

Perhaps the market orientated financial conglomerate of insurance company, unit trust, building society and bank will be the answer to the mass market? The choice of carrier for a particular product will then depend on secondary considerations (eg tax, risk management, regulatory supervision).

CONCLUSION

It is far too early to draw conclusions, except the obvious one that the market place of the future will be very different from that of today. It is to be hoped both that the consumer will not suffer too greatly in the process and that the various institutions have the necessary stamina to cope with the changes.

CIVIL JUSTICE REVIEW: GENERAL ISSUES PAPER – NATIONAL CONSUMER COUNCIL'S RESPONSE

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1. Background to Civil Justice Review

Lord Hailsham, then Lord Chancellor, set up in February 1985 the Civil Justice Review, the terms of reference of which was, "to advise the Lord Chancellor and his officials on matters arising in the course of the conduct by him of a general review of Civil Justice."

The committee has published six consultation papers in an amazingly short period of time. The first three published in 1986 were concerned with Personal Injuries (see BILA Journal, January and May 1987 issues), Small Claims and the Commercial Court and followed these in 1987 with papers concerning Enforcement of Debt, Housing Cases and General Issues. The method used was to contract out to management consultants certain basic research on the individual topics, conduct interviews with litigants and members of the judiciary, publish the reports and ask for responses on each report.

The final report on General Issues "draws on information and experience obtained from the particular studies ... identifies problems common to Civil Justice as a whole and proposes important changes in jurisdiction, procedure and administration." The General Issues paper is the longest of the papers and runs to 114 pages divided into seven substantive chapters covering (i) Civil Justice and the Courts; (ii) Delay and Other Problems; (iii) Court structure; (iv) Civil Procedure;

(v) Management and Administration; (vi) Access to Justice and Legal Services and (vii) Summary. One legal correspondent described it as a "radical document" and the Master of the Rolls, while not agreeing with all of the views, has stated that the General Issue Paper "has scattered sacred cows in all directions."

2. National Consumer Council Response

In July 1987 the NCC published a 19 page response to 73 recommendations, although choosing not to comment on the chapter devoted to court management and administration.

- (i) Integration of the County Court and High Court. The Paper suggested that either the County Court and the High Court should be amalgamated into a single civil court or that they should remain separate but should be more closely integrated. Preference was shown for the second alternative partly on the grounds that there should remain a stratified group of trial judges whereby certain cases are dealt with by more senior judges. In this case there should however be flexibility whereby judges should be eligible to sit in any court. Such flexibility should assist in speeding up of hearings.

The NCC response agrees with the integration approach stressing that the county court should be a court of unlimited jurisdiction. While the consultation paper suggested that certain cases might start in the High Court when they raised points of particular significance, the NCC felt that when either party was an individual then the county court was the right forum. Their view was that a case should only be transferred to the High Court if it raised important points of law or matters of public significance or where the sum involved exceeded £25,000. In the case of individual defendants the NCC pressed strongly for the matter to be dealt with by the defendant's local county court. They were unconvinced with the Paper's view that a simple system of transfer could operate when necessary. They were also unimpressed that only a limited number of trial centres should be used, other than for small claims. The Paper argued that limiting the number of centres would provide flexibility of handling cases, provide continuous trial facilities and thus reduce delays. The NCC argued that for the Royal Courts of Justice in the Strand to be the London centre was too daunting and intimidating for many litigants.

- (ii) Litigation without lawyers. The NCC is understandably concerned with the plight of unrepresented litigants. The paper suggested that in such situations the trial should be conducted on a more interventionist basis. The NCC call for a more investigative system of justice when the sum involved is less than £1,000. But such a change of emphasis calls for major changes in attitudes by those working in the system and the NCC were aware that such change would not only be costly but would also require considerable political will. In particular if registrars and masters are to play an increasingly important role in such an interventionist procedure, then major changes in judicial training will be necessary in order to equip them with the ability to administer a new system. The NCC call for a systematic one or two year training programme for such personnel whom the NCC would prefer to be called 'district judges'.

The Paper recommended that each court should have a link officer with whom local advice agencies could liaise. The NCC agreed but would prefer his influence to be more wide-ranging calling for him to take a more active role in the community in advertising the role of the local court.

Court procedure and court forms are the creation of lawyers and both suffer because of it to the extent that the outcome is often unintelligible to the general public. The NCC call for lay representation on committees charged with future revision as proposed in the Paper.

The NCC were particularly critical of the lack of funding for advice centres and of the inequality of advice provisions on a regional basis. They call for greater funding and greater co-operation between the various government departments.

- (iii) Litigation with lawyers. The NCC agreed with the Paper's suggestions relating to procedural changes. Such changes were aimed at speeding up hearings and simplifying procedures. The NCC did not lose the opportunity to restate their view that as far as personal injury cases were concerned a no-fault system was the only real answer.
- (iv) Costs. Evidence points to the fact that costs is a major deterrent to the individual litigant. The Paper suggested various possible changes to the payment-in rule. The NCC were of the view that it should be abolished in personal injury cases where the assessment of damages is very difficult on the grounds that it is unfair to plaintiffs.

In other cases the NCC were of the view that only where a judge considered that the plaintiff had behaved unreasonably should the payment-in/costs rule operate.

One of the novel suggestions in the Paper was the introduction of pre-determined fees for certain types of work such as divorce and personal injuries and for other cases an hourly rate should be disclosed. This was supported by the NCC.

Conclusion

The Review hopes that decisions can be taken on matters discussed by the end of 1987. That remains to be seen. Understandably the NCC has approached the General Issues Paper from a narrower perspective than the Review Committee. The NCC place themselves in the shoes of the individual as opposed to the institutional litigant, whether or not he is legally represented. They are concerned with evidence that points to the fact that even in the small claims procedure two-thirds of plaintiffs are businesses; 85% of accident victims fail to claim compensation, and in housing matters the majority of private defendants make no court appearance at all. The judicial system is too daunting and too costly. By and large the problem areas have been identified and the NCC agrees with the majority of suggestions for reform mentioned in the General Issues Paper. The NCC were well aware that only political will can bring about meaningful changes. Whether or not that exists is anyone's guess.

THE 1987 PRESIDENT'S LUNCHEON held on Thursday, 10th December.

“BUSINESS IN THE COMMUNITY” by Rt. Hon. Lord Carr of Hadley, PC.

This is a subject in which I have been involved over the last six years or so in my capacity as Chairman of CBI's Special Programmes Unit and latterly as Chairman since 1984 until some two weeks ago of the British Organisation called 'Business in the Community' (BIC for short) and as the United Kingdom Member of the Board of the European Business and Information Centre Network (EBN).

The activities of the BIC are confined to Britain, although its example and experience have, I believe, been influential beyond its shores and the activities of EBN are of course European wide.