

Professions and their codes

Francis Bennion, a barrister hits back at the Monopolies Commission's recent report

Are the professions riddled with restrictive practices ? After a seven-man inquiry initiated by Mr Wilson which has lasted three-and-a-half years, the Monopolies Commission says Yes. The professions argue that you can't have a profession or any other organisation for that matter without rules, and rules in their nature are restrictive. It is a restrictive practice to prevent people driving cars until they have passed the test.

The main 'practices which' Mr Wilson at the outset condemned as "restrictive" were those which regulate entry into a profession, or the fees to be charged for professional services, or the way in which practices are organised (whether as partnerships or limited companies), or the carrying on of commercial activities alongside the professional, or the advertising of professional services.

It seems obvious that a profession, if it is to remain one, cannot allow the unqualified to join its ranks until they are trained and tested by examination. This particular "restrictive practice" is therefore given a pat of approval by the Monopolies Commission.

Of course it is a different matter to *prohibit* the unqualified from practice. This happens with dentists, solicitors and veterinary surgeons among others, but such prohibitions are not imposed by the professions themselves. Parliament laid them down in the past as being for the public good. Wiser in our generation, we now think differently-or rather the seven gentlemen of the Monopolies Commission think differently.

Guidance only

When, it comes to fees the seven gentlemen are on surer' ground though" not all that sure. No one likes to feel they are being over-charged, and professional services often leave little tangible advantage behind to make up for their high cost. Yet the Prices and Incomes Board (on architects and solicitors) and the Monopolies Commission itself (on estate agents) have; both in other recent inquiries; rejected suggestions of excessive earnings.

Now the Commission says that for a professional body to give guidance on fee scales and levels is a "restrictive practice" although, (as is invariably the case) nothing happens if the guidance is itself disregarded. Not content with this they even treat as "restrictive" the maximum charges laid down by the solicitors' conveyancing scale!

While there is no justification for excessive charges, these are the fault of the individual practitioner and not of his institute or its "restrictive practices." The institute lays down fee scales so that both client and practitioner have some guide as to what is regarded as reasonable. In disputes over fees the courts have always been ready to accept the institutes' scales.

More open to suspicion as restrictive practices are rules against the poaching of the clients of a professional man by under-cutting him. This is condemned by the professions as unfraternal, but the seven gentlemen are not interested in the fraternal aspects of professionalism, mistakenly thinking they are of no public benefit.

"There are rules of conduct which all professional men • must observe. Refraining from, advertising would, I think, clearly be one."

Lord Chief Justice Goddard thus expressed one of the cardinal rules of professionalism. The Monopolies Commission is not at all impressed by this and rejects its underlying basis which business should come through personal recommendation.

It seems obvious that in choosing a professional consultant one is better guided by the advice of a trusted friend or business contact than by advertisements. But, say the seven gentlemen in one of their sillier observations: "A client may be misled through personal recommendation as well as by an advertisement." It is on advertising that they fully expose their commercial bias and their willingness to speculate. They conjure up visions of what *might* happen to improve efficiency if advertising were unlimited. They adduce not a scrap of evidence or argument to show that it would happen.

This exercise in the hypothetical recalls the remark of a dissenting member of the Monopolies Commission, Mr T. G. Roche, in an earlier inquiry (on estate agents), when he said it was "wrong and unwise " to condemn without evidence arrangements that were old-established, working well and affording the public a reasonable service at a reasonable cost. Mr Roche's comment might be applied to the whole of the present report.

The Commission had no evidence; before them of what was wrong with the present arrangements, apart from a remarkably small (but. unspecified) number of letters of complaint from the, public. Its recommendations are either hedged about with uncertainty, or so jejune as to be useless.

The report discloses no coherent economic principles on which its recommendations are based - indeed they seem to be based on no more than intuition or "feel," even though two of the seven gentlemen are trained economists. Is this the criterion on which to judge a mass of workers who, with their immediate families, form perhaps one-eighth of the whole population of this country?

Understandably, the report displays little confidence by the members in their recommendations. In one of their humbler moments they confess that without more investigation "we cannot say how far the practices of a particular profession are justifiable." Bursting with magnanimity, they continue: "Nor would it be right for us to attempt ; to make this judgment. when no profession has had an opportunity, of justifying its practices to us. . ."

The last remark refers to the fact that for the first time in its history the Monopolies Commission has reported entirely on written material, refusing oral hearings. Nor did the Commission trouble to study professionalism in any other country. Thus was an inquiry conducted which was of national importance and yet both too narrow (in that it allowed no investigation of what is really meant by professionalism) and too wide (in ranging over every occupation that can conceivably be called a profession). What is to be the sequel?

One might have thought that the Conservatives would reject a report so ill-conceived and inadequately prepared. Not at all. Mr Davies, Secretary of. State for Trade and Industry, welcomed the report, noting that the Commission was unable without further inquiry to reach a final judgment but wished the professions to examine their practices with a view to abolishing or amending them, and had urged a series of official inquiries into individual professions.

Mr Davies grimly added that he would give, the 130 bodies concerned six months to determine What modifications they intended, to make, and would then decide on his next step.

To demand that these modifications should be agreed on within six months shows a sad unawareness of how professional institutes operate. They are not autocratic, and can act in such a matter only-as their members wish.

Their first step must be to promote awareness of the Monopolies Commission report among the members, and then consideration and discussion of it. The members are dispersed throughout the country. Local meetings need to be held both initially and also later to

consider proposed amendments to the rules. Consultation between the professions must take place since most rules are common to them all. To do thoroughly the job of overhauling fundamental principles needs time and must be given it.

Defence of ideals

The politicians and civil servants concerned in this sorry affair have demonstrated ignorance of the nature of the consultant professions. Far from being a monopoly, they are a collection of individuals running their own independent practices throughout the land. This report and its outcome is essentially a continuation of the attack by collectivists on individuals who have chosen to be their own masters and stand on their own feet.'

Professional people need to combine to meet this attack—not in order to defend meaningless restrictions and their own self-interest but to preserve an aspect of society which it needs and should value—independent professions with high ideals. Just because the Monopolies Commission goes out of its way to sneer at idealism (paragraph 352), and worships crude commercialism, the public interest requires that its mischievous recommendations should be fought and defeated.

The professions should certainly examine their practices and overhaul them where necessary—a process which in any case is constantly going on. If there is real proof that any practice is harmful it should certainly be abrogated. But let us have an end to this system' of deciding momentous issues affecting millions of workers on the opinion of a taxi-load of men who assert "it's right because I say so."

Francis Bennion, a barrister, is former secretary of the Royal Institution of Chartered Surveyors, chairman of the Professional Association of Teachers and author of "Professional" Ethics: the Consultant Professions and their Code" (Charles Knight, 1969).