ADR: Prospects and Challenges

By Professor Martin Partington, CBE

Law Commissioner,

Chair, ADR Committee of the Civil Justice Council

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Introduction

Sir Brian, Lords Ladies and Gentlemen, I am extremely honoured to have been invited by the Academy of Experts to deliver this lecture on Alternative Dispute Resolution. The last time the Academy sponsored such a formal occasion on this topic was when the then Lord Chancellor, Lord Irvine, delivered the Inaugural Lecture to the Faculty of Mediation and ADR. This was on 27 January 1999. I am led to understand that there had been hopes that that event might have been the start of an annual lecture series. That has not happened. However, five years on may be a good time for the Faculty to reflect on what has happened in the intervening period.

What I propose to do tonight is:

1. Reflect briefly on the situation at the time when the Lord Chancellor spoke;
2. Summarise some of the significant developments that have occurred over the last five years;
3. Consider the challenges that lie ahead;
4. Draw very brief conclusions about the prospects for ADR.

Disclaimer

In offering these thoughts, I must make two things clear.

First, though my 'day-job' is now that of Law Commissioner, what I say here does not in any way represent the views of the Commission. They are personal to me.

Second, I am not an ADR practitioner, though I did sit for a number of years as part-time chairman of social security tribunals – which on some people's definition is a form of ADR. But I have long had an academic interest in the operation and reform of the legal system. More especially, since 1998, I have been a member of the Civil Justice Council, the statutory body which advises the Lord Chancellor/Secretary of State on how the Woolf reforms are working and the further steps that needed to ensure the public's access to justice is enhanced. Lord Woolf, the Council's first Chairman, asked me to chair its ADR Committee. I have done that ever since.

The situation in 1999

By January 1999, there was already considerable interest in the contribution that ADR could make to the effective resolution of disputes. Among the developments that had occurred by that date:

1. Many of ADR providers had by that time become well established; they were not only providing ADR services, but also providing training programmes for those interested in learning about ADR, in particular mediation;
2. There were indications of the effectiveness of ADR techniques, particularly in the context of heavyweight commercial litigation, where the prospects of resolving disputes without the full costs of hearings in court were becoming increasingly attractive;
3. Lord Woolf in arguing that the courts should be the dispute-resolution forum of law resort had urged the use of ADR in the civil justice process as a part of his proposals for increasing 'Access to Justice';
4. Experiments in court-based ADR schemes had started – notably in the Commercial Court and the Central London County Court;
5. The literature on ADR was expanding. In particular the practitioners' 'bible', by Arthur Marriott and Henry Brown, was about to appear in its second edition.

But whilst there was considerable enthusiasm for ADR, at least amongst those who had practical experience of ADR or who had been trained in the use of ADR techniques, important questions remained unresolved:

1. Attempts to create common standards for training and accreditation of ADR providers had foundered;
2. There were often sharp differences of view about how different forms of ADR should be practised. These emerged not only in differences between those who provided ADR services in the for-profit and not-for-profit sectors, but also between different providers in the for-profit sector;
3. Away from substantial commercial clients, there was very little demand from clients for their advisers to use ADR;
4. More generally, large numbers of practitioners remained ignorant of ADR and the potential for the use of ADR techniques in the resolution of disputes.
5. Although the experiments in court-based ADR were the result of the enthusiasm of individual judges, there was considerable judicial scepticism and ignorance about the appropriateness and value of ADR.

Advocates of ADR would, therefore, have found encouragement when Lord Irvine delivered his inaugural lecture five years ago. Those of you who attended, or who read it subsequently when published in *The Expert*[1] will remember that its tone was supportive of the concept of ADR and the contribution it would make to the range of ways in which disputes may be resolved in this country.

But it was also cautious. Developments with the use of ADR, he argued, should be measured and taken forward slowly. The impact of the use of ADR on all those actors in the justice system should be weighed carefully. Lord Irvine doubted whether 'unlimited enthusiasm [for ADR] does much to help promote wider use of ADR in the long run'.

[1] Journal of the Academy of Experts, Vol 3 No 4, Winter/Spring 1999

If one wants to see this metaphorically in developmental terms, it could be argued that by January 1999, the ADR movement had been borne and survived its early years of infancy and was beginning to enter early adolescence – but it was still very unclear what it was going to do later in live. Would it mature into full adult-hood, or languish – unable to achieve its full potential, a disappointment to its parents?

Developments over the last 5 years

This rhetorical question can be answered at once. ADR has not languished. Indeed so great has been the pace of change over the last five years that a detailed review would be both boring and impractical. I offer a summary of the highlights.

The introduction of the new Civil Procedure Rules

First and foremost, the new Civil Procedure Rules have come into effect. It is worth remembering that, when Lord Irvine delivered his lecture, the new rules – though at an advanced stage of drafting – were not then operational. There was much debate about what the impact of Lord Woolf's reforms might be – with sharp divisions of opinion between enthusiasts, and sceptics. But there was no way of telling what actual impact the reforms would have on the Civil Justice system.

The importance of their introduction can hardly be overstated. Among other things, they:

- Introduced the principle of judicial case-management;
- Introduced protocols, those statements of good practice in the conduct of litigation; and
- Reinforced the notion that the courts should be the dispute-resolution forum of last resort – not actually a new idea.

The CPR and ADR

In specific relation to ADR, the Civil Procedure Rules require the court, as part of its duty to actively manage cases, to encourage the parties to use ADR if the court considers is appropriate and to facilitate the use of any such procedure (Part 1.4). In addition, the CPR give the court power to stay proceedings either at the request of the parties or of its own initiative while the parties try to settle the case by ADR or other means(Part 26). A stay will be for one month in the first instance; extensions are possible, though the relevant PD suggests that any extension should normally be only for a further 4 weeks.

The court rulings

There has been a significant number of important judicial statements about the place of ADR in the litigation process. These will be very familiar to members of this audience.

The notable judgements of the Court of Appeal in *Dunnett v Railtrack* and *Cowl v Plymouth* and of the Commercial Court in *Cable and Wireless v IBM* have all stressed the importance of the appropriate use of ADR, and that unreasonable failure to use ADR may be subject to cost sanctions. There have been other more cautious dicta,

emphasising that ADR should only be attempted where appropriate. Even so, it ia now widely accepted that it would be professionally negligent for a solicitor to fail to mention the existence of ADR to clients.

Extra-judicial statements

These statements have been supplemented by a number of extra-judicial lectures urging greater use of ADR, The boldest of these are, perhaps, those of Mr Justice Lightman. Indeed, in a widely publicised lecture given at the University of Sheffield earlier this year,[2] he questioned the whole viability of the retention of the adversarial principle.

> "At the root of the problems we face are the adversary system and the case law system on which the common law places (or misplaces) such pride…The law and the legal system should be a protection…to which recourse should be available by all at an affordable cost…My concern is…how more distant we are becoming from achieving these objectives."

He saw ADR, together with the Woolf reforms of procedure and the adoption of the Human Rights Act, as one of the positive developments. On ADR he concluded:

> "A mediation culture is vital today where the alternative [litigation] is financially and socially disruptive."

And more recently, in another lecture, Lightman J said:

> "The thrust of my talk today is that, even as in the case of trial by battle the overwhelming balance of negative considerations required the development and promotion by the State and the adoption by the parties of alternative methods of resolution (namely trial by judge and jury in place of trial by battle), so today the overwhelming balance of negative considerations in the case of modern litigation requires the development and promotion by the State and the adoption by the parties of alternative methods of resolution (colloquially ADR) and most particularly the foremost method of ADR namely mediation."

He accepted that "Mediation is not a universal panacea: it has its limitations and it is not always applicable. But, he concluded: " where it is available in my view no sane or conscientious litigators or party will lightly reject it if he fairly weighs up the alternative namely litigation, and any adviser who does so invites a claim in negligence against him."

I am not sure that all judges would go as far as Lightman J; his views might be compared with the more cautious comments of Sir Anthony Evans to an Insurance Law Conference which appeared in the same edition of the *Civil Justice Quarterly.*[3] But no one could deny that his are challenging views.

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[2] "The Civil Justice System and Legal Profession – The Challenges Ahead" (2003) 22 Civil Justice Quarterly, 235

[3] "Forget ADR – think A or D." (2003) 22 Civil Justice Quarterly, 230.

In-court experiments

There has been an increase in the number of in-court experimental schemes. There have been well-publicised launches of new schemes in Birmingham and Exeter. But other schemes have also been put in place in other courts, for example Newcastle, Liverpool and Manchester. A new scheme is on the verge of a launch in Cardiff. Research carried out for the Civil Justice Council suggest that there are around 15 courts with scheme either operational or about to come on stream.

The Civil Justice Council and its ADR Committee

My ADR Committee has sought to make its own contribution to raising the profile of ADR. During the first phase of its work we:

- responded to the Lord Chancellor's Discussion Paper on ADR and to other Consultation Papers as required;
- developed proposals for an in-court ADR scheme, which were submitted to the LCD by the Civil Justice Council. (I am not sure that we have ever received a formal response to that proposal!);
- sponsored a prize essay competition on ADR for law students and those undergoing professional legal training; and
- in December 2001, ran jointly with the Judicial Studies Board, a workshop which brought together ADR providers and judges to discuss the scope for the use of ADR, particularly in the county court.

Our current projects are focussing on building confidence amongst the judiciary and court managers about the role of ADR in civil proceedings. We are also exploring ways of assisting providers and judges to come to a better understanding of the potential contribution of ADR to dispute resolution and access to justice.

Refocusing of the suppliers

A number of important initiatives have been taken by the suppliers of ADR services to better focus their services.

1. The Law Society launched its Civil and Commercial Mediation Panel in 2002, again with a supportive address by the Lord Chancellor.

2. A number of local law societies have been actively involved in the promotion of new court-based initiatives. The role of the Devon and Exeter Law Society in the creation of the Exeter Court-based Mediation schemes is just one example.

3. New groups offering ADR services have been established and new Associations formed, particularly in the regions. I was privileged to attend the inauguration of the East Midlands branch of the Association of Midlands Mediators only last month.

4. This year has seen the creation of the Civil Mediation Council, in my view a key initiative, led by Sir Brian Neill who – having retired from the Court of Appeal – has devoted prodigious energy into this attempt to encourage the differing ADR providers to speak with a clearer and more uniform voice. (I

confess that, as a member of the steering group involved in this process, there were times I thought progress would only be achieved through the use of mediation; but such was Sir Brian's chairing skill that in the end mediation was not required.)

5. I have the impression that the not for profit sector of the ADR world are seeking to work perhaps more collaboratively with the for profit sector than was perhaps the case in the past.

The Government

It is very important to stress the contribution that the Government has made over the last 5 years.

1. I have just mentioned the Discussion Paper on ADR. This was published in 1999. There was some sense of disappointment that it did not even make the status of Consultation Paper. But it reflected the Lord Chancellor's view that progress with ADR would, and should be measured. There was also at the time very little resource available to take on significant new schemes. On balance I think that decision was a wise one. It set down a marker of Government intent. (As an aside, and at the risk of embarrassing her, I do think the ADR community owes a debt of gratitude to Heather Bradbury who, so far as I can judge, has worked tirelessly to support ADR without significant means at her disposal.)

2. In March 2001, the Lord Chancellor issued the Government's pledge that government departments would more seriously consider the use of ADR to resolve disputes in which it was involved. I suspect some may have felt, as did I, that this was a good piece of PR which might not lead to tangible results. The recent report on the use of ADR within Government suggests that such scepticism was unwarranted. Recent figures reveal an impressive rise in the willingness of government departments to adopt new approaches to dispute resolution. To quote from the latest monitoring report:

   > "Information received in the Department shows that the number of Government disputes in the financial year 2002 - 2003 where a method of ADR has been used or attempted, is 617 - an increase of over 1200% on the previous financial year. Of the 617 offers of ADR made, 27% were accepted and of those cases where ADR was used, 89% had settled without recourse to a hearing. This information provides evidence of a significant increase in the level of ADR activity in Government Departments and demonstrates the Government's growing commitment to a culture of settlement rather than a culture of litigation. Departments have estimated savings of over £6m, attributable to their use of ADR over the period of the report."

3. This year, a new focus on initiatives relating to ADR has been provided by the adoption of the Public Service Agreement made between the Treasury and the Department of Constitutional Affairs. PSA 3 has, as a stated target: "to reduce the proportion of disputes that are resolved by resort to the courts". This is encouraging the department, with the Court Service, to consider not only ways of encouraging the resolution of claims without recourse to the courts at all –

avoidance -, but also encouraging the settlement of claims where proceedings have been issued but before a hearing on the substantive issue – diversion. Many with experience of litigation in this country may feel that, as most cases settle, there is little scope for delivering on this target. But the DCA and the Court Service are taking this seriously, and have already begun a programme of pilot initiatives.

- The first to be announced is a leaflet campaign. This involves around 25 courts sending out leaflets to parties about the potential use of ADR. Both Civil and Family courts are involved. The impact of this will be monitored.

- Second, DCA is considering a trial, in which an in-court advice desk would be established from which advice and assistance about mediation and how it works could be provided. Tony Allen from CEDR has provided a preliminary analysis of what this could involve, in the specific context of the Manchester Combined Court Centre.

- Finally, and most boldly, the DCA is contemplating an "opt-out" experiment, on lines similar to that adopted in Ontario. I am not clear precisely how far this plan has developed. As I understand it, Ministers have not yet reached a decision on it. I will say a little more about the Ontario experiment later.

4. The Legal Services Commission has also begun to fund ADR in appropriate cases. I do not think that particularly bold steps have been taken in that context to date. For example, as part of the Law Commission's work on the reform of housing law, many respondents to our Consultation Papers mentioned the potential for the use of ADR to resolve housing disputes. A moment's reflection might suggest that many of the disputes about housing conditions or even the allocation of accommodation to the homeless would be very suitable for resolution by ADR. But informal discussion with officials indicates that they do not yet see the potential for ADR here. Policy thinking is still pretty tentative.

5. There have been numerous government reports which have urged increased use of ADR in the context of dispute resolution. The recent report of the Chief Medical Officer on the handling of Clinical Negligence claims is one example; Janet Gaymer's review of the procedures to be adopted by Employment Tribunals is another. I suspect there are many more.

Developments in the common law world and in Europe

Of course many of those who argue for the development of ADR in the British context have been inspired by what they have witnessed abroad. A number of common law jurisdictions seem to have taken bold steps to promote the use of ADR. Senior judges returning from the Commonwealth Law Conference earlier this year were heard to ask why we had not developed ADR as actively here as they had in e.g. Canada, New Zealand and Australia.

In Europe too there is also considerable interest in the use of ADR, for example in the context of the resolution of consumer disputes and many public law disputes; it is not clear to me how far interest has been translated into effective programmes and processes.

Conclusion

No doubt each of you could offer other examples of developments that have occurred over the last 5 years. To continue the developmental metaphor, one might conclude that the ADR movement had indeed got beyond childhood, and had progressed well into adolescence. There are many signs of energy and enthusiasm; there are indications of a maturer adulthood; but there have also been some examples of adolescent moodiness.

I conclude that today there is no prospect of ADR disappearing; the investment in it is too great. Nevertheless, the question remains: how long will it take for the use of ADR to become fully integrated into the dispute-resolution processes of this country?

Challenges

This question leads to a consideration of the challenges. The emphasis of these comments is on the use of ADR in contexts, other than heavyweight commercial litigation, and on the potential for ADR to assist in the delivery of access to justice for ordinary people. I have identified six of them.

Building judicial confidence

First, I think there is still an urgent need to build judicial confidence in ADR and its appropriate place in dispute-resolution, particularly in the county court. Although there are some passionate judicial advocates who have done a great deal to advance the use of ADR, there are many others who remain sceptical, even hostile. Why? I think there are at least five reasons for this.

1. *Constitutional objections.* A number of judges resist the use of ADR as a matter of principle. They argue that the courts are there to resolve disputes brought to them by litigants. That is their constitutional function; they have no business diverting people away from their day in court. This is an argument that will need to be addressed by the Lord Chancellor/Secretary of State and the Senior Judiciary.

2. *Lack of understanding about ADR.* Most judges know that ADR exists, but many still lack a *real* understanding of how, for example, mediation differs from negotiation or arbitration, or what early neutral evaluation involves. I know from my own experience that I did not really see the point of ADR until I saw a role-play exercise involving mediation. I do not argue that judges should be trained to be mediators (though in passing it may be noted that family judges and district judges in the small claims cases do not operate the full blown adversarial model of civil justice criticised by Lightman J.) It would be unrealistic to expect the JSB to offer the kind of intensive training course provided by the Academy, or CEDR or ADR Group. Even so, having short lectures on ADR does not, I think, do much to aid understanding. I have heard that the next round of JSB refresher training may

be able to offer a little more, but this has to be fitted into programmes that are already very intense and tightly timetabled. Perhaps what is needed here is the development of, say, an "ADR awareness day or half-day", not provided directly by the JSB but developed under their sponsorship, which judges could attend on a voluntary basis. It would still have to be paid for; but this might be a relatively cost-effective way of enhancing judicial understanding. Incidentally, a noteworthy feature of the workshop we ran in 2001 was that many of those beginning to take up judicial roles – the recorders and deputy DJs – have themselves had ADR training. Perhaps they are a particular resource that could be utilised?

3. *Lack of knowledge about or confidence in the providers of ADR*. Many judges say they would be more willing to encourage parties to use ADR if they know more about the abilities and qualifications of ADR providers, particularly those operating in their local area. They are reluctant to urge parties to take advantage of services whose standards of professionalism are unclear. The emergence of regional associations of mediators, such as those in the North and the Midlands are designed, in part, to address this. The Exeter scheme is even more hands-on; there those willing to undertake mediations must not only have been trained by one of the training bodies, but must also attend a special court-based training programme at which they are instructed in what the court requires from them. Allocations of cases are currently done by the Designated Civil Judge in person to those who have taken the course and who thus has confidence in those to whom cases are referred.

4. *Practical concerns*. Judges also have practical concerns. For example, they worry that, if they exercise their powers under the CPR to encourage a mediation or other form of ADR that fails, they will be seen as having added to the costs and perhaps delay of the litigation, contrary to the spirit and intent of the CPR. Even if judges are in principle in favour of encouraging ADR, they remain uncertain about the types of case which are suitable for ADR. Another concern is about the physical facilities available for mediation. Use of court facilities has been provided in some of the in-court initiatives, but there can be difficulties in providing suitable rooms, particularly outside normal court hours. These are all reasonable concerns that need to be tested. In this context the experiment in Ontario, which I mentioned in passing earlier, may be instructive.

The Ontario scheme

The Ontario scheme, which was run on an experimental basis for nearly 2 years, involved:

- all cases where a defence was served being required to consider mediation as part of case management;
- The parties could seek the court's permission not to go down this route, but they had to show that in the particular circumstances of the case mediation was very unlikely to succeed;
- The mediation was time limited to 3 hours;
- The parties shared the fee, which started at $600 (plus tax) for a two-party action
- The mediation had to take place within the overall time frame permitted by the court for the case coming to trial. The mediation process could not be used as

a means of subverting the court's case management role in controlling the timetable.

The Ontario Government put considerable resource into a detailed evaluation of the experiment. In that context, it was shown that the worries that many people quite properly had about making the use of ADR if not entirely then almost compulsory were not borne out in practice; that in most cases the use of ADR did not add to cost or delay. To the contrary, many cases were settled that otherwise would not have settled and would have required a full hearing. In the light of these findings, the Ontario Attorney General has extended the Mandatory Mediation Program until July 2004.

I am certainly not suggesting that the same results would follow from a similar experiment here. But I do suggest that the time has come for there to be a similar experiment here. The news that DCA is now contemplating this is important and exciting.

If results here show that, in general, costs don't rise; delays are not increased; that any defended case is suitable; and resources can be provided, then the judicial concerns above should be allayed. I am impressed with the claim from Exeter, that its small claims scheme – which involves a half-hour, free mediation – has reduced judicial burdens in that court very considerably, while achieving a high settlement rate.

5. *Procedural reform.* Although the CPR gives judges considerable discretion to stay cases, I think there is a case for a review of the relevant Rules and Practice Directions to see whether slightly firmer guidance could be given to judges – more on the lines that already exist in the Commercial Court Guide – which might encourage judges to order stays a little more frequently. The ADR Committee is working up proposals on these lines which it intends to submit to the Rules Committee.

Increasing practitioner involvement

The second challenge is to continue to increase practitioner involvement with ADR. The Woolf reforms were, in part, about changing litigation culture. Many practitioners want to do this, but are concerned that they must not be perceived as 'weak' against an opponent to refuses to engage in an appropriate ADR procedure. For this reason, I think that the atmosphere within which the conduct of litigation takes place needs to be set by what goes on in court. This should spill over into dispute-resolution that does not involve litigation.

There are challenges which ADR providers still need to address:

1. They still need to market their services more effectively;
2. They need to assure both the judiciary and the public about the standards to which they are working;
3. They need to develop mechanisms for removing accreditation from those who fall below those standards;
4. In the longer term they must ask whether the current proliferation of organisations offering ADR services and training is in the public interest.

These are all substantial issues. However I think the creation of the Civil Mediation Council should allow them to be discussed on a more coherent basis than has hitherto been possible.

Ensuring Government support

Government will clearly need to continue its involvement in supporting the development of ADR. At the policy level, I do not see this as a particular challenge for Government because I think they largely share the objective of the appropriate development of ADR. Nevertheless, there are financial challenges which the government needs to address:

1. *Resources*. Present court-based schemes run on minimal resources and extensive good-will. While we are still effectively experimenting with a range of models for the delivery of ADR in-court, this may not matter too much. If the pace of development is to pick up, eventually leading to the creation of a national scheme, there will need to be more investment. Determining the priority for the funding of ADR as against other demands on the Court service budget will not be easy.

2. *Information*. The government could do more to make information about ADR services available, particularly to the judiciary. I am very impressed with the information resources currently compiled by the Advice Services Alliance, to which DCA has I think made a financial contribution. Why DCA does not take the further step of acquiring enough copies for at least each court, or arrange to receive it electronically is something of a mystery to me.

3. *Court funding policy*. Third there does seem to be a tension between the requirement that courts cover their costs and the requirement that cases be resolved without going to court. Government will need to ensure that use of ADR will not undermine further the level of resources that the court system needs to do its job.

Promoting public awareness

Most of the research into the use of ADR in courts to date has told a similar story; those who use ADR on the whole like it, but take-up has been very limited. There may be a number of reasons for this:

- The parties do not know about ADR.
- If they do, do not wish to use it.
- The lawyers involved in the case are not keen on the use of ADR.
- The type of case is not suitable for ADR.

Other procedural changes in the civil justice system may have discouraged the use of ADR. In particular, many think that the impact of the protocols has done much to encourage early settlement of cases, thus reducing the number of cases where the use of ADR would be helpful.

My hunch is that, as with most innovations, creating public awareness takes time. For example there is evidence that the concept of the ‘Ombudsman’ is now widely known

and reasonably well understood; but the first ombudsman – the Parliamentary Commissioner for Administration – was created in 1967. After more than 35 years, one would hope for good public recognition; but how would things have seemed in 1977, or even 1987?

The challenge here, then, is for all those involved in dispute resolution to continue to find ways of introducing the public to ADR. Addressing the challenges mentioned earlier will assist in this. So too will new innovations, such as that of the Lawworks Mediation Scheme, involving a partnership between the Solicitors' Pro Bono Group and the Law Centres Federation.

And time will assist. I gather that the Central London County Court mediation scheme, long under-used, it is now attracting considerable business.

Thinking more flexibly

Another challenge is that all those with an interest in ADR should think more flexibly about the contexts in which ADR may be used effectively, and about the outcomes that can reasonably be expected.

For example:

- mediation can still be effective, even if time limited and cost limited;
- ADR may assist in the partial resolution of disputes, leaving for the trial what cannot be resolved;
- perhaps we should worry less about types of case suitable for ADR, and instead assume that any case, including public law cases and small claims – seen by many as not suitable for ADR – could benefit from the use of ADR.

Keeping a sense of proportion

A final challenge is that those who wish to promote ADR should keep a sense of proportion.

I remarked earlier that 5 years ago, Lord Irvine's tone was one of caution. I think we are now at a point where we should be more bullish about the advantages of ADR and its role in dispute resolution. But at the same time we need to keep a sense of proportion. ADR will never become the sole method of dispute resolution. Even in those jurisdictions which have moved further ahead than we have, close inspection of the figures indicates that there is still plenty of litigation that continues to go through the courts.

Conclusion: the prospects for ADR

If these challenges are addressed, then I think the prospects for ADR are extremely good. The late adolescent will mature into a young and vigorous adult.

The next 5-10 years will, in my view, see significant changes in the relationship between ADR and litigation. Litigation will not be replaced by ADR, but will be much more commonplace than it currently is. The change in litigation culture that was a key part of Lord Woolf's vision will become an increasing reality.

But these developments won't occur without encouragement from the key players – the judiciary, the government and the service providers. They must respond to the challenges I have suggested need addressing and to the others I have failed to identify. I am confident this will happen. I see no reason why the pace of change over the last 5 years should not be maintained and even increased over the next five years. And if they are, the litigation landscape and the place of ADR within it will change significantly.

I look forward to receiving an invitation to the third lecture in this series and to hearing the extent to which the challenges I have identified have been met and the prospects for the future have been realised.