Luncheon on 13th June 1989 will be Mr T.J. Palmer, Group Chief Executive of Legal and General.

D.G. COLE

THE 1988 AGM AND ANNUAL CONFERENCE
Main Paper

INSURANCE AND PROPERTY

by Professor John Adams and Emeritus Professor of Law at Queen Mary College, Director of Training, Titmuss Sainer & Webb

I must begin by stressing that I speak to you as a property lawyer who knows a little insurance, not as an insurance lawyer who knows some property. Perhaps the fact that one or other of those states of affairs is the common situation accounts for some of the obscurities that I shall discuss. The problems are then confounded by the unhappy situation that reform may lie largely with Parliament which is ignorant in large measure in both areas, and significantly not interested to boot.

Does the 1774 Act Apply?

My first comment is whether we should still after more than two centuries have to remain in doubt whether or not the Life Assurance Act 1774 applies to property insurance. We can then decide whether or not it ought to.

Surprisingly, the issue appears not to have been ruled on in the Courts till *re King* (1963)[1] when the issue was raised in Lord Denning's dissenting but, on this occasion, attractive judgment. The matter is dealt with in a few short sentences.

> "You must remember that when you take out a policy of fire insurance of a building (as distinct from goods), you must insert in the policy the names of all the persons interested therein, or for whose use or benefit it is made. No person can recover thereon unless he is named therein, and then only to the extent of his interest. That is clear from the Life Assurance Act, 1774 (14 Geo 3 c48), ss. 2, 3 and 4, which by its very terms applies to 'any other "event" as well as life.' "[2]

It must be remembered that in that case the insurance was in joint names and the

dispute was whether, the premises having been compulsorily acquired and demolished, the insurance proceeds should be divided between the co-insured proportionately to their interests, as the Master of the Rolls favoured, or go all to the tenant, as Upjohn and Diplock LJJ decided. So the question of the impact of the three sections of the 1774 Act was, if not obiter, at least pretty marginal.

The statement, however belatedly, of the applicability of the 1774 Act to property insurance seems to have had little practical impact. Only in 1985 did the issue appear in a more challenging form, namely the possible disqualification from benefit of a claimant not named in the policy. *Mark Rowlands Ltd v. Berni Inns Ltd* [3]saw the issue raised directly. The tenant who paid for the policy. wholly in his landlord's name, was held to be entitled to his share of the proceeds, section 2 notwithstanding.

Looking at the relevant passages in the judgement of Kerr LJ one is hardly bowled over by its intellectual force. It reads in full:-

"section 2 of the Life Assurance Act 1774. This provides:

> 'it shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies the person or persons name or names interested therein, or for whose use, benefit, or on whose account such policy is so made or underwrote.'

Although obviously directed primarily to life assurance, the words "or other event or events" admittedly widen its scope. A literal application of the language of section 2 would create havoc in much of our modern insurance law, and *Mumford Hotels Ltd v. Wheeler* (1964) Ch 117 would have been decided wrongly or per incuriam in ignorance of this statutory provision. In my view Mr Harvey was right in his submission that this ancient statute was not intended to apply, and does not apply, to indemnity insurance, but only to insurances which provide for the payment of a specified sum upon the happening of an insured event. I think that this is supported by the long title of the Act, and in Halsbury's Statutes of England, 3rd ed, vol 17 (1970), p827, it is pointed out that this Act is also known as the Gambling Act 1774. In *Dalby v. India and London Life Assurance Co* (1894) 15 CB 365, 387 the judgment of the court, delivered by Parke B, appears to distinguish insurances covered by this Act from indemnity insurance, and *Tattersall v. Drysdale* (1935) 2 KB 174, 181 Goddard J appears to have taken the same view."[4]

How easier life would be for lawyers, not least in the insurance field if "ancient" law could always be thus easily brushed aside! A firmer basis for denying the applicability

of the 1774 Act would have been welcome.

The consequences of settling the issue are several and important. If the Act applies, so must the section 1 requirement of insurable interest at the date of the policy. This could create problems; assume the property which is insured by the owner being later let, that tenant covenanting to pay or reimburse the insurance premium, far more common nowadays that the covenant to effect a policy in the landlord's name. *Mumford Hotels Ltd. v. Wheelers* and *Mark Rowlands* [6]would give the tenant some standing in regard to the policy proceeds, but a strict application of section 1 would deny him any such right, even if named, at least till after the next renewal of the policy. Can that be fair? Against what public evil or peril to the insurance industry is the application of the section safeguarding whom? I disagree with Birds on this score when he asserts "the application of section 1 to real property would in fact cause no problems..."[7] In the circumstances suggested, it could.

Similarly, the view that the Act does apply would deny un-named tenants at the date of the policy the benefits that *Mark Rowlands* and *Mumford Hotels* gave them, and prevent the insured with limited interest insuring for full value, and recovering on behalf of both himself and others interested, by reason of section 3. It would also prevent recovery by a party with only a contingent interest under a building agreement at the date of the contract recovering a greater sum than that value notwithstanding the subsequent acquisition of a much more valuable interest at a later date. These are unacceptable results, and it is to be hoped that, however unconvincing, the reasoning of the 1986 Court of Appeal arrived at the preferable answer. How strange that the 1984 edition of Colinvaux neither discusses *re King* nor the direct impact of the sections, but mixes it with a rather inconsequential discussion of the other 1774 statute?[8] MacGillivray and Parkington cites the *re King* ruling, and discusses some of the consequences, but does not broach the conflict between the statement in it and the decision in Mumford Hotels.[9] We can however be certain the forthcoming editions of each will not avoid the issues, as the editorial team for each includes authors who have already tackled the issue.

I have a further worry over section 2, should it apply, which is to know what exactly is required before a person is "named". The special Blocks of Flats policies which are now available on the domestic level for example are understandably drawn to name the insured generically "the lessees of the flats and their respective mortgagees" sort of thing. Does that suffice? I'm sure it should, but, once more, I don't think it has ever been decided expressly.

The consequence of the ruling on the *Mark Rowlands* case that the 1774 Act did not

apply so that the tenant, who paid the premiums, could be treated as a party to the insurance, was to oust a claim against the tenant by way of subrogation. It was conceded that it was dislike of subrogation that led to the decision on section 2, of course. However, subrogation leads me to my next topic.

Noting

Being treated as a party to the insurance contract is not the only route for a tenant (or a mortgagor or licensee for that matter) to bar subrogation. We have also the arcane mysteries of "noting". I have not yet found anyone who can venture an explanation of it. When the Office of Fair Trading was preparing its paper on Household Insurance a few years ago they discussed certain issues with a Law Society Land Law Committee panel. We invited them to approach the relevant bodies within the insurance world to seek an authoritative explanation of the concept and announce it to the waiting world. It is not mentioned in the published Paper[10], so we - or I, at least, - await enlightenment. Perhaps the discussion period today will provide it. Belief in its efficacy is widespread, I may add, as witness the insurance condition in the National Conditions of Sale[10a]. This entitles a purchaser to have an endorsement of notice of his interest on the vendor's policy, although the latter can retaliate by calling on the purchaser to pay a share of the premium. (The purchaser is also given a right to inspect the policy - I sometimes fantasise at the crowd of purchasers from Halifax Building Society mortgagors joining the queue at its Head Office to exercise their inspection rights!)

Two aspects are tolerably clear, I believe. Noting does not make the person whose interest is noted a party to the insurance contract. (I must admit that my colleague Robert Merkin appears to favour the opposite view in his new work on Insurance Contract Law[11]). That is not necessarily always adverse to the person who wants his interest noted. A tenant required to insure the property only in his landlord's name would breach his lease by adding his own or any other name to the policy - *Penniall v. Harborne.*[12] So also, a covenant to insure in joint names of landlord and tenant would be broken by adding in the tenant's mortgagee *Nokes v. Gibbon,*[13] but not, I submit, merely by noting its interest. Noting is said, however, to bar the exercise of subrogation rights. I have searched for a legal basis for that proposition; I have not found one yet. In the filing cabinet of my own mind, I accordingly file it under insurance lore, until I can move it into insurance law. It is a significant consequence, and a valuable one to those who gain that protection by having their interest noted. I only wish I could find a firmer basis for it.

I am further of the opinion that noting must have a second result. I can see no way in which an insurer could deny the right of a party whose interest was noted the right to

invoke his rights - such as they are - under section 83 of the other 1774 Act, the Fires Prevention (Metropolis) Statute. Estoppel there would surely be. I want to look at this section more closely; the paradox will emerge, if my suggestion that noting precludes a denial of entitlement to benefit from the section, that it may be better to have the lesser protection of noting rather than the apparently greater protection of being named as an insured party at least in respect of those matters to which the section extends.

Fires Prevention (Metropolis Act) (1774))

The 18th century prose of the section is too good to waste so let's first remind ourselves of it:

> 83 Money insured on houses burnt how to be applied
>
> And in order to deter and hinder ill-minded persons from wilfully setting their house or houses or other buildings on fire with a view of gaining to themselves the insurance money, whereby the lives and fortunes of many families may be lost or endangered: Be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the respective governors or directors of the several insurance offices for insuring houses or other buildings against loss by fire, and they are hereby authorised and required, upon the request of any person or persons interested in or intitled unto any house or houses or other buildings which may hereafter be burnt down, demolished or damaged by fire, or upon any grounds of suspicion that the owner or owners, occupier or occupiers, or other person or persons who shall have insured such house or houses or other buildings have been guilty of fraud, or of wilfully setting their house or houses or other buildings on fire to cause the insurance money to be laid out and expended, as far as the same will go towards rebuilding, reinstating or repairing such house or houses or other buildings so burnt down, demolished or damaged by fire, unless the party or parties claiming such insurance money shall, within sixty days next after his, her or their claim is adjusted, give a sufficient security to the governors or directors of the insurance office where such house or houses or other buildings are insured, that the same insurance money shall be laid out and expended as aforesaid, or unless the said insurance money shall be in that time settled and disposed of to and amongst all the contending parties, to the satisfaction and approbation of such governors or directors of such insurance office respectively.

Just imagine what it would do for the contemporary statute book if we had a little explanation like that before each section of the annual Finance Act! Clearly, that

element which allows - or does it not oblige? - the insurer to spend the money on rebuilding so as to frustrate the fraud or wilful arsonist seems quite superfluous today and could go. My plea however is that the whole section should be rethought and replaced or rephrased and retained if you like. Its main shortcomings are well-known - it applies to fire, only to insurance offices and not to Lloyds[14], not to fixtures but only to buildings and that it cannot be invoked once the moneys have been paid over. Most if not all of these should be remedied. Two particular weaknesses, less well known, may also be mentioned.

The most diligent action by say the lessees of a block of flats to operate the section to secure re-instatement by the insurer can be frustrated by the insured landlord or management agent who fails or refuses to initiate a claim. Reports of such an unsatisfactory state of affairs were made to the Nugee Committee and some provisions in the Landlord & Tenant Act 1987[15] provide a partial remedy. It permits the tenant who contributes to the premium to give notice of the damage giving rise to a potential claim to the insurer which extends the period for a claim to six months from the date of damage. This in theory will give the tenant time to seek to compel the reluctant insured party to make a claim but is not at all generous, I suggest. I would myself prefer a statutory provision whereby the modernised right to claim re-instatement could be invoked by the interested party in spite of inaction by the insured party, subject to proper safeguards of prior notice, reasonable periods for compliance and so on.

Secondly, there is the statement by *Forbes J* in *Reynolds v. Phoenix Assurance*[16] that the one actor in the drama who cannot invoke section 83 is the insured party himself. In the bitter wrangling in that case, where the insurers were challenging the genuineness of the insured's plan to rebuild, his advisors sought to call upon the insurers to spend the necessary sum "- to cause (it) to be laid out and expended" - on re-instatement. It may have been a tactical ploy in that case, but one can see circumstances where it would provide a sensible solution to a dispute about re-instatement. Perhaps insurers will not agree, or would their response be "give us the requisite 'sufficient security' and we'll pay you the money and you get the rebuilding done"? The Court refused a mandatory injunction in *Wimbledon Park Golf Club v. Imperial Insurance Co Ltd*[17] in 1902 because the parties could not agree what was to be done, so the insurer would have to be given the power, in effect, to resolve such differences. In any event, I hope all this explains my earlier statement of the paradox that it's better to be noted than named!

Joint Insurance

My discussion of the Fire Prevention Act has led me to the whole topic of the insurance of property in which more than one party is interested - and these days how much owner occupied unmortgaged property is there? In this area, the property lawyers have a great deal to answer for, but perhaps some of the blame should attach to the insurers, too, for failing to give a firm enough lead. Far too often and far too readily the conveyancing formulae in leases and mortgages alike glibly refer to insurance in the joint names of landlord and tenant or mortgagor and mortgagee. As the parties have separate interests it is those distinct interests which should be covered, so that composite insurance is what is needed. There is authority that what some say is the usual wording - that the insured are covered "for their respective rights and interests" - - does achieve composite insurance; *(General Accident Fire and Life Assurance Corporation Ltd v. Midland Bank Ltd* 1940)[18]: all I can say is that I don't always see that wording in some of the joint name policies I see and some of the statements of Upjohn LJ in *re King*[19] support my view - "the lessor and the lessee could, of course, agree to enter into an insurance policy which would ensure their respective interests... The one thing that is clear is that the lessor and lessee never intended to do any such thing.[20]" The perils of joint insurance are obvious - the risks of breach of duty by one insured vitiating the whole cover, wilful misconduct of the co-insured having a similar result and the more troublesome issue of payment. In 1848, Lord Denman CJ held that one of two joint insured could give a good receipt *(Penniall v. Harbourne)*[21] but in 1963 Upjohn LJ was of the opposite view *(re King* again)[22]. Composite insurance should avoid these perils; the Building Society was paid in full by the Sun Alliance when Mr George Henry Woolcott was not[23]. He was "guilty", it may be recalled, of not volunteering his murky criminal past.

I appreciate that many commercial policies may be modified by tenants' default conditions whereby misbehaviour of one tenant would not deprive other tenants or the landlord of cover, but again they are not universal and have to be bargained for. Moreover, if all multi-name policies were composite policies and not joint there would hardly be the need for these clauses, would there?

Valuing Separate Interests

Even assuming these problems are overcome, the assessment of the value of the *respective* interests is far from easy. The mortgagee's interest, at least with a single property having a fixed, or reducing, sum charged on it, presents few problems of assessment, and the mortgagor will get the residue up to market or re-instatement value (or is it cost?), according to which measure is appropriate. But what with landlord & tenant? I have to say quite firmly that I do not wholeheartedly commend the method of assessment accepted by the Court in the most recent case where this

issue was raised - *Beacon Carpets Ltd v. Kirby*[24]. (In the case, incidentally, the lease provided in terms for joint names and the policy covered the respective interests. Slade LJ is sure "that is what...the parties agreed as between themselves"[25].)

Browne-Wilkinson LJ suggested the following formula:-

> I would therefore allow the appeal on this aspect of the case and substitute a declaration that the sum representing the insurance moneys belongs to the landlords and the tenants in shares proportionate to their respective interests in the demised premises (land and buildings) immediately before the fire. In default of agreement, this will involve (i) a valuation of the freehold with vacant possession on that date (£x) and (ii) a valuation of the leasehold on that date (£y), both valuations being on the basis that there was unconditional planning permission. The sum will then be divisible by paying y/x thereof to the tenants (plus interest actually received on the sum so paid), and paying the balance to the landlords[26].

I do not think that the only division by any means, nor the fairest.

A better formula, especially bearing in mind the reference to "immediately before the fire", would be to ascertain "Z" the value of the freehold reversion, subject to the lease at that date and "Y" as before, and give the tenant Y/Y+Z and the landlord the balance. The two formulae only produce the same result where the Vice-Chancellor's "X" equals my "Y plus Z", which may well not be common.

The problems are not merely those of valuation of the respective interests but the more intractable issues of insurance cover based on either the loss of market value or re-instatement cost of the buildings. The site remains in the normal case. The parties had legal interests in the site and buildings reflecting the residue of the one party's lease and the other's reversion to the lease. The former may be enhanced by, say, goodwill and the latter by, say, relationship to other adjoining properties. The valuers can value those abstract property rights, but the insurance valuation may well have proceeded on a quite different basis. My own view is that the ideal solution to what I see as this dilemma would be to add some element of contingency cover to the property cover so that the true loss of each party in the case of destruction is covered in a way that may not always be covered by the more usual policy.

Vendor and Purchaser: The Law Commission's Working Paper

Finally, I would like to deal with another common situation of concurrent interests,

being vendor and purchaser. The topicality of this issue has increased markedly since I undertook to give this talk; within the last week or so the matter has been brought into prominence by publication of Law Commission Working Paper No 109 "Transfer of Land. Passing of Risk from Vendor to Purchaser[27]." Part 1 of this Paper questions the whole theoretical basis of the passing of risk - the imposition of a particular form of trust. Part II specifically discusses insurance. The arguments will be familiar to this audience, but the proposals to remedy the defects will perhaps be new.

Briefly to summarise the arguments, the vendor can recover the full insured value[28]; if the purchaser can still pay him, the insurer gets its money back, except perhaps if he had spent it on repairing the property[29]. Indeed if the purchaser can pay, the insurer can sue him by virtue of subrogation[30]. The wise purchaser insures; the Law Commission joins the chorus of condemnation of this double insurance. It next expresses more doubt over the right of purchasers to invoke section 83 of the 1774 Act than most of the other commentators.

Then the Paper turns the spotlight on section 47 Law of Property Act 1925, designed, as it was, to reverse the effect of *Rayner v. Preston*[31]. Let's remind ourselves of the section.

Application of insurance money on completion of a sale or exchange.

47. - (1) Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor.

(2) This section applies only to the contracts made after the commencement of this Act, and has effect subject to -

(a) any stipulation to the contrary contained in the contract,
(b) any requisite consents of the insurers
(c) the payment by the purchaser of the proportionate part of the premium from the date of the contract

(3) This section applies to a sale or exchange by an order of the court, as if -

(a) for references to the "vendor" there were substituted references to the "person bound by the order";
(b) for the reference to the completion of the contract there were substituted a

reference to the payment of the purchase or equality money (if any) into court;

(c) for the reference to the date of the contract there were substituted a reference to the time when the contract becomes binding.

Its shortcomings have been demonstrated by decisions of the High Court of Australia and in New Zealand. Under the first decision *Ziel Nominees Ltd v. VACC Insurance Co* [32]the purchaser paid the vendor, who had authorised the insurers to pay the proceeds to him. The insurers argued, successfully, that nothing was payable as the vendor had lost nothing. Am I alone in thinking the result markedly unjust? Under the second, *Budhia v. Wellington City Corporation*[33], the insurer exercised its subrogation rights to sue the purchaser, forcing him to pay the vendor and then reclaimed what it had paid the vendor, so thwarting the latter's undertaking to pay the insurance proceeds to the purchaser. Perhaps an equivalent to section 47 would have prevented the second result, though not the first. One would like, for instance, to consider the effect of an argument that the wording of the section "the money shall... be held or receivable by the vendor on behalf of the purchaser" creates a trust and that a trust should be proof against a claim for returning of the moneys. Of course, I know the insurer is not reclaiming that parcel of money but only a sum equal to that amount, which is why I was very careful only to say I "would like to consider"!

Little comfort can be gleaned from the wording of the section, alas, on the *Ziel v. VACC* point. The words omitted from my citation from the section are crucial; the full citation is that "the money shall, on completion of the contract be held..." and the section continues that the money is paid over "on completion of the sale or exchange, or so soon thereafter as the same shall be received". As a fellow professor said in another context "Ouch! We have ways of making you fall into traps."[34]

Reliance on robust judicial interpretation to avoid these results seems unwise to the Law Commission, as it had already done to various other Law Reform bodies. They prefer an 1882 Victorian amendment which reads:-

> 35 (1) During the period between the making of a contract for the sale of land and the purchaser becoming entitled to possession or to the receipt of rents and profits pursuant to the terms of the contract, any policy of insurance maintained by the vendor in respect of any damage to or destruction of any part of the land agreed to be sold pursuant to the contract shall in respect of the said land, to the extent that the purchaser is not entitled to be indemnified under any other policy of insurance, enure for the benefit of the purchaser as well as for the vendor and the purchaser shall be entitled to be indemnified by the insurer under any such

insurance policy in the same manner and to the same extent as the vendor would have been if the land had not been subject to the contract.

(2) It shall not be a defence or answer to any claim by the purchaser against the insurer made under sub-section (1) hereof that the vendor otherwise would not be entitled to be indemnified by the insurer because the vendor has suffered no loss or has suffered diminished loss by reason of the fact that the vendor is entitled to be paid the purchase price of the balance thereof by the purchaser[35].

The Law Commission discusses the three conditions attached to section 47 - no contrary provision in (sale) contract, consent of insurer and payment of premium share. Next it stresses why reliance on section 47 is rare - indeed it is expressly excluded by one of the standard sets of Sale Conditions[36] - namely the uncertainties of whether anything would be payable under the vendor's insurance anyway. Again a Victorian solution is proposed - a sub-section simply preventing the insurer relying as against the purchaser on the fault of the vendor[37]. Even that could hardly apply if the "fault" was simply not to renew the policy. The reform would not assist a purchaser, moreover, if the vendor was underinsured. So while the Law Commission recommends legislation like the Victorian statutes, it eventually puts forward as its main recommendation an alteration in the substantive law to postpone the time when the risk passes from vendor to purchaser.

In a way, this may be said to make the discussion of the insurance aspects rather incidental. In self-defence I hope it has been central to my theme, namely the ill consequences of property lawyers (including the distinguished property lawyer who drafted the Law of Property Act and the later property lawyers who have left it untouched for over sixty years) ignoring the basic concepts of insurance law like the principle of indemnity or the rights of subrogation. This property lawyer can only hope that he has not exposed too much of such ignorance on his part in these comments either!

1. [1963] Ch 459
2. at p485
3. [1986] Ch 211
4. at p227 D-G
5. [1967] Ch 117
6. [1986] Ch 211
7. Modern Insurance Law (2nd Edition) p37. He there draws attention to the ingenious reconciliation of sections 1 and 2 of the Act in *Davjoyda Estates Pty Ltd v. National Insurance Co of New Zealand Ltd* [1965] NSWR 1237, (1967) 65 SR (NSW) 381
8. Fires Prevention (Metropolis) Act 1774; see Chapter 11 especially paragraph 11-11. He renders it throughout as the Fire (sic) Prevention (Metropolis) Act.
9. Cp para 1652 and 1654
10. "Household Insurance" A Report by the Director General of Fair Trading (September 1985)

10a. Condition 21(3)

11. Para 4.4-04 note 4
12. (1848) 11 QB 368

13. (1856) 26 LJ Ch 433
14. *Portavon Cinema Co Ltd v, Price* [1939] 4 All ER 601
15. Schedule 3
16. [1978] 2 Lloyds Rep 440
17. (1902) 18 TLR 815
18. [1940] 2 KB 388
19. [1963] Ch 459
20. at 492
21. (1848) 11 QB 368 at 376 - admittedly a passing reference to the point
22. [1963] Ch 459 at 492-3
23. *Woolcott v. Sun Alliance and London Insurance Co Ltd* [1978] 1 WLR 493
24. [1948] WLR 489
25. at 500A
26. at 497H 498A
27. Working Paper 109
28. *Collingridge v. Royal Exchange Insurance Corporation* (1877) 3 QBD 173
29. See Working Paper 109, para 2.2 - no authority is cited for the qualification
30. *Castellain v. Preston* (1883) 11 QBD 380
31. (1881) 18 Ch D1 - vendor did not hold sums recovered on trust for purchaser
32. (1975) 7 ALR 667
33. [1976] 1 NZLR 766
34. [1980] Conv 7 - Professor J T Farrand
35. Paragraph 2.19 of the Working Paper
36. Law Society Condition 11
37. Paragraph 2.28

LUNCHTIME ADDRESS
by Sir Gordon Borrie, Q.C., Director-General of Fair Trading

1. I should begin by thanking you for inviting me to speak on this occasion. What I propose to talk about is, first, my general role under the Financial Services Act and, second, the particular views that I have taken on the marketing of life insurance.

2. My duties under the Act are quite specific. Before A-day, I was required to report to the Secretary of State as to whether anything in the rule-books of each of the new regulatory bodies, SIB, SROs and RIEs was likely to restrict competition to a significant extent. If I concluded that in any way the rules were significantly anti-competitive, and the Secretary of State agreed, then he could only designate SIB, or allow the SIB to recognise the other regulatory bodies if he decided that the anti-competitive effects were outweighed by the benefits to the protection of investors. Perhaps because the Fair Trading Act gives me a general consumer protection role, many commentators have not understood that, in this area, I am required to take a narrow view and to deal solely with competition effects. Any balancing that ought to be done between competition and investor protection is for the Secretary of State, not me.

3. The task of preparing reports in time for A-day was not a light one: indeed between March 1987 and April 1988 I made twenty-six reports on eighteen institutions. However, A-day has come and gone and my on-going task is less time constrained. It is to examine any changes in the rule-books to see if they may restrict competition to a