The civil justice system and legal profession: The challenges ahead: Speech by Mr Justice Lightman, High Court Judge: The 6th Edward Bramley Memorial Lecture

Introduction

I had the pleasure of teaching law at the University of Sheffield during the year 1962-3. After leaving University College London with my LLB I spent a blissful year at the expense of the American taxpayer at the University of Michigan studying for the LLM. The warmth of the hospitality afforded to foreign students extended to the adoption of a mature approach to examinations: there was a presumption that we passed. I cannot too highly recommend the experience. The icing on the cake was an invitation from Professor Roy Marshall, the Head of the Sheffield University Law Faculty, on my return to England to teach here, an offer I gratefully accepted as a means of financing the year I was to study for Bar Finals. It was one of the happiest years of my life. Professor Graham Battersby became a lifelong friend as well as my co-author of the first modern student casebook on land law. I worked with Professor Marshall on his edition of Theobald on Wills. His lasting reputation rests on his work in establishing the faculty as it is today in the front rank of legal academic institutions and in his writings in the field of equity and trust. I and other faculty members owe him a special debt for introducing us to the wonders of Barbados rum and hospitality.

For me, my year was the prelude to my subsequent 32 years at the Bar and nine years on the Bench, and my invitation to give this prestigious lecture has been occasion to look back and to consider how far legal practice has changed for good and for bad since that time. Changes in both directions have been substantial. My primary concern is for the litigant, the customer for our legal services. Is he better served today than yesterday? The question is an important one for all concerned with the law. The answer is in my view far from reassuring.

At the root of the problems we face are the adversary system and the case law system on which the common law places (or misplaces) such pride, and the huge cost which they occasion litigants. The mantra recited as the blessings and goals of a modern human rights compliant civilised legal system are the rule of law, access to all, legal certainty and equality of arms. The law and the legal system should be a protection, a safeguard, a source of peace of mind, to which recourse should be available by all at an affordable cost. The overriding objective of the Woolf Reforms is formulated to achieve these objectives. My concern is how distant we are and how more distant we are becoming from achieving these objectives. To the great majority of the public the perception (if not the reality) is that the legal system is a profitable monopoly of the lawyers, a source of profit for the providers of legal and ancillary services and a business which does not adequately cater for the less advantaged. In this lecture I want to examine some of the developments in the legal system over the past recent years and how far they accord with, advance and retard the achievement of a just legal system.

I want to examine developments in six areas in particular. In three there have been developments which are to be welcomed, namely the Woolf Reforms, the rise of alternative dispute resolution ("ADR") and the Human Rights Act. In three there are developments with far reaching negative consequences, namely the rise in legal costs, the displacement of public funding by the conditional fee and the metamorphosis of both branches of the legal profession into legal businesses. There is no doubt an interrelationship between these six developments. The Woolf Reforms have placed some form of brake on costs, and the developing business culture and rising costs (as well as the Woolf Reforms) have no doubt given impetus to the increasing use of ADR. But I shall consider each development separately. But before I do so I must say a word about the adversary system as practised in this country and its shortcomings. For that is the backdrop against which all these developments require to be viewed.

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The adversary system

English institutions have tended to reflect the traditions and values of upper class England. English civil procedure has always reflected the values and traditions of the English sport of cricket most markedly in the adversary system of justice, and not only in the sense that both are slow and boring. In summary, each side prepares its team for the contest. One side in turn goes in to bat (i.e. address the court and call its witnesses) and faces the bowling of the other side (i.e. the cross-examination of its witnesses); then the other side takes its turn at the wicket, calling its witnesses. Each side then has the opportunity in final speeches to make its case and unmake that of its opponent. Throughout an independent third party umpire, selected on grounds of his relative expertise and experience, watches, listens, and enforces the rules, and at the end of the game gives his decision as to the winner.

The adversary system has a number of disturbing features for those who are more interested in the achievement of justice than in the playing of the game.

The first feature (which is not unique to this activity) is that success turns very much on the performance on the day. If (as often happens) a party or his witness for any reasons "has a bad day" (or under-performs as a witness) or his counsel (e.g. because of lack of preparation or ability or misjudgment) lets him down, his prospects are placed at the greatest risk. He has had "his day in court". He cannot obtain a "replay". It is important to appreciate the stress and strain that this places on all concerned, and in particular witnesses. Those who give evidence stand in public view in an unfamiliar surrounding to answer (often hostile) questions which may admit of no clear or simple answer. I have only once given evidence - whether I had concluded a compromise with my opposing counsel. Though in an entirely familiar surrounding, and though I knew the judge well and he knew me, I was more nervous and afraid than when addressing as counsel the most daunting tribunal. I recall distinctly in the split second between being asked a question and answering it puzzling how it should be answered, conscious of the difficulty to give an answer, let alone to give an immediate answer, conscious how easy it was innocently to give the wrong answer and that throughout the exercise my credibility was under scrutiny. Do not imagine that judges possess a sixth sense enabling them to "see the truth". They are as susceptible to error as anyone else. Any judge who tells me that he has no problem segregating the sheep from the goats reminds me of the professor of another discipline whom I met when I was interviewing students for admission to a college where I was teaching. I found the selection process excruciatingly difficult. When I later told the professor of the difficulties I had experienced, he brushed my concerns aside. He said that within a minute of an interview with candidates for admission he never had any doubt who to select. Duly impressed, I mentioned this remark to one of his colleagues. His colleague laughed and said that the professor indeed had no difficulty: he had a long and consistent record of always selecting the wrong candidates.

The second feature (which accentuates the importance and effect of the first) is that a party's performance at the trial very much turns on the investment made by the respective parties in the litigation: at all stages in the litigation money talks loud and clear. The human right to equality of arms has little, if any, meaning or practical effect in this context and the judge, however fair minded and interventionist, has limited scope to redress the balance. A litigant purchases the quality of justice he can afford. The first "item" on the shopping list is quality of legal advice. The quality of solicitors and counsel varies as does the quality of wine from "unfit to drink" to vintage. Vintage tends to be very expensive beyond the means of the ordinary litigant. Most must be satisfied with "plonk". The quality of the advice is critical for the decision whether to make or concede a claim. The second item is the quality of the preparation for trial e.g. drafting pleadings and obtaining and drafting witness statements and preparation of skeleton arguments. The third is the quality of representation at the trial. A failure of advice at the first stage is calculated to cause irreversible harm. The prospects of success of a case very much turn on the quality or lack of quality of preparation for trial. Cases are won and lost by reason of the quality of representation at the trial: hence the extravagant fees paid to litigation lawyers. Common experience reveals how unbalanced the legal process is at all three stages between the "haves" and the "have nots". Tell it not in Gath but the scales of justice favour those who can afford to buy it.

I recall a clear example when I was at the Bar. I was counsel (one of four counsel) for a manufacturer which was the defendant in mammoth litigation relating to a drug. The claimants in the case brought proceedings alleging that the drug caused deformity in the children born to parents who took it. Millions of pounds were at stake because this was a test action not only for the legally aided claimants in this country, but also for claimants in the USA, where jury awards and contingent fees dwarf the expectations of the

greediest lawyers here. The outcome of the litigation very much turned on two factors. The first was the quality of the training of each side's lawyers in a multitude of relevant legal disciplines in which experts were called to give evidence. The second was the results of research studies in this country and the USA. The legally aided claimants had limited funds reflecting the demands for public funding in the country as a whole. For us the manufacturers, nothing was spared: the defendant's reputation and possibly its future existence was at stake. Weeks of training were provided, and when it emerged that the claimant's case essentially rested on the published results of two studies, one in England and one in the USA, every resource was made available to test and challenge them. The resources available to us (and nothing else) enabled us to put in place the necessary investigation and make the necessary court applications for production of the documents on which the English study was based. These documents revealed that the research results here were fabricated. The most detailed examination of the underlying data in the USA enabled us to establish that the published results in the USA were not (as they appeared to be) statistically significant - the published results being vitiated by elementary mathematical errors. As a result, the claimants abandoned their action only weeks before trial. Justice may have been done. But it is significant that the claimants did not have the funds to undertake an equivalent exercise in respect of the research relied on by our clients: what might have been the result of such an exercise is pure conjecture. The defendants out-resourced the claimants.

The third is the limitation placed on the role of the judge in achieving justice in the case before him. He will endeavour to achieve justice to the extent that he is free to do so, but his freedom is constrained. He must always remember that at the trial he is not a participant in the dispute: he is a detached observer and must not enter the arena. The search for truth (so far as he is concerned) is limited to the evidence placed by the parties before the court. Unlike the judge under the Continental inquisitorial system, who is subject to no such constraint and whose role is the single-minded pursuit of truth and justice, he is not (for example) at liberty to call a witness essential to finding out the truth where the parties feel for good reason unable to call him themselves but would wish or not oppose his being called by the opposing party or the court. Likewise the judge here cannot ordinarily to any significant degree assume the role of redressing the lack in balance in quality of representation between the parties by advising the disadvantaged how to make good his case or make it good for him. That is not cricket.

Fourthly and finally, the adversarial system is expensive and time consuming. The quality of English justice is high even for those who can afford it. You must purchase your "champions" for the tournament and champions do not come cheap. One continuing luxury is the silk system. As I said in my 1998 Chancery Bar Association lecture, in the public perception the grant of silk is tantamount to the grant of a licence to print money. This comment was not universally welcome by those who had taken silk or planned to do so. But I stand by it. I see this day in and day out when I am required to assess costs. Indeed it is worse than that. The silk's inflated fee is still, if not regularly, at least in my experience frequently, the bench mark for the fee payable to the silk's (often unnecessary) junior (a blind half or two-third proportion) and indeed often for other parties, whether or not led. The justification regularly put forward for the inflated fee is that such incentives must be furnished to attract talent to the Bar. Barristers must be seen capable of earning at a level comparable with top solicitors, accountants and city gentlemen. This argument ignores the fact that the Bar is and should remain an honourable profession and a uniquely attractive calling. Without such fees the Bar can and will attract those whose talent is combined with a commitment to play a part in our system for justice and for whom money is not everything. It is sufficient to say that increasingly informed advisers wisely recommend prospective litigants (as likewise purchasers of new cars) in order to make savings in terms of cost, where it is practicable, to sue on the Continent e.g. in Holland, Belgium or Germany, rather than here. In those countries at least equal justice is obtainable at a fraction of the cost. The movement of litigation to foreign courts for this reason has been particularly noted in the field of intellectual property and most especially patents, where the forum of choice is Germany.

The deficiencies of the adversary system are aggravated by the case law system, which potentially vests with almost mystic significance every word in the judgment of a superior court judge: as by alchemy his sayings become law. Hence there has arisen the profitable industry of reporting more and more judgments with no effort made by publishers to distinguish between those which are extempore and those which are considered or to avoid duplication of reporting. The practising lawyer is obliged to expend ever increasing resources and time (paid for by clients) on obtaining access to and studying these reports, and judges are increasingly subjected to being bombarded in written and oral form with torrents of authorities. The judges

make too limited efforts to keep their judgments as brief as the reasoning requires. Appellate courts insist:

a. on blessing their readers with judgments when it is unnecessary to say more than that they agree with the judgment below and with separate judgments of their members when single judgments of the court would be of greater value in clarifying the law; and
b. on giving permission to appeal in hopeless cases if they afford a chance to "clarify the law".

Why should litigants be forced to subsidise the exercise of clarifying the law? A system which finds it necessary to provide such a service should surely itself pay for the privilege.

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Developments

I turn now to each of the six developments to which I referred, each of which requires separate consideration. I begin with the three positive developments.

(a) The Woolf Reforms

Civil Procedure Rule 1 sets out the overriding objective which permeates the new procedural rules and governs their application. It reads as follows:

"(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly;

(2) Dealing with a case justly includes, so far as is practicable

a. ensuring that the parties are on an equal footing;
b. saving expense;
c. dealing with the case in ways which are proportionate
    i. to the amount of money involved;
    ii. to the importance of the case;
    iii. to the complexity of the issues; and
    iv. to the financial position of each party;
d. ensuring that it is dealt with expeditiously and fairly; and
e. allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."

To the outsider these objectives of a civilised legal system would appear self-evident, and the surprise lies, not in their statement in the Civil Procedure Rules, but in the need to state them and their absence prior to implementation of the reforms.

The Woolf Reforms have had a positive effect in a number of areas directed at achieving the overriding objective. I shall mention only a few:

i. the pre-action protocols require the parties in effect to let each other know the basis of their proposed claims and proposed defences before issue of proceedings. This procedure, has to a degree increased costs by occasioning "front end loading" in cases where the exercise has not led to a premature settlement or other resolution of the disputes. But undoubtedly the procedure has substantially reduced the number of actions launched, and led to a reduction in civil business. I know this is true. It is not just a matter of an appreciable reduction in the pressure of business on the courts. I have heard lawyers complain of the effect on their business. If the development hurts in this way, it is the clearest confirmation that it is working;
ii. the encouragement of the court to make summary orders for payment of costs and summary assessments of costs has led to parties feeling the "pain" as soon as an abortive or unconsidered application or resistance to an application has met its fate. Solicitors cannot conceal from their clients the failure and its consequences, and the client cannot discount the consequences as postponed until

after any subsequent trial. Parties are more cautious and sensible, and unnecessary court business is avoided;

iii. the assumption by the court of full case management powers should and often does enable the court to ensure that interlocutory stages and delay are minimised and a trial of the essential issues expedited;

iv. the severe limitation on the role and scope of expert witnesses (often in the past no more than paid advocates speaking in foreign tongues) has removed a drain on resources and court time; and

v. the special lists and procedure for trial of small claims provide a public service of inestimable value due to the commitment and wisdom of District Judges.

But it must be acknowledged that for all these advances, litigation of any substantial size (most particularly in the High Court) remains an extravagantly expensive and unpredictable exercise. As I recently said at a conference on the primary form of ADR, namely mediation, the present system affords limited grounds for any confidence that any proceeding will result in a correct or just result: at best it affords a limited bias in that direction. These facts constitute a deterrent for any but the most gung-ho litigant whatever the merits to making or defending a claim.

(b) Alternative Dispute Resolution

The price (in every sense of the word) of litigation has given the impetus to find and encourage other methods of resolving disputes. The method principally in vogue and endorsed by the Woolf Reforms is mediation. It is a remarkable fact that parties to the most insoluble disputes, when brought together with a trained mediator, can and do find an acceptable resolution. The attractive forces are the saving of the costs and risks of (often protracted) litigation, the avoidance of fatal damage to the relationship between the parties, the removal of future uncertainty and the confidentiality of the negotiations and any settlement arrived at. The court cannot force either or both parties to a dispute to resolve the dispute by way of mediation any more than a preceding contract can contractually require the parties to the contract through mediation to reach a settlement if they are unwilling to do so. But the court and the contract can require them to try to resolve their disputes in this way and the court in a series of recent judgments has made plain that a party who fails to do so without sufficient cause may be penalised in costs. Mediation has taken off. The courts increasingly make orders for mediation. A mediation culture is vital today where the alternative is financially crippling and socially disruptive.

(c) Human Rights Act

The Human Rights Act brings rights home which previously could only be vindicated in the European Court of Human Rights. Its practical effect was to be expected to be limited because the European Convention on Human Rights was drafted by English lawyers and designed by them to reflect the rights respected by and values imbued in the Common Law. But it has exposed areas where English law, and most particularly English statute law, has proved sub-standard. We have periods in our legal history when the reports of certain law reporters were for litigants the recourse of the last report e.g. Isaac Espinasse of whom Pollock CB said "he heard only half of what went on in court and reported the other half". When I began in practice in 1963, the recourse of last resort was to dicta of Lord Denning. For a period after we joined the European Community, it was Articles 81 and 82 of the Treaty of Rome. For a period after the passing of the Human Rights Act it was the European Convention on Human Rights. But a strong hand by the judiciary with increased familiarity with its jurisprudence has seen that period pass. The provisions of the Convention have, however, encouraged the development of the law directions previously open but to which no prior commitment had been made.

As an example Article 6, which protects the right to a fair trial, has required anxious reconsideration of principles and practices previously taken for granted and increased sensitivity to perceptions of injustice. Borrowing from European jurisprudence, the House of Lords in Porter v Magill [2002] AC 357 has adopted as the test for bias the criterion of "public perception" - whether a fair minded and fully informed observer would conclude that there was a real possibility of bias.

Along the same lines, the European jurisprudence may be expected soon to bring to an end as legally objectionable the historical anomaly of the Lord Chancellor sitting as a judge.

Article 6 also requires reconsideration of practices whose acceptability was long taken for granted. When I was at the Bar, whilst a member of the Bar could not appear before his father or a close relative if a County Court judge, it was perfectly normal and acceptable for a member of the Bar the son of a High Court or Appellate Court Judge to appear before his father. The occupant of such a position was considered to be well able to mete out justice regardless of what would be an embarrassment for frailer mortals. This was not always to the son's advantage. Some judges had strong views about the qualities of their sons and they did not hesitate to express them when they appeared before them. With the passing of the Act, I think that this is now regarded as totally unacceptable, at any rate unless unavoidable - the need for transparency transcends the imputed personal qualities of the judge. This is rightly so.

I turn now to the three negative developments.

(a) Legal Costs

I have sufficiently already made the point that costs have reached the level that medicines and medical care have reached in the poorer parts of the world - they cannot be afforded by the mass of the population. The quality of the legal system (like the quality of drugs) is an irrelevance to those beneath the relevant subsistence level. Costs render litigation ruinous even to the middle and indeed upper middle classes: I regularly see the ruin inflicted on litigants who have acted in accordance with legal advice received by them. I may add that one side-effect of the high earnings of leading members of the Bar is the impetus and justification which they afford for increasing the salaries of the judiciary to aid recruitment from the bar, though judicial salaries are already substantially greater than those of judges abroad with few exceptions, notably Singapore.

(b) Abolition of Public Funding

The effective replacement in civil litigation of public funding by the conditional fee agreement is in direct contradiction of the message we were promised when the Human Rights Act was introduced, namely that rights were coming home. If Human Rights have come home, they are largely unemployed. There is all too often no wherewithal to protect or enforce them. The conditional fee provides at best a fig leaf to cover the nakedness of the legal system in protecting those in need of protection. To obtain the willingness of lawyers to represent clients on this basis and to obtain the necessary insurance against liability for an award of costs in favour of the opposite party, in practice the prospects of success must be perceived to approach 90%. In view of the inherent uncertainties of litigation, only the simplest cases can meet this condition. Beyond this a system which rests on the conferment on barristers and solicitors of a financial interest in the outcome of litigation in which they are engaged is calculated to create unacceptable conflicts of interest and duty and create unacceptable pressure to win.

(c) The Metamorphosis of the Legal Professions into Legal Businesses

A change has occurred of the foremost significance but very largely unrecognised. It is in respect of the standing and structure of the legal professions. In a word, whilst the legal competence of members today is significantly higher than it was thirty years ago, the law today is less a profession than a business where financial pressures and inducements in place of traditional standards are the driving force.

In the 1960s there was a clear demarcation between the professions and roles of barristers and solicitors. The Bar (then the senior service) provided the expertise. Solicitors were the generalists providing the services of a general practitioner to their clients and referring clients with specialists needs to junior and leading counsel. Junior counsel, when occasion arose to instruct leading counsel, recognised the obligation to recommend the leading counsel best qualified for the job. Likewise leaders applied the same test when occasion arose to instruct a junior counsel. And solicitors made the decision whether to instruct counsel and if so which counsel by having regard to the best interests of their clients. In case both of the Bar and Solicitors their practices reflected the legal obligations (leave aside the professional obligations) resting upon them to allow no personal consideration to divert them from or dilute the performance of the professional duties owed to their clients or to compete with or distract them from conducting themselves in their clients' affairs with the single-minded pursuit of the best interests of the clients.

The climate today has totally changed. The dominant philosophy today amongst many firms and chambers is to place the highest premium on keeping all available work for clients "in house". Indeed chambers have increasingly in all but name and law become partnerships between the members committed to the pursuant of the best interest of its members. Chambers have for practical purposes a corporate existence. Chambers increasingly publish legal works as a chambers exercise to publicise the chambers and attract work to the chambers. Chambers have put into effect "rules" (enforced by Chief Executives and Barristers clerks) that, when counsel has been instructed from amongst the members of the chambers, if that counsel requires a leader or junior, that leader or junior will be selected from the available pool in that chambers (mopping up local unemployment) rather than on the basis of talent or price (the relevant considerations for the client) from the available pool of the Bar as a whole. I recall one occasion whilst I was in practice when I experienced this rule being adopted and applied. A junior from another chambers with whom I regularly worked once regretfully informed me that his head of chambers (a leader of some prominence) had now insisted that no junior from the chambers should willingly accept any leader save from those chambers. I considered the practice deplorable as it was unprofessional, but it was an aberration. What was then one-off is now far from one-off and appears to be widely accepted. I cannot see how this practice can be reconciled with the ethical and moral code of the Bar.

There is a like and perhaps more dangerous development in the solicitors' profession. The larger (mega) firms have increasingly over the years set out to provide a total service for clients. To this end they have established amongst their numbers experts in all the various areas for which services may be required and entrants into the firms have increasingly been trained to fit into the appropriate groove. There is in this regard an assumption of the role previously occupied by counsel as experts: the expertise lies with the solicitors. There is practically a reversal of roles. Where firms have adopted this policy, a client's full needs are fulfilled within the firm with the product (satisfactory to the firm) that all expenditure is within the firm and no outsider or potential rival need be afforded access to the client. This goal is however achieved at a high price - and I underline the word "price". First there is limited scope, and still less inclination, to consider whether in any particular area the client's needs for expertise can be satisfied better or more cheaply outside the firm. The client is a "tame" client who will naturally rely on the firm for advice on this question assuming that he is made aware that the question has arisen, and there must be grave doubts whether the advice will (or indeed can) be either full or disinterested. The second is that with the increasing concentration of partners in such firms on narrow areas of expertise in place of more general experience, the need for a number of individual partners (each earning his fee) on any client's case increases. Rarely will one partner be sufficient: a team is increasingly called for. This generates a higher return for the firm but no better service for the client and often a service obtainable as well and more cheaply elsewhere. Thirdly, solicitors and partners in such firms, if required to move, having for years concentrated on their speciality (e.g. drafting the first ten pages of complicated financing documents) prove to be scarcely employable elsewhere: their expertise is too confined.

The "total service" philosophy finds no more troubling expression than in the field of litigation. Solicitors' firms have over the last twelve or so years made great strides to provide full "in house" litigation services for their clients, training partners and solicitors to fulfil the roles generally undertaken by barristers, and in particular drafting pleadings, settling evidence, preparing skeleton arguments and acting as advocates. This development may be welcomed, but subject to one critical safeguard: the special relationship with the client must not be exploited to obtain an abuse of the monopoly of the clients' legal services: in particular there must be full compliance with the fiduciary duty owed to clients to provide services only where it is in the interests of the clients (and not the solicitors' firm) for the firm to assume and fulfil these roles. The two critical factors in this regard are the relative expertise and relative costs of "inside" and outside counsel. There is substantial ground for concern whether the clients are receiving full and detached advice on the options open to them. There is a real risk that the firms will (and there are substantial grounds to believe that the firms do) adopt practices and policies designed to elevate their litigation profile and secure full fee-earning utilisation of staff by designating members of the firm to settle pleadings, draft evidence, prepare skeleton arguments and act as advocates irrespective of and notwithstanding their relative lack of expertise and higher charge-out rates. Firms increasingly foist partners and staff as junior counsel on leaders they retain to obtain for their members' exposure and educational experience. If that were all and there was no need for a junior counsel who justified his or her presence on merit and value, and if no charge were made for the public relations or educational role of the solicitor, the situation would be defensible. But it is not in practice just to obtain exposure and experience: it is also to obtain fees. If the firm decide to provide

exposure or education for its own members, it must be at its own expense: the client should not be expected to pay for it. Too often the client is paying and indeed at rates significantly exceeding the fees to be charged by counsel. All too often I have had occasion to doubt whether the clients of a firm can have been fully advised of the relative merits and costs of the decision to instruct the solicitors to fulfil the role usually fulfilled by the Bar. It is vital if professional standards and professional duties are to be maintained and fulfilled that, when the firm has a personal (indeed pecuniary) interest in so acting, the solicitor has in mind his duty to act in the single-minded interest of the client and obtain the fully informed consent of the client. If a solicitor assumes this role without providing the client with the benefit of such advice and without providing the client with the full ingredients for an informed decision (i.e. an objective assessment of the relative expertise and costs), he is abusing his relationship of confidence with his client and exposes himself to legal as well as professional disciplinary redress.

The developments to which I have referred in respect of both branches of the legal profession reflect the influences operating to convert legal practice from a profession into a business. In case both of solicitors' firms and barristers' chambers their increasing sizes, their enlarged staff and facilities, their massive investments in new technology, and their recourse to sophisticated business management and public relations techniques do not come without a high price for their clients and the public interest. Increasing competition and high overheads combined with the ever increasing (though already inflated) financial expectations of entrants into and members of the leading commercial chambers and of the larger firms create temptations to "cut corners" in complying with professional duties and standards and exploit relationships with clients. The developments call for an investigation in the public interest and (unless the public interest is otherwise protected) by regulation.

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Conclusion

The Duke of York marched his men up to the top of the hill and he marched them down again. The ceremony was no doubt grand and impressive - but left his army and his people no way further forward than where they were before he began the exercise. Likewise there have been grand developments and movements in the field of legal practice over the past years - but have we advanced? Are we closer to achieving a legal system which achieves justice, a system which the customer appreciates and values and which genuinely recognises and protects the citizen's rights? The Woolf Reforms have made welcome improvements in the adversary system, and most particular in the stimulus which it has given to alternative dispute resolution (itself a recognition of the limitations of dispute resolution by the court). But on the whole the defects inherent in the adversary system have been aggravated rather than remedied by recent developments. The inflated expectations and returns of members of the legal profession and the parasitic costs of our case law system have made access to civil justice increasingly a luxury few can afford. The legal landscape has changed, but in my view we are today even further from our goal of a system delivering justice to all than we were forty years ago. That is depressing. It is also a challenge. There is an urgent need for radical thinking and research into foreign legal systems which may provide valuable lessons. Perhaps a close approximation is called for to the Continental inquisitorial system, which elevates the role of the judge in the search for the truth and cuts back on the dominant role of counsel and practically eliminates the costly exercises of disclosure and cross-examination. No part of our existing faulty systems should be regarded as sacrosanct. The goal is sacrosanct, not the means. The new code of practice adopted by the Patent Court (no doubt at least in part in response to the challenge posed to its international market) has adopted giant strides in this direction. The code makes provision for trials "on paper", dispensing with disclosure of documents, cross-examination of witnesses and oral presentations. This move in the direction of the Continental system is most certainly a move in the right direction and (it is to be hoped) will prompt a move in the same direction elsewhere. The search for justice poses a challenge for us all, but most particularly for the law students of today, the lawyers of tomorrow. Our future is in their hands.