

Reforming English Civil Justice: a Market Strategy for Delivering Access to Justice
Peter Harris, Lord Chancellor's Department, United Kingdom

A seminar of the World Bank Legal Institutions Thematic Group
April 20, 2000

Since the broad reforms undertaken in the English civil justice system in recent years, the average cost of cases has fallen. Cases are settling in greater numbers than before, but also costing more to reach the point of settlement.

A U.K. study some years ago concluded that the demand for use of the legal system in the United Kingdom would continue to expand. Individuals are increasingly asserting their rights, and relying less on groups such as trade unions or employers for legal security. Apart from a new assertive individualism, the greater public awareness of rights, and the continued expansion of law into every area of activity, continue to create new demands on the justice system. However, the classic view of access to justice as requiring welfare state social spending is no longer viable, given the high costs of providing legal aid and services.

Thus, the U.K. government is now turning increasingly toward market mechanisms to meet the demand for justice. The new model views fairness and enterprise as symbiotic, in contrast to the old social democratic model by which an interest in fairness or other social goods was seen to require some sacrifice of market efficiency. Components of the U.K. civil justice system affected by these changes include dispute resolution, legal aid, and the overall legal/judicial sector in society.

1. Dispute resolution

A market approach to dispute resolution would promote greater choice for individuals seeking to resolve conflict. The current system restricts avenues for dispute resolution to those which the suppliers—particularly the legal profession—are willing to offer. But in the new market-based model of dispute resolution, litigants are viewed as consumers and given a range of options for obtaining redress. These include different modes of alternative dispute resolution, including mediation, arbitration, and the use of an ombudsman, options which typically cost less than formal litigation.

Disputants are provided access to more information to facilitate rational decision-making. In particular, reforms in civil court procedure promote transparency regarding the costs and anticipated time of litigation. At every stage of the process, people would be advised about the options that are available and the costs they should expect to incur, allowing them to make more informed and responsible choices.

Courts, too, should operate according to market rules. In the United Kingdom, court fees have increased, sometimes substantially, in the last few years, increasing efficiency in the court system by providing disincentives for needless litigation. Disadvantaged individuals are still subsidized, but compensation is strategic rather than a broad-based entitlement to individuals below a certain income level. Moreover, individuals are actually compensated by the court if the court fails to abide by the date of trial set by the

judge. Courts that are penalized for failing to meet deadlines are thus made more accountable for the delivery of their services. Greater financial independence for the courts also means a judiciary that is less dependent on the executive branch of government—a potentially valuable approach for developing countries struggling to establish independent judiciaries.

2. Legal aid

Legal aid budgets increased throughout the 1990s. The government pays 1.6 billion pounds annually toward lawyer fees, about evenly divided among criminal, family, and civil cases. In the new model, legal aid should address cases of market failure, defined as instances where important social and political objectives are not met by the market, but should not generally subsidize lawyers for any service that lawyers choose to provide.

Applying market ideas to improve the quality of service and reduce the cost, the new legal aid reforms do not simply compensate lawyers on a pay-as-you-go basis for representing people who qualify for legal aid. Instead, they require lawyers to compete for government contracts. The new approach involves an advance purchase of legal services from law firms, including large commercial firms which can usually offer better prices than small firms. This allows the government to keep its expenditures down, while encouraging innovation and improving the quality of legal aid.

By reducing costs in the compensation of lawyers, the government can also inject more resources into legal advice and outreach, rather than litigation. After the reforms, a larger fraction of the government's legal aid budget now goes toward providing information to people about their legal choices.

3. Legal/judicial sector

The legal and judicial sector has expanded each year, with a 5% growth every year in the 1990s. Among the reforms underway to improve efficiency in the sector as a whole, the U.K. government is easing the distinction between solicitors and barristers in the law field, allowing each group to perform the functions of the other, and liberalizing rules on rights of audience to appear in court. Ultimately, nonlawyers may be permitted to represent clients before some courts. These developments would open the market for legal representation and reduce costs.

The legal sector in the United Kingdom is also changing with the emergence of new private actors providing services, and advertising aggressively to market their services to consumers. The private market for legal advice is booming, especially for such areas as home mortgages or automobile purchase. Many of these new firms provide access through the telephone or Internet. In addition, new claims management companies provide ways of reducing risk for individuals with potentially worthy cases.

The widespread reforms in the administration of justice and in the private market for legal services leads to many questions regarding access to justice. Ethical issues raised in the move to a more market-oriented legal system, questions of the feasibility of self-

regulation of the legal profession, and constitutional issues will continue to occupy U.K. legal and judicial reform efforts.

This summary of Peter Harris' talk was prepared by the Legal Institutions Thematic Group.