



## THE RIGHT HON. SIR GEOFFREY VOS

### **Civil Justice Council, National Forum on Access to Justice for Those Without Means**

**Methodist Central Hall Westminster  
10 December 2021**

#### Introduction

1. May I start by welcoming all of you, to the Civil Justice Council's 10<sup>th</sup> National Forum on Access to Justice for those without means.
2. I want also to thank the CJC secretariat team and the CJC members who have worked so hard to bring this forum to fruition. Mr Justice Robin Knowles in particular has guided this event from its rather more humble beginnings 10 years ago to what it is today.
3. As this is the Forum's 10<sup>th</sup> birthday it is a real shame that the terrible pandemic has again affected us, but it will not dent our enthusiasm for the discussions we are going to have. And I am pleased that this year for the first time we are holding a hybrid event. I welcome particularly all of you joining remotely and getting to grips with Slido – a programme whose slogan is “audience interaction made easy”. I hope that you will all feel as welcome, in all our sessions, as if you were here with the rest of us at Central Hall in Westminster.
4. I spoke last year just as I was about to take up appointment as Master of the Rolls, Head of Civil Justice and Chair of the Civil Justice Council setting out my vision for a digital justice system. I have since that time spoken frequently on that subject, as some of you may have heard.
5. I am delighted to say that the HMCTS Reform Programme is starting to make that vision a reality, but I will spare you this morning another exposition of the digital funnel and how I see the future of our justice system.

6. Instead, I want to address the aims of this Forum, and the Civil Justice Council, because I regard my Chairmanship of that body as one of the most important facets of my job as Master of the Rolls.
7. The Forum today has four specific identified aims. Let me look at those in turn.
8. The first aim is, in essence, to identify access to justice needs and solutions for those without means for the next decade. I see that aim through a digital telescope. I know that many of you will rightly ask about the digitally disadvantaged, but we would not be doing our job if we limited the development of our ideas for the entirety of the civil justice system by focusing only on those who are unable to use new technologies. Instead, we must build a system that is ever more accessible for the vast majority of citizens especially the new generation who use digital devices in every aspect of their lives.
9. We must, nonetheless and as an important part of our work, ensure that those who do not have access to technology, either because of their vulnerabilities or simply because of a lack of means, are fully and properly provided for.
10. I want particularly to emphasise, in this Forum particularly, that these are not competing views between those here whose work focuses on driving forward digital development, and those here who are focussed on supporting the members of our society who are otherwise left behind; you are both working on improving access to justice and both are as vital as the other as we move forward.
11. That leads me to the second aim of the Forum this year, which is to facilitate collaboration, discussion, and learning on civil justice. That is where the Forum has scored so highly over the last 10 years.
12. We would not attract such a diverse attendance, with over 300 delegates from the judiciary, the law, the 3<sup>rd</sup> sector, the tech sector, government, and civil society; I could go on; if you were not certain that you would be able to collaborate, openly, and to discuss and to learn from your participation. The breadth of the organisations represented here and online today is truly remarkable.
13. Collaboration is the only way to achieve an outcome greater than the sum of its parts and civil justice is a broad ecosystem in which each part shares an interest in the development and sustainability of the whole. I

take the view that coherence is the key to the future. In the past, many have seen civil justice in silos. I am keen, again in the digital context, to look at the civil justice system holistically from the very smallest cases at one end of the spectrum to the largest cases decided in the Business and Property Courts at the other.

14. The third aim concerns the Civil Justice Council itself. I have already said how important I think the Council is. It embodies the collaborative approach that I have mentioned. I want to take a few moments to mention some of the Council's recent work and some of the work that we will be doing as we approach 2022.
15. There are four particular reports and consultations that I want to highlight.
16. First, there is the interim report on Small Claims from the working group chaired by Mr Justice Barry Cotter. It has produced a fantastic insight into how these very numerous small claims can be more efficiently and effectively dealt with in the period leading up to an entirely digitised system. The Civil Procedure Rules Committee, the CPRC, approved last week one of the interim report's most important recommendations. It put into effect a pilot to allow the Court to decide small claims under £1,000 on screen (or what we used to call 'on the papers') without a hearing. This will be taken forward next year. There are many types of claim, like, for example airline delay claims, where some defendants have bogged the system down by refusing to agree hearings on the papers, even when multiple individual claims raise the same straightforward issues. The Council will publish its final report on small claims very soon.
17. Secondly, Lady Justice Asplin chaired a working group that has reported on mandatory mediation and (alternative) dispute resolution. That report has already been widely discussed. It concluded that mandatory (alternative) dispute resolution was compatible with Article 6 of the European Human Rights Convention and was, therefore, lawful. Paragraphs 58-9 of the report said that "any form of ADR which is not disproportionately onerous and does not foreclose the parties' effective access to the court will be compatible with the parties' Article 6 rights". If there is no obligation on the parties to settle and they remain free to choose between settlement and continuing the litigation, then there is not "an unacceptable constraint" on the right of access to the court. I agree. As a footnote, I would say that the Government's consultation on

dispute resolution has dropped the 'alternative' from that term to recognise as I said a few months ago, that mediated interventions should not in any sense be regarded as alternative to the dispute resolution process. I am told that the new Commercial Court Guide is using the term "Negotiated Dispute Resolution" for big case mediation - instead of ADR – that is a much more accurate description.

18. Thirdly, and on a completely different tack, the CJC published Sir Stephen Stewart's report on Guideline Hourly Rates. I accepted the report's recommendations and the new Guide to the Summary Assessment of Costs came into force on 1 October 2021. It was the first revised Guide to be introduced since 1 January 2005. I have agreed that the CJC will be invited to do further work in that area in the next 2 years.
19. Fourthly, Professor Andrew Higgins is leading a ground-breaking group looking at pre-action protocols, and their future. The world of PAPs has always been a somewhat twilight one – introduced by the Woolf reforms but never fully a part of the Procedure Rules. I am very enthusiastic about an integrated pre-action process, with portals directed at the early resolution of as many types of civil, family, and tribunals claims as possible.
20. PAPs and Pre-Action Portals also need rather greater coherence. Many pre-action portals are already in existence. I believe that the Council's consultation and consequential report, together with the inauguration of the Online Procedure Rules Committee now going through Parliament, will provide a firm foundation for greater cohesion in the pre-action digital space. The Council's consultation began 4 weeks ago and closes on Christmas Eve. I encourage you all to respond. Santa is being especially kind to Professor Higgins this year.
21. That is all work that the Council has done this year. Can I also briefly mention two new projects for next year:
22. First, I am hoping that the Council will agree to take another look at costs more generally.
23. Costs are critical in the debate about access to justice. The Government has decided to increase the applicability of fixed recoverable costs in civil claims for up to £25,000 (and beyond in some cases). We need, in that context, to look again, at the effect that extending fixed recoverable costs will have on Fast Track and Small Claims, at Guideline Hourly Rates

themselves as I have said, and also at other aspects of the costs regime including costs in the digital space and costs budgeting.

24. The Council is well placed to take that work forward. The historic approach on these subjects has been to deliver big name generational monolithic reports. My view is that a better approach, which is squarely within the Council's statutory remit, is one which constantly looks at ways of improving the system incrementally. We need to operate with sufficient agility to ensure that work does not become outdated before it is even complete. We must recognise that the civil justice system, by its nature, never stands still for long.
25. Secondly, I am pleased that Professor Richard Susskind is chairing an innovative working group for the Council, which is looking at the use and effect of technology in the justice system beyond the Reform Programme and the immediate future. It will undertake the horizon scanning that is needed. It will ensure that the justice system does not just stand still once the integrated digital justice system has been introduced and developed.
26. The last aim of today's Forum is to reflect on the last 10 years. Reflection is perhaps not my strongest suit. But 10 years on from the first small forum, the civil justice system has come a long way.
27. I do offer one reflection though. It is that there is a greater appreciation that civil justice does not stand apart from society but is integral to it. I am pleased that the third plenary session today tackles this head on.
28. I cannot overstate how important it is for all of society to have access to civil justice that is delivered speedily and at proportionate cost. All of the reforms I have mentioned are directed towards that. It is worth, once again, highlighting why that is the case. Inability to vindicate legal rights at all levels in society profoundly affects individual lives. It also causes massive economic drag. From families in dispute and those subject to possession claims and threatened with losing their homes, to small businesses unable to recover a relatively modest debt: all these problems individually cause disproportionate psychological, even physical, consequences, that is tragic for individuals, but also directly affects us all through the reduced productivity of those involved, whether in employment or business.

29. If we can continue to emphasise resolution rather than dispute, as the digital environment allows us to do, then these pressures will be ameliorated, better for the individual and better for us all. A healthy civil justice system is an essential part of a healthy society.
30. I hope that everyone listening enjoys the great programme that we have today. Many thanks for listening.
31. May I now hand over to Lord Wolfson, who has been forced to appear remotely. He is the MoJ's Minister in the Lords and needs no further introduction. David, you are very welcome.