Editorial

ADR Revisited

Lord Chief Justice Taylor's speech at the Lord Mayor's dinner at the Guildhall in July included what has now become almost a routine message. His Lordship drew attention, as so many of his predecessors have done, to a critical backlog of business in the courts. In 1991, in the Queen's Bench Division, there was a mind-boggling average delay of 157 weeks between the issuing of a writ and the commencement of a trial or the disposal of an action – twelve weeks more than the hardly less mind-boggling figure for 1990. According to the Lord Chief Justice, the delays are largely attributable to an acute shortage of judges.

Lord Taylor's concern is widely shared by both branches of the legal profession. The problems have become increasingly acute despite recent moves to speed up pre-trial hearings and despite the Courts and Legal Services Act 1990 which shifted a lot of business from the High Court to the county court (where there are also growing complaints about delays). Even the squeeze on legal aid funding has done nothing to ease the pressure. More and more deputy judges are being employed, but this policy has also given rise to concern.

Lord Taylor's *cri de coeur* exemplifies the recent tendency for leading members of the judiciary, in the face of the ever-tightening financial discipline imposed by Government, to confront ministers in public. And for the Lord Chancellor any issue that divides the executive and the judiciary must by definition be highly sensitive.

The Government's *Citizen's Charter*, published in July last year, has a section dealing with the courts (focussed mostly on the criminal justice system) which, among other things, mentions the inclusion of details of performance standards and indicators in the Lord Chancellor's annual reports on the courts service. Such information is unlikely to refute Lord Taylor's charges. The courts are not destined, as at present constituted, to be strong candidates for one of William Waldegrave's much-vaunted "Chartermarks". At the same time, however, The Lord Chancellor is unlikely to feel much sympathy for Lord Lane's contention that the way to make the courts more efficient and more consumer friendly is simply to throw more judges at them.

There are no panaceas. But a hint of one plausible way forward can be found in the *Charter* itself, which refers to "a significantly greater number of cases being dealt with by a small claims arbitration procedure, much cheaper and less formal than normal court procedures." As we suggested in an editorial in February this year, serious consideration should be given to encouraging extended use of methods of Alternative Dispute Resolution (ADR) – arbitration, mediation, conciliation, and so forth. The likely consequence of such a policy would, for many kinds of dispute, be much speedier and cheaper outcomes and enhanced consumer-satisfaction. And, who knows, perhaps even an eventual *reduction* in the number of judges?