Doing Law Differently

A PAPER BY LORD FALCONER

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Britain's justice system is one of our country's greatest strengths. The legal and judicial system in the United Kingdom plays a major part in our social and economic well-being. We have an independent judiciary of the highest probity and quality. Across the world, there is recognition that a decision from an English court will have the hallmarks of both judicial excellence and judicial integrity. Our common law of contract is used by jurisdictions across the world. In ever more complex, sophisticated and inter-related markets, English commercial law provides predictability of outcome, legal certainty and fairness. Lawyers from the UK are in great demand. They are renowned for their quality and their ability to innovate and adapt to different markets. The commercial legal sector brings significant imports into this country. In 2003 alone, the legal services market had a turnover of £19bn. This represents an increase of more than 60% in real terms since 1995. We have a criminal justice system that is honest and fair and has brought more than 1.2 million offences to justice in the 12 months to September 2005. Magistrates deal with 95% of criminal cases. There are more than 28,000 magistrates who come from a variety of backgrounds – all drawn from the local community and all dedicated to making their communities safer, often combining their duties with other work or family commitments. We have a legal aid system that, since its introduction in 1949, has helped millions of people get legal advice and support. Britain's legal system is a key element in the fabric of our country of which we can and should rightly be proud.

But no system, however good or well-regarded, is incapable of improvement. Even though all those who come into contact with the justice system in the UK, and those who work within it, do in the main justifiably pay tribute to its probity and its fairness, at the same time many who use it or who work within it recognise its shortcomings. They know that sometimes it can be remote from people's concerns. They know that sometimes it does its work in a manner and a timeframe which barely fits the needs of the community and of modern life. No one wants to see the justice system in Britain damaged. No one wants to see anyone rip up the justice system and start again. The rule of law is paramount; no one wants to see the law as anything other than the law. But, at the same time, the need for reform is clear. The view that change is required is widespread. The law needs to be done; but the way we do law needs to change. We need to do law, but we need to do law differently.

The need for change

Central to this is the connection between our courts and our communities. Our system of justice is rightly seen as impartial and independent. Its job is clear and well understood: to reach settlements to problems, major or minor, criminal or civil, which society wants to see. In criminal justice, its job is to convict the guilty and acquit the innocent – giving society the protection from crime it needs and deserves. In civil justice, its job is to provide solutions which are fair and equitable – in line with the values our society rightly holds dear. The independence and impartiality of our justice system must be upheld and enhanced. But that independence and impartiality rests in the job the justice system does for us all, and in turn the respect the vast majority have for our system of justice. For that mutual relationship to work properly, though, our justice system has to be properly connected to our society and our community. That connection is not static. For it to work, for it to be effective, that connection will change over time as society and community change. For the relationship to work, it needs to be sustained and maintained. The connection of the justice system to the community must be clear if the justice system is to do the job the community wants it to do.

In very many instances that connection is there now. But in a number of cases, that connection has become strained. The fundamental premise on which the justice system rests – the job it does for us all – is under pressure. There are a number of fault lines which, if left unaddressed, could weaken the standing of the system – and in turn its ability to provide for society and the community the outcomes we want from it.

Take, for example, the criminal justice system. The criminal justice system deals with too many administrative or regulatory cases in court that could be dealt with more effectively elsewhere. Cases that do go to court can take too long to get there and progress through the system too slowly. The net result is a system that in some areas works less well than it should. Or take legal aid. The legal aid system is a pillar of our justice system, but the current levels of expenditure are unsustainable. The overall cost has risen from £1.5 billion in 1997 to £2.1 billion today, yet there has not been a similar increase in the number of cases dealt with. The current payment system encourages long and expensive trials, and does not reward early preparation. More fundamentally, the focus of the system has moved away from civil and family cases, which help people who are often vulnerable and facing social exclusion. The last two decades has seen significantly higher amounts of the legal aid budget focused on a small number of very high cost criminal cases – 50% of the legal aid budget in the higher criminal courts goes on just 1% of cases – at the expense of civil cases.

Take, as a further example, the judiciary. For many years, for instance, we have been behind other countries in ensuring the composition of the judiciary reflects the society in which we live. The judiciary is of the highest quality and our judges are undoubtedly of the highest calibre, but failure to sufficiently widen the pool from which appointments are made weakens the connection between the judges and those they judge. It will also, over time, risk weakening merit as the system misses out on the talent and experience of many parts of our community. Or take the legal profession. Despite the undoubted talent of its individual members, over a long period of time the legal profession has become increasingly detached from the needs of the community in which it operates. Until very recently the regulatory framework has allowed lawyers effectively to determine their own standards and to regulate their own operations. The framework has also hindered the development of the legal profession and has failed to modernise to take account of new working practices and the needs of consumers.

In order to sustain our justice system a number of changes are necessary. We need to preserve the aspects of the system that work well and reform those areas that are poorly designed, ineffective or restrictive. Reforms are being taken forward, but in a way that is very different from what has gone before.

Reform has previously been tested primarily against the impact it will have on the ‘professional’, with particular regard to the views of the judiciary and the lawyers. Their views are of course vital. Judges and lawyers have particular expertise and experience that will help mould our reforms. But the real test for reform is whether changes are needed in order to increase public confidence and to ensure public institutions are responsive to the communities they serve.

This kind of change is long-term – a significant shift to the legal and judicial sector in the years to come. But the fact that change will take place over the long term should not deter us from embarking upon these changes now. Individual reforms will have considerable impact on specific sectors, markets and in the delivery of particular services. We will see a real shift from a focus on the producer in the legal and justice system to those who are the users of the legal and justice system. The net effect will be that for many people – victims of crime, defendants accused of crimes, consumers in debt, children in need of care or business people in commercial disputes – law will be done differently.

What we are doing – and what we will do

Some of the necessary reforms are already under way. Others are as yet ahead of us. But there are a number of specific areas where change is essential:

- Recalibrating the boundaries between the state and the judiciary, with a clear separation from the legislature and the executive with the establishment of a Supreme Court for the United Kingdom and the ending of the role of the Lord Chancellor as the head of the judiciary.

- Reforming the judicial appointments process to provide greater transparency, helping strengthen judicial independence and clarifying the roles of the Lord Chancellor and the Lord Chief Justice, as well as improving the connection between judges and those they judge and promoting greater diversity in the judiciary.

- Re-engineering the criminal justice system to deliver a process that is much simpler, speedier and in which summary justice plays a more significant part; simply, speedy, summary.

- Reshaping legal services to ensure they provide value for money and are more responsive to consumers' needs.

- Rebalancing the funding of legal aid to bring about a greater focus on vulnerable people rather than a small number of very high-cost criminal cases.

Taken together, these reforms mark a significant shift in the legal and judicial system in this country and will ensure the constituent parts – judges, the courts, legal aid and legal services – are focused much more clearly on the needs of the people.

Constitutional and judicial reform

From April 2006 the implementation of the Government's Constitutional Reform Act means that the Lord Chancellor – a politician – will no longer be the head of the judiciary and that responsibility will instead transfer to the Lord Chief Justice.

The reason for this change was the Government's firm view that the old combination of the roles of Cabinet Minister, Head of Judiciary, a judge and Speaker of the House of Lords in one office was no longer appropriate or tenable in a modern democracy. The Lord Chancellor is appointed by the Prime Minister because of his political affiliations to the governing party. He performs the job of a normal minister in his departmental responsibilities and in his accountability to Parliament for those responsibilities. His main ministerial responsibility is for courts and legal aid, which, along with other areas of policy that his department is responsible for, accounts for an annual expenditure of around £4 billion. The old system involved the office-holder being drawn from a restricted pool – those with senior legal and political standing. In addition, the office-holder's role in relation to the judiciary is significantly different from other ministers' relationships with their stakeholders. This could lead to the unsatisfactory situation where the office-holder could be subject to a practical conflict between the views of the judges and what he and his colleagues see as in the wider public interest. The Government believes that even the potential for such a conflict is undesirable and best averted by a proper separation of powers, of role and of responsibilities.

The reformed office of Lord Chancellor will continue to be a ministerial role, with responsibility for upholding the independence of the judiciary and the rule of law, but he will no longer be a judge. The Act now establishes the Lord Chief Justice as head of the Judiciary of England and Wales.

This preserves judicial independence, defines the judges' role and frees the office of the Lord Chancellor to be what in practice it has long been – a political role with responsibility for the investment of public funds in order to deliver first-class services for the people. The office of the Lord Chancellor, with the historical authority that comes from 800 years of history, will still actively protect that independence within government – indeed, the Constitutional Reform Act imposes specific duties on the Lord Chancellor and all Ministers of the Crown to uphold such independence.

Clarification of our constitutional arrangements is also being extended to the separation of the courts from the legislature and the executive. The final court of appeal, the body that makes the most difficult and controversial decisions, is currently the Appellate Committee of the House of Lords. To make the final court of appeal more visible with a clear division between the judges and Parliament, the jurisdiction of the Appellate Committee will be transferred to a new Supreme Court for the United Kingdom. This will be located separately from the Houses of Parliament. Our preferred location is the Middlesex Guildhall on Parliament Square, subject to planning permission being granted.

The implementation of the Constitutional Reform Act means that, from April 2006, the process of selecting judges will be removed from the exclusive hand of the Lord Chancellor, and placed with the Judicial Appointments Commission (JAC). The JAC is an independent body that will still select candidates solely based on merit, but will also have a statutory duty to encourage a wider pool from which judicial office-holders are selected.

The way judges are appointed, carried out by only one member of the existing legal profession – the Lord Chancellor – has inevitably fuelled the impression of a closed process which makes appointments that reflect the existing judicial profile, which is overwhelmingly white and male. The quality of judicial appointments has not suffered, but it has meant that the judiciary is not as diverse as the wider community.

The pool from which appointments are made needs to be as diverse as possible. Applications for judicial office have disproportionately come from the Bar, with far fewer applications from solicitors. Intake into these professions is relatively diverse, but this does not always result in application for judicial office because there can sometimes still be the view that the judiciary is for a certain 'type' of person, rather than for individuals of high merit.

The judicial diversity figures are moving in the right direction: in 1998, just over 10% of the judges in our courts were women, and under 2% were from black or minority ethnic backgrounds. By 2005, those figures had risen to just under 17% and just over 3% respectively. The establishment of the Judicial Appointments Commission and the new responsibilities of the Lord Chief Justice will provide a new impetus to ensure we recruit judges of the highest possible quality from the widest range of possible candidates. Importantly, the JAC will be under a new statutory duty to encourage a wider pool of applicants to judicial office. Candidates for judicial office who are unhappy with how their application has been handled will be able to refer their complaint to an independent Judicial Appointments and Conduct Ombudsman.

Re-engineering criminal justice I: courts and the community

Our constitutional and judicial changes come at a time when there is a far greater understanding that the courts must co-operate much more purposefully with the public, and other public service agencies. The courts must have an understanding of the communities they serve in order to retain the confidence of those communities. Magistrates are often the vital link between the court and community, as magistrates are drawn from the local area and are able to bring a wide range of experience and an understanding of local issues.

We must be also be alert to new approaches. In the United States and in other jurisdictions, the courts have pioneered a problem-solving approach to criminal justice. The determination of guilt and innocence is dealt with in the conventional way, but in their sentencing arrangements, the courts look at both the problem the community is facing and what drives the defendant to crime. In New York this has had a transforming effect on many areas of the city. Local community courts have focused relentlessly on ‘quality of life’ crimes and areas such as Times Square are now accessible to the public in a way that they were not before.

In the UK, the North Liverpool Community Justice Centre is piloting a similar approach. The Centre brings together a multi-jurisdictional courtroom that has the sentencing powers of Magistrates’, Youth and Crown Courts, with a range of ‘on-site’ services including victim support and services dealing with drug addiction, debt and housing.

The Centre’s achievements mark the work of the agencies involved, the local community and the leadership of His Honour Judge David Fletcher. The Centre is developing an approach where justice is a key element of the local community, not something that is done ‘to’ people by a distant authority. This does not affect judicial independence but means that Judge Fletcher proactively makes links with the community by connecting directly with local people, residents’ groups and elected representatives.

As a result, the Court knows the difficulties the community is facing. The Court is aware of the consequences of criminal and anti-social behaviour, and it has a greater understanding of the circumstances of the defendants that come before it. So, there is a more effective response, both in terms of the punishment for the offence and in shaping a response that deters re-offending on the part of the individual offender. For example, to tackle the underlying causes of offending behaviour such as debt or drug misuse, a programme for each offender is developed. This brings the full range of agencies together in a problem-solving approach and the programme is then monitored closely by the Judge to ensure compliance. Adjournments at the court are less likely and sentences are often passed on the day a guilty plea is entered. Under authority delegated by the Director of Public Prosecutions, Judge Fletcher makes use of conditional cautions and community penalties, with the community having an active role in suggesting what kind of unpaid work is carried out by offenders, such as cleaning up graffiti. The fact that the police and community support officers are on-site means that officers can serve a warrant issued at 11am, in time for the defendant to appear in the dock by 2pm the same day.

The purpose of the Centre is to tackle anti-social behaviour and the crime associated with it, but the effect is much wider and impacts on neighbourhood regeneration. It is able to have this broader impact because of the connections with the community and because there is a range of different agencies co-located within the building who are all working in a visible way to achieve common objectives. The community has been involved right from the start with two members of the local community sitting on the panel which appointed Judge David Fletcher to lead the project, and recently more than 25 local people have been trained to become mentors at the Centre.

This approach is also being tested in a mainstream court environment, in Salford Magistrates' Court. This takes a slightly different approach – agencies are not co-located, for example, and there is not the equivalent of Judge Fletcher. But the Court is developing closer working arrangements with other agencies and the community has been consulted on the offences they would like to see addressed.

Problem-solving approaches are also being applied to other social problems. The Government is piloting drug courts, and specialist domestic violence and anti-social behaviour courts are also in operation. These courts look to deal with these problems in new ways, by clustering cases together so they can be dealt with more efficiently or by addressing any underlying problem, such as drug misuse, as part of the sentencing process.

The establishment of Her Majesty's Courts Service (HMCS) in April 2005 unifies the administration of the courts and means that we are better able to raise standards and make best use of the available resources to deliver a high-quality public service. Before 1 April 2005 the system was fragmented with Magistrates' Courts administered by 42 independent local committees, alongside the Court Service which supported the Court of Appeal, the High Court and all Crown and county courts. The establishment of Local Criminal Justice Boards and Courts Boards have also provided the infrastructure to deliver change in local communities.

Re-engineering criminal justice II: speedy, simply, summary

Our wider reforms to the criminal justice system are aimed at ensuring that the focus is on reducing crime in the most effective way. Public confidence is critical to the effective operation of the criminal justice system. People must feel the system is fair, efficient and is protecting them from harm. This means that the gap between offence and sentencing should be as short as possible, punishment should relate to the seriousness of the offence and the system should deal effectively with offending behaviour.

There are many cases where the system delivers effective justice – where justice is done quickly and justice is done efficiently. But at present, too many cases take much too long to come to court – in 2005, cases in the Magistrates' Courts took on average 153 days from offence to completion. Many offences come to court that arguably could be better dealt with in other ways. Processes both in court and beforehand are often lengthy and arcane and take little account of the needs of victims and witnesses. There is often a disconnection between crimes prosecuted and the sentences given, and the concerns of local communities, especially around anti-social behaviour. This has a negative effect on public confidence – 60% of people believe that the criminal justice system is ineffective in bringing offenders to justice and around a quarter of court users emerge with a confidence level in the court system lower than it was before they experienced it.

Reforms in this area are being taken forward by my Department and in partnership with the Home Secretary and the Attorney General. There is also a broad consensus among practitioners in the criminal justice system that further reform is necessary. It is important to harness the enthusiasm of people within the justice system to find new and more proportionate and restorative ways of delivering justice.

A single template for the disposal of a wide range of cases within the criminal justice system is neither sensible nor the best way to retain public confidence. Long processes which at the end treat the offence as minor, and quite possibly impose the same penalty as the defendant would have received at the outset, have the effect of sapping public confidence. There needs to be a more sophisticated response that takes account of the seriousness and the complexity of the case, and identifies an appropriate response.

The time a case takes to come to court and, if there is a trial, the time it takes in court need to be addressed. Too often there are unacceptable delays in dealing with cases. Within relatively recent memory, cases were handled much more quickly within the system. It is not too long ago, for example, that Magistrates' Courts were regularly dealing on Monday mornings with cases relating to crimes which had taken place over the weekend. That kind of direct connection forges a clear link between crime and punishment for both victims and for offenders. Not all cases are suitable for this approach. Some cases need determination over time. That approach must continue to be available. But in many cases, we need to return to a connection between crime and its disposal in the courts which is much more quick and much more direct.

What the public wants – especially in such cases often characterised as 'low-level' crime but which can make such a misery of people's lives, such anti-social behaviour and vandalism – is as an aim pretty clear: crime today, court tomorrow. We need to balance that desire for solutions which connect the instance of crime much more quickly and directly with the consequences of crime against the need to deal with cases fairly, properly and responsibly. But we need to reflect much more fully in the way we do justice that ambition for a process of tackling crime that is much more simple, much more speedy and in which summary justice plays a much greater part. That will be a tough target to reach: but it is clearly an objective for which we ought to strive. We also need to identify more clearly those cases which are best dealt with outside of the court process. Working with the Home Secretary and the Attorney General, our aim is a criminal justice system in which the way cases are dealt with is done simply, in order to command maximum public understanding and support; in which there is a speedy resolution of cases; and in which summary justice – judicial and non-judicial – plays a full and increased part: speedy, simply, summary.

The defendant needs proper protection against injustice within the system, but our aim should be a system that will allow the court to know what happened and a process that will be driven by the substantive merits of the case, not the exploitation of safeguards. If the case is to proceed to trial, courts have a proactive role to ensure the prosecution and defence have the case ready for trial in a timely fashion. The defendant should not have pressure put on them but, where the weight of evidence is against him or her, they should be given every opportunity to admit their guilt and allow the matter to be resolved quickly.

Some anti-social behaviour and other less serious crimes, such as certain cases of criminal damage, theft or public order offences, do not need to come to court if the defendant admits guilt and is willing to make reparation to the victim, accept a fine, pay compensation, go for drug treatment or carry out unpaid work. Many cases can be diverted out of court and dealt with by the use of fixed-penalty notices or Conditional Cautions.

In the interests of proportionality, there will always be cases that are too minor to justify a criminal conviction, particularly a one-off offence where the offender accepts their guilt and is willing to make amends quickly. Such cases are often appropriate for Cautions and Conditional Cautions, which provide a swift way of giving offenders who plead guilty to minor criminal damage, graffiti and other similar offences the opportunity to make amends to their communities or the victim. A high proportion of Conditional Cautions have already been used for compensation in cases of minor criminal damage.

We also need a more rigorous look at how to handle some of the minor, guilty plea cases that come to court. A high proportion of summary cases are guilty pleas and most will get a low level fine. With the increased sentencing powers that will be available to magistrates later this year, we need to be sure that we are focusing the skills of the magistrates on contested and serious cases.

The justice system also needs to change to deal more effectively with large numbers of 'new', 21st century crimes. For example, volumes of lower-level motoring-related offences are set to increase with technological advances such as automatic number plate recognition. Such cases, where there are no victim or public safety implications, need not be dealt with using the same process as offences such as burglary or assault. These cases, such as non-payment of TV licences, are regulatory in nature and their evidence is largely documentary. Any punishment in contested cases, however, should only be handed down by a court but that need not necessarily mean a physical hearing, as many of these straightforward matters could be settled by correspondence.

This is a fundamentally new way of delivering justice that focuses much more clearly on proportionality of process. It is an approach that rightly will be the subject of discussion, but it is also an approach where we can, and should, make progress. Dealing with simple, low-level criminality quickly creates a base level of public confidence that the system is not over-engineered. It also creates capacity in the system, in terms of court, prosecutorial and police time to deal in a more tailored and sophisticated way with those crimes that require that treatment.

This also involves a fundamental re-gearing of our approach to victims and witnesses. The welfare of those who were most affected by the crimes, either people on the receiving end or people who saw the offence occur, has not always been central to the system. Victims can feel disenfranchised by a system that may appear dominated by lawyers, by judges and by process.

This is changing, and Witness Care Units, established by the police and Crown Prosecution Service, are now in place around the country helping to provide the right support to witnesses and at the right time. Often the victim doesn't have a voice in court and in the case of the most heinous of crimes, the relatives of a murder victim have no chance to speak in court and explain the impact the crime has had on their lives. We will be introducing pilots for victims' advocates in murder and manslaughter cases, who can make a statement to the court on what effect the death and subsequent events have had on the victims' families.

Rebalancing legal aid

There will always be circumstances where some people need access to publicly-funded legal advice and representation. Indeed, since its introduction by the Attlee Government in 1949, publicly-funded legal aid has benefitted millions of people – often the most vulnerable and disadvantaged people in our society.

Legal aid serves two purposes. Firstly, it provides representation to those accused of crime and underpins the guarantee to a fair trial. Secondly, it helps tackle problems associated with family relationships, such as contact with children following separation and the protection of vulnerable children and problems associated with social exclusion, such as housing and debt.

Legal aid in a very practical sense helps to create a fair, decent and safe society and, in particular, helps to pick up the pieces for people when they are at their lowest ebb. Effective advice services play a critical role in helping people to resolve problems and tackle social exclusion, but the very high spend on criminal cases is putting pressure on the services provided through civil and family legal aid.

The system is one of the most respected in the world, but it is also one of the most expensive. England and Wales have the highest per capita spend on legal aid in the world, currently more than £30 per head, compared with less than £5 per head in France and Germany.

Currently, anybody charged with a serious criminal offence is entitled to legal aid without regards to their means. This can result in legal aid being spent on cases that do not warrant public support and recent cases of highly paid and wealthy people receiving public funding have highlighted the problem. Although these instances are rare, they undermine public confidence in the administration of justice by sustaining the perception that legal aid is not being invested wisely and is failing to help those who need it most. Those who can afford it should pay for their own defence in criminal proceedings; that is why the new Criminal Defence Service Act provides for the re-introduction of means testing. Those who can pay, should pay.

The way the public funds legal advice and representation needs overhauling to control overall costs, to get the balance right between civil and criminal legal aid and to deliver a fairer deal for taxpayers, vulnerable people and practitioners.

There are particular inefficiencies in the way the state purchases criminal defence services. Legal practitioners responsible for providing legal advice and assistance to people accused of crime have expressed dissatisfaction with the arrangements for procuring their services. They believe that the procurement system is overly complex, bureaucratic, inflexible and, too often, does not meet the needs of individual cases. For the public purse it does little to stimulate a competitive market that affords defendants the best quality representation.

There are over 2,700 suppliers of criminal defence services and the sheer number imposes difficulties for those attempting to obtain sufficient volumes of work to structure their organisations effectively. Many payments for criminal defence services continue to be made according to hours worked, which offers little incentive to work efficiently.

We must provide an alternative to this procurement system: one that provides quality service and minimum cost with enough flexibility to reward efficient suppliers who are able to adapt in order to provide the type and volume of services required. Lord Carter of Coles has recently published his interim report on the procurement of criminal defence services. His report set out reforms to deliver an integrated system from the police station through to the Crown Court. This may include consortia of suppliers working in partnership as a single contractor or large individual suppliers tendering for this work with contracts awarded to suppliers based on the quality, capacity and price that they tender.

These reforms will deliver a balanced, steady, criminal legal aid budget, which in turn, will benefit civil legal aid and ensure the funding of publicly-funded legal services is stable, targeted in the right way and contributes to an efficient justice system.

Reshaping legal services

The way in which legal services are regulated and delivered is also undergoing significant reform, so that services can be provided in the way that consumers want.

The UK is the main international destination for dispute resolution and the legal services market makes a considerable contribution to the UK economy. Selling a product is much easier when it is a first-rate one – in terms of quality, scope and size the UK legal services sector is a world leader. The outstanding quality and enterprise of our lawyers is a major factor. Our lawyers are known for being innovative, highly skilled and adaptable.

The UK legal sector's pre-eminence on the global stage is not just important for the legal profession, but it also makes a huge contribution to the UK economy as a whole. In 2004, exports generated by international law firms totalled over £1.9bn, three times that of 1995. The legal services sector is also a significant employer, with the largest 100 law firms in London employing more than 17,000 solicitors, an increase of over two-thirds between 1994 and 2002. The legal services sector plays an almost unquantifiable role in helping London to maintain its position as a major centre for global commerce: people will understandably seek to conduct their business in a country which offers a flexible and dependable legal system and an expert legal profession.

In terms of UK lawyers working abroad, the expansion of the major UK law firms into new markets overseas has been considerable. The number of solicitors based abroad increased by more than nine times between 1990 and 2004 – up from 355 in 1990 to nearly 3,400 in 2004. Currently solicitors are based in 71 countries around the world, the biggest clusters being in Singapore, Hong Kong and Japan, as well as European countries, notably France, Belgium and Germany.

This is a relatively recent development. In the 1970s, in line with Britain's entry into the EEC in 1973, big UK law firms started to open up offices in Europe. In 1986 came the 'Big Bang' in the City when deregulation and the growth in foreign securities institutions led to massive growth for the 'magic circle' firms and many went global, establishing bases in the US, Asia, South America and the Middle East. The fall of the Berlin Wall also led to some UK offices being established in Eastern Europe.

The most recent figures show that by 2004 we had reached a situation when the largest, and the second, fourth and sixth largest law firms in the world were all UK entities. All of these firms had more than half of their lawyers based overseas.

It is not just the big London firms either – increasingly, many small and medium-sized firms from London and the regions are expanding overseas, many of them through global alliances, which allow them to work in co-operation with local firms without the need to open a global network of offices.

However, the sector faces increased competition from jurisdictions such as the US, France, Canada and Australia. The developing economies of China and India are changing the face of global trade and our service industries, particularly professional and financial services in which we have a proven track record, become all the more important to our economic well-being. The law is one such area where we must make sure we stay ahead of the game.

For many years, solicitors and barristers were regulated by the same bodies – the Law Society and the Bar Council – which also represented their interests to the outside world. This was an anomaly. From January this year both bodies have now formally split their regulatory and representative functions, with separate boards for each. The new system provides for greater consumer representation with a significant lay membership on the regulatory boards.

But this will not, of course, eliminate the possibility of error. In order to retain confidence any modern system should have an effective complaints process. The current system is opaque – complaints made by the public about their lawyers, whether solicitor or barrister, go through a process that is complex, often slow, and corrosive of the complainant's will to pursue it.

A new Office for Legal Complaints and a new regulator, the Legal Services Board – a strong and independent body – will oversee the whole of the legal services sector. The Board will set high standards for front-line regulators, and have powers to take tough action if those standards are breached. These changes will improve complaints handling and increase consumer confidence, and make sure that the legal profession is not only transparent, but is seen to be transparent.

There are also restrictions in the way and the circumstances in which lawyers can offer their services to their clients. Barristers cannot go into partnership, for example, and companies cannot employ lawyers to give advice to people other than the company itself. These restrictions to a limited extent reflect the need to provide protection for consumers against unscrupulous lawyers, but the extent of those restrictions could not, as Sir David Clementi found in his searching report, be entirely justified by consumer protection. The Office of Fair Trading has found that rules of the legal profession were potentially anti-competitive and clients in some areas get poorer value for money than they would under more competitive conditions. The consequence of this is damaging to the interests of the consumer and hinders access to legal advice, whether this is a lone parent needing advice on a housing issue or a global corporation seeking legal advice for an acquisition.

Legal services should be able to work in new ways, through new business models. Traditional divisions between the work of barristers and solicitors have become less rigid and the business needs of consumers and providers have become ever more complex and diverse. The structures in which lawyers operate should not be unduly restrictive, but as the range and complexity of legal services offered to consumers continues to expand, the scope and strength of consumer protection must also be extended where necessary.

Alternative business structures will provide a platform for different types of lawyers and non-lawyers to work together on an equal footing. This could be in a partnership, a limited liability partnership or a company or any other structure deemed to be appropriate by front-line regulators. These firms will have access to external investment, allowing them to exploit new technologies and develop the scale and scope of their business. These reforms will create new opportunities and help the legal professions to respond to the pace of a changing market. The real gains could be for those looking for a competitive edge in the provision of high-volume, consumer-facing transactions – and of course for their consumers.

Summary: doing law differently

Britain's legal and justice system is something of which we are and should be proud. The strengths of our system need to be fully maintained – and at the same time, the system needs to be reformed and improved. What we are doing is designed to do precisely that.

Our approach provides us with the building blocks to make our system much more targeted on those who really need its help and protection. Transformation as we found it in 1997 would not, and could not, be done overnight. It would necessarily be a long process. Our reforms are designed to deliver real change over a sustained period.

The purpose of reform was, and is, clear: to make our legal system – courts, lawyers and judiciary – more responsive to the communities they serve. Across all these areas there is evidence of real change. More offences are being brought to justice. The proportion of ineffective trials is down. So too is the number of outstanding Failure to Appear warrants. The payment rate of fines is up. There is an upward trend in the appointment of women and ethnic minority candidates to judicial office. Many constitutional reforms are now a reality – the Judicial Appointments Commission is in place from April 2006 and the office of the Lord Chancellor has been fundamentally changed. Legislation to reform legal services is forthcoming and legal aid is undergoing considerable change.

We have done a lot, but there is a great deal more to do. We will have a constitutional arrangement which sees the proper separation of the legislature, the executive and the judiciary. We will ensure that the key principle and practice of judicial independence is fully preserved. We will make sure that the quality of our judges remains the envy of the world, and also that the judiciary in its greater diversity better reflects the society it is there to serve. We will have a criminal justice system which will be speedier, simpler and make more use of summary justice. We will provide legal aid which will be better focused on vulnerable people. We will see a legal market which will provide services to consumers which are effective, innovative and offer value for money. We will see a legal profession which will be better equipped to compete in the global market-place. We will be maintaining and sustaining the law; but we will be doing law differently. We will have the platform we need to see reforms moving through to make a real and lasting difference and a real and lasting improvement to people's lives.

Rt Hon Lord Falconer of Thoroton

Secretary of State and Lord Chancellor

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