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Imagine that you need a new suit. Your old one is comfortable and familiar, but must be replaced. You have two choices. Off the peg or bespoke? The attractions of the first choice are speed and economy. Whilst a visit to a tailor has the reputation of ensuring both a perfect fit and good quality. Both choices have disadvantages. 'Off the peg' can lack quality, while bespoke takes longer, costs more and is available only to the few.

The civil justice system is undergoing reform. A crude approach might be to liken the current system to the bespoke suit. Unfortunately, the present system is perceived to have all the disadvantages, but none of the saving graces of the bespoke suit.

'Access to justice, who pays the price?' Using the courts is expensive. Costs are caused by the complexity of the procedure and the culture of the legal profession. Such costs are at present paid by the litigant or the taxpayer through the Legal Aid Fund. From the outset of a case, costs are imponderable and may exceed the amount claimed by the plaintiff.

To combat these problems, there is to be an expansion of Conditional Fee Arrangements (**CFAs**) and the reforms of Lord Woolf as contained in his 1996 'Access to Justice' report are to be implemented.

It is argued that CFAs will widen access to the courts because litigants will only pay their lawyers when a case is won. Thus, the vast tracts of 'middle England' who cannot currently afford to pursue a case to court would be able to do so. All they need do is pay their lawyers up to double their fee if they win.

At present CFAs are used in personal injury, insolvency and human rights cases, and an expansion in their scope is recommended by the Government. What then are their advantages and disadvantages?

The advantages of CFAs are obvious, in that they will allow many more people to instruct a lawyer and possibly pursue a case. However, CFAs do raise ethical and practical issues.

On an ethical level there are problems caused by the fact that lawyers will have a direct financial interest in the case itself. This must entail some risk to the objectivity of lawyers, as when viewing the case, the lawyer must surely have one eye on his own financial interest. There is also a danger of abuse. The risk assessment made by the lawyer sets the uplift charged for winning the case. Thus, over pessimistic lawyers may make more money out of the system.

Such reform will also have a practical impact. The CFA system depends upon risk analysis. This has an effect on the insurance premiums which the litigant may have to pay to insure against the costs of losing. (Such premiums may be very high indeed if the amount of the claim is high and the risk is too.) Also, high risk or borderline cases may not be pursued under the new system.

There will also be an impact upon the organisation of the legal profession. In order to remain viable as businesses, solicitor firms may need to carry large portfolios of cases to ensure financial survival. It is argued that this may cause many small high street solicitor firms to disappear. If this does occur, many litigants will pay a price in terms of choice of legal representation. There will be less choice for clients in who they choose to represent them, and who they receive advice from.

For barristers a greater change may be necessary. If one barrister in chambers agrees to accept a CFA, and is subsequently unavailable for the trial. Another barrister in chambers will have to accept the case on the same basis. Barristers will no longer be able to have an island mentality about themselves, but will have to function in a more corporate manner within a set of chambers.

Thus, the use of CFAs entail financial costs to litigants of insurance premiums and uplifts. But also, a price in terms of diminished objectivity and declining choice in who represents them.

Many costs are caused by the complex procedure. This will be reformed by the implementation of the reforms proposed by Lord Woolf. Instead of lawyers managing cases, judges will manage them. Thus the blame for delays under the present system is placed upon lawyers. Timetables will be set and sanctions imposed for non-compliance. It is argued that such changes will make costs more affordable, predictable and proportionate.

The reform contains two distinct procedures. First, the fast track. This is an 'off the peg' approach. Within it there will be strict timetables and fixed costs for cases up to £15 000. Also, strict rules will govern the discovery of documents and the use of expert witnesses. Fixed costs are those costs which are recoverable by the winner from the loser. Lawyers will still be able to set their own costs for their own clients.

A more bespoke approach is the multi-track. This will exist for claims above the fast-track limit, and more complex cases. The court will manage the case, and vary that management according to the nature of the case. There are no fixed costs, but it is stated that through judicial case management costs will be reduced as there will be less use of procedure.

The problem is that both tracks leave plenty of room (for example through interlocutory applications) for costs to be escalated. Such a banded system gives lawyers great incentives to exaggerate complexity and importance to escape the fast track and its limits upon costs.

Access to justice, who pays the price? At present the litigant pays the price. It is suggested that the litigant will continue to do so, through insurance premiums, uplifts and add on costs under the 'track' procedures. Both reforms may encourage more people to use the law, but an 'off the peg' system, must mean that for some litigants 'justice' will be less than a perfect fit.