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# *Deregulation of Conveyancing Markets in England and Wales*

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## I. INTRODUCTION

There has been much concern in recent years with whether the ‘privilege’ of self-regulation accorded to the professions works for or against the public interest (Federal Trade Commission, 1984; Monopolies and Mergers Commission, 1970, 1976a and 1976b; Department of Trade and Industry, 1989; Courts and Legal Services Act, 1990). Ogus (1993) argues that ‘Self-regulation has had a bad press’ and that ‘most of this criticism is well-founded in relation to some forms of self-regulation’. Economists have been, traditionally, highly critical of many aspects of professional self-regulation.<sup>2</sup> More recently, there has been a greater awareness of the informational asymmetry inherent in professional markets which demands some protection for the (infrequent) consumer of personal professional services (see, for example, Dingwall and Fenn (1987)). Commentators have identified three principal instruments of such self-regulators which work against the public interest: (1) restrictions on entry; (2) restrictions on fee competition; and (3) restrictions on advertising and other means of promoting a competitive process within the profession.

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<sup>2</sup> See, for example, Friedman and Kuznets (1945), Friedman (1962), Faure, Finsinger, Siegers and Van den Bergh (1993), Benham and Benham (1975), Arnould (1972), Arnould and Friedland (1977), Lees (1966), Kessel (1958) and Leffler (1978).

In this paper, we examine the response of the solicitors' profession in England and Wales to a series of policy measures which have 'relaxed' its regime of self-regulation. The rest of the present section reviews the economic literature on professional regulation. This is followed in Section II by details of the regulatory regime governing solicitors and the supply of conveyancing services for gain in England and Wales. Section III examines evidence on how the profession and others have responded to the new regime in two respects: solicitor advertising and the entry into conveyancing markets of the para-profession of licensed conveyancer. In Section IV, we examine the conveyancing fees of solicitors and licensed conveyancers. Finally, Section V summarises the conclusions drawn from this study.

The information asymmetry between the consumer and the provider of professional services requires that the consumer have more protection than provided by the traditional common-law doctrine which treats consumers as though they were as well informed as sellers. The consumer of professional services (and, in particular, the private consumer of legal services) cannot easily judge the quality of service nor, often, how much of it should be bought. In the case of private legal services, in particular, the client is, therefore, required to hold the provider of the service in a position of trust. Most consumers of legal services are infrequent purchasers and, potentially, would be open to opportunistic behaviour by suppliers of the service. Such behaviour is not constrained by repeat purchasing or reputation effects in the absence of regulation. Proponents of self-regulation argue that it provides a code of professional ethics and practice rules which distinguish between acceptable professional practice and unprofessional behaviour. However, the public interest requires that the ethics, practice rules and the manner in which they are enforced do not themselves become a source of market failure. The proponents of reform of the legal profession's self-regulatory regime in England and Wales argued that this had become the case by the mid-1980s.<sup>3</sup>

Self-regulation has been characterised by its critics as, potentially, having the effect of a cartel: by controlling entry to the market and setting an agreed price above the competitive price, members of the profession earn economic rents. Restrictions on advertising and prohibitions on using fee levels to attract business are used to restrain competition from 'breaking out' between existing suppliers.

Restrictions on entry to a profession or restrictions on providing a particular service by persons not recognised by a particular professional body have long been the subject of criticism by economists (see, for example, Friedman and Kuznets (1945) and Leffler (1978)). They can undoubtedly lead to supply shortages and hence the earning of substantial economic rents by members of the

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<sup>3</sup> For a general discussion of professional regulation, see Dingwall and Fenn (1987), and for the legal profession, see Paterson (1987).

profession. However, restrictions on entry to the profession in general do not necessarily imply an absence of competition in specific service markets. Professional service markets, particularly of a personal nature, tend to be spatially localised. General controls on entry do not necessarily, therefore, imply barriers to entry into specific service markets for existing members of the profession.

Other restrictions on behaviour, such as prohibiting advertising, may raise the cost of entry (through an inability to generate goodwill quickly) and thus constitute a barrier to entering a specific spatial market. Alternatively, prohibitions on 'undercutting' or 'supplanting' existing suppliers may reduce the incentive to enter a local market where rents are being earned.

An extensive empirical literature<sup>4</sup> (particularly North American) has developed on the restriction of advertising of professional services and what happens to fee levels when such restrictions are relaxed. Such studies emphasise the informational role of advertising and derive their theoretical underpinning from the literature stimulated by Stigler (1961) on the economics of information. They have typically used data from a cross-section of US states where the severity of restrictions on professional advertising varies. These studies do not distinguish between the effects of different forms of advertising. They have generally concluded that professional fees are higher, *ceteris paribus*, the more stringent are controls on advertising.

It has been argued<sup>5</sup> that restricting fee competition, particularly by publishing mandatory or recommended fee scales, reduces competition and innovation and is against the public interest. However, there have been relatively few empirical studies on the impact of fee regulation on fees actually charged (exceptions are Arnauld (1972), Arnauld and Friedland (1977) and Stephen (1993)).

## II. REGULATION OF THE MARKET FOR CONVEYANCING SERVICES IN ENGLAND AND WALES

The modes of operation of the legal profession in England and Wales are subject to a system of self-regulation by its professional bodies (the Law Society and the Bar Council) together with the Lord Chancellor. Since 1984, this system of self-regulation has been the subject of significant revision with the objective of stimulating greater competition within (and to some extent between) the two branches of the profession. This paper is specifically concerned with the solicitors' branch of the profession in its provision of a relatively routine service

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<sup>4</sup> See, for example, Benham (1972), Benham and Benham (1975), Maurizi, Moore and Shepard (1981), Mackintosh and Frey (1978), Kwoka (1984), Cady (1975), Schroeter, Smith and Cox (1987), Federal Trade Commission (1984), Paterson and Stephen (1990) and Stephen (1994).

<sup>5</sup> See Monopolies and Mergers Commission (1970), Arnauld (1972), Domberger and Sherr (1989) and Van den Bergh and Faure (1991).

(conveyancing) in the period in which deregulation has been progressively implemented.

The Monopolies and Mergers Commission, in a series of reports on the legal profession (Monopolies and Mergers Commission, 1970, 1976a and 1976b), argued that restrictions on the freedom of solicitors to advertise limited the information available to the public about the services offered by solicitors in the UK. By doing so, the competitiveness and efficiency of the profession were likely to be reduced. New rules were drawn up by the Law Society on 1 October 1984 which permitted advertising by solicitors in England and Wales, within certain limits. Solicitors were allowed to advertise and to provide prospective clients with fee quotations in advance of taking instructions. The media in which advertising was permitted were restricted. Television, for example, was excluded. The use of 'mail shots' to persons who were not already clients was also prohibited; that was regarded as 'touting' and therefore unethical.

These rules were revised further, with effect from 1 July 1987. Advertising in all media was permitted and mail shots were no longer classified as touting. The Administration of Justice Act, 1985 introduced the para-profession of licensed conveyancer empowered to provide conveyancing services to the public but no other form of legal service. A Council for Licensed Conveyancers was created to oversee the examination and consequent licensing of persons who would carry out conveyancing for the public but no other legal service. The Courts and Legal Services Act, 1990 further provided that banks and building societies could be permitted to provide conveyancing services to their clients. These services would be carried out by solicitors or licensed conveyancers employed by these bodies. However, the Lord Chancellor has so far declined to put before Parliament the statutory instrument necessary to implement this provision of the Act. The reason given is the slump in the property market!

Thus two aspects of the regulation of the market for conveyancing services in England and Wales have been relaxed in recent years: (1) entry to the market is no longer restricted to solicitors and (2) competition has been facilitated through permitting solicitors to advertise. Restrictions on what fees could be charged by solicitors for conveyancing services had been removed in 1973. However, it has been argued that the Law Society's scale of fees for conveyancing services, which ceased to be binding in that year, still effectively determined fees until the reforms of 1984 (Domberger and Sherr, 1992).

The present paper reports results from a study of the effects of these recent regulatory changes. It focuses on behaviour within a single regulatory regime (England and Wales), in contrast to many previous studies which compare performance across regimes. This permits an examination of, *inter alia*, the effects of actual advertising behaviour rather than regulations governing advertising. Similar work has been carried out in Scotland (Paterson and Stephen, 1990; Stephen, 1993 and 1994). In the next section, we present

evidence on how solicitors and others have reacted to the new deregulated environment.

### III. RESPONSES TO DEREGULATION

The effects of the deregulation of the conveyancing market in England and Wales were monitored through a series of surveys carried out in November and December of each of 1986, 1989 and 1992. Thus the first survey took place about two years after the initial phase of deregulation came into effect. By the time of the 1989 survey, further liberalisation of the rules on advertising had taken place and the para-profession of licensed conveyancer had been created. In 1989 and 1992, surveys similar to those of solicitors were carried out of all licensed conveyancers in private practice in the same sample areas. At the time of the 1992 surveys, the regulatory regime in conveyancing was substantially the same as that at the time of the 1989 surveys.

The surveys were carried out by means of telephone interviews with conveyancing partners of a representative sample of solicitors' firms in each of 27 of the Department of Employment's travel-to-work areas (TTWAs) in England and Wales. The TTWAs were drawn from all of the economic regions except London and covered the full range along the urban/rural continuum as defined by Cloke and Edwards (1986) plus metropolitan areas. A full listing of the TTWAs selected is presented in Table 1 and the methods used to draw the sample of firms are given in Stephen, Love, Paterson and Farmer (1989), Love, Stephen, Gillanders and Paterson (1991) and McGough, O'Brien, Love and Stephen (1993). The same TTWAs were sampled in each year. In TTWAs with fewer than 40 firms, all firms were included. Where there were more than 40, a sample of 40 firms or 25 per cent was drawn, whichever was the greater.

TABLE 1  
Sample Markets Showing Licensed Conveyancer Entry

Metropolitan	Birmingham <sup>a</sup> , Liverpool <sup>a</sup> , Manchester <sup>a</sup> , Newcastle <sup>a</sup> , Sheffield <sup>a</sup>
Urban	Huddersfield <sup>b</sup> , Middlesbrough, Nottingham <sup>a</sup> , Slough <sup>a</sup> , Warrington <sup>a</sup> , Watford and Luton <sup>a</sup>
Intermediate non-rural	Leek, Norwich <sup>a</sup> , Oxford, Retford, Warminster
Intermediate rural	Canterbury, Clitheroe, Devizes, Harrogate, Matlock, Whitehaven
Extreme rural	Aberystwyth, Bridport, Lowestoft, Skegness, Welshpool

<sup>a</sup>Licensed conveyancers present in 1989 and 1992.

<sup>b</sup>Licensed conveyancers present only in 1992.

The telephone survey was used to gather the following types of data on the sample firms:

- the firm's perception of the principal areas and sources of competition confronting the profession;
- the firm's advertising behaviour, i.e. whether it had advertised, in which media, what form it had taken, the reasons behind the decision to advertise and the extent to which advertising was part of an overall strategy;
- certain characteristics of the firm, e.g. the proportion of the work that consisted of conveyancing and the extent of its commitment to specialisation or innovation;
- the fees that the firm would charge to a first-time buyer for a sample of routine conveyancing transactions. In 1986, this referred to a property valued at £30,000 (and subject to a £25,000 mortgage); in 1989, these transactions related to a property valued at £50,000 (subject to a £30,000 mortgage) and £80,000 (£50,000 mortgage); whilst in 1992, in addition to these two, a property valued at £120,000 (£80,000 mortgage) was added.

In 1986, the total number of firms in the sample was 796, of which 675 (84.8 per cent) responded. In 1989, the sample involved 711 firms; usable responses were received from 79.5 per cent. In 1992, the sample was 752, with 565 (75.1 per cent) responding. Response rates on the fee questions were slightly lower in each year at 74.5 per cent in 1986, 72.4 per cent in 1989 and 71.4 per cent in 1992.<sup>6</sup> Seventeen firms of licensed conveyancers in 1989 and 29 in 1992 were actively trading in these TTWAs. All were surveyed, and 82.4 per cent in 1989 and 86.2 per cent in 1992 supplied fee data.

Below, we discuss the general findings of these surveys for the period as a whole.<sup>7</sup>

Initially, we consider the response to the two major changes in the constraints on behaviour initiated by the deregulation process: (1) advertising by solicitors and (2) the creation of the para-profession of licensed conveyancer.

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<sup>6</sup> It should be noted that although the overall response rate has fallen over the three surveys, the proportion of firms providing fee information has declined only marginally. At the time of the initial survey, the legal profession was highly sensitised to changes in practice rules governing advertising and to the impending entry of licensed conveyancers. The reduction in partial co-operators may be a reflection of the waning of interest and perhaps increased workloads.

<sup>7</sup> More detailed analyses of the results for specific years and on specific topics are available in Love, Stephen, Gillanders and Paterson (1991 and 1992), McGough, O'Brien, Love and Stephen (1993), Stephen, Love, Paterson and Farmer (1989), Stephen, Love, Gillanders and Paterson (1992 and 1993) and Stephen, Love and Paterson (1994).

*1. Advertising*

Before October 1984, solicitors in England and Wales were so restricted in relation to their advertising and promotional activities that they could be regarded as not being permitted to advertise. Those advocating liberalisation argued that restrictions on advertising restricted competition and innovation in legal service markets to the detriment of the public interest (see, for example, Monopolies and Mergers Commission (1970)). However, permitting solicitors to advertise does not guarantee that they will do so. The beneficial effects of advertising for competition will only be attained if solicitors respond to the change in the rules governing their behaviour.

Table 2 shows the survey estimates of the percentage of solicitors' firms in the sample markets which had undertaken various forms of advertising in the six months prior to their interview.

As the table shows, around two years after being permitted, the percentage of firms advertising in the six months prior to the survey was 46 per cent, and it increased by one-third between 1989 and 1992, having fallen slightly between 1986 and 1989. Media advertising continued to increase, whilst enhanced entries in the Yellow Page directories increased by more than 60 per cent, having fallen between 1986 and 1989.

The advertising of fees for a particular service in the Press or other media remained static between 1989 and 1992. It is clearly a very unusual occurrence. However, by 1992, such price advertising was occurring in 15 TTWAs as opposed to 10 in 1986 and 11 in 1989. It was largely restricted to those areas with more than 15 law firms: in only two of the 12 markets with fewer than 15 firms had a firm advertised its fees at the time of any of our surveys.

There is variation across TTWAs in the percentage of firms that have advertised: in 1986, there was one area where no firms had advertised in the previous six months; in two areas in 1992, only 16.7 per cent of firms had

TABLE 2  
**Solicitor Advertising**

	<i>Percentage of firms in sample market</i>		
	<i>1986</i>	<i>1989</i>	<i>1992</i>
Any form of advertising	46%	44%	59%
Media <sup>a</sup> advertising	21%	25%	31%
Enhanced Yellow Pages <sup>b</sup>	38%	31%	50%
Price advertising <sup>c</sup>	2%	4%	4%

<sup>a</sup>Print and broadcast media but excluding brochures.

<sup>b</sup>An entry other than the free listing.

<sup>c</sup>A media advertisement containing the fee for a service.

advertised in that period, whilst in a further two, all firms had advertised during the same period. Whilst the variability of the proportion of firms in a TTWA that advertised (as measured by its coefficient of variation) declined by 26 per cent between 1986 and 1989, it increased by almost 16 per cent between 1989 and 1992. The net effect is that it declined by 14 per cent between the first and third surveys. In other words, conveyancing markets have become more homogeneous in terms of the proportion of firms that advertise.

In less than eight years since solicitors were first permitted to advertise extensively in modern times, advertising has become a fairly common phenomenon. In the US 10 years after advertising by attorneys was permitted, only 31 per cent of firms had advertised *at any time* (*American Bar Association Journal*, November 1987). However, it is probably the case that those firms that do advertise in the US do so more intensively than those in the UK.

This evidence on advertising suggests that the constraints on it that existed before 1984 were stopping at least some solicitors from advertising. Were this not the case, then no solicitors would have taken up the option to advertise. As a matter of logic, this does not mean that all of those who have advertised since 1984 would previously have done so but for the prohibition. Some of those who have advertised may only have done so in response to others advertising. Some opponents of the relaxation of the rules prohibiting advertising had argued that relaxing the rules would 'force' some solicitors reluctantly to advertise in response to others. However, our evidence suggests that this is not the case. Respondents to our surveys who had advertised in the media in the preceding six months were asked why they had advertised. Answers were unprompted and were not mutually exclusive. In no year did more than 5 per cent suggest it was because others advertised. In 1986, almost 31 per cent said it was because of competition within the profession. By 1989, the number saying this had fallen slightly to 28 per cent, while by 1992, it had fallen to 7.5 per cent.

Another argument put forward by opponents of relaxing the rules on advertising was that only large firms would advertise, resulting in a loss in market share for small firms. Given that, by 1992, such a significant proportion of firms were advertising, this seems unlikely by that year.<sup>8</sup>

## *2. Licensed Conveyancer Entry*

A major feature of the deregulation of the conveyancing market was the creation of the para-profession of licensed conveyancer in 1987. From that year, it was possible for non-solicitors to undertake conveyancing for gain. To do so, they were required to satisfy the Council for Licensed Conveyancers (by examination or through other qualifications) that they had the knowledge to convey property.

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<sup>8</sup> Logit regressions were used to test for a relationship between advertising and firm size in a multivariate context. Whilst this did reveal such a relationship in 1989, no such relationship was found in the other two years.



Data obtained from the Council for Licensed Conveyancers showed that in 1989, 17 firms of licensed conveyancers operated in our sample markets. Only one of these involved more than one licensed conveyancer. Indeed, it was discovered that in 1989, 19 licensed conveyancers were actually employed by firms of solicitors, i.e. there were more solicitors' firms employing licensed conveyancers than there were firms of licensed conveyancers in our sample markets. In addition, six licensed conveyancers were employed by local authorities or other third parties.

The number of licensed conveyancers entering these markets has, therefore, been relatively small. In 1989, the 17 firms of licensed conveyancers operated in 10 of the 27 markets. None of these licensed conveyancers operated in the markets with fewer than 15 firms. As Table 1 indicates, licensed conveyancer entry was concentrated in the metropolitan and urban markets with only one exception (Norwich). In the sample markets, the 17 firms of licensed conveyancers contrasted with 1,619 firms of solicitors. The highest ratio of licensed conveyancers to firms of solicitors in a TTWA was 5 per cent. In 1992, the number of firms of licensed conveyancers in the sample markets had risen to 29<sup>9</sup> (1,666 firms of solicitors). However, only one further market (making 11) now had licensed conveyancers. In this market, the number of licensed conveyancers was 6.7 per cent of the number of solicitors' firms. There were a further three markets where the number of licensed conveyancers represented more than 5 per cent of the number of solicitors' firms. It should, however, be realised that almost all of the licensed conveyancing firms were single practitioners whereas the average number of solicitors in solicitors' firms was 4.6 in 1989 and 5.3 in 1992.

Although only a small number of licensed conveyancers have entered our sample markets, this does not mean that their entry (or even *potential* entry) has had no effect in these markets. Even before the Act establishing the para-profession had come into force, respondents to our 1986 survey were anticipating the impact of their entry. In answering a question on what they thought had increased competition in their local conveyancing market, 7.1 per cent of respondents said the loss of the conveyancing monopoly. Indeed, in one TTWA this answer was given by 20 per cent of respondents. In general, we gained the impression that in 1986, fees for conveyancing were falling in anticipation of increased competition due, *inter alia*, to the loss of the monopoly (see Paterson, Farmer, Stephen and Love (1988)).

There is a temptation to interpret this in terms of the theory of contestable markets (Baumol, Panzar and Willig, 1982): the passage of the Administration of Justice Act had made the market for conveyancing contestable, therefore fees fell to the competitive level to forestall entry. However, in one sense, entry had

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<sup>9</sup> The register of the Council for Licensed Conveyancers showed 30, but we subsequently discovered that one was no longer in practice at the time of our survey.

always been possible: solicitors could always enter a new local market. Contestability requires that entry and exit be costless in that there are no sunk costs of entry. Because of the nature of legal services, consumer awareness of firms is important. New entrants to a market need time to build up such awareness and a case-load sufficient to sustain their presence in that market. This was the sunk cost of entry.

Prior to the liberalisation of 1984, the ban on advertising and overt price competition kept the cost of entry high. After 1984, the cost of entry for solicitors fell. Was there a greater willingness to enter new markets? Probably not. It would still be seen as costly to do so, particularly because it was not clear in the early stages how local law societies and the Law Society nationally would react to aggressive entry behaviour. Thus it is likely that solicitors were still reluctant to 'contest' markets.

The new licensed conveyancers would not be inhibited by the Law Society's remaining constraints on competitive behaviour. Since many licensed conveyancers came from the ranks of legal executives working for law firms, they came with local market knowledge.<sup>10</sup> Thus, perhaps, the threat of entry by licensed conveyancers was more credible than that of entry by solicitors. Consequently, it required the threat of impending entry by licensed conveyancers to produce the reaction from incumbent solicitors' firms that contestability is supposed to evoke.

However, licensed conveyancers are restricted to providing only one type of service (conveyancing) whereas solicitors have other areas of legal work to sustain them. This may, to some extent, make it more difficult for licensed conveyancers to sustain entry. They will require a housing market with a significantly higher turnover of properties than would solicitors for viability. This suggests that where clients still expect some face-to-face contact with their conveyancer, licensed conveyancers will be limited to urban areas with high concentrations of population. This explains the limited categories (metropolitan and urban) of the sample TTWAs into which licensed conveyancers have penetrated.

#### **IV. CONVEYANCING FEES**

The three surveys of solicitors and the two surveys of licensed conveyancers that we carried out gathered data on the fee that respondents would charge for specimen conveyancing transactions as outlined above. In 1986, there was only one sample transaction per firm: a property valued at £30,000 subject to a mortgage of £25,000. This was approximately the average house price in that

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<sup>10</sup> In the course of interviews with solicitors, a few respondents suggested that they might opt for licensed conveyancer status because this would free them from Law Society rules which restricted their ability to 'compete' for business.

year. The mean fee charged by solicitors for this transaction was £200.99. The mean fee in TTWAs ranged from £177.67 to £261.77. The coefficient of variation for mean fees was 0.13.

Due to house-price inflation, the £30,000 property ceased to be relevant in a number of TTWAs by 1989 and the baseline quotation was changed to a £50,000 property subject to a £30,000 mortgage. Again, this was approximately the national average house price. In 1989, a second quotation for a property valued at £80,000 and subject to a £50,000 mortgage was also sought. In 1992, when the mean property price was still around £50,000, a third transaction for a property valued at £120,000 and subject to a mortgage of £80,000 was added. Mean fees and rates of change for solicitors' conveyancing fees in 1989 and 1992 are given in Table 3.

Allowing for the increase in the retail price index between November 1989 and November 1992 of almost 18 per cent, the real cost of obtaining conveyancing services from a solicitor for the £50,000 and £80,000 specimen transactions has fallen on average. However, the average figure masks a wide variation of changes in TTWAs. For example, the mean fee for the £50,000 property has risen by 20 per cent (in current price terms) in Skegness while it has fallen by 18 per cent in Whitehaven. Similarly, the fee for the £80,000 property has risen by 29 per cent in Skegness but fallen by 23 per cent in Huddersfield. Table 3 also shows how the variation in mean fee across TTWAs (as measured by the coefficient of variation for the means) has changed between the two years.

How does the behaviour of licensed conveyancers compare with that of solicitors? The fees quoted by licensed conveyancers are, *on average*, below

TABLE 3  
Means of Solicitors' Conveyancing Fees, 1989 and 1992

	1989	1992	Change
<i>£50,000 property</i>			
Mean fee	£247.25	£251.05	+1.5%
Coefficient of variation for mean fees	0.225	0.164	-27.1%
<i>£80,000 property</i>			
Mean fee	£309.34	£306.24	-1.0%
Coefficient of variation for mean fees	0.205	0.216	+5.4%
<i>£120,000 property</i>			
Mean fee	n.a.	£385.21	n.a.
Coefficient of variation for mean fees	n.a.	0.249	n.a.

TABLE 4  
**Conveyancing Fees in Markets where Licensed Conveyancers Operate,  
 1989 and 1992**

	1989	1992	Change in fee
<i>£50,000 property</i>			
(a) Mean fee of licensed conveyancers	£199.14	£216.80	8.9%
(b) Mean fee of solicitors	£240.04	£251.01	4.6%
(a):(b)	82.96%	86.37%	
<i>£50,000 property</i>			
(a) Mean fee of licensed conveyancers	207.93	£231.80	11.5%
(b) Mean fee of solicitors	£301.92	£306.78	1.6%
(a):(b)	68.87%	75.56%	

those quoted by solicitors in the markets where licensed conveyancers operate. Table 4 shows the mean fees charged by licensed conveyancers in 1989 and 1992 and compares them with the mean fees of solicitors *in the markets where licensed conveyancers operate*. Licensed conveyancers' fees *on average* were lower than those of solicitors in both years but rose relative to them between the years. However, these averages hide variations: the mean fees of licensed conveyancers were above those of solicitors in Watford and Luton in 1989 and in Slough in 1992.

The fees of licensed conveyancers and their relationship to those of solicitors have not only changed between the years but show considerable variation across the sample markets. This variation in fees across sample markets is a feature of our data not only for licensed conveyancers but also for solicitors. This suggests conveyancing markets are geographically defined markets in England and Wales.<sup>11</sup>

It should also be noted that although the fees of licensed conveyancers have risen faster than those of solicitors in the markets where they both operate, solicitors' fees in these markets would appear to have risen faster than those in the markets where there are no licensed conveyancers.<sup>12</sup> The mean increase in the conveyancing fee charged by solicitors for the £50,000 (£80,000) property over *all markets* was 1.5 per cent (–1.0 per cent) compared with 4.6 per cent (1.6

<sup>11</sup> This observation is confirmed in a series of regressions to estimate the determinants of fees reported in Love, Stephen, Gillanders and Paterson (1991 and 1992), McGough, O'Brien, Love and Stephen (1993), Stephen, Love, Paterson and Farmer (1989), Stephen, Love, Gillanders and Paterson (1993) and Stephen, Love and Paterson (1994).

<sup>12</sup> It should be noted that the period 1989–92 represents one of decline in the housing market throughout England and Wales. During this period, the Nationwide Building Society's index of house prices fell from 233.8 to 190.6.

per cent) in those markets where licensed conveyancers operated. Thus, between the two years, licensed conveyancers have not, apparently, restrained increases in solicitors' fees relative to those in markets where there were no licensed conveyancers. It may be that the solicitors had held down their fees between 1987 and 1989 in response to the entry of licensed conveyancers but subsequently discovered that they were less of a threat than was anticipated. Consequently, they were able to increase fees more rapidly than elsewhere. It may be significant that the only TTWA in our sample that was entered by licensed conveyancers for the first time between 1989 and 1992 (Huddersfield) saw solicitors' fees for the £50,000 (£80,000) property fall by 14 per cent (23 per cent).

A self-regulated profession such as solicitors offering a personal service such as conveyancing provides an almost classical opportunity for price discrimination (Domberger and Sherr, 1989). This takes the form of relating the fee charged to the value of the property involved when the cost of providing the service is constant. However, the 1989 survey revealed that 21 per cent of solicitors who provided fee information charged the same fee for both the £50,000 and the £80,000 transaction.<sup>13</sup> Licensed conveyancers in our sample markets showed a lower propensity to 'price-discriminate' for the two transactions: 71 per cent charged the same fee for both transactions. The 1992 survey provided firmer evidence of single-fee-charging since in that year there were three specimen transactions (£50,000, £80,000 and £120,000). In 1992, 26 per cent of solicitors providing data on fees for the £50,000 and £80,000 properties charged the same fee for both, whilst 16 per cent of those who provided data for all three transactions charged a single fee. There was still a greater likelihood in 1992 that licensed conveyancers would charge one fee, but the difference in behaviour in this respect between licensed conveyancers and solicitors had diminished. In 1992, 56 per cent (compared with 71 per cent in 1989) charged the same fee for the £50,000 and £80,000 transactions, whilst 36 per cent charged the same fee for all three transactions. Thus, whilst in 1989 licensed conveyancers were 3½ times more likely than solicitors to charge a single fee, by 1992 they were only twice as likely to. The evidence on 'price discrimination' and on the level of fees suggests that the behaviour of licensed conveyancers was less differentiated from that of solicitors in 1992 than it was in 1989.<sup>14</sup>

What influence, if any, on the conveyancing fees of solicitors can be ascribed to the liberalisation of the solicitors' regime of self-regulation? Elsewhere, we

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<sup>13</sup> Since we have information on only two fees, we cannot say that these solicitors charged the same fee for *all* transactions.

<sup>14</sup> Stephen, Love, Gillanders and Paterson (1992 and 1993) analyse price discrimination in our sample markets in 1989. They find that the probability of a firm of solicitors being a price discriminator is significantly reduced the higher are the levels of certain advertising variables and the number of licensed conveyancers relative to the number of solicitors in the TTWA.

report more fully attempts to model the determinants of solicitors' conveyancing fees.<sup>15</sup> However, we must recognise that our data all relate to the post-liberalisation phase. Thus we cannot assess the effect on fees of the change in regulatory regime *per se*. What we have are the effects, if any, of the instruments of competition *across markets* within the deregulated period. Essentially, we are examining whether variations in the intensity of the use of the new competitive weapons had any effect on fees across markets. These studies suggest that there is an inverse relationship between solicitors' conveyancing fees in a TTWA and advertising behaviour in that TTWA. However, the relationship is not as straightforward as that portrayed in the North American studies listed in footnote 4. When a distinction is made between different types of advertising (price advertising, non-price media advertising in print media, enhanced entries in Yellow Page directories), it would appear that not all have an influence on conveyancing fees. Thus the role of advertising in these markets is more complex than previous studies suggest.

Similarly, we find that although licensed conveyancer entry to a local market was associated with lower fees in 1989, it would appear to be associated with higher fees in 1992 except where licensed conveyancers have entered for the first time. Thus it would appear that after entry, an accommodation takes place between solicitors and licensed conveyancers.

## V. CONCLUSIONS

Our data reveal that English and Welsh solicitors were relatively quick to take advantage of the removal of the ban on advertising. Whilst a majority of firms have advertised in some way, price advertising has remained very much an exception. Nevertheless, it can be concluded that the previous ban on advertising had stopped many firms that would have wished to advertise from doing so.

Our results suggest that, whilst the breaking of the monopoly in England and Wales by the creation of licensed conveyancers initially made the market contestable, where entry has taken place the numbers of entrants have been small and largely confined to the metropolitan and urban areas. Although initially entry appears to have reduced solicitors' fees, it has not had the desired effect in the long run. It could be that licensed conveyancers initially produced fees which were below the economic level and subsequently had to be increased. However, the variations in solicitors' fees suggests that efficiency gains can still be made by many solicitors and, therefore, that licensed conveyancers set their fees slightly below those of solicitors but still earned supernormal profits. The initially lower fees may have been a result of misjudging the reaction of solicitors or simply an 'entry price'; nevertheless, there has been subsequently an

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<sup>15</sup> See Love, Stephen, Gillanders and Paterson (1992), McGough, O'Brien, Love and Stephen (1993), Stephen, Love, Paterson and Farmer (1989) and Stephen, Love and Paterson (1994).

accommodation to licensed conveyancer entry by all parties. Licensed conveyancers by 1992 were pricing rather like solicitors.

The post-entry behaviour of licensed conveyancers is not too surprising. Even more than for solicitors, the conveyancing market is the focus of their business. They, just like solicitors, will benefit from implicit collusion. This raises the question of whether building societies and banks, which are currently prohibited from offering conveyancing services, should be permitted to enter the conveyancing market as envisaged in the Courts and Legal Services Act, 1992 whose provisions in this respect have not yet been implemented. For these bodies, conveyancing is a subsidiary market. Since their profits are made elsewhere, they have an incentive to ensure low costs in the provision of conveyancing services. The entry of banks and building societies is, in our view, likely to make the market for conveyancing services more competitive. This may be all the more so if they do not provide the services themselves but retain panels of solicitors to actually carry out the work. In such circumstances, they will be dominant purchasers in the market for conveyancing and able to reap the benefits of a dominant position. They may choose to pass this benefit on to their customers to tie them into their other services where they may reap their economic rents. Under this scenario, as repeat purchasers, banks and building societies will be better informed than individual clients on quality issues and on costs. Thus they may redress the asymmetric information problem which lies behind the case for regulation in this field. However, constraints are required to ensure that they do not cross-subsidise conveyancing charges from their other activities and consequently unfairly undercut independent solicitor conveyancers and licensed conveyancers.

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