registered;  
[In the initial period, while the register was being made up, nomination was to be by the Privy Council in similar proportions on the basis of the numbers in each body thought likely to qualify for registration.]
- (c) Three representatives of estate agents belonging to no national corporate body to be nominated by the Privy Council.

All these nominations would be arranged so as to secure due representation of all parts of Great Britain.

2. The following functions and appellations would be restricted to use by registered persons:

- (a) *Functions.* The buying, selling and leasing of land, whether for owner, purchaser or lessee, including transactions affecting houses, offices and shops (and business transfer in so far as it comprises those functions), if done for reward other than a mere reimbursement of expenses or payment of salary; and any holding out to do these things for payment;
- (b) *Appellations.* No one other than a registered person to describe himself as a "registered estate agent" or use any similar appellation including the word "registered."

3. The following would have to register: All principals of estate agency firms and all estate agency directors of estate agency companies; and (since every branch office of a firm or company

would have to be supervised by a registered person) the managers of branch offices not supervised by any principal.

4. The following would be eligible for registration:

- (a) On a practice qualification, any principal or director who was carrying on business as an estate agent during the year ended December 8, 1965, the date of first reading of the Bill;
- (b) Members of recognised representative bodies (i.e., corporate bodies of good standing requiring good character of members and the minimum standard of competence requisite for proper practice as an estate agent), being in the classes of membership recognised as qualifying them as estate agents;
- (c) Persons satisfying tests of competence and character to be prescribed by rules, to be made as soon as practicable after the enactment of the Bill, by the Estate Agents Council. The rules would require Privy Council approval and would be subject to annulment by Parliament.

5. *Conduct.* The Estate Agents Council would be required to prepare and submit for Privy Council approval a statement of acts the doing of which in the opinion of the Estate Agents Council was contrary to the public interest and amounted to disgraceful conduct as an estate agent. It was provided that in determining whether any conduct was disgraceful account should be taken of the fact that estate agency had both professional and commercial attributes, and of the desirability of not preventing estate agents from making proper use of new techniques and providing an efficient service to the public. This marked a concession to the National Association of Estate Agents, originally embodied in a document which became famous in the negotiations as "Paper A."

#### **Power to Restrict Fees**

6. *Fees.* The maximum fees to be charged by estate agents for estate agency work would be laid down by the Estate Agents Council, subject to Privy Council approval. This provision was inserted at the request of the Home Office.

7. *Honesty bonds and compensation.* Every Estate agency principal and responsible manager would have to have deposited a guarantee bond to insure, up to #10,000, proper conduct by him in relation to money and other property entrusted to him. In addition the Estate Agents Council would be empowered to set up a compensation fund under a scheme to be approved by the Privy Council, which could, as soon as adequate, supersede the bonding scheme.

8. *Accounts, audit and interest on money.* Rules to be made by the Estate Agents Council and approved by the Privy Council requiring separate bank accounts for the firm's money and for the money of clients and others, and, on lines similar to those recently enacted for solicitors, dealing with the payment of interest on clients' money.

9. The following exemptions were provided for:

- (a) Local authorities providing information to prospective purchasers by means of a register, and the Greater London Council in the exercise of powers under section 22 (5) of the London Government Act, 1963;
- (b) Proprietors of shops or newspapers displaying property advertisements;
- (c) Solicitors in the course of their practices as such;

- (d) Accountants qualified to make public audits: and
- (e) Registered architects in connection with their practices.

The steering group were under no illusions about the tremendous difficulty of the task of getting the Bill through both Houses of Parliament and on to the Statute Book. They had to run the gauntlet of critical comment from both inside and outside Parliament, and were particularly nervous of allegations about the imposition of a closed shop, restrictive practices, oppressive behaviour or monopoly. In a pamphlet circulated by the steering group to Members of Parliament these possible allegations were answered in advance in the following way:

"1. The safeguard against any closed shop is that the examinations for entry to the register would be open to all of good character whether members of any representative body or not, and that the rules about the examinations, etc., would not only be subject to Privy Council approval but also to annulment by Parliament. So far as membership of a body of estate agents is concerned, no corporate bodies are mentioned by name in the Bill; their recognition would be a matter for the Estate Agents Council and subject to an appeal to an independent tribunal. There would also be independent tribunals to deal with appeals by individuals refused registration.

2. The safeguard against the rules of conduct imposing any restrictive practice is that they have to be in the public interest. The Estate Agents Council, who make the first draft, would include independent members to represent the public, and the rules would be subject to approval or amendment by the Privy Council. The same provisions would afford protection against any minority representation on the Estate Agents Council being oppressed by any majority representation.

3. The protection of any individual estate agent against oppression would be that he could not be removed from the register except by a finding of the Disciplinary Committee, under a completely independent chairman being an advocate or barrister of due standing, and that the finding would be subject to appeal to the High Court or Court of Session. Moreover, in determining if any conduct has been both contrary to the public interest and disgraceful, account has to be taken of the fact that estate agency has both professional and commercial attributes, and of the desirability of not preventing estate agents from making proper use of new techniques and providing an efficient service to the public.

4. The Bill, if enacted, would create no monopoly. It would remain a matter of voluntary contract whether a person selling, buying or letting a property would employ an estate agent or not. For example, transactions effected by private advertisement or cards outside shops, or private introductions are untouched. Local authorities are expressly empowered to provide information to prospective purchasers by means of registers and certain powers in that connection of the Greater London Council are expressly saved."

As the time for the second reading of the Bill approached, the promoters were heartened to learn that its principles were supported, and its passage into law urged, by a number of important national bodies including the Greater London Council, the National Chamber of Trade and the Law Society. Support was also declared by the recently formed Federation of Local Associations of Estate Agents and, in Scotland, by the Institute of Auctioneers and Appraisers and the National Federation of Property Owners and Factors.

### **Second Reading of Jones Bill**

The second reading of the Bill took place in the House of Commons on January 28, 1966. In moving the second reading the promoter of the Bill, Mr. Arthur Jones, Conservative Member for Northants South, said that it was the first time that the House and the Government had been able to welcome a Bill on which all shades of opinion throughout the profession were represented and reconciled. He explained that the Government had arranged for official drafting assistance to be given to enable amendments to the Bill to be made in proper form. Mr. Jones' speech was mainly devoted to a description of the contents of the Bill and an explanation of the circumstances that made it necessary. On the latter point he said:

"The House will be aware that the public continue to be harmed by the dishonesty, sharp practice and incompetence of a small minority of unscrupulous agents. Over the last 20 years the Press has reported some 350 convictions for fraud by estate agents and nearly 400 bankruptcies. Last year the reported cases covered losses amounting to #14,000 and possibly double this amount might be involved if account is taken where no conviction was reported or where people were reluctant to incur the publicity of a prosecution. Thus #1/4m. might be nearer the correct figure for the losses in 1965.

"The 'Sheffield Morning Telegraph' has taken a particular interest in this question and, in a report of a recent case, the man charged with fraudulent conversion was said to be semi-literate and to have no knowledge of estate agency. When sentencing this man the Assistant Recorder said that he found it incredible that such a person could not be stopped from setting himself up as an estate agent.

"I have a leaflet here circulated in December in the London area inviting the public 'to select a good and fair agent.' The leaflet goes on to say 'What about yourself? Should in case you die sudden, is your life insured to provide for your wife and children whom you love so much? Or will they be left to charity?' This leaflet was associated with attempts to extract large fees from both the vendor and purchaser who had come to an agreement over the private sale of a house.

"A recent case brought to my notice concerns two estate offices in London controlled by a limited company.... The circumstances are quite tragic. A large number of depositors, many of whom come from overseas territories, have lost their life savings and I am told that the prospect of any return to them in the liquidation is negligible. No fewer than 68 persons are now unsecured creditors for amounts totalling nearly #20,000."

The other main form of abuse dealt with by Mr. Jones in his opening speech was over-charging by estate agents. He gave the following examples:

"On the sale of a house for #1,300 the commission was #300. The scale of charges authorised by the professional societies would have been #45. Another case carried commission of 7 1/2 per cent, with a minimum fee of #200 compared with the 5 per cent or less charge of the societies, with a minimum fee of #7 10s. In Lancashire a vendor was bound to pay 10 per cent on the selling price with a minimum of #100, for the sale of a house built before 1918 which sold for less than #500. In this case the contract also bound the client to pay over to the agent any amount realised for the property above a certain figure. An agent in Paignton used a slightly different method. His form of instruction guaranteed him a minimum of #90 whatever the selling price."

Mr. Jones concluded this part of his speech by quoting the following advertisement in a national

publication:

"House and Estate Agency: start your own. Full instructions plus free advisory service, #1 1s. inclusive." Anyone who paid this fee was sent some literature and a covering letter reading: "Here is your copy of our booklet on operating an estate and house agency from your own home. After your second reading you should be ready to start. So now Good Luck."

Mr. Jones was interrupted in his speech on two points. One concerned the composition of the proposed Estate Agents Council. Two Labour Members, Mr. Alfred Morris (Manchester, Wythenshaw) and Mr. W.T. Williams (Warrington) questioned Mr. Jones on this point.

Mr. Williams said: "The position appears to be that as the composition of the Council stands it is overwhelmingly weighted in favour of estate agents running their own businesses. This is a matter about which there is some complaint. Would the honourable gentleman be prepared to consider dropping the large number of professional representatives in favour of non-professional lay representatives?" Mr. Jones endeavoured to defend the composition of the Council in the following way:

"In my view, considerable professional 'know-how' would be required in the drawing up of a satisfactory code of conduct. These remarks apply equally to its successful application. Members of the Council must be experienced in the day to day conduct of all aspects of estate agency, and the representations of the recognised corporate bodies, be they large or small, will ensure this....It is unrealistic to suggest that the issues coming before the Council can be adequately dealt with lay members without some specialised knowledge of the duties and problems on which they would be required to give decisions." Nevertheless Mr. Jones was forced to consider this point, and concessions were later made which are explained below.

### **Estate Agents Dealing in Property**

Another important matter dealt with by Mr. Jones in his opening speech was the point raised by Mr. Shepherd, the Conservative M.P. for Cheadle, in the debate on the 1963 Bill, that an estate agent ought not to deal in property. Mr. Jones said that "to deny registered agents the right to own property or serve as directors of property-owning companies of whatever nature would be to deny to the agent himself and to others his skill, experience and knowledge. Chartered accountants continually became directors, so that they may give advice on finance and tax matters, as do solicitors because of their general knowledge of the law and affairs." Mr. Jones went on to give a personal instance: "Some time ago I accepted an invitation to join the board of a small multiple grocer's business, to deal, in my capacity as an estate agent, with the large number of properties which, as an old family business, it had acquired over the years. In any negotiations which I conduct on the company's behalf, my responsibility is clear. I some small grocer wishing to sell his business approaches me and the company to which I refer is likely to be interested, he is so informed at once and I make it clear that my interest as a director precludes me from acting for him in the sale. There need be no question of conflicting loyalty. I am confident that those in general practice are daily confronted with such circumstances, which are honourably resolved."

At the conclusion of Mr. Jones's speech the speaker pointed out that almost every honourable Member present wished to take part in the debate, an illustration of the very great interest aroused by the subject of registration of estate agents.

In the debate which followed, almost every member spoke of the need to increase the proportion of lay members on the proposed Estate Agents Council. Mr. R. E. Winterbottom (Sheffield, Brightside) went so far as to say: "I want a majority of Government supporters in charge of the Council." He later made it clear that he intended to refer to Government nominees, rather than supporters. Even Sir Harry Legge-Bourke said that he thought the number of non-estate agents on the Council should be increased. The Government's spokesman, Sir Eric Fletcher, disagreed that the number of independent members ought to be in the majority, saying that he thought this would defeat the object of the Bill. He went on: "It is essential that the Estate Agents Council should be so constituted that there is a large preponderance of estate agents on it and an adequate number of independent members. In my view, the public will be protected not by the mathematical constitution of the Estate Agents Council but by the fact that all the rules, the code of conduct, the scale of charges and particularly the registration will be subject to the approval of the President of the Board of Trade and capable of amendment by him.... A reasonable composition would be about seven independent members and perhaps 18 to 19 estate agents."

The only other point on which all Members present agreed was that the Bill was necessary. Even Mr. Winterbottom, who went on record as saying "we do not need estate agents for the business of buying and selling property or land," nevertheless said he believed it was necessary to register estate agents. He went on:

"Most estate agents started their businesses with no experience of house or land valuation. Most of them came from other occupations. In the place I come from, a co-operative society, of which I was a member, had a house purchase scheme to cover the entire district and at one time I did the examination of those houses. The estate agents, many of whom started while I was there, knew nothing at all about houses and they came to us for advice. There is no special requirement with the exception of a few weeks' experience in the business of buying or selling houses."

Mr. Shepherd expressed regret that the Bill indicated a certain amount of disrespect for the estate agent:

"It is somewhat curious how the British behave. They have an unjustifiable respect for some occupations and a curious distaste for others. For instance, doctors have been held, at any rate until recently in the most incredible esteem. They could make no mistakes and could do no wrong and their word was law. I suppose that this is part of the class difference which has animated our society in the past years."

Mr. Will Owen (Labour, Morpeth) felt that the Bill was urgently needed, while Mr. Anthony Grant (Conservative, Harrow Central) said: "There are all too many tragic cases of people who have suffered at the hands of a minority of dishonest and irresponsible agents. In my own professional experience I have known many clients who have suffered greatly as a result of the action of such a minority." Mr. Ron Ledger (Labour, Romford) did not, however, see dishonesty as the only reason for the Bill. He said:

"I put it to some honourable members who are interested in this measure that, surely, they are not suggesting that if there were no case of an estate agent running away with the money there would be no reason for this Bill. There certainly still would be. There are dozens of reasons for having it, even though every estate agent was good and honest. I would therefore like to feel that, in the main, the sponsors are putting forward the Bill in an effort to raise the general standard of service and to establish the integrity of the greater number of these estate agents." Mr. Norman Cole

(Conservative, Bedfordshire South) said: "It seems logical and inevitable that, on a large professional body including Government nominees, *ipso facto* the result will be a better service for the public than was given previously by an amorphous group composed of a large number of societies and many people who belonged to no society." Mr. David Weitzman (Labour, Stoke Newington and Hackney North) said that he particularly welcomed the power to provide training facilities. He added his contribution to the tale of malpractices by a minority of estate agents, quoting a letter from the North-East London Law Society which said: "Mushroom firms of estate agents seem to be the bane of this district and in recent weeks there have been a number who have disappeared taking with them quite a large amount of the public's money, and the human suffering caused by this has assumed pitiful proportions."

Mr. Shepherd devoted most of his speech to an attack on estate agents who also acted as dealers or developers of land. Since his views were accepted by most members present, and were later acted upon in Standing Committee, it is necessary to state them at some length. He expressed himself as follows:

"I want, first, to deal with the practice since the end of the war. I am not guilty of exaggeration in what I say because anyone in the property business knows that it is true. The senior partners of a large number of the great, well-known estate agencies in London, and to a lesser extent, perhaps, elsewhere, have made large fortunes dealing in property since the war. Some of these activities have been on what I consider to be an absolutely unscrupulous scale.

"I know a young man who went into the office of one of these agencies - with a very well known name - and left the business in disgust because each morning the properties that came in were gone through and if something seemed to be particularly valuable or a very good offer it was transferred to the property company of one of the senior partners, emerging later for general sale or as part of an investment portfolio. This young man left the office in disgust at the nature of this practice... The job of a registered estate agent seeking to maintain, or appearing to maintain, a strictly professional attitude is to get for the client the highest possible price in selling, or to give to those who come to buy from him the greatest possible selection of properties from which to buy. If he is himself engaged in dealing with property and development he cannot properly serve the interests of the client... This is the worst practice in the estate agency business and I regard it as much more disreputable than that of the man who goes to an estate agency without experience or knowledge and who gets into trouble and who in the end as a result of mismanagement, defaults on deposits. This business in dealing in, and hiving off, the best things which come to the office to some personal channel is much less reputable than the unfortunate man who takes deposits and who, because he is incompetent or manages the business badly, defaults on deposits.

"It is true that agents indulge in all kinds of practices which tend to restrict the market for development. For example, an agent will say: "I will sell you a development or plot of land provided that you agree to cut me in on the equity." This is a kind of restriction in trade. It is dishonourable in the professional sense and in many cases it prevents the vendor from getting the highest possible price, because if the agent has a liaison with the developer he will sell the property at, at any rate, a little less than the maximum price."

### **Attack on Business Transfer Agents**

Another aspect of estate agency to come under attack in the debate was business transfer agency.

Mr. Grant thought it significant that the main opponents of the provision in the Bill to regulate charges were "some business transfer agents, who, I regret to say, often, quite notoriously, overcharge for their commission compared with ordinary agents. Their charges, mainly, are very much higher than the vast majority of estate agents. They say, I know, that this is because of their more expensive advertising and that they are specialists. I agree with that; but some of the advertising by business transfer agents compared with that of estate agents generally is sometimes, perhaps, more for personal aggrandisement than the interests of their clients."

The provision restricting the charges that might be made by an estate agent was, however, criticised by a number of members. Mr. Weitzman said: "We all know that maximum charges will become minimum charges." Sir Eric Fletcher, acknowledging that this provision had been introduced largely to meet the wishes of the Government, said that he did not share the fear expressed by Mr. Weitzman.

Sir Eric expressed the Government's welcome for the Bill and pointed out that if the Government were not already committed to a very large legislative programme they themselves might have wished to introduce a Bill on the subject. He continued: "In the Government's view, there are two main objects. One is to completely eliminate those persons who have been practising discreditable and disgraceful conduct as estate agents. Secondly, we hope to reduce the costs of house purchase generally, not only by trying to make sensible reductions in estate agents' charges but also to reduce the cost of house purchase by reducing legal costs." Sir Eric explained why the Government desired a change in the department that was to supervise the operation of the Bill:

"In the Government's view, the Privy Council is not the body to undertake those functions. This, of course, is a matter of the machinery of Government which, the House will realise, must be left to the Government of the day and in the view of the present Government the appropriate Ministry to discharge the Governmental functions envisaged by the Bill is the Board of Trade.... This Bill expressly recognises that estate agency has both professional and commercial attributes. Therefore, while the Privy Council might be the appropriate body to deal with some of the recognised professions for which it has accepted limited responsibility in the past, it is the Board of Trade which should be responsible in this case, because it is basic to the conception of the Bill that there should be effective departmental control. It is intended that departmental control should not be...a mere formality and it could not be expected to be more than a mere formality if these functions were entrusted to the Privy Council."

Since no member present wished to dissent from the principle of the Bill its second reading was carried without a division after a debate lasting 4 hrs and 40 mins.

### **Committee Stage of Jones Bill**

The Bill was now considered by a Standing Committee of the House of Commons, consisting of 25 members and a chairman. The membership of the Committee reflected the balance of parties in the House and was mainly made up of members who had indicated their interest in the Bill. The Committee began its proceedings on February 9, 1966, with a debate on the question of the chairmanship of the proposed Estate Agents Council. Mr. Shepherd moved an amendment providing that the chairman should be one of the independent members to be nominated by the Board of Trade, and should not be a person whose name was entered in the Estate Agents Register. In view of later events it is interesting that the Committee proceedings should have begun in this way, and we shall devote some time to examining the arguments put forward.

In moving his amendment Mr. Shepherd said: "I want to make clear to honourable members present and to the public outside that the amendment makes no reflection on the ability of estate agents to run their own Council or upon the concept that estate agents can carry out their own duties. I made this suggestion on second reading because I felt that there were special circumstances attached to this operation. The circumstances are that this is the first time that we have registered a business.

"In a registration of a business for the first time, we are establishing a critical situation. We are giving to men engaged in a business what is a semi-monopolistic position. In those circumstances, we must feel satisfied that the public interest is to be served. Where the urgent need is to be satisfied that the public interest will be served we are entitled to ask the sponsor of the Bill to take special steps to see that that interest is served and appears to be served.

"One of the ways in which we can do this is by having independents on the Council. On that I understand there is no dispute, but the position of the independents and the serving of the public interest will be fortified if the chairman of the Council is himself an independent. I suggest that this will be also in the interests of the Council itself."

After some interruptions, Mr. Shepherd went on: "In my view, an independent chairman would be of value to the Estate Agents Council itself because independents, like other people, even estate agents and Members of Parliament, vary in their quality and it is important that we should have independents of the highest possible quality to discharge this function on the Council. If we accept my amendment to provide that there should be an independent chairman it would fortify greatly the prospects of getting a man of exceptional ability to carry out this task... This activity, this profession or business - and to some extent it is a mixture of both - is truly in its organisational sense a decimated one. There are 10 bodies representative of the activity. Clearly, with this amount of division within its ranks, there would be some material advantage in having someone who was outside this great series of bodies to act in the capacity of chairman."

Mr. Winterbottom felt it to be essential in the public interest that the chairman should be selected by the Board of Trade, and responsible to the Government. He added: "So long as the chairman of the body is one selected by the Board of Trade, I feel that members of the public will have much more confidence in the Council, because they will feel that, on the face of it, consumers are going to have a square deal."

Mr. Ledger, in supporting the amendment, doubted the necessity for the chairman to have technical knowledge. He said: "That may be true in a committee of three or four people, but it is not true of a large Council in which most of the contributions to the deliberations will come from professional people. It is they who will decide what decisions are made, and not the chairman. A good chairman...is not one who tries to dictate to a committee, but one who listens to opinions, tries to assess the result of the discussion and gives an unbiased opinion."

Sir Eric Fletcher, for the Government, said that the right approach was to consider whether the Council would command greater confidence and respect among estate agents generally and the public if it had an independent chairman than if it did not. He thought that in view of the difficulties that might arise over disagreements among the ten societies as to the code of conduct, there might be an advantage in having a neutral and independent chairman.

The promoter of the Bill, Mr. Jones, opposed the amendment. He said: "Surely the very foundation of sound Committee and Council work is that those who are members of a Council or Committee shall find themselves operating under a chairman of their own choice, if that is possible. The proposals under the Bill as now drawn are designed to that end. How can we ask a large body of this sort to serve under what will in effect be a nominated chairman? One cannot think that a chairman in those circumstances would be very happy to serve. He might find himself in substantial disagreement or in a position of embarrassment where he might be forced to recognise that he was a nominated chairman and by no means serving in his independent capacity reflecting the varying views of members of the Council..

facilities will be available to them, to be able to judge on a chairman from among the seven persons nominated by the Board of Trade?...A great deal of professional and commercial knowledge will be necessary to guide the deliberations and discussions of the Estate Agents Council. One can see a substantial professional content in the deliberations and if, in those circumstances, a chairman were appointed from outside the register, he might find himself at a singular disadvantage.

Mr. Anthony Grant thought the amendment both unnecessary and undesirable. He cited the parallel of the Law Society, of which he was a member, saying that it had a president drawn from its own members, and discharged statutory duties, some of them similar to those contained in the Bill, perfectly satisfactorily and honourably with a president chosen from its own ranks.

Mr. Woodhouse felt that the amendment would be interpreted as a slur on a group of people trying to establish themselves as a profession. He went on: "It seems to me rather harsh at this particular moment to suggest that they are, so to speak, not sufficiently trustworthy in themselves to look after the consumer interests to the extent of providing their own chairman." Mr. Norman Cole went so far as to think that the amendment would "decimate the whole Bill," and Mr. Shepherd in the end bowed to these criticisms by withdrawing his amendment. He said that he had no doubt about the merits, in the initial period when a code of practice was to be established, of having an independent chairman. Nevertheless he felt that it would be enough to ensure that any chairman selected by the Council could not take office unless approved by the Board of Trade, and it was his intention to move an amendment to this effect on the report stage of the Bill.

### **Composition of Estate Agents Council**

The Standing Committee went on to consider amendments relating to the composition of the Estate Agents Council. Under the Bill in its original form there would have been four independent persons nominated by a Government department and 21 representatives of estate agents. The amendment moved by the Government's spokesman, with the somewhat grudging support of Mr. Jones, increased the number of independent nominees from four to seven and made a corresponding reduction in the number of professional members. The amendment, which was carried by the Committee, also altered the basis of representation of professional societies in a way which deprived some of the smaller societies of a right to nomination. This arose because the right to nominate depended upon a society having a minimum of 500 members. Under the revised provisions the representation of the professional bodies in the first instance would have been as follows:

Royal Institution of Chartered Surveyors	4
Chartered Land Agents' Society	1

Chartered Auctioneers' and Estate Agents' Institute	4
Valuers Institution	3
Incorporated Society of Auctioneers and Landed Property Agents	2
Incorporated Association of Architects and Surveyors	1
National Association of Estate Agents	1

The three smallest bodies promoting the Bill would have lacked any direct representation. These were the Rating and Valuation Association, the Faculty of Architects and Surveyors and the Institution of Business Agents. To enable some representation to be given to these bodies the Government spokesman stated that the provision under which three persons would be nominated by the Board of Trade to represent persons not represented by any body entitled to make nominations would be used to allow for at least one representative in rotation from the three smallest bodies.

Some debate took place at this point on the position of Scotland, for whom Mr. W. H. K. Baker (Banff) was the spokesman. He said that the Scots felt that there should be a separate Bill passed to deal with the Scottish position. He pointed out that there were major differences in law and practice between England and Scotland. He said: "When a property is about to change hands [in Scotland] it is usually dealt with through a solicitor and not by an estate agent at all. This does not apply in some of the larger cities and towns. There are estate agents, as they are known in England, established already in some of the places I have mentioned. But if a house or property is advertised by an estate agent, the initial move is made to the estate agent and thence to a solicitor. The solicitor carries out all the work except the professional points such as survey and so on. The solicitor carries out the transaction entirely and the estate agent merely acts as a go-between, as it were, between the intending buyer and the vendor's agent, who is the solicitor. The estate agent then merely takes a 5 per cent cut on the transaction overall."

In reply to this Mr. Jones pointed out that the Bill required nominations to the Council to include persons representative of all parts of Great Britain, and stated his expectation that the Council would appoint a Scottish committee. He felt this should make sufficient allowance for the differences between England and Scotland.

Another important amendment provided that existing practitioners could not be registered unless they either belonged to one of the Ten Societies or gave proof that they were of good character. In moving this amendment Sir Eric Fletcher pointed out that as the Bill stood it would be possible for a person who had been convicted of fraud to qualify for registration. This was obviously undesirable. Mr. Weitzman, who had put down a similar amendment, welcomed this change, saying that he knew of four cases in his own constituency of persons found guilty of serious frauds who were nevertheless currently carrying on business as estate agents and would be entitled to register if the amendment were not made.

Debate followed on the question of what activities were included within the scope of the Bill. Sir Eric Fletcher, speaking for the Government, expressed the view that business transfer agents should be within the scope of the Bill. Mr. Weitzman was anxious that the definition should cover "every activity" of an estate agent. Being satisfied on these points, the Committee turned to debate the provisions of the Bill relating to the code of conduct. A division of opinion emerged between those who felt it should be left to the Estate Agents Council, subject to the supervision of the Board of Trade, to work out for itself what should and should not be inserted in the code of conduct, and those who felt that Parliament should give definite instructions on the matter. Mr.

Rose (Labour, Manchester, Blackley) moved an amendment requiring the code of conduct to outlaw racial discrimination. There was general support in the Committee for the intention behind the amendment, but it was resisted on the ground that it would fetter too much the discretion of the Council. Mr.Perry (Labour, Battersea South) said that racial discrimination worked both ways: "Estate agents are not backward in using coloured people against white people. White estate agents in London often use coloured purchasers of houses in order to bring a road 'alive' - a phrase used in estate agency. If there is a road in which there is never a house for sale and then suddenly a house for sale appears, estate agents are not backward in selling it to a coloured immigrant so that many other people in the road will seek to move out, thereby making houses for sale and providing business for estate agents. This is a common practice in London.... Estate agents are often not backward in threatening - and I use the word deliberately - the white tenant of a house which is for sale with a coloured owner if the tenant does not accept #200 to get out. That too is common in London. The honourable member for Poole laughed, but this morning I had three letters from people who had suffered in this way."

### **Estate Agents as Dealers or Developers**

Another point on which Hon. Members sought to instruct the Estate Agents Council about what was to be put in the code of conduct related to the question of estate agents dealing in or developing property. This matter had been referred to during the second reading debate, and now Mr.Shepherd moved an amendment requiring the code of conduct to "include regulations designed to prevent any registered agent from dealing in or developing property, or taking any equity share in such dealing or development, either directly or indirectly, save with the permission of the Council." In moving the amendment Mr. Shepherd said he believed Parliament had a duty to see that certain standards were established when the Bill became law. He went on: "I know of no circumstance where this is more important than in the task of establishing that the agent has a high standard of integrity. I go further and say that if, as a consequence of this Bill, we do not correct the evils of the past, the Bill will be a waste of time and against the public interest." He went on to complain that whereas the professional societies said that an agent should not be a dealer at the same time, they did not attempt to enforce this regulation. He continued: "A member of one of these societies wrote to my architect, who had got me planning permission for a building in Croydon, saying, 'I see you have got planning permission; if you can get this away from your client and give it to me, I shall see that you are suitably rewarded.' The architect, being a man of some integrity, showed the letter to me. I wrote to the society. I received an acknowledgement but heard nothing further. It is true to say that, in respect of the disgraceful practices conducted by agents since the war, there has been the biggest 'head in the sand' operation ever conducted by any profession in the history of this country. I go even further and say that I know of no parallel disgraceful condition in any other profession in the country."

Arguing that it was not sufficient to place a duty of disclosure on an agent in circumstances where his own interest conflicted with that of the client, Mr. Shepherd said that the client might be harmed in circumstances where no particular property was in question. Pointing out that the agent had the important duty of giving advice, he said: "It is when it comes to this crucial duty of giving advice that the lack of integrity becomes a very great evil indeed. If I say to Mr.X 'I am thinking of doing this or that. Would you advise me to do this or that?' and he is engaged in the activity, either directly, through a nominee or as an equity shareholder in a property company, there will be a clash between his personal interests and the advice which he tenders to me as an individual. I assure the Committee that very big sums of money are staked out on the advice given by professional agents. The outlay of millions of pounds is often determined by their

advice. It is therefore crucially important that an agent who gives advice should be free from the complication of being involved in dealing or development, either directly or indirectly."

Mr. Shepherd indicated that in his view an agent should be required to advise the Council whenever he wished to buy and sell property either directly or indirectly, though he contemplated that there would be an exemption in the case of the ownership or development of the agent's own home.

Mr. Shepherd's amendment received general support in the Committee. Only six of the twenty-one members voting in the Division opposed the amendment, and three of these were themselves estate agents. The opponents included Mr. Jones, the promoter of the Bill, who said he felt that any professional man could cover himself in such circumstances by declaring his interest. He did not accept the rule of the Chartered Auctioneers' and Estate Agents' Institute that "agency and dealing are two incompatible occupations, and any attempt to combine them in one person or firm must inevitably be fatal in any pretension to a professional reputation." The Government spokesman, Sir Eric Fletcher, supported Mr. Shepherd's amendment and said that in his view Parliament would be entirely justified in imposing a specific obligation on the Estate Agents Council to provide by regulations against the scandal arising where the rule that agency and dealing were incompatible was infringed.

Having added Mr. Shepherd's amendment to the Bill, the Committee went on to consider a further amendment put down by Mr. Shepherd under which it would have been misconduct for a registered estate agent to serve as a director of any company whose main business was dealing in land or buildings unless he had the permission of the Estate Agents Council. In moving this amendment Mr. Shepherd said: "There has been this growing practice of appointing to the boards of public property companies men who are engaged in the business of estate agency. The House took a certain view on a situation somewhat germane to this, but not parallel, when it dealt with the Building Societies Act, 1962. The Committee will recollect that under this Act it is unlawful for a man who is an estate agent to value property for a building society of which he is a director.

"I accept that that is not a complete parallel to a situation which applies in the case of directors of public companies who are estate agents, but it gives some indication that the House is concerned about a situation where a man in a professional capacity is placed on the board of a public company, and where there may well be a clash of interest between his duties as a professional man or as a senior partner of an estate agency, and his responsibility as a director of a public company."

### **Dissolution of Parliament**

Mr. Shepherd was in the middle of his speech moving this second amendment when the Standing Committee adjourned. It did not meet again because shortly afterwards Parliament was dissolved. This meant that all pending business, including the Estate Agents Bill, was dropped. Having got so far along the road towards statutory registration - farther than they had ever got before - the professional bodies were faced with the loss of yet another registration Bill. They computed that their expenditure on the Bill, together with its predecessor promoted by Sir Harry Legge-Bourke, amounted to some #15,000. In a statement issued on the announcement of the dissolution, the Ten Societies stated that they intended to renew their attempt to secure the passage of the Bill as early as possible in the new Parliament. The statement went on: "As a result of the consideration it has had in the present Parliament, the Bill has been put into a form

which should improve its chances, and the time spent on it has, therefore, not been wasted."

The Committee expressed their appreciation of the support and assistance received from many Members of Parliament, and in particular for the skilful efforts of Mr. Arthur Jones.

The new Government elected after the ensuing General Election had a heavy programme of legislation and it was soon obvious that the climate was not propitious for the immediate reintroduction of the Bill. Nevertheless, the Ten Societies considered it essential to retain the initiative and remain in a state of readiness to secure legislation at the earliest possible opportunity. Aware of the great public interest that had been aroused in recent years both by the continued malpractices of the small minority of "fringe" estate agents and by the determined attempts of the profession to deal with the matter, the societies felt it would be most unwise to give any sign of slackening in their efforts. There were still those who clamoured for action to be taken by the Government itself, and it was clear that if the societies relinquished their efforts the running would be taken up by the Government or by back-benchers having no connection with the profession. This was illustrated by a pamphlet published soon after the collapse of the Jones Bill by the Fabian Society. After discussing the provisions of the Jones Bill, the pamphlet drew a number of conclusions from the terms of the Bill and its Parliamentary history. On the whole these were hostile to the profession and its attempts to secure registration. The author said: "It is to be hoped that the Government will take the Bill over and strengthen it and that essential reforms will not be further delayed until another Tory estate agent is lucky in the ballot." It was made clear that by "strengthening" the Bill the author meant among other things that the composition of the Council should be altered in favour of still further independent representation.

He felt that the Bill should be altered also to ban estate agents from receiving deposits. Further, he suggested that there should be cast on agents a positive duty of care towards purchasers, and that local authorities should be encouraged to act as estate agents. On the question of dealing in property the pamphlet said: "It is clear that an agent cannot perform his duty to obtain for his vendor client the best possible price (or perform his function of providing the greatest possible selection of properties from which to buy) if he is continuously on the lookout for bargains for himself. A man who holds himself out as an agent to represent and advise others in certain matters should not in the same matters be in a position to choose to act for himself. The whole outlook of an agent whose obligations should be entirely to his client is bound to be affected in that relationship if he is dealing in property beyond that relationship.

"A trustee is absolutely forbidden to purchase trust property (except with permission of the court), whether directly or by a circuitous arrangement, even by public auction or after an independent valuation and however fair the price may be. This uncompromising rule is necessary because it is genuinely impossible to tell, in the words of Lord Chancellor Eldon, 'whether he had made an advantage or not.' A like rule should be made to apply to estate agents.

"If the estate agent has an interest either as an estate agent or as a property developer before deciding whether to accept instructions and take up the property on behalf of the client, he has a choice. He has foreknowledge of whether he will make more profit by acting as an agent or a dealer in property. The criterion is not the good of the prospective client, but which method of dealing will give the greatest profit to the agent.

"Estate agents should be forbidden to deal in, invest in, or develop property, or to be directors of property companies."

If the Societies were to keep the initiative, but were for Parliamentary reasons unable to introduce a Bill, what was their best course of action? Even if legislation had been secured, it would have taken a certain amount of time to set up the Council and establish a system of registration, draw up a code of conduct and so on. All these things could, however, be done without legislation. Indeed three-quarters of the provisions of the Jones Bill could be put into effect without having a Bill at all. Suggestions had previously been made that it would be wise to set up an estate agents council voluntarily even in advance of the passage of a Bill. In October, 1956, the President of the Valuers Institution, Mr.R.Hunter Hudson, said: "It is not necessary to wait for legislation, the urgent need is for a powerful authority to speak for the qualified members of the estate profession. There is a pressing necessity for the general public, and in particular the Members of Parliament, to be better informed. It must be explained that there is much more to the vocation of selling property than just obtaining an agreement between vendor and purchaser and the security of a deposit. I am quite sure the Government of the day would prefer to deal with one authority in such matters, than having to consider the views of so many organisations."

### **Decision to Set up Voluntary Council**

While some misgivings were felt about introducing a voluntary system of registration, the societies decided to do so. They would thus be able to get on with the necessary preliminary work and would have a flourishing Estate Agents Council in existence when the next attempt to legislate was made. Accordingly an agreement was entered into between the Ten Societies for the setting up, as a company incorporated under the Companies Acts and limited by guarantee, of the Estate Agents Council. The agreement provided for the Council to have exactly the same composition as was provided for by the Jones Bill after its amendment. In order to provide the necessary initial finance, the Ten Societies agreed to pay to this Council over a period of two years the sum of #30,000. The Board of Trade agreed to support the setting up of the Council and to nominate members in the same way as it would have been required to nominate them under the Jones Bill. In answer to a question in the House of Commons, the President of the Board of Trade said: "The ten principal societies representing estate agents have told me that they are proposing to set up a Council similar so far as possible in constitutions and functions to the statutory body provided for in the Private Member's Bill introduced in the last Parliament [i.e., the Jones Bill].

"I welcome this proposal as a move towards eliminating undesirable practices. The effectiveness of the new body will depend to a great extent on the support from the public which it receives. "At the request of the societies, I have agreed to nominate to the Council seven independent members and three estate agents who do not belong to the larger societies. I have also agreed to nominate the chairman from among the members of the Council and I have told the societies that the Board of Trade would be prepared to comment informally on any rules or code of conduct that the Council may draw up.

"The report of the Monopolies Commission on their investigation into estate agents' fees, when it is received, will provide valuable guidance to the Council and to the Government on this subject.

The decision of the societies to set up a Council voluntarily does not preclude legislation and the Government will watch closely how the situation develops. They would be prepared to consider legislation if this seemed necessary later in the light of experience and would support a suitable Bill designed to deal with any problems remaining after the Council has been established."

When Mr. Rose, M.P., asked in October, 1966, what steps the President of the Board of Trade intended to take to protect the public from defaulting estate agents, he was told that there was nothing to add to the President's statement quoted above.

In a statement issued to all members in June, 1967, the Ten Societies Committee said: "The pattern of the Estate Agents Council has emerged after long negotiations. Its voluntary nature does not override the basic desire of the Ten Societies that the activities of the Council shall be supported by statute at the earliest opportunity. We regard the setting up of the Council as a step towards statutory control and not a substitute for it.... It will be the purpose of the Council to secure adequate standards of competence and conduct among estate agents; to improve the techniques used in estate agency; to increase public knowledge of the services provided by estate agents; to establish and maintain a register of all persons entitled to use the term 'Recognised by the Estate Agents Council'; and to make regulations as to the requirements which must be fulfilled before any person can be entered on the register.

"The Council will have the right to lay down the form of qualification for entry on the register. It will be able to discipline those registered for unethical acts and require that the activities of each registered estate agent shall be covered by an 'Honesty Bond'.

"Additionally it is the purpose of the Council to prevent the exploitation of the public by unscrupulous men. This has indeed been the aim of the efforts in the past and has arisen largely because there has been the opportunity for exploitation. Provided the public treats only with those entitled to the description 'Recognised by the Estate Agents Council,' the risks will be appreciably reduced.

"The other principal advantage, and this must be related to the preceding paragraph, will be the drawing together of estate agents' interests and the promotion of those interests by one body. Dispersal of effort has in the past resulted in inadequate public relations, but in future, for the 'Recognised Estate Agent,' promotion will come from one source with obvious advantage."

There was further Parliamentary questioning about the control of estate agents in July, 1967. One of the questions asked was what action the President of the Board of Trade had taken on the report by the Consumer Council made to him in 1965 on the need for further regulation and control of estate agency. The answer again fell back on the statement quoted above. While great interest continued to be displayed in Parliament and elsewhere about what action the Government were taking to ensure proper control of estate agents, the Government were able to fend off criticism by referring to the setting up of the Estate Agents Council, and this answer sufficed to satisfy the critics.

In accordance with the agreement between the Ten Societies, the Estate Agents Council was incorporated on October 1, 1967.