CHAPTER 12

ADVERTISING

"There are rules of conduct which all professional men must observe. Refraining from advertising would, I think, clearly be one." These words by Lord Chief Justicc Goddard in the case of Hughes v.Architects Registration Council (I) state the law's view of advertising and the pro- fessions. There are many other cases in which the courts have held that prohibition of advertising is an essential characteristic of a profession. (2) We have given above a definition of advertising and examples of profes- sional rules prohibiting it (see page 143). Other brief statements of prohibition are: "An architect must not advertise, either directly or by any form of organised publicity paid for by the architect" (3); a medical practitioner "should not sanction or acquiesce in anything which com- mends or directs attention to his professional skill, knowledge, services or qualifications . . . or be associated with those who procure or sanc- tion such advertising or publicity" (4); "it is contrary to professional etiquette for a barrister to do, or cause or allow to be done, anything with the primary motive of personal advertisement, or anything calcu- lated to suggest that it is so motivated" (5).

The British Medical Association say that in considering this prohibi- tion the word "advertising" must be taken in its broadest sense, and their view is shared by the professions generally. Anonymity is the aim of professional people, who feel that it should be departed from only where this is necessary in the interests of the general public or the profession itself. (6) Reasons for the Rule As will be apparent from the preceding chapters of this Part, the rule against advertising is an expression of the belief that the professional man should not seek work but let it come to him. Nevertheless the particular abhorrence of advertising calls for more detailed examination. Lord Justice Singleton, in an address to young barristers, once said that "advertisement is looked down upon by all right-thinking members of the Bar". (7) This is the general view, and is usually regarded as self- evident. How has it come to be so firmly held? 149

 To answer this question we need to take a look at the disreputable history of the advertising industry. Throughout the nineteenth century, the formative period in the working out of professional codes, adver- tising was held in low esteem. The techniques of advertising were crude, and roguery was rampant. As Harris and Seldon remarked in Advertis- ing and the Public: "At a time when many people could barely read or write and before modern techniques of typography and block-making had been developed, advertisements relied for their attraction on tricks and sensationalism." (8) There was no scientific technique of adver- tising: "Spending money on advertisements and judging the result depended on the crudest guesswork." (9) The advertisements produced were often "crude, meretricious, vulgar and dishonest". (10) E.S. Turner, in The Shocking History of Advertising, comments that an advertiser, unhampered by codes of ethics, scarcely restricted by legislation, uncon- fused by market research theorists, had little to guide him but his own judgment of human nature. "The leading showmen did very well at the game, but lesser men spent huge sums of money on badly-orientated advertising which produced no dividend except public exasperation. Rather was it 'the brazen age of advertising'." (11) One of the main causes of the mistrust and disgust aroused by advertising was in a field connected with a major profession. This was the peddiing of quack remedies, an abuse going back at least as far as the Great Plague of London in 1665. Daniel Defoe, in his Journal of the Plague Year, describes how there appeared in the streets of London a rash of posters proclaiming "INFALLIBLE preventive Pills against the Plague. NEVER-F AILING Preservatives against the Infection. SOVEREIGN Cordials against the Corruption of the Air . . . " (12) Patent remedies and sovereign specifics have been peddled ever since, and are even today by no means unknown. Much has however been done to bring them under control, notably by the British Medical Association itself with the publication of its pamphlet Secret Remedies in 1909, followed three years later by More Secret Remedies. These contained laboratory analyses of some widely-advertised patent medi- cines; "analyses which made it all too clear that the public were paying heavily for rubbish". (13) Turner comments that the first B.M.A. pam- phlet had a similar effect on the medicine mongers to that produced by Samuel Plimsoll's Our Seamen on the shipowners. (14) A House

of Commons Select Committee on patent medicines was appointed, and its report “is one of the most disillusioned documents of the century and contains enough criminal plots to last a novelist a lifetime”. (15) A.J. Clark, in Patent Medicines, showed that the medical profession itself was not immune from the effects of patent medicine advertising, and obligingly increased its prescriptions when invited to do so by the advertisers. (16) The economist A.S.J. Baster, writing in 1935, found that the “shameful scandals” of the patent medicine business were still a public offence, even in the most advanced countries. (17) Quack remedies were not of course the only source of complaint in the advertising field. They were the most notorious abuse however, and Harris and Seldon observed that it was reluctance to be allied with ‘‘quacks’’ that deterred many manufacturers from making use of mass advertising techniques. (18) Punch commented “Let us be a nation of shopkeepers as much as we please, but there is no necessity that we should become a nation of advertisers”. (19) It is scarcely surprising that with a general belief, even among traders and manufacturers, that advertising was “ungentlemanly”, professional people should react against it. They were moreover acutely aware that their predecessors among the consultant professions had taken part freely and with gusto in the scramble for business through puffing advertisements. In the medical field it was not only quack remedies, but quack consultants as well, whose virtues were proclaimed. Defoe quotes some of these advertisements: An eminent HIGH-DUTCH Physician, newly come over from HOLLAND, where he resided during all the Time of the great Plague, last year in AMSTERDAM; and cured Multitudes of People that actually had the Plague upon them. An antient Gentlewoman having pradised with great Suc- cess, in the late plague in this city, ANNO 1636, gives her advice only to the Female Sex ... (20) There are even earlier records of posters advertising surveyors in London. John Norden in The Surveiors Dialogue (1607) depicts a fanner saying “As I have passed through London, I have seen many of their bills fixed upon posts in the streets, to solicit men to afford them some service: which argueth, that either the trade decayeth, or they are not skilful, that beg employment so publicly”. (21) Another example, this time from the field of dentistry and dating from the eighteenth century, is furnished by a Mr Gray, of the Royal College of Surgeons, who announced an “unprecedented” development in dentistry: he could fit artificial teeth constructed without springs, wires or other anchoring devices. They could thus be taken out “with the greatest facility”, cleaned and replaced by the wearers themselves. (22) Carr-Saunders and Wilson cite abuses in dentistry going on well into the twentieth century. Dental companies began to flourish about 1906. “Skilled in touting, advertising and canvassing, they employed men lacking any training and were able in most cases to avoid financial liability for injury.” The departmental committee appointed to examine the working of the Dentists Act 1878 found in a report published in 1919 that there was nothing to stop any person, however ignorant, from practising dentistry and informing the public by advertisement and otherwise that he did so. The unregistered practitioner “is frequently a charlatan attracting business with blatant advertising or unscrupulous touting, who being subject to no control or professional code of ethics, brings discredit on the dental profession”. (23) As a final example, take the following advertisement from the Economist of 1844: MANLY VIGOUR: a Popular Inquiry into the CAUSES of its PREMATURE DECLINE with instructions for its COM- PLETE RESTORATION . . . Illustrated with cases, etc. By C.J. LUCAS & CO., Consulting Surgeons, London . . Messrs Lucas & Co. are to be consulted from ten until two, and from five till eight in the evening, at their residence, No.60 Newman Street, Oxford Street, London, and country patients may be successfully treated on minutely describing their case, and enclosing the usual fee of £1 for advice. (24) It is scarcely surprising that uninhibited advertising of this kind, particularly in the field of human health, should induce practitioners to conclude that advertising needed to be brought under strict control. It was not felt to be enough however merely to require advertisements to be honest. the mere presence of advertisements could bring those responsible into disrepute. For example much public indignation was caused by defacement of towns and countryside through advertisement hoardings until the matter was brought under control by town and country planning legislation. Estate agents came in for their share of obloquy, through the proliferation of sale boards and other advertise- ments (see page 166). While the unpopularity of advertising generally, and of medical advertising in particular, no doubt predisposed professional people against making use of it, this is not the whole story. Advertising has lost much of its former disrepute, and dignified professional institutions think it no shame to advertise the profession in the daily press and elsewhere. Yet we find the Law Society saying in 1968 that the prohibi- tion is needed to preserve the dignity of the profession. (25) This is open to the objection that if it is undignified for an individual to advertise it must also be undignified for his professional body to do so, yet the Law Society engages in advertising. The medical profession is

more consistent. the B.M.A. take the view that advertising on behalf of the profession "would certainly destroy those traditions of dignity and self-respect which have helped to give the British medical profession its high status". (26) they thus apply to the professional bodies themselves the same rule as restricts individual practitioners. A reason often given for the no-advertising rule is the need to main- tain the relationship of trust between client and practitioner. Dr Johnson once remarked that "promise, large promise, is the soul of an advertise- ment". The professions want the public to trust them, but dislike mak- ing promises express or implied. The Law Society argued before the Monopolies Commission that the need for trust renders certain common commercial practices incompatible with professional services, they cited Carr-Saunders and Wilson: "Professional men may only compete with one another in reputation for ability, which implies that advertise- ment, price cutting, and other methods familiar to the business world are ruled out." (27) the British Optical Association say that to achieve the necessary relationship of trust and confidence the client must have consulted the practitioner because of his accredited knowledge. "If his motive in consulting the practitioner is that he is cheaper or because he advertises better than someone else, he will not have this true con- fidence." (28) In their submission to the Monopolies Commission, the flritish Medical Association also argued that advertising would diminish the trust and confidence which a patient should repose in his doctor. They cite the recent case of the alleged cure for lukaemia made by M. Naessens as having caused disastrous effects through the publicity given. "Patients and their relatives had their hopes raised unjustifiably and the delicate relationship between seriously-ill patients and their doctors was gravely compromised as a result of this publicity." the B.M.A. go on to argue that if advertising were allowed, those aspects of medical practice which would attract the most interest as advertising material would inevitably be the most sensational and not those which characterised professional competence and expertise. (29) A further argument used by the professions to support the no-advertising rule relates to the cost of advertising, and has several facets. the purely economic argument runs as follows. Professional services differ from manufactured goods in that they are rendered individually and thus are not susceptible to the economics of standardisation and mass production. the argument that advertising increases demand and enables economies of large-scale production to be achieved therefore does not apply. this does not of course mean that the demand for services cannot be increased by advertising, but the increase will only be marginal in view of the restricting factor represented by the limited

number of professional practitioners. Indeed an undue increase in demand would almost inevitably lead to a dilution of standards, since unqualified people would be. drawn in to meet the demand and the existing practitioners would be tempted to skimp their service. The Law Society argue that it is not for a professional man to create a demand for his expertise — "indeed it is just because the demand is always there and the public have needed protection against the charlatan and the incompetent that his profession exists at all". (30) Is the demand always there however? Perhaps it is in the case of solicitors, though the Law Society still finds it necessary to publish its own advertising material (see page 146). Again, it could be argued that a practitioner would not spend money on advertising himself or his firm if he were already working full-time. If he thought it worth spending money on advertisement this would presumably be because he had some slack and could therefore absorb more work in his office. This has some plausi- bility, but the professions would argue that if advertising were accepted it would be necessary for all practitioners to spend money merely in order to prevent loss of existing business. This would be wasteful. Another aspect of the cost factor in advertising relates to the main- tenance of equality between practitioners. Professional firms usually have little capital — the rules we have considered in Part II of this book preclude the raising of capital by means open to commercial companies. Often professional people have nothing except their own acquired skills and native intelligence to keep them going. As the British Optical Assoc- iation put it, in a profession all men, theoretically, have equal chances of success. "If one man can afford to advertise and does, while another cannot, this equality is disturbed." (31) Lewis and Maude make the same point: "the practitioner with large reserves of capital must not be allowed to use this (sic) to influence the public's judgment of his qualifications, prowess or suitability." (32) The last word may be given to the Bar Council: "If barristers were permitted to advertise, the advantages would go, not to the best qualified, but to the barrister with the longest purse and the least scruples. If the choice of bar- risters came to be made by the general public on the strength •of advertisement, the choice would tend to be more ill- informed and the public not so well served as at present. If it became common for barristers to advertise, and all were compelled to fall in with the practicee, the costs of a bar rister's services would inevitably go up." (33) In the nature of things there cannot effectively be a complete

prohibition of

all forms of publicity, and in the remainder of this chapter we consider in some detail the rules which have been devised to regulate essential advertising and draw the line between publicity which is allowable or at least venial and the rest. Before going on to these detailed rules we look briefly at one or two general points.

the rules are mainly designed to govern professional people in private practice. Since they are ultimately directed to means of attracting business they have little relevance where the person concerned is not in the market for business. thus "publicity is rightly allowed to medical men not in actual practice of their profession". (34) This does not mean however that it is a defence to a charge of advertising to show that no pecuniary or other benefit was to be derived from it. "A doctor who attempts to justify unduly frequent publicity on the grounds that it can- not benefit him professionally is doing a disservice in that he makes it more difficult to condenm similar activities on the part of others who do stand to gain thereby." (35) In a recent instance the Bar Council went so far as to condemn a barrister who, in writing a preface to a legal textbook, was held to have "puffed" other practising members of the Bar specialising in the subject of the book. (36)

The extent of the no-advertising rule is not limited to Great Britain. Usually a member of a British professional body is expected to observe the rule so far as advertising in overseas countries is concerned. A dispensation may however be granted where the corresponding profes- sional body in the country concerned permits advertising. The Bar Council state that advertising by a barrister that he is in practice, or intends to practise, is prohibited abroad as well as at home. (37) the ethical rules of the legal profession in Commonwealth and foreign coun- tries are in the main similar to those prevailing in Britain. (38)

Finally we might mention that not all professional bodies carry the no-advertising rule to the same lengths. In particular some professions, such as the chartered surveyors (but not chartered quantity surveyors) and patent agents permit "card" advertisements — that is a simple adveT- tisement giving the name of the firm and a brief indication of the type of practice (see page 161).

Putting up the Plate

In a corner of lincoln's Inn Fields, well back from the road, stands a large Wren building. to the casual passer-by its use appears obscure, since the exterior bears no indication whatever of who or what the occupants are. In fact it houses Farrer & Co., solicitors to royalty and the aristocracy, who prefer to practise in discreet anonymity. In this they resemble the firm of Frobisher & Haslitt in A.E.W. Mason's The

 House of the Arrow, written about 1920. It was "the real thing as a firm of solicitors", and this was the reaction of the senior partner when a newcomer to the firm suggested that they ought to have a brass plate upon the door: "Mr Haslitt's eyebrows rose half the height of his forehead towards his thick white hair. He was really distressed by the Waberski incident, but this suggestion, and from a partner in the firm, shocked him like a sacrilege. 'My dear boy, what are you thinking of?' he expostulated. 'I hope I am not one of those obstinate old fogeys who refuse to march with the times. We have had, as you know, a telephone instrument recently installed in the junior clerks' office. I believe that I myself proposed it. But a brass plate upon the door! My dear Jim! Let us leave that to Harley Street and Southampton Row!' "(39)

though Mr Haslitt's attitude is not unknown today, neither the solicitors nor any other profession go so far as to prohibit the placing of the name of the firm outside its premises. As the B.M.A. put it, "it is generally accepted by the profession that certain customs are so univer- sally practised that it cannot be said that they are for the person's own advantage, as, for instance, a door plate with the simple announcement of the doctor's name and qualifications", the B.M.A. adds sternly that even this "may be abused by undue particularity or elaboration". (40) While no profession prohibits the display of the name of the practi- tioneror his firm, the Bar carries the concession no further. A barrister may not have the words "barrister-at-law" outside the place where he lives or has chambers. (41) Oddly enough, however, there is no objection to the letters "Q.C." being appended to the name. In this way, since most people know the significance of these initials, the senior member of the profession may enjoy an advantage over his juniors.

there is some lack of consistency about the reason why the brass plate or its equivalent is allowed, the most rigorous view is that taken by the dentists, namely, that the plate is purely to indicate to those who already know of the practice the location of, and entrance to, the premises at which the practice is carried on. (42) This also seems to be the attitude of the solicitors. (43) the doctors on the other hand say that the door plate on a doctor's house or branch surgery is the means by which he indicates to the passing public his availability as a medical practitioner. (44) the difference may be explained by the fact that doctors are often needed in emergencies involving life and death — though if this is really the reason it is surprising that doctors are

 directed that the plate should be unostentatious in size and form.

the professions go to some pains in telling members how far they may go in making their presence known. The size and positioning of the name plate, where it may be fixed, the type and size of lettering, the information to be displayed, and the degree of illumination are all

laid down in detailed directions. A doctor's plate may bear his name and qualifications, and "in small letters" his surgery hours. Descriptive wording such as "Psychiatrist" or "Consulting Surgeon" is not permit- ted. (45) the solicitors have similar rules, though indications of actual offices held, such as Commissioner for Oaths or Notary Public, are permissible. An exception is membership of a legal advice panel. (46) Dentists regard it as unethical to exhibit the telephone number of the practice on professional plates. (47) the British Dental Association go so far as to specify the maximum size of a name plate. For a partnership the aggregate area of the plate or plates shall not exceed 24 inches x 18 inches. For practitioners working on their own account the limit is 18 inches x 12 inches. (48) Several professions specify the maximum size of lettering; architects and dentists both favour a maximum height of two inches. Chartered accoun- tants refrain from laying down the maximum size of lettering and say that "it should be able to be read without strain by the average person with the normal complement of eyes". (49) Solicitors are told that the size and design of the plate and lettering is really a matter of taste for them to decide, although it has been held to be "quite improper" to put the firm name and the description "Solicitors and Commissioners for Oaths" in gold letters about a foot high right across the width of the building. (50) Illuminated signs are frowned upon by the professions, although some have permitted these in exceptional circumstances. A solicitor whose office was in a dark arcade, the entrance to which was entirely surrounded by neon lighting, was allowed "modestly to illu- inmate his own name plate". Sir thomas Lund, in giving this example, stresses that "I do not mean that a neon sign flashing on and off would commend itself even in Piccadilly Circus". (51) the chartered accoun- tants have also firmly refused to allow flashing neon signs "or any of the other manifestations of modern advertising techniques". (52) the question of where a name plate may be put has caused the Law Society difficulty. the general rule is that the plate must only be put on premises where the profession is actually carried on. this is not always straightforward however, particularly where the profession is carried on part-time, perhaps from a private residence. Accommodation addresses are frowned upon: "In no circumstances whatever may the plate be put outside the house of clients or friends even though it states that the solicitor will attend there on request, or that messages may be left for him there, that is highly objectionable." (53) the doctors stress that a trainee should not have a door plate, and a doctor should not put up a name plate on premises he proposes to occupy at some future date. (54) Posters and Hoardings Advertisement of a firm by the use of posters, hoardings or other outside displays is in general forbidden, at least where no purpose of a client is thereby served. Only two exceptions need be noted. Architects, engineers and quantity surveyors are allowed to put up boards indicating the names of their firms on building sites where the firms are currently engaged. The R.I.B.A. imposes limitations of size "as much for aesthetic reasons as to prevent ostentatious advertisement". (55) the Institute has produced boards of a standard size and design, and other professions have followed suit, these boards, in their standard colours of grey and white for architects, red and white for consulting engineers, and blue and white for chartered quantity surveyors, have become familiar features wherever buildings are constructed, altered or extended. While use of this board, rather than any other type, is not compulsory it is strongly recommended. Chartered surveyors are not allowed to use such boards where the work in progress is of an unimpor- tant character. the second exception arises in the case of chartered surveyors in general practice. the business of many of these consists wholly or mainly of house agency. In order to enable their members to compete with rival agents not subject to professional rules, the R.I.C.S. allows "restrained and dignified" name boards to be displayed. Unless these serve the purposes of the client, however, they are required to be located only within the precincts of a railway station, a coach station or an airport. Specific rulings have prohibited their use at, for instance, bus-stop shelters or within buses and trains. Other rulings have forbidden the use of sandwich men and town criers. (56) It should finally be noted that rules against advertising do not prevent an architect from allowing his name to appear permanently on the out- side of a building which he has designed, provided it is not done in an ostentatious way. Indeed the Architects Registration Council go so far as to say it is desirable that an architect should sign his buildings. (57) Directories the professions are nervous about the use of directories, they recog- nise that there needs to be available for reference a comprehensive list of practitioners, giving addresses and other necessary information. They

 see a danger on the other hand that such lists will be used for the attraction of business. No one, they feel, should select a practitioner merely on the basis of an entry in a directory. Rules have been laid down to discourage this. Most professions publish a list of members, and in the case of the registered professions copies of the register are published, the form of these lists is under the control of the professional bodies and many would prefer their members to refrain from

inserting their names in any other directories. Such a restriction is not possible, however, since official works of reference such as telephone directories, and reputable compilations such as Who's Who, would be seriously incomplete, to the disadvantage of the professions, if their members were excluded. Never- theless barristers are forbidden to include their names in the classified telephone directory. Doctors take the robust view that since their tele- phones are paid for at the business rate it is sensible to allow their names to be included among the businesses set out in the classified list. (58) While the official roll of members is not always published directly by the professional body concerned, it is normally produced with the full co-operation and assent of the professional body and is therefore presumed not to infringe professional rules. Hitherto such directories have confined themselves to the barest details of members' names, addresses and telephone numbers. the R.I.B.A. however broke new ground in 1968 with the publication of its Directory of Practices. A fee is charged for the inclusion of a firm's name in this, and firms are per- mitted to go into considerable detail as to the nature of their practices o work undertaken. They f work under taken iiiey are even permitted to give a list and the type of projects carried out by the firm. the publication of this list was challenged by a rival professional body, very much smaller than the R.I.B.A. This was the Incorporated Association of Architects and Sur- veyors, which went so far as to issue a writ attempting to restrain pub- lication of the directory. the Association claimed that the directory was contrary to the spirit of professionalism and unfair to the small practice. Indeed it went further and claimed that the directory was a breach of the requirement laid down by the Architects Registration Council that an architect "must not advertise, either directly or by any form of organised publicity paid for by the architect". the I.A.A.S. considered that publication of the directory would cause dissension among architects and could well mislead members of the general public because the information included in it would refer solely to an archi- tect's successes and exclude any of his failures. the writ was later with- drawn "owing to abstruse legal technicalities". (59) Such a directory is of course open to the precise objection mentioned above, namely that

it is likely to be used by clients to select an architect, whereas they would be better advised to seek recommendations from persons with practical knowledge (see page 136)ey It is surprising therefore that the ReyIeyBeyA. should commend the Directory on the ground that it would 'greatly assist potential clients, client organisations and members of the public in making appraisals of suitable firms prior to commissioning new work'ey (60) At least a word of warning should have been added as to the dangers of relying on the Directory alone. In relation to directories other than those produced by or under the auspices of the professions, certain rules have evolved. A fundamental rule is that the directory must be open to all members of the profession equally, or where it is confined to a particular area must be open to all practitioners in that area. the ReyIeyBeyAey Directory of Practices infringes this rule, since it is only open to architects who are members of the ReyIeyB.A. Also objectionable would be a list of members of a body such as a local chamber of commerce, listed under particular trades or pro- fessionsey Since this would exclude a firm in the area which did not choose to belong to the chamber of commerce, and would have the tendency of inviting those into whose hands the directory fell to con- fine their custom to firms listed in it, it would offend the notion of equality of treatment. (61) Another rule commonly found is that precluding the use of leaded type or other devices to give special prominence to a practitioner's name. the chartered accountants make a special exception in allowing a telephone directory entry to be in small leaded type. this is a recent relaxation by the English institute. the Scottish institute had long allowed the use of leaded type in this way, and in a praiseworthy desire to secure uniformity the English Institute came into line. Crox ton-Smith comments that "it is doubtful whether many members will bother to take advantage of this relaxation, but there seems to be no harm in it". (62) the professions discourage the use of directories to give biographical details likely to attract business, or the names of clients or details of services offered by a firm. Sir thomas Lund gives the example of a solicitor who took a whole page in the Irish Law List and filled it with the names of firms for whom he acted as professional agentey (63) Advertising in the General Press The professions draw a distinction between advertisements in journals confined to members of the profession or those closely con- nected with it and advertisements in newspapers and periodicals circulating among the public generally. For obvious reasons, consider- ably more latitude is allowed in relation to the specialist press. With few

exceptions, advertisements of a professional man or his firm inserted in the general press will offend against professional ethics. the principle is that information which it is essential to convey to clients of the firm and others having dealings with it may be communi- cated by advertisement provided no unnecessary matter is included. Notice of a change of address or telephone number, or of the retirement of a partner or the dissolution of a partnership, or of the addition of

a new partner may be advertised generally. Preferably there should be only one insertion. The solicitors refuse to allow advertisements of the opening of a new office, though the chartered quantity surveyors allow this. Also disallowed by the solicitors is an advertisement giving a change in office hours, though there was one occasion where, provided the description "solicitor" was omitted, one insertion in the local press was allowed where a firm reversed a century-old practice of closing on Wednesdays and opening on Saturdaysey Where a rumour was circulating that a solicitor had retired from practice the Law Society declined to allow him to advertise that this was false. The man who decides to give up practice and seek paid employment is allowed to advertise for a job, and the chartered accountants have expressly permitted a firm to adver- tise the examination successes of its articled clerks. (64) An advertisement for salaried employment inserted by an architect in the general press must be anonymous. (65) Certain professions do not disallow advertisements giving brief factual details of a firm, sometimes known as "card" advertisements. Among these are chartered surveyors and, according to Carr-Saunders and Wilson, patent agents. (66) The chartered surveyors' concession (which does not apply to quantity surveyors) allows, in addition to the name, address and telephone number of the firm, such descriptive phrases as "rating valuations and appeals"; "rent collections" and "surveys". Not allowed are phrases such as "Call in and discuss your housing problems with us". References to specialisation are only permitted where the member concerned is in fact a specialist; "otherwise they lose all significance". (67) In explaining the concession to the Monopolies Commission, the R.I.C.S. contended that "card" advertisements are "in essence an extension of the office plate". (68) In his presidential address, given in the centenary year of the Institution, Mr Oliver Chesterton criticised the concession and sug- gested it might be limited to advertising in recognised technical or professional journals. "I note with regret", he added, "a tendency for these card advertisements to be elaborated far beyond the spirit of the existing directions and I do not believe that the public should be subjected to the subtle pressure of the public relations man in

fields where professional skill and integrity are concernedey" (69) The solicitors extend the rule against advertising to foreign news- papers and periodicals, and other professions would doubtless follow suit. It seems that the rule may indeed be more severe in its overseas application: Sir thomas Lund states that "all personal advertisements of the solicitor which describe him as such are objectionable in the foreign press". (70) Press Reports The attitude of the professions towards press publicity is slowly changing. The old dislike of publicity is giving place to a realisation of its Value when not abusedey The traditional attitude is exemplified by the doctors, barristers and solicitors. After somewhat grudgingly admit- ting that exception cannot reasonably be taken to publication in the lay press of a doctor's name in connection with a factual report of events of public concern, and that it is usually unexceptionable for a doctor's name to be included in a report of a social occasion, they go on: "Never- theless the name that is always occurring, sometimes in unlikely places, may well be suspect." Publicity-seeking medical men have long been the bane of the profession and the resentment of their colleagues is expressed by the BeyMeyAey with suitable restraint: "It is not beyond the wit of man to manage to appear prominently and frequently in suf- ficient places for his name to become better known than would be the ordinary sequel of good professional reputation. Ambition may super- sede conscience and modesty." (71) The solicitors relaxed their rules somewhat in 1968, but the new version still reminds practitioners that "there are many things innocent in themselves which by the manner or frequency of their doing may contravene the principle that solicitors should not advertise". (72) Professions which are beginning to welcome publicity include the architects and accountants. The R.I.B.A. encourages publicity for architecture and the work of members in contributing towards it. Local and national newspapers increasingly carry news about buildings and the architects who have designed them and, "although this sometimes arouses dissatisfaction in members not so favoured" the R.I.B.A. welcomes this publicity provided the obligation to avoid ostentatious self-advertisement is observed. (73) Similarly the Institute of Chartered Accountants takes the view that while no member should actively seek publicity for himself, it is in the interest of the public and the profession that appointments, awards and similar distinctions of members should be suitably reported in the general press and that the report should mention membership of the Institute. (74) In a relaxation of previous

rulings, which was announced towards the end of 1968, the Institute gave members further encouragement in obtaining publicity within proper limits. the traditional attitude of the professions towards publicity has been rather like that towards the attraction of business; if it comes at all it must come unsought. Thus what might be called "feeding the press" is frowned upon. A solicitor should not seek or inspire an inter- view with the press, except on his client's instructions and on that client's business. (75) A medical practitioner should not sanction nor acquiesce in anything

which commends or directs attention to his pro- fessional skill. (76) Even the architects, who welcome publicity, prohibit a member from giving any monetary consideration as an inducement to the publication of descriptions of his work. (77) Chartered surveyors are allowed to supply the press with factual statements of property transactions and material for market intelligence. Where a doctor finds a press report commenting favourably on his professional activities or success, he is required by the B.M.A. to take action since "these state- ments cannot fail to place the named practitioner in a critical and embarassing situation, and this should not be allowed to pass unchal- lenged". (78) the action recommended is to send a latter of protest to the journal concerned, marked "not for publication". the B.M.A. take the view that the appearance of a doctor's photo- graph in connection with any reference to medical subjects in the lay press is "a most undesirable form of publicity". (79) the Bar also frowns on the publication of photograph of members, though there is no objection to a barrister's portrait in robes appearing in an art exhibition. (80) Books and Articles the health and progress of a profession depend upon its expertise being described and developed. Members are therefore encouraged to write textbooks, articles for the specialist press, and similar material. Where they do so it is right that their names and qualifications should appear on the work. So far there is no difficulty. An infringement of etiquette would however occur where an essential theme of the publica- tion was the commendation of the skill and abilities of the writer himself. It is accepted that, in the words of the Privy Council in a medical case, "a hope that some legitimate meed of personal advancement will result may find its place among the motives of writing and may be the spur to command the industry that the task may require". (81) If however this natural feeling gets out of bounds and results in self-praise, the author will be in trouble. M 164 PROFESSIONAL ETHICS

Writing for a lay audience is a different matter. The professions do not encourage the transmission of their expertise directly to the general public, and self-diagnosis, self-medication and other forms of self-administered advice are considered dangerous. Nevertheless it is recog- nised that there is a legitimate public interest in professional doings, and that very often this can only be properly satisfied by a writer having professional qualifications. Strict rules are however laid down. the professions differ on the question of whether the author's name and qualifications may appear together. Most of them now allow this, while discouraging mention of a firm's name as well, the Bar however continues to prohibit mention in the lay press of the professional qualification in addition to the author's name. Other rules usually applied include prohibition of any laudatory editorial reference to the author's professional status or experience, or of references to privately- owned institutions with which the author is professionally associated, or the entering into private correspondence with lay readers. A medical practitioner must not be a party to the publication in the lay press of medical articles of a sensational nature. (82) Irrespective of any specific rule, the General Medical Council "is conscious of the fact that certain contributions could not fail to promote the professional advantage of the author, who must shoulder the responsibility for any such result and be prepared if challenged to answer for it before a professional tribunal". (83) A barrister who writes for general publication any account of cases in which he has appeared is required to do so anony- mously unless he has given up practice. (84) Broadcasting and Lecturing The rules governing the transmission of views otherwise than through the printed word necessarily take a similar line. The enormous impact of television, with its attentive audience of millions, obviously gives great opportunities for self-advertisement. So far this does not appear to have caused serious difficulty. In the early days of broadcasting anonymity was the rule. This has now been relaxed by all professions except the Bar. the B.M.A. have explicitly recognised that the policy of anonymity in all circumstances is no longer tenable, and do not now object to the announcement of a doctor's name. Where the circumstances of the broadcast specifically require it, mention may also be made of the branch of medicine in which the broadcaster specialises and any appointments held. A doctor engaged for a series of broadcasts is nevertheless advised to remain anonymous "lest the frequency of mention of his name should be held to be unethical". (85) Doctors are not allowed to appear as such in ADVERTISING 165 television advertisements, and other professions would no doubt follow this rule. In a relaxation of rules made in 1968, the Law Society and the Institute of Chartered Accountants permitted members to broadcast under their own names and with mention of their professional qualifica- tions. this is still forbidden by the Bar Council and the R.I.C.S., who require to be consulted in advance about such broadcasts, and to lay down conditions as to the manner in which members may be described. these restrictions do not apply to broadcasts on non-professional topics, provided membership of the profession is not mentioned. the rules governing lectures and addresses are similar, though in some cases not quite so stringent. A barrister giving a lecture on a legal subject is allowed to describe himself both by name and qualification. Perhaps strangely, he is not

allowed to give his qualification if the lecture is on a non-legal topic. (86) Doctors lecturing to a lay audience are advised to request the chairman beforehand not to make laudatory remarks in his introduction. (87) Advertising in Specialist Press the editors of journals circulating wholly or mainly within a profession are usually aware of professional proprieties and careful to observe them. Furthermore a professional man knows very well that there is little to be gained, and much to be lost, from puffing himself in the professional journals. Clearly it is permissible to publish any adver- tisement in the specialist press which would be allowed in the general press (see page 160). In the specialist press greater latitude is allowed as respects the giving of information about the operation of a firm — particularly evidence of its growth, as by the opening of new branch offices. In some cases it is even permissible to advertise for work. the chartered accountants used to have a concession, designed to help new entrants to build a practice, whereby private practitioners seeking work were allowed to advertise the fact in the accountancy press. this con- cession was fully used, and the columns of the professional press con- tained many advertisements seeking part-time or sub-contract work. By no means all of these were by younger members attempting to start a practice, and the Institute came to the conclusion that the concession was being abused and withdrew. (88)

Some of the rulings given appear inconsistent and difficult to follow. Solicitors are told that advertising under a box number that a solicitor is prepared to undertake missions abroad as an agent for other solicitors is unobjectionable in the legal press. On the other hand a similar adver- tisement in the legal press that a solicitor is prepared to act as a London 166 PROFESSIONAL ETHiCS agent for country firms is held objectionable as offending against the rule regarding touting. (89) Advertising on Behalf of Clients Where a person has obtained a professional adviser to handle certain of his affairs, it is very often necessary, in connection with that function, to publish advertisements carrying the name and address of the profes- sional adviser, this presents an obvious loophole for obtaining publicity.

the professions recognise that nothing can be done to prevent a solicitor from advertising that his client wishes to become a naturalised citizen or to trace a beneficiary under a will, or a chartered accountant from announcing that his client wishes to acquire a particular type of business, or an estate agent from carrying out his function of informing the public of the properties in his books. In all such cases it is natural that the professional man's name and address, and professional qualifi- cations, should appear in the advertisement. All the professions can do is require that they should not be given undue prominence or be embellished with unnecessary detail. Certain restrictions have been laid down however. It is "highly objectionable" for a solicitor to publish his name, address and description on an advertisement whereby a client offers specific property as security for a mortgage investment, or a specific fund as being available for investment. (90) It has also been held objectionable to have a solicitor's name on a poster offering a reward, though it is common practice for solicitors' names and addresses to appear on posters giving particulars of auction sales. (91) Property sales are a special case, since their successful prosecution often involves lavish publicity. The agent's name cannot escape being associated with this, and there is little the professional bodies can do about it. the R.I.C.S. has advised its members that there should normally be only one board displayed on a property. Its appearance and the announcement on it should be "in good taste", and the board should at all times be kept in good order. Once the sale has been com- pleted the board has served its purpose, but many agents like to keep the board in position adding the words "sold by" before their names. This of course is a pure and simple advertisement for the firm, rather than the property, and moreover gives the impression that the firm is a successful one. the R.I.C.S. has not felt able to ban this practice completely, but limits the period within which the board may be displayed in this condition to one month. Rules of this kind are not entirely in the interests of pure professionalism. It was noted by the Estates Gazette as long ago as 1908 that "there are few more certain methods of depreciating a street than to fill it with 'to let' boards". (92) ADVERTISING 167 Unrestrained proliferation of sale boards can cause damage to amenity which lowers the price of property (and thus the commission obtainable by the agent) and also harms the reputation of the agent, whose name on the board proclaims him the obvious cuplrit. Estate agents' permitted advertising is not limited to the require- ments of clients themselves. An estate agent usually acts for the vendor of property, but if a prospective purchaser tells an agent that he is seeking a certain type of property the agent is allowed to advertise his requirements. In an attempt to limit this obvious loophole the R.I.C.S. and kindred bodies require an agent who publishes such an advertise- ment to disclose the name and address of the applicant if called on to do so. these advertisements are particularly awkward because not only do they give publicity to the agent but they also explicitly seek instructions. this arises because property owners answering the advertisement may be expected to place the expected sale in the hands of the agent publishing the advertisement, the R.I.C.S. defend the concession as

being in the public interest because it assists applicants to be put in touch with vendors. (93)

Chartered surveyors are sometimes worried lest the permissive attitude of their institution towards advertising be looked at askance by other professions. they may take comfort from the fact that the Law Society, in its submission to the Monopolies Commission, found justifi- cation for estate agents' advertisements: "whereas a member of the public may obtain the services of any solicitor to act on the purchase of a property which he has already found, his normal way of finding a property is through the estate agent on whose books the property happens to be". (94) Advertising by Clients Occasionally clients of professional people wish to publish advertise- ments which incidentally include the information that the professional person concerned is acting in the matter. This gives rise to the same possibilities of exploitation as advertisements by professional people themselves. While a professional man cannot directly cont rol the adver- tisement published by his client, he has the ultimate sanction of refusing to go on acting. If he acquiesces in the publication of undesirable advertisements he will be held responsible by his institute.

Certain cases have given particular difficulty. The chartered accoun- tants have been embarrassed by the long-standing practice of building societies publishing advertisements, often "flamboyant and unre- strained", which include the information that a specified firm of char- tered accountants is acting as secretary or agent of the society. the 168 PROFESSIONAL ETHICS standard of building society advertisements has steadily improved in recent years, and the problem has ceased to be pressing. (95) Manufacturers of building components very often wish to puff their wares by stating that they have been used by specified architects. this is another case where inveterate practice has tied the hands of the pro- fessional body. The Architects Registration Council have felt compelled to allow an architect to permit the publication of his name in this way provided it is not ostentatiously displayed. The concession does not of course extend to soliciting by the architect for the use of his name, and an architect must not allow the advertiser to state in the advertisement for his product that it is recommended by the architect. (96) the Law Society has ruled that it is undesirable for the name of the builder's solicitor to appear in advertisements for the sale of houses on an estate. there is however no objection to the name of the vendor's solicitor appearing in an estate agent's auction particulars, provided it is not given undue prominence. (97) Advertising for Staff Plainly a thriving professional firm needs to recruit staff from time to time. the use of display advertising is becoming common for this purpose, and to attract staff of the desired calibre it may be desirable to describe the job and its opportunities in glowing terms. Here again there is an opening for blatant advertising of the firm itself and rules have been laid down to deal with this. Chartered accountants are required to observe precise rules governing the size of the advertisements (not exceeding two columns in width), the type to be used (of modest and uniform boldness), the sort of headings which may be employed and so on. (98) Croxton-Smith comments that the rules have worked very well "and the law of the jungle which prevailed a few years ago no longer operates". (99) the R.I.B.A. forbids members to advertise for staff in the lay press by the use of display advertisements. Nor must they refer to the work of their practice "in fulsome terms designed to catch the attention of clients rather than potential staff'. (100) the disciplinary committee of the Architects Registration Council has more than once published warnings that advertisements for staff in the lay press should be issued only with a box number, without mentioning the advertiser's name. the committee also objects to advertisements for staff containing photo- graphs of buildings designed by the advertiser. (101) Advertisements by Consultancy Organisations

In certain fields the professions have been plagued by lay organisations

 set up to provide cut-rate consultancy services. In order to be able to function at all these bodies have to employ members of the profession concerned and to advertise their services. The professional bodies regard advertising of this kind, at least where the names of members of the pro- fession are given, as being just as reprehensible as advertising by the individuals concerned.

A notable example of this type of organisation is the medical aid society. these grew up to meet a need caused by the shortage of doctors in general practice and, before the advent of the National Health Service, were common in many of the poorer districts. Readers of A.J. Cronin's The Citadel will remember the way these bodies operated, at least in South Wales. They would be run by a committee of mine managers and other prominent laymen, and would employ doctors on a salaried basis. Patients would be attracted by canvassing and advertising so as to provide a sufficient number to make the organisation finan- cially viable. The employed doctors would be forced to accept far more patients than they could properly deal with. the General Medical Council reacted by forbidding registered practitioners to take employ- ment with such bodies. Private practice still of course continues along- side the National Health Service, and there are today organisations in the form of provident societies which advertise their services. Mention of a doctor's name in

such advertisements would carry the risk of disciplinary proceedings being brought against him.

Another type of consultancy organisation which has caused trouble to the profession concerned is the management consultancy company. Many such organisations follow the no-advertising rule of the profes~ sions, and little difficulty arises. It is a rule of the Chartered Accoun- tants Institute however that a member may not be a partner, director or employee of any such company which does advertise its services. Even where the advertising is indirect, as by the insertion of advertise- ments for staff giving the name of the consultancy company in prominent lettering, members are discouraged from belonging to it and must certainly not allow their names to be used in connection with its advertisements, the Institute has not however felt able to prevent its members taking employment with other organisations which offer con- sultancy services and advertise, such as joint stock banks. the somewhat unconvincing reason given is that with such a body its accountancy services "are subsidary and incidental to its main business". (102)

Advertising by Professional Bodies

As we have seen, some professional bodies (though not all) have in recent years come round to the view that the undesirability of

advertising does not extend to advertisements on behalf of the profes~ sion as a whole. the professions have been treading gingerly in this matter, and have used the attraction of new entrants as a peg on which to hang much of their advertising. It seems somehow less objectionable to extol the virtues of a profession, and describe the services it can offer, in the context of advising young people on their future careers; and the chartered accountants in particular have taken advantage of this. the climate of opinion has already changed since Millerson, writing in 1964, remarked that associations consider direct canvassing for mem~ bers "unethical", or "unprofessional". (103)

Many members of professional bodies are currently urging their institutes to embark on advertising campaigns, and often the only restraining factor is lack of finance, the justification is given by the Institute of Chartered Accountants in its submission to the Monopolies Commission, where it recognises that "it is important for the public to be informed of the services which its members can provide and that it is desirable in the interest of the public no less than of members generally that the use of these services should be encouraged". (104) *

* For an example of the way institutes, as well as individuals, can get into hot water over advertising see page 159