

The Law on Shop Hours?

THE CASE FOR DEREGULATION

by

JEREMY MITCHELL

A York do-it-yourself store was fined £7,000 in October this year. It was the seventh time that it had been prosecuted by the council and the firm concerned has so far had to pay £19,000 in fines and £500 in costs. What crime did it commit? Did it defraud or endanger its customers by selling sub-standard or unsafe goods? Did it fail to pay its taxes? Did it put its workers' health and safety at risk? It did none of those things. It was found guilty of selling on Sundays paints, brushes, wallpapers and other DIY goods. Under the Shops Act, 1950, that is a criminal offence in England and Wales.

Present Law and its Enforcement

That's something that would surprise the 35 per cent of people who said in a recent MORI survey conducted for the National Consumer Council that it was legal for DIY stores to trade on Sundays. The 73 per cent who thought it was legal for garden centres to trade then would have been equally surprised by the fact that Nottingham City Council recently threatened to seek a High Court injunction against a Nottingham garden centre unless it stopped trading on Sundays. The firm later announced that it had no option but to lay off six of its staff, after complying with the council's instructions. It had done one-third of its week's business on Sunday.

The two councils cannot be faulted for enforcing the law. They are not alone. In 1983, there were 500 convictions in England and Wales for trading illegally on Sundays. For every prosecution, however, there are probably scores of cases where councils turn a blind eye to infringements of the law. This is demonstrated by the fact that in one month alone, between mid-October and mid-November 1983, the National Consumer Council collected nearly 3,000 advertisements for Sunday trading from provincial papers in England and Wales. Of these, almost 1,700 were for shops advertising opening in contravention of the law. Shops are not only breaking the law, they are spending money advertising the fact.

Attitude of Councils

Some councils make no secret of the fact that they will prosecute offenders for breaking the law on shop hours only if a formal complaint is lodged. The London borough of Kensington and Chelsea, for instance,

made public recently its 'reluctance' in warning Sainsbury's that it was opening later at night than was legal. The warning followed a complaint from a rival store, which didn't want to open late itself and didn't want its rivals doing so. At the same time, the council made known that it was campaigning for the law on shop hours to be reformed.

It is not unique. The Association of District Councils – like the National Consumer Council – is pressing for repeal of the present legal restrictions on shop opening hours, to leave shops free to decide for themselves when to open. Behind the Association's campaign lies the fact that its members have found the law increasingly hard to enforce fairly – and they know that it is out of step with public opinion.

Anomalies and Illogicalities

It is hardly surprising that the law on shop hours is so widely ridiculed. It is full of anomalies and illogicalities and betrays its ancient origins in the fact that it permits the sale of fodder for mules on Sundays but not a tin of catfood! The classic absurdities that it is an offence for a bookseller to sell a Bible but not for a newsagent to sell Playboy magazine on a Sunday, or legal to buy gin but not milk powder for a baby's bottle – are now well-known. Less well known perhaps, are the facts that you may buy a film for your camera from a zoo, but not from a photographic shop or chemist, and buy paint to touch up your car or bicycle but not paint to decorate the house. There are numerous other anomalies, bearing little or no relation to today's needs.

The Changes Wanted?

Even those most implacably opposed to making it easier to trade late at night or on Sundays agree that the law needs to be changed. The debate is about what changes are needed.

There have been sixteen attempts to get the law changed since 1950. All have failed. Yet it is clear what public opinion wants. The MORI survey carried out for the National Consumer Council this summer showed that 69 per cent of people think the law should be changed to allow more shops to open on Sundays. Given a choice between eight non-party political topics, on which legislation is possible, people gave more support to legalising Sunday trading than to the other possible legislative changes.

Organisations that represent the interests of consumers – Consumers' Association and the National Federation of Consumer Groups, as well as the National Consumer Council – all think shops should be freed from statutory control of opening hours. A growing number of bodies representing traders, including those catering for tourists, and individual traders, like Asda and Habitat, take the same line.

Opponents of Radical Reform

Opposition to radical reform of the law comes mainly from those who oppose Sunday trading on religious grounds, from traders who don't want to trade on Sundays themselves and don't want their rivals to, from some of the smaller shopkeepers who fear they will lose business to bigger stores if Sunday trading is legalised, and from USDAW the shopworkers' union. However, some of these groups favour a partial change.

The trouble with tinkering with the law, rather than radically reforming it, is that you then create new anomalies. To take just one suggestion – that only shops with less than 3,000 sq. ft. should be allowed to open on Sundays – it is easy to imagine the discrimination that such a dividing line would cause between a shop of the right size and one just a few feet larger, and the trouble that shops would take to get round the law. Such a limit would also be unfair to some of the retailers already benefitting from Sunday trading – DIY and garden centres, for instance, and furniture stores.

The Effects Feared?

In justification of their stance, opponents of allowing shops to choose their own opening hours raise the bogey of this leading to 24-hour a day, seven-days a week trading, with shop workers being exploited, or else an increase in retailing costs that would force up prices.

New evidence from Sweden casts doubt on this. There, derestricted shop hours led to more jobs in shops, through the opening of some 2,000 new convenience stores. Prices have not gone up and many retailers have found Sunday trading extremely profitable. Shops do not open everywhere, all the time, but only at times and in places which suit retailers and customers. Workers receive double time for working Sundays and after 8 pm and time and a half for working between 5 pm and 8 pm during the week.

The Evidence from Scotland

Indeed, we need look no further than Scotland for further evidence of this kind. What happens on Sundays in Scotland is much the same as what already happens in England and Wales. The difference is that in Scotland it's legal. There, only barbers and hairdressers are banned from Sunday trading.

There is no evidence that prices have risen as a result, nor that shop workers are exploited. On the contrary, agreements giving them extra pay and time off have been negotiated.

Seven days a week trading is not the norm. Habitat, for instance, closes on Mondays but trades from Tuesday to Sunday. It finds it does 20 per cent of its six days a week trading in Scotland on Sundays, even though it opens for a shorter time then. Only a minority of shops open on a Sunday.

Those most likely to do so are small corner shops, hypermarkets and discount warehouses on the outskirts of big towns and shops in tourist resorts. Also, some High Street shops open on a few Sundays before Christmas.

The Religious Objections

There remain the religious objections to Sunday trading. As Joan Macintosh, former Chairman of the Scottish Consumer Council and herself a churchgoer has said, the fact that Sunday trading is permitted in Scotland does not prevent anyone from going to church if they want to. In her words: "I would oppose any attempt to force people against their will to work or to shop on Sundays. What I dispute is whether, in an increasingly pluralistic society, those who believe in observing the Christian Sabbath strictly have the right to impose their beliefs on others whose Sabbath may be a different one, or for whom Sunday trading is not incompatible with their personal philosophy".

Finally, the greatest anomaly of all is that retailers should be free to compete on price, products and service, but not on opening hours. When the law is changed to allow retailers to open at times that are convenient and profitable for them and their customers, I suspect we shall wonder what the fuss was all about.

Note of the Author

JEREMY MITCHELL has been Director of the National Consumer Council since October 1977. He is also a member of the Economic Development Committee for the Distributive Trades. Previously he has been in service with the Consumers' Association, the National Economic Development Council, the Social Science Research Council and the Office of Fair Trading. He has written and broadcast extensively on consumer affairs.