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Reliable data and technology: the direction of travel for Civil Justice

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1. Many thanks for inviting me to contribute to this important discussion.
2. It will be no secret that I am enthusiastic about the introduction of an integrated online civil justice system, which will be accessible to all, and will reduce the expenses and delays of the present paper-based approach.
3. I am also sufficiently realistic to understand that, notwithstanding the great strides that have already been made within the HMCTS reform programme, the ultimate goal is still some distance away. But that does not mean that we cannot or should not be following a direction of travel that is aimed at creating the civil justice system of the 21st century that will give consumers and businesses confidence about the future.
4. What, in my view, is too often ignored is that achieving this objective will have extremely beneficial consequences for the UK economy. An efficient debt recovery system can be the difference between solvency and insolvency for literally thousands of consumers and SMEs alike. Moreover, this is an opportunity for the UK to lead the world in showing how a mature first world justice system can make full and effective use of technology to allow legal rights to be cheaply and quickly vindicated.
5. Let me try to put some flesh on the bones. In this talk, I want to consider first the question of good data. This is important because the scale of civil justice claims is often not appreciated, and the profile of those claims does not remain constant. I include all claims - from those determined on eBay at one end to those determined in the Business and Property Courts or in commercial arbitration at the other end. Secondly, I want to say something about the technology that is being and will be used to achieve these objectives, and finally I will come to the nature of what I see as the ultimate vision.

Reliable Data

6. Data is crucial to reform. A system cannot be improved unless one knows, within reasonable bounds of accuracy, how it is currently performing. Moreover, one needs also to understand how many cases of what types are now in all parts of the civil justice firmament, and how many one could expect if reforms made the system more accessible and made it easier to bring claims and pursue them to a conclusion.
7. The problem with having a paper-based civil justice system in the County Court is that it makes it very difficult to compile accurate data. But there are nonetheless some parameters that we do know and can inform how things are done in the future.

8. Before Covid, we saw that some 39,000 civil claims were issued each week in England and Wales – some 2 million every year, not forgetting the nearly 20,000 cases issued annually in the Business and Property Courts. Of the 2 million County Court claims, very roughly indeed, 1.6 million were money claims, 180,000 were damages claims, 80,000 were Part 8 claims, 130,000 were possession claims, and 25,000 other claims. These are economically significant figures.
9. In addition, also pre-Covid, we know that some 14,800 civil cases were listed each week, or 770,000 each year, and that some 18,700 civil orders were made each week, which is some 970,000 each year. That, of course, includes interim orders and leaves a lot of cases that just seem never to go anywhere.
10. The County Court is being digitised as part of the HMCTS reform programme. Digitisation will enable us to collect far more extensive data on, for example, numbers and categories of cases issued, time between issue and listing, hearing times, and how cases are disposed of, including the effect that ADR has on the process. We will be able to obtain local data showing regional differences within the system.
11. Even before full digitisation, there are already in place online systems in civil justice that are very promising. The numbers are impressive.
12. The first is Online Civil Money Claims (“OCMC”) which is a successful pilot aimed at litigants in person currently limited to claims up to £10,000. Pre-Covid, there were 70,000 such claims each year. The second is Online Damages Claims, which will launch soon for professional court users. The third is Online Possession Claims that is in the course of development, and should also launch this year.
13. Money Claims Online (MCOL) has been in existence for some years, and is mainly used by bulk claimants for claims up to £100,000. The year before Covid, there were 1.3 million such cases issued. Possession Claims Online (PCOL) has also been in existence for some years. Before Covid, there were 100,000 such cases issued each year.
14. The Personal Injury Claims Portal dealing with claims up to £25,000 creates a pre-action process for small personal injury claims. Pre-Covid cases going through the portal amounted to some 689,000 per annum.
15. The Government’s new Whiplash Claims Portal, which is aimed at LIPs, and will create a pre-action process for small personal injury claims will be launched in May 2021.
16. It is critical, of course, that all these systems talk to and are integrated with each other and with the common components being created by HMCTS.
17. In addition to data about cases that enter the court system, it is also necessary to take a wider look at the firmament of civil claims beyond the courts. I often talk about the 60 million claims that are resolved every year by Artificial Intelligence on eBay with high user satisfaction. The figures for ombudsmen resolutions are also interesting. For example, the Financial Ombudsmen Service resolves nearly 300,000 complaints each year, and the Housing Ombudsmen closes some 15,000 cases annually, the communications ombudsman dealt with more than 20,000 cases every year, and the energy ombudsman some 57,000 cases.
18. You can see at once that civil justice is on a big economic scale. Even leaving aside eBay, there are probably at least 3 million civil claims of one kind or another initiated each year in

England & Wales. That feeds back to the point I made at the start about the importance to the UK economy of resolving all these claims quickly and efficiently.

Reliable Technology

19. When we talk about modernising justice in the time of Covid, many of us think immediately about the extensive use we have made of video platforms to enable court hearings to continue remotely. It was not before time, and I applaud all the lawyers, witnesses, parties and judges that have adapted to the use of these technologies so quickly.
20. In terms of reliability, the limiting factor in using remote video technology is often the devices and bandwidth available to individual litigants and witnesses. I am confident, however, that this will improve rapidly over time. I doubt that it will be a limiting factor in the long term. Of course, we will always have to deal properly with the digitally disadvantaged and the vulnerable, but that should not prevent the development of innovative systems accessible to the vast majority. It is also important to ensure that the technology used is kept up to date. In technology terms, the expectations of our users can change much more rapidly than judges and courts may realise.
21. Moreover, video hearings do not, in themselves, change the system itself. They merely change the mechanism by which we hear cases.
22. If we think for a moment of other consumer facing services, such as energy suppliers, telecoms, and entertainment, these are all now delivered, or at least metered and charged for, online. Few of us any longer receive a paper gas or electricity bill, a paper telephone bill or a paper satellite or cable television bill. Coming generations will not accept a slow paper-based and court-house centric justice system. If that is all that is available, the new generations will look for other means of dispute resolution. For that reason, the use of technology by the courts is not optional, it is inevitable and essential. Appropriate and accessible dispute resolution mechanisms must be made available. This is central to the rule of law itself.
23. At least in the first instance, the technology that we need is hardly rocket science. Online dispute resolution systems already exist in some countries. I have had the opportunity to view the Civil Resolution Tribunal that has been launched successfully in British Columbia. It is simple and impressive. Our jurisdiction is, however, much larger and probably more complex.
24. What is required is an integrated online dispute resolution that operates through online front ends, and then into an online court process.
25. Anyone having a complaint or dispute ought first to be able to go to a single front door that will direct them to the appropriate online dispute resolution process, whether that is mediation, arbitration, an ombudsmen or the courts.
26. There will be and already are numerous subject-orientated pre-litigation systems, like the Personal Injury Portal.
27. The first essential, whether pre-court or within the online court process, is to create a single data set in respect of each dispute that can be passed through the systems until resolution occurs. This is easier than it sounds since the basic questions that need to be answered are simply the identities and contact details of the parties and the nature of the complaint. But, as I have said, data is critical. If everything were online, we would have up to date data, and

would be able to respond more quickly to changes in the numbers of cases and the types of cases that our economy and our society need to be resolved from time to time.

28. The second essential is to build in to each of these systems, whether before or after proceedings have been commenced, processes of continuous alternative dispute resolution. At present, ADR initiatives are patchy and often hindered by the ability to opt out or the failure of one or other party to opt in. Every dispute has a sweet spot at which it is most susceptible to resolution. The programmes can themselves learn to detect when that occurs in any particular type of case, and then offer the mediated intervention that is most likely to be effective.
29. The introduction of these systems will change the expectations of consumers and businesses alike. They will come to expect early and economical 'resolution', rather than everything being directed to a hearing at which the 'dispute' is acted out in a staged gladiatorial process.
30. Lawyers need have no fear of these innovative uses of technology. There will still be the larger or more intractable problems that require their intervention and advice. From the economic point of view, the imperative is to provide up-to-date online systems that can resolve the bulk of claims with the minimum of cost and delay.

The ultimate vision

31. My vision for civil justice in England and Wales will allow all claimants to start their claims online, creating a single transferable data set, allowing vindication of their legal rights either within the online space or, for the most intractable cases that are not resolved by mediated interventions, by the most efficient possible judicial resolution process.
32. As I see it, the objective should be to create a single online funnel through which all disputes can pass. They will then be directed, according to the type of claim, to different resolution processes designed to deal with money claims, personal injury claims, family claims, tribunal claims or whatever they are. Even Business and Property disputes will not be exempt. Until more complex online systems are developed, they will in all probability need to come out of the funnel and be dispatched to the Business and Property Courts at quite an early stage. But the data set initially created will, as I say, be transferrable wherever the case goes.
33. On 9 October 2019, I spoke to the Civil Litigation Autumn Conference on the occasion of the 20th anniversary of the Civil Procedure Rules. In a speech that some thought controversial, I said that history had shown that Lord Woolf's reforms were inadequately revolutionary for the time, because the internet was in its infancy, emails were only just taking hold, social media was unheard of, and artificial intelligence was some way from reaching any kind of fulfilment. With hindsight, I said, such a foundational reform would better have waited another 10 or 15 years.
34. Now is, I think, the time to undertake a fundamental generational reform of the civil justice system. I am not talking about big name reviews. Things move too fast for them to be any longer of great value. I hope, however, that as Head of Civil Justice, I will be able to establish a direction of travel for an online justice system, with sophisticated integrated ADR mechanisms. I am not so naïve as to think that all this can be created overnight, but I hope that, working alongside the professions, the Ministry of Justice and HMCTS, we can create a firm vision of an online system that will benefit consumers, lawyers and SMEs alike.

35. The rules that govern the online system I am talking about will need to provide a higher level of governance than the current CPR. That too will be no bad thing, because the CPR has become, over time, complex and inaccessible.

Conclusions

36. I guess that some of you will think that I have not addressed directly what is to happen to traditional court hearings, court-houses and judges. All of these will survive, just as retail shops have survived the astonishing growth of online shopping.
37. The system I am envisaging will deal with many cases without the need for physical attendance at a court. That too is no bad thing. An online system will be able to resolve many more cases. There will far greater transparency, better data, and access to justice. The economy will be truly lubricated by efficient debt and dispute resolution.
38. Judges and lawyers will be needed as much as they are today to deal either in the online space or in remote or in person hearings with intractable issues of fact or difficult legal questions. I am first and foremost a judge and as far as I am concerned I certainly intend to continue to resolve cases, even in a brave new world
39. As far as questions of fact are concerned, as more and more data are created by each of us every day on our mobile and other devices, factual issues may in time become more difficult to contest. But questions of law will always require judicial determination.
40. So can I conclude, by asking you, as lawyers, to embrace reform. The justice system cannot stand on the side-lines, whilst every other aspect of our population's lives is transformed by technology.
41. I should emphasise in closing that, in considering the details of a reformed online justice system, I have no intention that there should be any compromises on the integrity of the judges and lawyers and the system itself, the imperative that any new approach to justice must command the confidence and respect of our populations, and thirdly the quality of justice delivered.
42. I look forward to being able to answer some of your questions.