

Lord Dyson's Keynote Address: the Challenges Facing Civil Justice today

On 26 May 2016, The Rt Hon The Master of the Rolls Lord Dyson delivered a Keynote speech at BPP University, Leeds. The event, organised by Leeds Law Society, provided a brief but interactive session addressing some of the key issues currently affecting Civil Justice in England and Wales.

Following an introduction by the then President of the Leeds Law Society, Colin Gilbert, Lord Dyson (**LD**) gave the 100+ audience an overview of the challenges that he feels are facing civil justice in the current legal landscape, and then engaged in a question and answer session.

LD began by talking about his Leeds background; he was born and raised in Leeds, and appreciates how the quality of justice offered in cities such as Leeds has an effect on the success of the rule of law in the country. There is a certain standard of professional competence and integrity here in Leeds, he said.

LD confirmed that he wanted to concentrate on civil litigation and access to justice, which is recognised as a fundamental human right. He mentioned a comment made by Lord Diplock that one of the functions of the government is to enable access to justice.

He went on to advise that two of the biggest problems facing access to justice are that we are in an age of austerity with the reduction of legal aid and the fact that legal costs are just too high. Both have a serious impact on many with regards to access to justice. There is also no prospect that this will be reversed in the foreseeable future. None of the main political parties have any plans to change this and we need to accept the harsh realities of political life; access to justice is not a protected area. It is a pity that there is not enough funding left for civil or family justice.

There have been some schemes introduced to try and help alleviate the problem, this being the use of CVAs and also the Community Legal Aid Fund (**CLAF**), which has been examined again recently (although LD was not sure whether anything would come of it) and also legal expenses insurance schemes (LD commented that where costs are reasonably predictable then this works better). LD then said that naturally brought him on to another problem – that people cannot afford the barristers or solicitors who would enable them to have access to justice. Very few would resort to litigation unless they are very desperate (or very rich). To pay for lawyers in the normal way on an hourly rate for an unknown duration is a frightening prospect and no wonder many are put off.

LD said that he was convinced that extending the scope for fixed costs would help the problem to enable more people to have access to justice. It is being seen in areas such as clinical negligence litigation but he does not see why this should be treated as a special case. He then mentioned Lord Faulks' signal at a recent convention that the Ministry of Justice is looking at the implication of a wider fixed costs' regime. There should not be too much resistance apart from the point where it becomes necessary to decide where the cut off figure should be on multi track cases, etc. Nothing

has yet been decided in this regard and there will be an open consultation. The decision will be made after LD's time. LD commented that it was not his plan that costs would be reduced so far down so as to make litigation uneconomic as this would be counter-productive and would mean more litigants in person (**LIPs**) in court.

The assessed costs are still too high and sometimes exceed the actual sums being claimed which must stop. LD suggested there should be a sensible regime of fixed costs, with emphasis on the word 'sensible'. Unfortunately it will have an effect on solicitors' working practices and they will have to adapt to working in a fixed costs environment. In other areas such as in RTA, firms have done so successfully. It will be a challenge and the courts will also have to change their approach. He referred to the regime in Germany as a more cost effective regime. He said that he was not saying that we need to adopt their system, but should be open to other options.

LD knows that firms are already adapting, for example by unbundling, with solicitors trying to make what they do tighter. The system needs to be affordable to the ordinary person. The ordinary person needs to be catered for. The use of fixed costs would reduce the need for cost budgeting and make assessment of costs more straightforward; these two things alone would help reduce the costs of litigation.

LD stated that he had two other things to mention. The first was the recent rise in court fees. The opposition to this has been loud and it is concerning. LD commented that the senior judiciary had warned the government that the rise was likely to deter many ordinary people and SMEs, and it acts as a further barrier to access to justice, as well as being counterproductive.

The second thing is digitalisation, with the aim of paperless courts by 2020. LD thinks we should welcome this and that it is an exciting prospect. Regarding the online court, LD acknowledges that there are some concerns about this but he would not go into the details. It is being developed as part of a modernisation programme and to open up access to the courts. The online court will not necessarily be lawyer free; there will still be scope for legal advice.

LD concluded that there are many things happening and he had only touched on a few. Change is often unsettling and the professions will need to adapt to the major changes, but he sees no reason why we would not successfully adapt. The concern now is that it might be difficult to attract outstanding lawyers where the pay is meagre (for example, in criminal law and family law) or bright young people from less advantaged backgrounds. LD commented on his recent trip where he made admissions to the role and met with newly qualified solicitors from a huge range of backgrounds, which was impressive. We should be optimistic about the future, recognise that problems exist and adapt to them.

Question and Answer

Ben Pindar – Northern Lights PR

Q: With regards to access to the profession, what are your thoughts on the best ways to engage and enter the profession?

A: I am not well qualified to answer that. I can offer a view but it wouldn't carry much weight. The issue is very important. It is a widely recognised problem that there is lack of diversity. This can't be changed overnight but we are moving in the right direction.

Nick Dyson – Blacks Solicitors LLP

Q: With concerns regarding changes in the profession, what are the signs in any of the other systems? What are the risks if we deny people in the middle tier access to justice?

A: The risk is that more people will not come to the courts at all even when they have a justifiable claim. This is lamentable. Access to justice is a fundamental right of citizens. People will be disgruntled if they have been denied their rights. If there are more LIPs then this does pose a huge problem. With the online court, if the limit is set at £25,000, then this would cover a vast proportion of all litigation in the country; trying to help them. It would be better if everyone had access to legal advice. The trend to be a LIP would be accentuated. We cannot rely on goodwill or pro-bono; it is to be encouraged but not relied upon. As a member of the judiciary, we are immensely grateful for the pro bono work done.

Ben Pindar – Northern Lights PR

Q: With the rise of LIPs, what impact does this have on the development of the law in general?

A: It depends how far it goes. There are still plenty of cases coming through the courts; for example the Court of Appeal can't cope with the amount. There is real danger in commercial law for a lack of development following the Arbitration Act; there is not any commercial work coming through the courts. You are right to raise the point, but there is no particular danger.

Matthew Rose – Clarion Solicitors Limited

Q: With the fixed costs extension, this has been introduced to the regime already, is there a risk that if defendants know their maximum liability they will behave badly and price out the opposition?

A: This is a possibility. But the alternative is to carry on with what we have, which is unacceptable. Yes there will be some cynically behaving defendants, but it is that versus what we have currently.

Sue Harris – Leeds Law Society and Walker Morris LLP

Q: There was not much take up on the shorter and flexible trial schemes; has this changed?

A: I don't have the figures for that so can't answer.

Ben Pindar – Northern Lights PR

Q: What do you hope your legacy will be?

A: It is grandiose work and I am realistic. I hope that I have contributed to the development of our law and provided a building block. Although I have been involved in more administration in recent times, which is a constantly evolving process, I regard myself principally as a judge and hope that I have made a lasting contribution. I had overall responsibility for the founding of the new Technology and Construction Court (as it was previously known as the Official Referees' Court with no jurisdiction per se) which is significant, and gave the first few judgments after the introduction of the adjudication Scheme (the Scheme for Construction Contracts 1998). LJ Briggs Final Report on the Civil Courts Structure is to be published in July 2016 so this is the next important issue with regards to Civil Justice.