

# Editorial

## Rights of Audience

Present recollections of the many controversies preceding and surrounding the enactment of the Courts and Legal Services Act are blurred by the three years that have elapsed since its Royal Assent. But the provisions paving the way for an end of the barristers' monopolistic rights of audience in the higher courts came home to roost on 8 December. It was announced by the Lord Chancellor's Department that solicitors in private practice, qualified in advocacy, would have rights of audience in civil and criminal proceedings in the House of Lords, the Court of Appeal, the High Court and the Crown Court. The possibility of extending this to salaried solicitors in government departments and in commerce remains to be resolved.

Leading members of the Bar have put a brave face on the prospect of enhanced competition. But the Lord Chancellor's announcement came just three weeks after publication of a report by a Bar Council working party on the young Bar, signalling that the Bar – which has grown by 23 per cent in the last four years – is in danger of "collapse from the bottom upwards". A quarter of the 7,000 or so barristers have been qualified for less than five years.

Young barristers need plenty of experience and professional exposure in order to advance. But shortage of work has led to many barristers dropping out within a year or two of qualifying. Many new barristers are burdened with debts incurred at university and Bar school. There is a worrying

shortage of pupillages and tenancies. One of several contributory factors is the crisis in the housing market, which has resulted in many solicitors compensating for the decline in domestic conveyancing by taking on work that they once passed to young barristers. Another is that solicitors have been undertaking more criminal advocacy in magistrates' courts – a trend encouraged both by recent changes in the criminal legal aid system (which encouraged solicitors to instruct other solicitors, rather than barristers) and by the increasing prosecution work-load taken on by CPS prosecutors.

Apart from anything else, the shortage of young talent, destined to be the next generation of silks, is a matter of real concern. The prospects look particularly grim for the criminal Bar, but advocacy in civil proceedings is also affected by the winds of change. Many of the larger City solicitors' firms are already preparing for in-house advocacy.

Should we shed tears for what barristers will inevitably perceive as a cruel twist of the knife in their professional wounds? Some might argue that the wound is in any case self-inflicted. More to the point, we are talking here about the overdue demise of a restrictive practice. Increasing exposure of the Bar to market forces will inevitably result in some individual casualties, but the consumer of legal services will benefit from increased competition. And ultimately the Bar itself may well emerge much the stronger, if a little leaner, from a painful period of adaptation.

*Gavin Drewry*

## News

### Insurance and the Single Market

According to a report in *The Times* of 15 December 1993, the Department of Trade and Industry will be able to suspend UK insurers' authorisation, freeze assets and demand information without a court order, under proposals that enable it to regulate the insurance industry in the EC Single Market, which it is hoped will be in force by July.

The DTI is seeking comments by February on the proposals that will bring UK law into line with the EC Third Directive on insurance. Under the proposals, regulation moves to the home State, so the DTI will be responsible for supervision of UK companies' business in the EC.

The benefits of the Single Market are that UK insurers should have greater freedom to operate overseas and consumers will be offered a greater choice of insurance products and be able to buy products from companies based in other EC States.

### Capital Allowances for Machinery and Plant

The Inland Revenue has published the clauses which will give effect to the Chancellor's proposals on capital allowances for machinery and plant announced on Budget Day (see p 17 in *Budget Information*).

These clauses introduce new rules which will help clarify the boundary between buildings, structures and land on the one hand and plant on the other; and new time limits for giving written notification of qualifying expenditure on machinery and plant for which a capital allowances claim may be made. The Chancellor's intention in bringing forward this legislation is to protect the Exchequer.

The legislation for these measures will be included in the 1994 Finance Bill.

Further details of the measures will be printed in the February issue of the *Business Law Review*.