Editorial

Barlow Clowes

On October 20, Lord Young issued the DTI's response to the long-awaited report by Sir Godfray le Quesne into the Barlow Clowes affair (HC 671). The Secretary of State concluded, on the basis of the report, that, "within the constraints of the old legislation and the information available to the Department at the time, the Department's general handling of the licensing of Barlow Clowes and Partners and Barlow Clowes Gilt Managers Ltd, was careful and considered and its actions reasonable". He added, to Opposition protests (even louder in the Commons, where the Minister of State, Mr Tony Newton, was simultaneously delivering the same message) that "the legal advice the Government has received on the question of liability to investors with all these businesses is clear. The Government has no legal liability". What then of moral liability and the possibility of *ex gratia* compensation? The bleak ministerial verdict on this was that, "the facts set out in Sir Godfray's report in the Government's view . . . provide no justification for using taxpayers' money to fund compensation".

No comfort here for disappointed investors, particularly the 11,000, many of them pensioners, who entrusted their money to the Gibraltar-based Barlow Clowes International, and who stand eventually to claw back just 30p in the pound of their investment. Such victims are to be found in Conservative constituencies as well as Labour ones, and the Government's uncompromising denial of liability has caused misgivings in the ranks of its own backbenchers. The Parliamentary Commissioner, now at last released from the constraint imposed by the decision to commission the le Quesne inquiry, has received complaints from more than a hundred MPs. Litigation against financial intermediaries is in prospect. The Institute of Chartered Accountants has set up an inquiry to look into Sir Godfray's criticisms of the work of the auditors involved in the episode. But the Government itself has managed so far to shrug off any responsibility.

It is certainly true that the limited investigatory powers provided by what Lord Young calls "the old legislation" – *ie* the Prevention of Fraud (Investments) Act 1958 – were tightened up by new Regulations promulgated in 1983, and have now largely been superseded by the much tougher provisions of the Financial Services Act 1986, whose main provisions came into effect only last April. But even if the Department's handling of the case discloses no liability in strictly legal terms, the stark refusal of any *ex gratia* compensation dresses mean-mindedness in the unconvincing disguise of a high-minded respect for the taxpayer's money. One thing that has emerged, for instance, is that the licensing unit of the Department was grossly understaffed during the relevant period. The repercussions of the affair are surely destined to rumble on, fuelled by the Ombudsman's investigations, and the Government may yet find itself paying a high political price for its ungenerosity.

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Sublime indifference to history

We must not expect solicitors to pay any more attention to history than any other section of our society, but it was nevertheless a great disappointment to read that a working party of the Law Society has decided in favour of payment by results for legal assistance. Surely the lessons of history should have persuaded them otherwise.

It is possible that a solicitor's professional education does not have to include legal history, but even if the early years of the common law are shrouded in mystery for the average practitioner most solicitors must be aware of contemporary history and in particular of what is happening in the American courts. Have they never read the reports, which are not likely to be all based on fiction, that whenever there is a major disaster, some American lawyers will cluster round the victims in the hope of sharing in the financial rewards to be obtained?

If, on the other hand, a solicitor does know something of the development of the common law, he will be aware of the difficulties under which the kings' courts established their jurisdiction. The court room was not infrequently invaded by armed bands: it was even found that one man-at-laws standing silent near the bar could influence the course of justice. The offences of maintenance and champerty were created to prevent undue interference with the legal system. Only those who were directly concerned could participate in a law suit, and to pay for somebody else's action was an affront to the system.

Some are now willing to turn back the clock. Not only would they allow, but they would actually encourage lawyers, whose disinterested efforts on behalf of the client are the glory of our legal system, to seek a share in the outcome. That is no answer to the problem of access to the Courts. Better and more generous legal aid would be one more acceptable alternative.

If we go far enough back we would find a society in which lawyers would not accept a fee. Even in medieval times a client would show his appreciation by putting something in the pocket conveniently left hanging at the back of his lawyer's gown. Contemporary reports do not tell us what the lawyer would do if adequate appreciation were omitted, but he would certainly not have demanded thirty percent of his client's damages!

P.S.
City Newsletter will return shortly.