PART II: WHAT THE CLIENT LOOKS FOR

CHAPTER 3

COMPETENCE: THE GIVING OF THE HALLMARK

"We know a few secrets of nature in our profession, Sir.", said Dr Jobling in Martin Chuzzlewit, "Of course we do. We study for that; we pass the Hall and the College for that; and we take our station in society by that. It's extraordinary how little is known on these subjects generally."

The idea of certain callings being "mysteries", whose lore is available only to the initiated, is an ancient one. It is a concept not confined to the professions and has been the source of much unnecessary mumbo- jumbo and self-importance. Nevertheless the complexity and obscurity of many occupations has grown with the increase in scientific know- ledge, the development of inventions and the general sophistication of industrial societies. Because of the personal and vitally important areas within which the consultant professions operate the need of the layman for competent advice is crucial. As has been stated hv the British Medical Association, "The nature of medical advice and treatment is such that the patient cannot effectively assess the quality of the services he is receiving and he must therefore repose considerable trust in the doctor . . . The successful treatment of many, and to some extent of all, medical conditions depends upon a high degree of confidence by the patient in the professional competence of his doctor." (1)

The state has long recognised that the public interest requires com- petence to be enforced by law in certain instances. As long ago as 1522 an Act was passed laying down that it was "expedient and necessary to provide that no person . . be suffered to exercise and practise physic but only those persons that be profound, sad and discreet, groundedly learned and deeply studied". (2) Similarly, Acts were passed to ensure the proper training of lawyers, e.g. an Act of 1729 "for the better regulation of attorneys and solicitors" enforced training under articles.

The need to ensure competence in financial matters has been recog- nised by many Acts of Parliament. The most notable is the Companies Act, 1948, s.161, which requires that the accounts of all companies be 35 D

 audited by persons who are members of a recognised body of accoun- tants. Similar rules apply to the audit of accounts of building societies, friendly societies, industrial and provident societies, nationalised industries and numerous public corporations.

Although the state has thus frequently recognised the need to legis- late to ensure competence, it has looked to the professional bodies themselves to provide a sufficient supply of practitioners of the necessary level of ability. By and large the professional bodies have accepted this role. The Royal Institute of British Architects for example has regarded itself as obliged to raise the standards of competence in the profession. In its submission to the Monopolies Commission in 1967, the Institute said: "The need to equip architects for the tasks of twenty to forty years ahead was the mainspring of the Institute's determination to raise standards. Human needs, building materials, the inter-relation of different parts of the man-made environment, methods of control and organisation of industrial processes, are changing fast and becoming increasingly complex. The quality of entrance to, and of training in, most schools of architecture in the 1950s seemed unlikely to yield a profession able to cope with the tasks of the future. Since 1958 a whole series of steps has been taken and more are projected to raise the standards." (3) Even such an unsympathetic body as the Prices and Incomes Board recognises that the quality of professional work ultimately depends on the standards of the

profession, as enforced by its representative institutions. (4) The Board in its report on architects in 1968 welcomed the R.I.B.A's initiative in producing a code of good performance.

The institutions see their main function as maintaining standards. Thus the Association of Consulting Engineers states that one of the primary objects of the Association is to secure that persons undertaking to advise as consultants on engineering matters shall be fully qualified in their respective fields. (5) The Hallmark

The public looks for a hallmark bestowed by a trusted professional body, and evidenced by entry on a register or members' list. Few people will employ an architect, unless they have other assurances of his quality, if he is not a member of the R.I.B.A. Similarly those needing to employ an accountant or surveyor will feel happier if he is "chartered". Often, however, the public is confused by the number of differing qualifications within the same field. When the Estate Agents Council was set up in 1967 to compile a standard register, there were about a dozen different professional bodies operating within the field of estate COMPETENCE:

THE GIVING OF THE HALLMARK 37 agency and each giving their own professional qualification with accom- panying designatory letters. Confusion in this field has been so great that very few members of the public are aware when consulting an estate agent whether he has any professional qualifications, and if so what they are. This problem is made more serious by the fact that the differing qualifications are of very variable standard. At one end of the spectrum stands the Royal Institution of Chartered Surveyors, requiring a five-year training and the passing of very difficult examinations, while at the other is the so-called "English Association of Estate Agents", which once enrolled on its register a domestic cat named Oliver Greenhalgh, whose owner sent in a form giving particulars in no way departing from the facts and describing its occupation as "rodent operative". (6)

The standards of a professional body tend to rise with the passage of time. Many bodies owe their origin to the desire of practitioners excluded from an existing body by standards they could not meet to find some society which would accept them, even if they had to form it themselves. Thus the Incorporated Society of Valuers and Auctioneers was formed in 1924 (as the Incorporated Society of Auctioneers and Landed Property Agents) to accommodate estate agents whose connec- tion with a furniture store or other "commercial" concern excluded them from membership of the senior estate agency bodies at a time when those bodies were seeking to persuade Parliament to take away the right to practise from those not among their own members. The Incorporated Society today enjoys a high reputation for its standards of competence, and shares to the full the code of conduct of the senior bodies. Nevertheless a man who sports the initials F.S.V.A. may well have obtained his membership in the early days when the standard of competence imposed was far lower. Even the senior body in the land profession, the R.I.C.S. itself, has considerably increased the level of its examinations since they were first set in 1881. The public therefore needs advice on the relative standing of different qualifications. It can scarcely expect impartial advice as to the relative value of their qualifi- cations from the institutes concerned (though it may very well get it). This kind of advisory service might well be offered by a body represent- ing the consultant professions collectively. The establishment of such a body is suggested below (page 235).

Another problem arising from the "hallmark" concept of a profes- sional qualification relates to regional variations in the expertise of the profession. A man in trouble with the law will not very happily consult a "qualified" lawyer unless he is satisfied that the qualification was gained from a study of the law of the country where the problem arises.

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PROFESSIONAL ETHICS For this reason most professional bodies give a qualification related to the particular country in which they operate. Chartered accountants, solicitors and barristers are qualified for their own country only, though their qualification may gain them partial exemption from the examina- tions of their profession in Commonwealth countries having similar systems. A chartered surveyor on the other hand has a qualification without territorial limitation. This does not mean that the examinations are

everywhere the same; for example, a quantity surveyor qualifying in Scotland will take papers some of which differ from those set in England to take account of differences in the methods of measurement and building construction in the two countries. The R.I.C.S. holds examinations in many countries, but except in Scotland and Ireland does not attempt to equate them generally to local conditions: many a Chinese youth sitting an examination in Hong Kong has grumbled at being tested in the intricacies of the London Building Acts.

This problem of how far a "hallmark" should be given a territorial limitation caused much difficulty to the Estate Agents Council. The Council was set up to give the public an assurance that estate agents recognised by the Council had at least the minimum degree of com- petence requisite for proper practice as an estate agent. Estate agents are, however, closely involved with the law of land and property, and the legal systems of Scotland and England differ considerably. Should an agent who has qualified in England be allowed to practise in Scotland under the seal of recognition by the Council? When this question was under debate it was pointed out t t it was not only the law of the two countries that differed, but the practice of estate agency as well; indeed it could be said with justification that practice was very different in the North of England and in the South. Where then should the line be drawn? In the end the Council decided that a registered agent should not be prevented from practising anywhere in Great Britain.

The professions naturally set much store by the concept of the "hallmark". That they are not alone in this view is shown by the submis- sion made to the Monopolies Commission by the Consumer Council, not a body noted for rushing to the support of the professions. The Council considers it an admirable policy that professional advisers should be com- petently trained and the public protected from charlatans by a controlled entry system. The Council's submission continues: "It is clear that mini- mum standards of achievement. . . should be required of practitioners of at least those professions where the client seeks specialised advice. Those who seek advice are almost by definition little capable of assessing its value and the customer seeking advice, cannot, unlike the buyer of con- sumer goods, inspect what he is buying before committing himself." COMPETENCE:

Professional bodies are sometimes accused of artificially restricting entry to the profession by setting the level of competence required too high. Even worse, they are suspected of raising and lowering the level in order to secure that a predetermined number of entrants should be admitted each year. This complaint is often heard from unsuccessful examination candidates; it is almost certainly unfounded. Carr-Saunders and Wilson reported that the only case of limitation of the number of entrants they had encountered was in the case of stockbrokers, which they defended on the grounds that without such a limitation a private market could not be preserved and the absence of such a market would endanger discipline. (7) Although the Prices and Incomes Board has shown a tendency to regard the professions it has examined as over- supplied with manpower, evidence of this is very difficult to substan- tiate. It would be a dangerous thing for anybody to presume to know several years in advance how many new entrants a profession needed, and to govern the entry accordingly. Quite apart from the fact that surplus practitioners will tend to be weeded out by economic forces, there are often people who seek a qualification without intending to practise in that profession. The best known example of this is the Bar, where a large proportion of those who qualify are not in practice as barristers five years later.

The form in which the "hallmark" is given varies, sometimes being simple and at others very complicated. With some professions, such as solicitors, the hallmark simply consists in the right to call oneself a sohcitor or whatever it may be. Other professions have developed a bewildering variety of designations. We are not here concerned to explore the complexities of different grades of membership of profes- sional organisations, but only to see how far these are useful indications of competence. In this respect the designations are significant where they indicate the attainment of a certain seniority or level of respon- sibility in the profession, or where they denote entry by examination rather than on the basis of a number of years' experience in practising the profession. In certain cases designations may have a further purpose of distinguishing between the members of an institute who have qual- ified in one type of expertise rather than another. For example, cor- porate members of the R.I.C.S., which embraces a number of different

techniques, will not have qualified in all of them. While any such member may describe himself as a chartered surveyor, this is not as informative as it might be, and many members also employ the more precise description of “chartered quantity surveyor” or “chartered land surveyor”.

The most usual way of indicating seniority is by dividing full members

 into associates and fellows. Admission to fellowship is only granted on the attainment of a certain age, such as 30, with, in addition, a fixed number of years of experience in the profession. Attainment of a responsible position, such as a principal in a private firm or head of a department, is also sometimes required. An indication that examinations have not been passed is sometimes given by having a licentiate grade of membership. It is said that many members of the R.I.B.A. are reluctant to proceed to the fellowship because this is open both to licentiates (who have not taken the examination) and associates (who have). A member who remains an associate demonstrates that he has qualified by examination.

The value of many of the indications of seniority, and the corres- ponding initials affixed to the member’s name, may be doubted — at least as far as the public is concerned. The public rightly assumes that the hallmark will not be given to one below years of discretion. The usual age limit is twenty-one; and the necessary lengthy training period would make any lower age limit impracticable as well as unwise. A member may carry greater prestige among his colleagues if he is seen to bear the senior rank of a fellow; the general public are likely to remain unimpressed because unaware of its significance. Since the rules governing the different grades in the various professions are so diverse, there seems little hope of evolving a system which can have general utility. As it is the public may even be misled by assuming that an apparently senior status indicates long experience which is in fact lacking. The most notorious example of this is the rank of Queen’s Counsel. Most people assume that if a barrister has taken silk that is a sign of advancement in the profession. Such indeed is often the case, since appointments are made by the Queen on the recommendation of the Lord Chancellor and many of those who apply are not appointed. The number to whom silk is granted in any year is fixed by the Lord Chancellor in accordance with the advice he receives as to the number necessary to do the work available, the appointments being related to the needs of London, of each circuit and of each specialty within the profession. What many members of the public do not realise however is that some barristers are made Q.C.s not through their experience at the Bar but because the title is treated as an honour to reward the man who reaches the head of a Civil Service legal department or is elected to Parliament. On the other hand many ordinary practitioners who would be regarded as having ample experience do not apply for appointment as Queen’s Counsel, preferring to remain juniors. Similarly many architects who would be eligible for fellowship do not apply, not only for the reason stated above but because, as the R.I.B.A. puts it, “the COMPETENCE:

 test for admission is not so severe as to create sufficient sense of great professional distinction for the fellowship class”. Another deterrent to proceeding to the fellowship is that the subscription rates are usually considerably higher.

It seems therefore that the tendency for these distinctions to die out need not be regretted. Indeed the less there is to mystify the public, and the simpler it is to identify a competent practitioner, the more effective will be the service provided by the professions. The Privy Council has requested the professional bodies to keep down the number of designa- tions to a minimum. In conformity with this the Institute of Chartered Accountants has drawn the attention of its members to the “desirability of adopting and using without additional words the title chartered accountaflt. It is comprehensive in its meaning and is now well under- stood as covering all branches of work entrusted to members. Any addition to it is apt to depreciate its character and value . . . “(8) Thus chartered accountants, unlike chartered surveyors, are not permitted to use designations such as “valuer and arbitrator”, “financial, property and insurance agent”, or “cost specialist”. Fellows of the Royal College of Physicians are not permitted to use designations implying the adop- tion of special modes of treatment, since these are opposed to the “freedom and dignity of the profession”. (9) Dentists are not allowed to describe themselves as “orthodontic specialists” or “specialists in children’s

dentistry", and commit a criminal offence if they do. (10) Does the public lose by the lack of this information? The professional philosophy says no, since information about such specialties should come by word of mouth from personal recommendations. Admission for Training

In its submission to the Monopolies Commission, the R.I.B.A. remarked: "The recruitment of the right human material, and its educa- tion, is obviously a major task in promoting the efficiency of a profes- sion. Society will not give its confidence to a profession whose practitioners are of inadequate calibre or expertise." (11) The consultant professions are attaching more and more importance to the quality of the initial intake. Only young people of relatively high intellectual endowmnent and a good general education can, it is felt, tackle the professional examinations with a good chance of success.

This is all very well provided a sufficient number of young people of this standard are prepared to enter on a course of professional training. It is vital for the professions to continue to present a sufficiently attractive picture to the young to encourage them to come forward in sufficient numbers. Otherwise the consequences to the public could be

 serious, though not perhaps so serious as those depicted in the evidence of the President of the Royal College of Surgeons to a select committee in 1834. Army surgeons had been desperately needed in the Peninsular war, and the only tests that were required were one course of anatomy and another of surgery. There were too many failures to enable a suf- ficient number of surgeons to be recruited. The Government was obliged to give warrants to persons lacking even this simple qualification and, said the President (who had himself served in Spain): "Some of those men who came out to us in Spain committed such destruction in con- sequence of their ignorance as to render it most deplorable." (12)

Most professional institutes have traditionally been examining, though not teaching, bodies. Some, such as the Accountants and Sur- veyors, have relied on the teaching of new entrants by correspondence courses combined with practical training under articles. Almost all the leading professional bodies now however are moving over, if they have not already done so, to an entry standard requiring the student to have obtained a level of general education entitling him to university entrance. In England this is taken to be two passes at the advanced level of the General Certificate of Education. In this way the professions hope to avoid the waste of training pupils not equipped to master the course, and to obtain their fair share of the schools' higher-quality output. This is an advance from the days when the only qualification needed for entry as a student was attainment of the age of 16 or 18. Practical Training

The traditional method of training for the professions is by the attachment of the new entrant to an established practitioner under articles of apprenticeship or clerkship. The concept is of learning by being in close proximity to those who are actually doing the job. Instead of poring over books in a remote university, the novice drinks in the atmosphere of his profession and makes himself useful into the bargain. Formerly a substantial premium was paid to the master for this privilege; nowadays where the system survives it is the student who is paid, though not at the market rate for those doing similar work without tuition by the master.* The system often gave rise to the abuse of using the articled pupil as cheap labour or, even worse, pocketing the premium and then treating the pupil as if he were nothing but a salaried clerk. These abuses are illustrated in Martin Chuzzlewit, where the eponymous hero was articled to Mr Pecksniff, who described himself as "Architect

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The Prices and Incomes Board found in 1968 that 5 per cent of solicitors' firms charged premiums — usually about £250 (Cmnd. 3529, p.5). and Land Surveyor", but betrayed little evidence of competence in either capacity.

The effectiveness of the system of articled pupilage largely depends on the quality and conscientiousness of the master. Where the system works well it provides the best training for a professional man. Indeed there is no other way in which the ideals as well as the expertise of the profession can be satisfactorily learnt. For this reason credit is due to the Institute of Chartered Accountants, who stand out against the tide which is tending to sweep away articles as a system of training and still insist on them as the only means of entry to the profession. The features to which the Institute attaches particular importance are:

1. The creation of a quasi-parental relationship between the principal and his students, allowing for the development in the student of the necessary professional qualities of character and personal behaviour, with the ability to handle relations with clients.

2. The effect in bringing the ordinary senior member of the profes- sion into contact with new entrants, giving him a share in the teaching role of the profession.

3. The inducing of an added sense of responsibility in the pupil because he is learning through the medium of actual cases rather than theoretical or hypothetical situations.

Unfortunately this last stronghold of compulsory articles is likely to disappear soon, since the Institute is contemplating amalgamnation with other accountancy bodies which do not insist on articles and draw their members largely from industry, commerce and the public service. In line with modern tendencies therefore it may be expected that the peculiar value of training the young in the atmosphere of individual service and professionalism found at its best in private offices will gradually disappear.

Since the Chartered Accountants' Institute so far retains the fullest system of articles of any profession except the solicitors, it is of interest to consider its requirements in some detail. The period of articled service is generally five years. A member is not allowed to take an articled clerk unless he is in private practice as an accountant in the United Kingdom. Before taking an articled clerk for the first time a prospective principal must obtain the consent of a special committee of the Institute. This is designed to ensure that the member is aware of his obligations as a principal and able to fulfil them. Approval is only given after an investigation by a sub-committee, which interviews the member. Most applications are successful; out of about 400 applications a year only one or two are rejected. To ensure that a member does not accept more articled clerks than he is able to look after properly a limit of four

 per member is imposed; until 1957 the limit was two. The lower age limnit for entry upon articles is at present 16, though this is likely to be raised shortly to 18. An articled clerk is not allowed to follow any other occupation without the consent of the Council of the Institute, which is only given where the time spent in other occupations will not affect training or studies. There is a compulsory probationary period at the beginning of articles, allowing either party to cancel their contract if on closer acquaintanceship they do not wish to continue it.

The institutes do not as a rule lay down the content or method of practical training, even where it is to be given under articles. This reliance on the principal's discretion may not always be justified, though it fits the basic idea that the pupil takes the office as he finds it. The range of work in particular offices varies widely and it would be unworkable to demand of a principal practical training in fields to which his practice does not extend. Nevertheless entrants for the exam- inations of the R.I.C.S., for example, have been refused permission to sit, on the ground that their practical training was in an unsuitable office. Principals can and should ensure, however, that pupils are really trained in professional work, and not employed in pettifogging tasks which as qualified men or women they will never have occasion to perform.

The breakdown in the apprenticeship system was attributed by Carr-Saunders and Wilson to the increased theoretical content of the courses of training, which nowadays necessitates full-time education at a university or similar establishment. (13) That this is not altogether incompatible with practical training is demonstrated by the R.I.C.S., who continue to require two years' practical training with a practising member of the

Institution even after the necessary theoretical training has been completed. The Bar Council also considers practical experience to be an essential part of the barrister's training. It has for many years been the practice for a barrister to do a year's pupilage in a barrister's chambers before accepting briefs on his own account. The positive rule was introduced in 1965 that a pupil may not accept instructions or conduct a case until six months of his pupilage have elapsed.

The imnportance of practical training with a practising member of the profession in private practice cannot be over-emphasised. While practical training in the expertise of the profession may be effectively given by practitioners not in private practice but, for example, employed in a public department, such practitioners are rarely able to imnplant those aspects of professionialism which spring from dealing with private clients. The code of the professions essentially originates from situations where a private client, often an individual, needs to be protected by the COMPETENCE:

THE GIVING OF THE HALLMARK 45 integrity of his personal consultant. These ideals cannot be learnt thoroughly except in an office where they are put into effect daily. If the professions value their code and standards they should hold on at all costs to the primne importance of educating their young entrants in the essence of professionalism. The failure to give full effect to this need is already showing results in the widespread ignorance among the recently-qualified of the true essence of professionalism and its code of practice. If this tendency continues much of the value of professionalism as now understood may die out. Examinations

The examination system is in no way peculiar to the consultant professions and we are only concerned with it on two points. One, which will be dealt with below, is whether, and how far, the public requires protection by the law's insisting on an examination qualifica- tion. The other concerns the need to remember that the essence of professionalism cannot be tested, even today, by written examinations based on theoretical training. It depends on experience, and experience of the right kind. It depends also on prolonged and close contact with the right kind of professional person during the formative years. Indeed a close alliance of high academic and theoretical disciplines with a sufficiency of the right kind of practical training should produce pro- fessionalism of a better standard than in the past. The old idea that it was not necessary to make any strict enquiry into a young man's know- ledge of the technicalities of his profession before he took up its practice is gone for good. The assumption that one who had received a liberal education could easily master the details of the profession as he went along, if it ever had any validity, lost it when the subject matter of the professions became as technically complex as it has now been for several generations. Reader gives a picture of the views held in the legal profession on the need for examinations a century or so ago. The Treasurer of the Middle Temple summed it up by saying: "I do not think that examination is really of any use. I think the advantage of dining in the Hall is associating together. The question of men associat- ing together, I think, is of very great importance . . . if he (the new barrister) is not qualified, he will get no business, and if he is qualified, he will get business." (14)

It is to be hoped that the reaction from this point of view will not go too far the other way. There was after all some basis for the belief that what mattered was for the tyro to mix with his future colleagues on terms of intimacy rather than to shut himself up with dusty books. That the latter was done, and often done with more depth of true

 learning than is found today, we know well. Even Dickens, with no love for lawyers and drawing Mr Pickwick's tormentors in the most unflatter- ing light, granted Mr Serjeant Snubbins, along with his lantern face and sallow complexion, "that dull-looking boiled eye which is often to be seen in the heads of people who have applied themselves during many years to a weary and laborious course of study".

There are by and large two sorts of learning to be tested by examina- tion: the academic and the technical. In some professions it is not uncommon for the academic side of the work to be studied at university as a matter quite apart from vocational training. For many years future barristers have passed their time at Oxford or

Cambridge in studying theoretical jurisprudence, with a concentration on judge-made law and a contempt for statutes which by no means gives them a thorough grounding in the field of learning of a fully-fledged barrister. It does however lodge in their heads a respect for legal theory and abstract reasoning of more value than a premature concentration on the minutiae of statutory provisions. Their brethren may have gained the same discipline by a study of classics or history before tackling the vocational exercises needed for the Bar examinations.

There is a danger that some of the newer professions, intoxicated by the thought of drawing their entrants exclusively from the universities, will abandon the role of examining bodies. To be sure there is consider- able pressure in that direction from the universities themselves, and from their graduates. Impatience to begin earning a living, coupled with the absence of any compulsion to become a member of a professional body before practising the profession, may well lead to growing num- bers of graduates by-passing the professional bodies and their qualifica- tion altogether. If a diploma in architecture or a B.Sc. (Estate Manage- ment) comes to be regarded as equivalent to, or better than, a qualifica- tion bestowed by a professional body a serious blow will have been struck at the viability of professional institutions. Already control of syllabuses is passing out of the hands of professional bodies, who are being compelled to grant exemptions from their own examinations to holders of university degrees. While the universities are still obliged to bear in mind the requirements of the professional body in framing their syllabuses, they often feel reasonably certain that if the Institutes hold out against syllabuses desired by the universities, and threaten to with- hold exemptions, the upshot will be that the university student will save himself the cost of an annual subscription and opt for reliance on his university qualification. Somehow this must be avoided and the idea preserved that a person is not fit to practise a profession the moment he or she comes down from the university with an academic COMPETENCE:

 degree. Indeed if it is a genuinely academic degree the graduate will scarcely have begun to embark on the vocational side of his education. It is not a matter merely of applied practical training; the difference between say the papers in the examninations for the final school of jurisprudence at Oxford and those for the solicitors' final is great indeed, and rightly so.

This leads us to a central problem of today. Should a university course be framed on vocational lines, so that little except practical instruction is needed before embarking on the profession? Or should the universities concentrate on training the mental faculties by rigorous intellectual discipline, leaving the details of the expertise of the profes- sion to be picked up later? With university courses being almost entirely financed out of public funds there is a strong tendency for the former of these alternatives to be adopted. This negatives the idea of a univer- sity, and equates it to a technical school. It denies the present genera- tion of undergraduates the richness of true learning, and such a denial will in time seriously impoverish the professions and indeed the whole national life. It is not merely a matter of cultural poverty; progress in the improvement of techniques is closely bound up with the pursuit of pure science and abstract learning.

If this reasoning is accepted it follows that such moves as the recent transfer of the College of Estate Management to form part of the University of Reading may not be altogether desirable. For half a century the College has formed the main training ground for recruits to the land professions. A typical pattern of training has been by corres- pondence courses taken by young men working under articles to an established practitioner. One danger is that the purely vocational train- ing thus given will continue in the guise of university instruction. If this does not happen, and the courses resemble more the academic syllabus of the Department of Land Economy at Cambridge University, the position will be unsatisfactory in the opposite direction, since the main source of vocational training will have disappeared. It is true that postal courses are to continue, but students taking them will find it difficult to attend lectures, as they used to do while the College was at London. This at a time when the subject matter of the profession of the land is becoming more and more complex. If university courses are indeed to become the main training ground for future professionals, there is a great need for a reversal of the trend against practical and vocational training being given in practitioners' offices.

Carr-Saunders and Wilson favoured the giving of professional training in universities on the ground that the association of students studying different techniques widened understanding and created diversity of

 interests. They also felt that since research is a common feature of universities "the atmosphere is less likely to be heavy with instruction than in purely teaching institutions". (15) These are of course reasons why entrants to the professions should be university graduates; they are not reasons why detailed vocational training, rather than intellectual and academic disciplines, should be given at university.

While traditionally accepting the role of examining bodies, the pro- fessional institutions have been reluctant to take any responsibility for the quality of the instruction given in preparation for their examnina- tions. There have been honourable exceptions: the land profession established the College of Estate Management, which was granted a charter in 1922; the Law Society has its School of Law and the Bar its Council of Legal Education. Private coaches have been ignored however; Carr-Saunders and Wilson found only one instance of a professional institute extending anything in the nature of recognition to private teaching institutions. Unwillingness to take responsibility for recom- mending an establishment whose standards were not officially supervised has led to a regrettable refusal to give needed advice. While this attitude still persists, its practical effect is growing less important with the increase in university courses and corresponding exemptions from pro- fessional examinations. Maintaining Competence

Having bestowed a hallmark of competence, a professional institute has some responsibility for ensuring that it remains valid. The man who has been examined and passed as competent at the age of 25 can, if he remains out of trouble, describe himself by his professional designation for the rest of his life. He may even do it after a long interval when he has not practised his profession at all. That this situation does not prejudice the public in fact can only be attributed to the rarity of the case. Most people who acquire a professional qualification either prac- tise the profession for the rest of their working lives or, having once given up, do not return to it.

A more serious problem exists in the case of those who, while still practising, do not keep up to date with new techniques. Some do not even refresh their memories of knowledge acquired in student days. Lord Greene, a celebrated Master of the Rolls, remarked in 1936 that there were some chambers in the Temple where the library consisted of an out-of-date edition of the Annual Practice. He went on: "Such chambers will be found to house a hack in his most perfect develop- ment." (16) To keep up with changes is all the more necessary in the present era when the corpus of professional knowledge does not remain COMPETENCE:

 virtually static, but is revolutionised every generation. In some cases, such as medical science, it is revolutionised every five years.

Most professional bodies accept the need to assist their members to obtain knowledge of developments in their expertise. They provide information services, lectures and similar aids for this purpose. The R.I.B.A. has a library which is one of the two largest architectural libraries in the world, with a stock of over 70,000 books and 500 current periodicals. The Institute publishes a handbook of architectural practice and management in four volumes of some 800 pages. To enable members to organise the flood of technical information and manufac- turers' trade literature, the Institute has promoted the use of an inter- national classification system. Most other professions provide similar services. The R.I.C.S. has recently started an elaborate technical information service; the Law Society supplies its members with hand- books on office management, costing, etc. Only the Bar Council main- tains the older tradition of doing very little for its members; but this enables it to keep membership subscriptions at a low level.

Even if his professional institution does not do all it might in the provision of information services, the active and conscientious practi- tioner can usually find the means to keep himself up to date. There is, however, rarely any compulsion on members to take advantage of the facilities available and certainly there is no examination into whether or not they have done so. The R.I.C.S. intends to establish post- qualification

studies, advanced diplomas and other refresher-course activities hut there is no suggestion that these should be made compul- sory.

The mature professional man has an invincible distaste for taking examinations. He usually feels that he has got them out of his system for good by the middle twenties, and would certainly oppose any attempt to make him sit them again later. Ten-year tests may be all right for motor-cars; they have little future for professional people.

Some may say that the government should step in and impose statutory obligations in this respect. The precedents for this kind of action, however, are not happy. Carr-Saunders and Wilson record that the Board of Trade have been reluctant to use such statutory powers in the case of patent agents; "Nor being a professional body the Board have shown great hesitation in using their powers except where offences of a very grave nature are concerned." (17) A recent attempt by the Ministry of Health to induce doctors to undergo postgraduate training by making this a condition of the receipt of seniority payments aroused the ire of the British Medical Association. The scheme, introduced in 1968, requires doctors to attend eight postgraduate training sessions in

 a two-year period if they are to qualify for payments ranging from £200 to £650 a year. The B.M.A. asserted that this went beyond the bounds of the Minister's functions by setting standards for doctors following their profession and trying to coerce them to accept these standards by financial sanctions. The Minister's justification was that attendances at the training sessions were inadequate, and that at least one-third of general practitioners had no postgraduate education. (18) Which was right? It seems that the British Medical Journal went too far in asserting that "in following his profession the doctor's allegiance is to the stan- dards of knowledge . . . laid down by the profession's governing bodies." if the implication is that he has no business to aim for any higher standard. The professional bodies themselves should aim for the highest practicable standards. If they shrink from enforcing them on backward practitioners they are in a weak position to object when the State, which in this case happens to hold the purse strings, insists on adding economic inducements. Is Incompetence Misconduct?

While many may agree that it should be left to the professions to ensure that the standard of competence of their members is maintained, it cannot be denied that they have been singularly reluctant to do so. The institution man tends to say that the matter can be safely left to the civil law. of negligence, or that the forces of the market will drive out the incompetent, since he will be unable to survive in competition with his abler fellows. While this may be the case in flagrant instances, a great deal of harm can be done by lack of competence before economic forces or the rage of his partners drives the offender into outer darkness.

Nor are legal remedies altogether adequate. While the law enables damages to be claimed for loss arising through the failure of a profes- sional man to exercise a reasonable standard of care, this standard will vary with the standing of the practitioner and the location of his prac- tice. As has been said, "that might be negligence in a doctor of repute in the West of London which would yet come up to the highest warrantable expectations of the patient of a village doctor in remotest Kerry or Westmoreland". (19) Furthermore the aggrieved client is often reluctant to go to law, and a deaf ear coupled with an incapacity for answering letters has seen many an erring professional man out of trouble without loss to himself.

Even where the client does bring legal proceedings, and meets with success, the practitioner often effectively opts out by handing the claim over to his insurance company. Admittedly an insurance company will raise the premiums or withdraw altogether if it finds too many claims are being made on the policy. By the time that stage is reached, however, the incompetent practitioner can do a lot of harm.

Another defect in the protection given by the law of negligence arises from the fact that it is very easy for a practitioner to relieve him- self from liability by inserting a suitable term in the contract with the client. This

defect may be remedied in the near future, since the Law Commission is examining the possibility of altering the law to make it impossible to contract out of negligence where this would be contrary to the public interest. In the case of barristers the law of negligence gives no protection to clients, as the law exempts barristers from liability. In a few cases the law specifically provides for practitioners to be deprived of the right to practise where incompetence is proved. Thus a pharmacist may be struck off the register for selling poison in a bottle not properly labelled.

The extreme reluctance of professional institutes to penalise incom- petence among their members is due to the fact that institutes are, after all, made up of professional people themselves who, while showing no mercy to dishonesty, always shrink from castigating examples of inefficiency which carry little or no moral blame. Two striking examples may be given, one from the last century and the other from very recent times.

The Tay Bridge disaster has passed into folklore. In 1877 the first railway bridge over the river Tay in Scotland was opened. It was the widest span over water yet attempted in any country, and the civil engineer responsible for designing it, Thomas Bouch, was knighted by Queen Victoria in recognition of his feat. Two years later, in a great storm the bridge was brought down, together with a passenger train which was crossing it at the time. 75 people lost their lives and the official court of enquiry concluded "that this bridge was badly designed, badly constructed and badly maintained, and that its downfall was due to inherent defects in the structure which must sooner or later have brought it down. Sir Thomas Bouch is, in our opinion, mainly to blame". (20) Sir Thomas did not long survive this condemnation and the public odium it incurred. Yet he remained a member of the Institu- tion of Civil Engineers to his death, and there was no attempt by the Institution Council to deprive him of his membership or penalise him in any other way for his incompetence. It is not without significance that the report cited above was in fact a minority report, since it was made by the one of the three members of the court of enquiry who was not himself a civil engineer. The other two members (who were engineers), while not dissenting from the attribution of the chief blame to Bouch, felt that it was not for the court of enquiry to say so. E

 John Prebble, in his book The High Girders, attributes this attitude to "professional sympathy, or loyalty, or caution". (21)

The more recent case concerned a two million-pound county hail at Bedford. The building was designed in the early 1960s by the County Architect's department. At an early stage in the construction serious weaknesses in the design were discovered and work was stopped. The design of the reinforced concrete structure had been entrusted to a structural engineer who was a member of the staff of the County Architect's department. A firm of consulting engineers who were called in to investigate reported that this engineer was diligent and industrious and that "where he was in any doubt he sought answers". The structural faults arose entirely "from the fact that he adopted a number of his own ideas and unusual design principles". The consultants went on to say that the case was quite unique in their experience, adding: "We cannot logically explain how an engineer, who was so diligent and industrious and who has displayed professional integrity, could possibly have so distorted his appreciation of accepted rudimentary engineering principles, which must have been the very foundation of his professional training." (22)

The matter was thoroughly reviewed by the engineer's professional body, the Institution of Structural Engineers, who concluded that no action should be taken against him by the Institution. The reason given is highly significant: "The erroneous design criteria adopted, which led to such disastrous results both for the County Council and for the member personally, were used in good faith and no charge of negligence could be sustained." (23) In commenting on the case, the journal Building said, "as the failure of the County Hall design proved, a univer- sity degree and membership of a professional society are not necessarily in themselves a guarantee that a structural engineer is competent to undertake important work". (24) That this comment was undoubtedly justified as a general pronouncement is a matter which should give the professions great concern.

The fraternal nature of professional institutions is an important element in the effectiveness of professionalism. Confidence in the pro- fessions requires, however, that loyalty to a comrade should not stand in the way of removal, from one who has shown himself inadequate, of the hallmark on which the public ought to feel it safe to rely. In the medical field, figures for incompetence in operating techniques are increasing, according to the Medical Defence Union. In 1967 there were 44 cases of retained swabs and instruments and 33 wrong operations reported to the Union, which paid out £127,000 in damages, costs and legal charges. These figures were the highest recorded, though the matter COMPETENCE:

THE GIVING OF THE HALLMARK 53 is put in perspective by the fact that the total of operations in British hospitals is about 1,500,000 a year. (25) This century has seen a change in the attitude of the courts towards professional negligence and the adoption of, in the words of Lord Devlin, "a much higher standard of skill and care than heretofore". (26)

The attitude of many professions towards incompetence is illustrated by the submissions made by the R.I.B.A. to the Monopolies Commis- sion in 1967. After pointing out the legal remedies for negligence and stating the R.I.B.A.'s policy of strongly urging members to take out insurance against this risk, the statement goes on: "The R.I.B.A. itself, however, cannot usurp the function of the courts. It cannot award damages to a client who has suffered from a member's misfortune, error or worse; and damages are usually the main concern of an injured client. The R.I.B.A. must therefore confine itself to issues of professional mis- conduct". The R.I.B.A. is exploring the possibility of framing a "Code of Performance" which would indicate in detail the service a member should give his client. It is not yet certain whether such a code will be forthcoming, or whether breach of it would constitute a matter for disciplinary action.

Incompetence goes wider than lack of professional skill, and covers delay, neglect and even sheer disobedience to the client's instructions. Solicitors have been found guilty of misconduct for failing to pay over money advanced by a debtor to buy time from his creditors, for failing to complete a conveyance after being put in funds and thus losing the property, and for disobeying instructions to invest property in a partic- ular way. (27)

Worthy of praise is the attitude of the Institute of Chartered Accoun- tants, whose practice it is in serious cases of neglect by members of their clients' affairs, to bring disciplinary proceedings on the grounds that such neglect is a discreditable act. In the years 1962-66, disciphnary action of this kind was taken in 29 cases, in only two of which was the complaint found not to have been proved. Frequently, in less serious cases, the Institute, by means of advice or the exertion of its influence, manages to rectify the situation without disciplinary proceedings. In the case of solicitors, gross delay or gross neglect of a client's business is regarded as professional misconduct, whereas "simple" delay or negli- gence is not. (28) This view is shared by the courts: in Felix v. General Dental Council it was held that a dentist was not guilty of disgraceful conduct in not keeping proper National Health Service records and over- charging, since he was merely careless without dishonesty or reckless- ness. (29) Powers to punish this type of misconduct in the case of solicitors have been recently strengthened, and the Council of the Law

 Society can now deal effectively with complaints of undue delay and failure to act. (30) Covering

There is one matter on which the professions are quick to act, and that is "covering" or the practice of allowing an unqualified person to act under the cover of a qualified person who in fact exercises no super- vision or control. It is a breach of the first of the fundamental rules of the Chartered Accountants. The General Medical Council has laid down that any doctor who knowingly enables or assists a person, not duly qualified and registered as a medical practitioner, to practise medicine becomes liable to disciplinary proceedings. No doctor should enable any uncertified person to attend a woman in childbirth, save in urgent necessity. Similarly, the Solicitors Acts provide that if a solicitor know- ingly acts as agent in any legal proceedings for an unqualified person, or permits his name to be made use of by an unqualified person, or

does any other act to enable an unqualified person to practise as a solicitor, his name shall be struck off the roll.

The reason why the professions are not slow to act in these cases is that they smack of fraud, and encourage the doing of the work of the profession by persons beyond its pale. In the eyes of professional people these acts are far more blameworthy than mere incompetence, but the harm to the public may be no different. So heinous is covering by solicitors that it is the sole offence for which striking off the roll is mandatory. According to Sir Thomas Lund it was the cardinal offence for any solicitor to commit up to the beginning of the present century. (31) "Closed" Professions

We have seen that in the consultant professions competence is highly important. The subject-matter closely affects life, property or rights and it is in the public interest that adequate advice should be available. It can scarcely be denied that within this field, where individualism matters so much, the most satisfactory arrangement for securing competence is one where "the profession itself accepts the responsibility for this and carries it out. To do so it must first be effectively organised, preferably with a single professional body cover- in the whole field of the profession.

What this field should be is debatable in particular instances and may not be static. The question where one profession ends and another begins is often difficult. Sir Christopher Wren was styled Surveyor- General to Her Majesty, but would now be called an architect. Many 55 COMPETENCE:

THE GIVING OF THE HALLMARK surveyors also practise as architects, however, and the line is not easy to draw. Architects' work also overlaps with engineers'. Solicitors over- lap with accountants in giving tax advice and (particularly in Scotland) with estate agency. Surveyors are forbidden by their charter to do work which is properly that of a solicitor; but there is no corresponding restriction the other way round. The distinction between solicitors and barristers is not found in most other countries, and the Prices and Incomes Board grumbled recently at the fact that it had never been independently looked at. Accountants claim to do the work of actuaries, while medical science has many confused and overlapping branches.

As expertise grows more complex there may be a case for reducing the area of the field covered by a single representative body. This is exemplified by the rise of town planning as a separate discipline during the period since the First World War, which led to the growth of a separate body, the Town Planning Institute, occupying part of the field held by architects and surveyors. Another example is the Institute of Landscape Architects.

The profession being organised in a unified way, it then falls to the professional body to place the hallmark of competence only upon those qualified for it, with due regard to matters such as regional variations in the expertise and the desirability or otherwise of indicating seniority by variations in the hallmark.

A further necessary step is to educate the potential users of the professional service so that they are aware of the significance of the hallmark. Ideally there should be no question of legal compulsion either on the public to go to particular practitioners or on practitioners to have obtained a particular qualification. If the public are generally aware that a guarantee of competence is only given where recourse is had to a practitioner who bears the hallmark, there should be no need to legislate upon the matter.

This is not to say that legislation has no place. It may well be necessary to legislate in order to assist in the development of the ideal situation outlined above. Once the legislation has had its effect, how- ever, it should be possible to repeal it. This may be the case, for example, with the Architects Registration Acts. While they were needed in a formative period in the development of the profession of architec- ture, little harm is likely to result from their repeal. The public generally is well aware that almost all qualified architects belong to the R.I.B.A. and, even if the Acts were repealed, bringing freedom to anyone to use the appellation "architect", the public would be very unlikely to con- sult self-styled architects who could not display an R.I.B.A. qualifica- tion, though the smaller bodies giving architectural qualifications

PROFESSIONAL ETHICS should not be overlooked.

The position is quite different in the field of estate agency. Here there are innumerable qualifications, of very different value. The public is confused and scarcely aware of the qualifications possessed by the estate agent they consult. The position has been improved by the set- ting up of the Estate Agents Council and its uniform register, but the effectiveness of this will be slow to be realised unless it is supported by legislation preventing unregistered estate agents from practising. After a generation the public should become so famniiar with the Estate Agents Council qualification that it will no longer need to be supported by law.

If free professions are to flourish in a free democracy, there ought to be as little interference from the law as possible. This wholesome prin- ciple has led to all attempts at imposing a "closed shop" in the field of medicine being firmly resisted. This is striking, since matters of life and death are involved. Yet Parliament was only prepared to go so far, by statutary regulation, as to provide a means whereby, in the words of the Medical Act of 1858, "persons requiring medical aid should be enabled to distinguish qualified from unqualified practitioners". This was done by setting up a statutory register, but there is no prohibition of the practice of medicine by unregistered practitioners. The Medical Acts do provide however that no person who is unregistered is a "legally qualified" or "duly qualified" medical practitioner; and only a regis- tered practitioner may, for example, hold appointments in most hos- pitals or in the public services, or practise in the National Health Service, or prescribe dangerous drugs, or give death certificates.

It is only in the legal field that, until recently, anything like a "closed shop" has been imposed by law. Barristers and solicitors have an exclusive right of audience in the courts. In the case of the superior courts the right is limited to barristers. It derives in some cases from statute, in others from decisions of the courts themselves. The Bar Council defend this position on the ground that the more important litigation is conducted by a small body of specialists, numbering just over 2,000 and this, coupled with the fact that the judges themselves have all been practising barristers, contributes largely to the expedition and efficiency with which cases are conducted and to the high reputa- tion which English justice has throughout the world.

Statutory provisions prevent anyone other than a solicitor from doing some forms of legal work. Only a solicitor may charge a fee for taking, on behalf of another person, certain necessary steps in con- veyancing and probate. The Prices and Incomes Board recently examined these restrictions in its report on remuneration of solicitors (32) and COMPETENCE:

THE GIVING OF THE HALLMARK 57 concluded that the restrictions provided protection for clients — m fact, a safeguard against those not subject to the discipline of a profes- sional body". They felt that the possible legal difficulties which might have a considerable effect on the enjoyment of his title by a buyer of property formed a justification for denying the outsider the right to carry out conveyancing.

In 1921 the dental profession secured a statutory "closed shop", and it is now in general unlawful for an individual who is not registered in the dentists register or under the Medical Acts to carry on practice as a dentist. (33)

The professional man always tends to feel that the public should be protected from the ministrations of those not enjoying his qualifica- tions. To provide this protection in the form of a legal bar on the provision of services by outsiders needs to be justified. In general the profession ought to rely upon impressing the public with the quality of its services, so that it becomes unthinkable to go elsewhere. This situa- tion may be ideal but it is not always easy to bring about. The health and safety of the public must be protected, and ultimately this is the responsibility of society itself. In the field of property and rights the danger is less pressing but still real. Cut-price services can be provided profitably if desirable safeguards are omitted or the outsider picks on services that are lucrative and leaves professional people to provide the rest. We shall see later how it is a feature of professional practice to adopt a "swings and roundabouts" approach, under which high-cost

transactions are subsidised by others where the service can be provided cheaply in relation to the value of property involved. This particularly applies to conveyancing by solicitors, and an outsider who could pick and choose the conveyances he was prepared to undertake (and left other legal business alone) would comfortably outbid the solicitors. The same feature is common in other services where a social element is involved.