



MASTER OF
THE ROLLS

LORD NEUBERGER OF ABBOTSBURY, MASTER OF THE ROLLS

THE IMPACT ON CIVIL JUSTICE

THE FUTURE OF THE BAR SYMPOSIUM

INNER TEMPLE

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1. The deservedly high reputation of litigators and in particular for this evening's purposes, of advocates, in this country stems from their ability, from their honesty, and from their independent-mindedness. The success of our civil legal system, both nationally and internationally, depends on this high reputation being maintained. With the understandable media and political concentration on criminal law and family law, the importance of civil law often goes unnoticed. Yet in both national and international terms, the role of an effective, accessible and respected civil legal system is vital. Nationally, it ensures that disputes are resolved peacefully, it provides an essential context for a healthy commercial sector, and it protects individuals from an increasingly powerful executive. Internationally, our civil legal reputation is very important politically and financially, in terms of being a very substantial invisible earner of money and goodwill, both in itself, and by supporting the City of London.
 2. In a world that is fast changing both at home and abroad, there are both opportunities and risks for these three essential qualities which English advocates currently can pride themselves on - ability, honesty and independent-mindedness. Whether we are barristers, solicitors, legal executives, politicians, regulators, MoJ officials or Judges, we

must all do our proper best to ensure that the opportunities are grasped and the risks are avoided.

3. What are the risks to the high level of ability being maintained? We need to ensure that bright, able people continue to be attracted to advocacy as a career. In that connection, one cannot overlook the facts. Lawyers, like anyone else, need to make a living, and potential lawyers will know of other career opportunities for able people, which will enable them to earn substantial sums, for instance, at least at times, accountancy, banking, financial services. The level of earnings at the privately funded, richer end of the Bar presents no problems in this regard. However, there is serious cause for concern at the less glamorous end, where legal aid has, sadly, been severely attenuated in the past ten years. The resultant system has not proved satisfactory, as Lord Justice Jackson's impressive report has conclusively demonstrated. The resultant reforms should be tailored as far as possible to ensure that able people continue to be attracted to careers as civil advocates.
4. Changes aimed at encouraging competition and improving regulation are to be welcomed if they make the profession more efficient and retain its reputation for ethical standards. We have a number of new practice structures on their way – LDPs, MDPs, Procurecos, ABSs (if they survive the Cable Review which the Government has recently announced). Such new structures offer a host of opportunities for innovation and greater competition in the public interest. As we all hope, innovation and greater competition should lead to a reduction in litigation cost. Equally, they should lead to greater access to justice through broadening the availability of quality advocates via an increase in direct access, or access via Procurecos.
5. External investment could also, for instance, lead to the expansion of law firms – of ABSs which advocates could play a proper and leading part – into new markets both home and abroad. Some chambers are already looking to expand further afield – New York, the Middle East, Singapore. Expansion offers opportunities, which advocates could properly pursue. Pursuing such opportunities could it seems to me ensure that civil advocates gain invaluable experience; experience which can only improve the quality of the service they provide here in our civil courts. What's learnt abroad need not stay abroad.
6. However, there is a real risk that the sudden introduction of LDPs, MDPs and ABSs, and the very complex and overlapping regulatory systems could lead to a loss of morale, a loss

of image, even a loss of reputation, which would discourage the most able from becoming advocates.

7. The driving forces behind LDPs, MDPs and ABSs are, as I have mentioned, the desire for competitiveness, respect for market forces, and a drive for access to justice. These aims are all to be applauded, but they carry with them the risk of undermining the honesty and thoroughness for which English advocates are justifiably respected. The introduction of such new entities, and the philosophy behind them, will affect all lawyers. The financial pressures which they bring will inevitably risk a squeeze on professionalism, and in particular on professional ethics. Cutting costs and maximising returns carry with them the risk of cutting corners, and compromising principles.
8. This emphasises the importance of the regulators. If they get it wrong, because they have the wrong structures, the wrong rules, the wrong approach or the wrong personnel, then we are all up the spout. I am concerned about the structures. Structures, as I have said before, need to be simple. Complexity adds to cost and cost will always be passed down to the consumer, and, at this time when we are all aware of the substantial pressure on our national finances, it is worth pointing out that the government is easily the biggest consumer of legal services in this country. Furthermore, any costs which get passed down will inevitably decrease access to justice. Equally, care must be taken to ensure that the new regulatory regime does not, in an environment of external investment and greater competition, lead to a decline in regulatory standards. If we sow the seeds that lead to a decline in professional ethics, we will not have a civil justice system worth its name.
9. Changing professional structures also pose challenges for the junior bar. Some say that there will be decreasing opportunities for junior barristers to learn their trade. I can see that there are genuine concerns here. It seems to me, though, that opportunities will exist for the junior bar to thrive, even if it has to adapt. We may well see the junior bar learn its trade through being at the same time in employment in an LDP or MDP while also being a member of chambers. Thus, in a cost conscious post-Jackson world, it may well be the case that the junior bar will gain its advocacy experience working in employment for a new form of solicitors' practice, whilst also taking instructions via chambers. Lots of possibilities and conceivable variants will no doubt exist. It seems to me that there will be plenty of scope for development here, and we will all have to do our best to ensure that the developments are to the advantage of the quality and accessibility of civil justice.

10. What can be said though is that I am sure that professional advocates will thrive, to the benefit of the civil courts, if they take apposite and constructive attitude to the opportunities that reform will create. But they will only do so, and the civil justice system will only benefit, if those opportunities do not undermine the quality and character of the legal profession and of advocates and other lawyers involved in litigation. Reform is only a good thing if advocates, and indeed all members of the legal profession, remain fundamentally wedded to professional ethics, and, more generally, to independent-mindedness, to honesty and to quality. If they do, reform should hold no problems for the future of the civil legal system, and those who practise in the civil courts; a future that through facilitating increased access to justice will benefit the civil justice system immensely.

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