



PRESIDENT OF THE
QUEEN'S BENCH DIVISION

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KEYNOTE LECTURE:

MODERNISING JUSTICE THROUGH TECHNOLOGY

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1. Can I start by expressing my thanks for being asked to take part in this conference? As the justice system is adapting to new ways of working, it is critical that we approach the benefits that new technology can provide not simply to build the use of IT into our present systems but rather to develop a new system which uses what technology can offer as the starting point for a fresh approach. In order to run the criminal justice system for less, this is not merely desirable but essential.
2. I was called to the bar some 45 years ago. Life was then very different. Although copies of documents could then be printed on special paper, the photocopier as we now recognise it was still a novel idea. Letters, proofs and statements were typed on typewriters with carbon copies or, if required in multiple copies, on roneo blanks or other special paper which could be copied onto multiple sheets. Briefs to counsel and the papers held by solicitors were consequently smaller and the documents before judges were usually slender files – a few witness statements, an interview with the accused, summarised by the police officer, and the odd letter or report. Somehow we survived; indeed, it now feels like a lost paradise. The photocopier has changed all that.
3. But technology is not alone to blame. Over the years, improvements in our approach to criminal justice have increased our dependency on paper. The Police and Criminal Evidence Act 1984 gave us tape recorded interviews all of which are transcribed; the Criminal Procedure and Investigations Act 1996 gave us much wider disclosure of unused material; the Youth Justice and Criminal Evidence Act 1999 introduced video recorded examination in chief which must then be transcribed. Cell site analysis produces schedules of enormous length.

The amount of paper we now have to wrestle with is almost unmanageable and, on top of that, the amount of electronic material which emanates from e mails and a myriad of other sources is unimaginably huge.

4. The consequence is that judges are very used to handling paper and, indeed, many probably prefer to see the written word on paper (which does not have that irritating habit of disappearing at the click of a computer mouse) to reach across and compare it with another piece of paper, to mark it up; this is what they have done for all their professional lives. Even though we are in 2015, this is entirely possible because although much has changed, a great deal has stubbornly remained the same. We may have embraced some elements of what the new technologies have to offer, but because of a lack of sufficient investment we have remained rooted in many of the working practices that would be wholly recognisable to judges and court staff from 4 decades ago; perhaps, albeit with parchment and quill, 300 years ago. If you walk round our court estate, it is submerged under the weight of files – acres of rooms are dedicated to them. Every case is represented by a folder, often sizeable with documents contained in ever increasing numbers of lever arch files. Similarly, although the court service use computers not large ledgers to record information, there are similarities between those processes as well.

5. We simply cannot go on with this utterly outmoded way of working and it is about to disappear. Endlessly re-keying in the same information; repeatedly printing and photocopying the same documents; moving files about, losing all or parts of them in the process as new material is not linked to the correct file; finding ourselves unable to move judges and courts because we need to transfer the documents which are all in wrong place. We watch many of our staff transferring bundles from courtrooms to chambers, from chambers to back offices, from back offices to archive warehouses. It is a heavy handed, duplicative, inefficient and costly way of doing our work and it is all about to go. Considerably past time, we will finally catch up with the world in which we renew our driving licences, shop and book holidays on line, or download novels to read on a tablet and music to listen to.

6. So, what is the genesis of this new approach? In a joint statement by the Lord Chief Justice and Senior President of Tribunals in March last year, they, together with the Lord Chancellor, announced a package of investment in the administration of HM Courts and Tribunals Service. Subject to approval of the business case, this amounts to over £700m. Since then, considerable work has been undertaken by the judiciary and HMCTS to plan, coordinate and deliver the reform programme. In reality, it is a clever and bold idea to bring us into the 21st century, to give us a modern system and to save a substantial sum of money by significant investment.

7. At the heart of the changes, the idea is to design a system for each jurisdiction – a way of working – which enables every case to be initiated, progressed and case-managed on line, with all the papers being served or made available in electronic format. It is so easy to deliver that neat little sentence and it is in danger of slipping by unnoticed, but in truth it reveals a profound revolution. Cases will all be managed on computer. Information will only be keyed in once, whether by a police officer in a criminal case or by a legal executive or a litigant in person in other jurisdictions. It will then be passed down the line in digital format, being bundled and stored electronically. In crime, the Criminal Justice Efficiency Board and the Common Platform Board will soon provide the facility whereby the papers in the case are made available to all those involved in the case in digital format, having been stored in a central place which can be accessed by any authorised person from any location.

8. We – and by that I mean judges, lawyers and all those involved in the delivery of justice – are going to have to learn new tricks and we will need to ensure that proper training is provided. But if the papers are sensibly assembled and presented in electronic format, they are surprisingly easy to manipulate, as the new programme in crime is proving. You can copy and paste the key passages from the statements and exhibits into working documents; write comments, underline and put in bookmarks, all of which are instantly retrievable; and the search functions are fantastic. We have created a short-term document store (albeit there have been some serious teething problems), in advance of a permanent warehouse in the cloud.

9. In crime (and this will be replicated for civil, family and tribunals), the police will send the statements and exhibits to the CPS electronically by way of what is called the streamline digital file. That largely already happens, albeit it is presently somewhat imperfect. Information in a case will only need to be typed in once. The CPS will then serve the papers on the defence and on the court electronically. Appropriate documents will be shared with the court staff, the probation service and the prison authorities, again electronically. No more couriers. No more lost pieces of paper. No more delays because there is no one to print, photocopy or deliver, or because the ageing equipment is on the blink yet again. Next month in Southwark and Leeds Crown Court centres the first judges and advocates will be using the new digital case file. In the Rolls Building this week, the first civil cases are being initiated on line (the e-filing element of a much larger project that is called CE-File). In its final state this will enable the parties to launch cases on line, pay fees on line, cases will be managed and listed on line, and the documents will be delivered electronically and they will be available to the judges in this way. We hope that the rollout of this will be complete by October 2015.
10. Although we recognise that for some litigants in person and those who do not have a good command of the English language there will need to be special arrangements in the form of properly qualified individuals who will provide assistance with all aspects of the process, litigants will commence their cases on-line. Thereafter, the cases will be managed by the court staff and the judiciary on-line, the papers will be made available on line, listing will take place on line with intelligent scheduling tools assisting the list officer, and hearings will often be conducted on line (either by rapid exchanges of text or by the hearings conducted using video conferencing tools we can all access from home). Better equipment will be provided to make it entirely acceptable to conduct remote hearings by video or other remote link and by telephone. Judges will simply make their judgments available directly on the internet without the need to deliver them in court.
11. Those involved in litigation (including the judges) will need a computer with programmes that enable them to access, view, navigate and mark up the papers with ease and in private. This software is not difficult to access. To that end, the

judiciary is about to be provided with an upgraded and up to date system which will allow it to be more flexible so that judges can access the case papers from different places at the press of a button or just by lifting the lid of their laptop, rather than having to navigate the complex processes that are needed to get our present equipment to respond, using security tokens or dongles and multiple passwords, while the PC slowly fires up each and every time it is removed from its docking station. This is hopeless if we are expecting the judges to move seamlessly between court and chambers. We need the judiciary to be able to work more quickly and more efficiently.

12. The result is that the judiciary are coming off the Government Secure Internet and are getting a Windows 365 replacement service which will enable them to send and receive emails, get the papers in the case and have access to all the present judicial sites from any computer or smartphone anywhere in the world so long as it has basic encryption. It is transferring from our present system and the government secure internet to something called eJudiciary.
13. As we speak, WiFi is being installed in all criminal courts, with civil, family and tribunals soon to follow. When in court, there will be large, high resolution screens and documents and other electronic material will be presented directly from the advocates' laptops, avoiding the broken or incompatible DVD and CD players; the software exists to make this happen and there is no reason why we should not use it.
14. In the more difficult and sensitive cases, the traditional model of face to face meetings in court will still take place – jury trial is not about to move to virtual reality – but much of the preliminary work will be done by everyone in their offices, retiring rooms, living rooms or some remote video suite with all the participants being linked together by WiFi or 3G, 4G or 5G (wherever the numbers next end up). In Kent, some preliminary hearings are being conducted with the CPS and the defence lawyers in their offices and with the Magistrates presiding over an empty courtroom, looking at the advocates on screen rather than in person. In Thames Valley, the Crown Court judges are doing a lot of this work by telephone, with the advocates booking hearings in this way so that they can make better use of their time and fit case management around their court or

other commitments.

15. Justice will soon look and feel very different and it is vital that it does. We simply cannot carry on cost cutting, salami slicing our approach, trying to do the same thing for less money and it will be far better as a result. For me and perhaps for many of my colleagues, it will be a real challenge but not for the next generation. Our children and their children appear to live out much of their lives on these devices. They expect to get information off a computer, tablet or smart-phone and to communicate with people on line. I hope they do not entirely lose the facility to deal with real human beings, but for them it is second nature to communicate virtually.
16. Magistrates will have tablets or the equivalent on the bench in order to receive all the documents and other electronic material in the case and their rota will be available on line via e judiciary. What is called Digital Mark Up will provide in-court resulting and back office resulting. We have started the process of enabling defendants in certain cases to plead guilty on line. But that is only the beginning. In some cases, for instance non-imprisonable lower end crime (such as less serious driving cases that only ever end up with a fine) it should be possible to use recognised sentencing guidelines to identify a prospective sentence which the person who has just pleaded guilty can accept if he or she chooses to do so, having entered their outgoings and income (which may well be cross checked), with the right to a hearing being reserved for those who ask for it, perhaps because they have particular mitigation. We do this now in relation to parking and other very minor traffic violations. Then, as in the parking cases now, defendants will be able to enter their credit card details and it will all be over, in one visit, as quickly as paying the parking fine, the road fund licence or all the other transactions that we are now used to performing on line. A very large bulk of standard, low level work which is presently very expensive to process may be resolved without a formal court appearance or hearing.
17. Much of this is very exciting but it is also terrifying. Some of my colleagues will be unhappy, perhaps unwilling, to move away from familiar paper based case files. How can we expect them to handle a paper-heavy fraud trial on line if they do not engage with IT? That problem will have to be addressed as a matter of

urgency; care will have to be taken with allocation of work and training will be critical. Further, history is littered with examples of failed IT projects, often with the IT company running off to the bank with huge amounts of public money in its back pocket, irrespective of the fact that the system of which they spoke so highly has not worked. We must not let this fail in that or any other way.

18. But yet, there are further questions. Although trials will still require everyone to come together, will we lose some indefinably important human element and the possibility of persuading the parties to accept compromise or reality by moving away from face to face meetings in court? There is great attachment to the visceral, biological nature of human interaction. The answer is that we will have to learn new techniques of interaction but I have no doubt that we shall. And what about all those litigants in person or those without a good command of English to whom I referred earlier? How can they meaningfully participate in a sophisticated on line justice system? Litigants in person are not infrequently seen carrying around a large pile of dog-eared papers, that are festooned with post-it notes and indecipherable scribbles. Will we really be able to assist them in going digital? The answer will have to be an excellent front of house service offered by HMCTS; while recognising the funding problems, we must also encourage other organisations such as Citizen Advice Bureaus, Personal Service Units and others.

19. I recognise that elephant traps abound but if this works, we will have created a brand new justice system that will meet – it may even exceed – the expectations of the public and the litigants, and which is likely save the government very substantial amounts of money without the salami slicing to which I have referred. This is a once-in-a-generation opportunity that will ultimately affect all of us.

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