



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

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LORD CHIEF JUSTICE OF ENGLAND AND WALES
FIRST INTERNATIONAL FORUM ON ONLINE COURTS
THE CUTTING EDGE OF DIGITAL REFORM
LONDON, 3 DECEMBER 2018**

1. It is my great pleasure to welcome you to this important International Forum on Online Courts: The Cutting Edge of Digital Reform, with its focus on the future of justice. The terms “online courts” and “digitalisation” mean many things to many people. But at their heart is a simple underlying theme. Technology has developed in leaps and bounds over the last 20 years. It continues to advance. The law and the justice system should not be frightened of technology but should harness it to provide a better and more efficient service to the public which at the same time improves access to justice. Many opportunities to change systems and working practices will arise. We should embrace those that improve what we do. Technology will be our servant, not our master and provides scope for our courts to resolve disputes more quickly less expensively. The world over, legal systems have been developing online courts and digitalisation. In England and Wales we are in the process of taking significant steps towards digitalising our court processes and using technology for the benefit of those involved in our system across all jurisdictions. This conference will enable us to learn from each other and benefit from experience around the world.
2. May I start by thanking Her Majesty’s Courts and Tribunals Service and the Society for Computers and Law for their foresight in organising this forum. On your behalf, I extend our collective thanks to all those who have sponsored this event and to DLA Piper for enabling the Forum to take place in their new offices.
3. And welcome to you all. I know that many have travelled considerable distances to be here and that over twenty countries are represented. The opportunity that presents for a wide-ranging discussion of our different experiences is especially valuable. We are grateful to all the speakers who are to lead our discussions. Great strides have been made in British Columbia in Canada in the arena of online and digital courts. This evening Shannon Salter, chair of the Civil Resolution Tribunal will be giving the Sir Brian Neil Lecture. I apologise in advance for being unable to join you – I shall be in Wales. But I understand that the lecture will be video recorded and available digitally. Very fitting.
4. In my fourteen months as Lord Chief Justice I have been impressed by the dedication of so many people to considering how we can improve the delivery of justice through the development of online courts and digital processes. Judges are working hard and effectively with officials to ensure that what we do in this jurisdiction works and achieves the ends to which I have referred. It is not every generation that is called upon to question the fundamentals of their systems, of their ways of working. The implications for all of us of the digital revolution are all too apparent. Justice cannot be immune from them. It is as well that we have not adopted the position of the proverbial ostrich.

5. When large numbers of individuals and particularly those on low incomes do not have effective access to our justice systems we simply cannot adopt such an approach. We cannot ignore the complexity of too much of what we do or the trouble and expense associated with it for litigants. That is a complaint that has echoed down the ages. Yet the sensible use of technology may provide enduring solutions to these problems.
6. Many lawyers and judges may instinctively cavil at the comparison. But contrast the dispute resolution system provided by eBay, which resolves 60 million disputes per year. It is quick, inexpensive and effective.¹ The courts are not in direct competition with contractual dispute resolution mechanisms of this sort – and they will proliferate across the digital world – but we should not be frightened of learning from them. We should learn also from more sophisticated organisations such as the Financial Ombudsman Service, which resolves hundreds of thousands of complaints a year. We should perhaps remember that the overwhelming majority of civil claims are for small sums, important though they are to the litigants, and that litigants want and expect a swift and inexpensive answer. If the courts cannot provide that, alternative dispute resolution mechanisms will develop which can. And we owe it to those who challenge government decisions in tribunals to make the task as simple as we can, in practical and procedural terms, and provide answers swiftly.
7. The use of technology will be at the heart of that, sensitive, of course, to the needs of the small proportion of people who may be unable to use technology even with the assistance of family or friends. In England and Wales the special needs of that group are kept well in mind.
8. We need therefore to learn from technological developments, from each other – from what works and what does not. We need to be prepared for what might appear to be radical change. Today’s radical change very quickly becomes tomorrow’s norm. In *Digital Justice*, Katch and Rabinovitch-Einy postulated the building of a ‘*smartphone court*’.² But why not? There is no reason why our forms, processes, and perhaps even some hearings should not be optimised for smartphones giving litigants effective access to justice from the palm of their hand. That facility is being developed in England and Wales. There is no reason why our online courts and justice systems cannot deliver effective and accessible justice direct to the citizen. Both the Lord Chancellor, who will speak to you after lunch today, and I are in agreement on this.
9. In putting it that way, may I reiterate my strong belief, which I know is shared by many: the citizen, the users of our courts, must be at the heart of the design process. We must ensure that modernisation is ‘user-centred’ in design and default, as much as it is digital by design and default. Importantly, the systems must be built to include what is described as “real time feedback”. That enables the system to identify where it may be under-performing so that redesign can be done easily, quickly and cheaply. More than that though, user-centred modernisation must focus more clearly than hitherto on ascertaining what users want by way of effective access to justice. In many cases, particularly in lower value claims, I repeat: they are likely to want an answer; and to want it quickly and inexpensively. They want certainty. So we must test our assumptions as judges and the assumptions of the legal profession about how our systems should operate. There is a need for evidence of what those who come to court want. We look forward to hearing how other jurisdictions have approached these issues.
10. Online court reforms require us to learn not just from technological developments and possibilities but also to discover what those who use our courts want from them. Different aspects of what we do engage very different constituencies with the result that one size will

¹ E. Katsh & O. Rabinovich-Einy, *Digital Justice*, (OUP, 2017) at 4.

² E. Katsh & O. Rabinovich-Einy (2017) at 153.

not fit all. But we should recognise that the courts provide a vital public service and acting consistently with the proper administration of justice, we should modernise our courts and their procedures in a way which takes full account of the needs of their users.

11. Here we are in 2018, at least in England, taking early steps in the use of technological innovation. But we have been talking about it for 20 years. If I may embarrass him, I must mention Professor Richard Susskind, who had been advisor on technology to all Lord Chief Justices since Lord Bingham. Professor Susskind is also one of the main architects of this Forum. He has unrivalled insight into the use of technology in courts around the world. He provides prescient advice on the impact of technology on the courts, and the means by which it could better deliver efficient and economical justice for court users.
12. If his advice had been acted on twenty years ago when he advised Lord Woolf, during his Access to Justice Inquiry, our readiness for the internet revolution would have been far more advanced. I should note that it was Lord Dyson, at the time Master of the Rolls, who stole a march on all of us in calling on his expertise. He led the way by appointing Professor Susskind, and an online dispute resolution working party, to make recommendations for reform. Its proposal, Her Majesty's Online Court, very much underpins the work that is being done to modernise our civil, family and tribunal justice systems. It focussed on the benefits that online courts, and the proper incorporation of online dispute resolution into the process, could deliver.
13. It was a vision also taken up by Lord Briggs, who speaks tomorrow on the challenge of open justice and fair trials in a digital age, in his civil justice reform recommendations. They are being implemented. Progress is being made on many fronts. We have E-filing in the Business and Property Courts and it is soon to be rolled out more broadly across the civil courts. There is a digital case management system in criminal proceedings. Video links are used in many criminal and civil proceedings. A pilot is running which allows full appeals in the First-tier Tax Tribunal to be attended and argued by the appellant remotely. We have successful online court pilots in civil claims, money claims, in probate and divorce. A vast amount of work is taking place. It is being piloted and tested on the basis of user feedback. Again, user-centred design. I expect that this process of digitalisation, of improving what we do currently, will move into the next stage: the incorporation in some areas of online facilitation and evaluation. There is no reason why it should not. It is very much the model already used for dispute resolution by the Financial Services Ombudsman.
14. Reform here is, of course, a part of wider modernisation. It is one that we can see taking shape in various forms in British Columbia's Civil Resolution Tribunal³, Utah's Online Dispute Resolution Programme⁴, or Victoria, Australia's Online Dispute Resolution Pilot⁵. We should not ignore the developments in Dubai's International Financial Centre courts. It uses IT, online conferencing and Skype hearings which enable litigants to be present in court from anywhere in the world. Then, there is China's Hangzhou Internet Court, specifically created to deal with digital age disputes.⁶ All of these examples required vision and leadership, by judges, the legal profession, academics and other policy-makers. They needed the support, especially financial support, of their Governments. There are other jurisdictions, large and small, well on the way to success in this field. But we should not overlook some of the less successful – it would be indelicate of me to identify them – and learn from others' mistakes.
15. As judges and lawyers, we need to examine our ways of working and our systems. The legal world is not renowned for embracing change. Those in positions of authority will need to lead the way. Modernisation of the sort this Forum will be considering requires us to make

³ See <https://civilresolutionbc.ca>

⁴ D. Himonas, *Utah's Online Dispute Resolution Program*, 122 Dick. L. Review. 875 (2018).

⁵ See <https://www.vcat.vic.gov.au/>

⁶ See, for instance, <http://www.chinadaily.com.cn/a/201808/18/WS5b77c8f4a310add14f386801.html>

difficult choices, because what is planned is often unfamiliar, indeed alien to some of those who will operate it. It requires us to be bold; to have the courage to embrace change in order to preserve and enhance the rule of law.

16. The use of technology will confront us with difficult questions about open justice. We must ensure that digitisation does not compromise open justice, and the democratic accountability of our justice systems. But there is no reason to suppose that technology, appropriately used, will not make justice more open than it is now, because seeing a dispute being resolved may no longer depend upon the physical presence of the spectator. We must ensure that online facilitation promotes early, effective and just dispute resolution. This may, as already happens under the paper-based European small claims procedure or under Utah's ODR process⁷, mean we no longer have traditional final hearings. It may mean judgments are reached by a judge adjudicating upon submissions and evidence uploaded digitally, with no oral hearing. Something similar can happen by the consent of the parties in small claims in England and Wales, although the material is all on paper, and almost all applications for permission to appeal to the Court of Appeal are dealt with in that way. There are some who feel such an approach is alien to our traditions but in the coming years there will be a lively debate about when such processes are appropriate.
17. In due course detailed consideration inevitably will be given to the greater use of AI during the judicial processes. It will transform many areas of human endeavour. AI is developing in the world of legal advice. It will be able to give a preliminary indication of the legal merits of a claim. There is every reason to suppose that it will develop to be useful in giving indicative decisions and maybe help facilitate early settlement. There are those who suggest that AI, buttressed with careful safeguards, could perform some, if not all judicial functions. I have my doubts but would not discourage debate. AI, however, is one area where, while much has been done, we are in the foothills, rather than the uplands, of understanding how and where it can properly be utilised. That said, all with an interest should not shy away from examining questions concerning its proper use in the administration of justice, technology and funds permitting. Tomorrow's discussion chaired by the President of the Law Society, Christina Blacklaws, may be a beginning.
18. I have absolutely no doubt that your discussions today and tomorrow will play an important part in leading the way, in answering questions and – crucially – in this fast developing area identifying and asking the right questions. We have much to learn from each other. And if I can end by borrowing the slogan of reforms in Utah: we must educate and evaluate.⁸ Over the next two days, I am sure you will do both. And the future development of digitalisation of our justice systems will gain immeasurably as a result.
19. Thank you.

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⁷ D. Himonas ibid at 882.

⁸ D. Himonas ibid at 882.