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THE RIGHT HON. SIR GEOFFREY VOS

The Future for Dispute Resolution: Horizon Scanning

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Introduction

1. I have given several lectures in the last couple of years about the reforms of the civil justice system in England and Wales that are in progress now. In this lecture, I want to take a step towards the horizon and consider what justice systems might look like in England and Wales and beyond in the next generation. I want to ask also what our most important objectives should be and how we should best prepare ourselves for that brave new world ahead. Despite that ambitious introduction, I shall hope to keep my feet firmly on the ground throughout.

2. It is first important to understand where we are today in the reform process.

3. I am pleased to say that progress towards an integrated digital justice system for civil, family and tribunals cases in England and Wales is well advanced. I have characterised what is being created as a funnel with three layers. At the front end, there will be a website and app to which any would-be claimant can go to find out how to progress a claim of any kind. Claimants will then be signposted to a series of pre-action portals and ombuds processes to identify and seek to resolve their claim. Any claim that is not

resolved within the appropriate pre-action space will already have a data set that can be transmitted by API directly to the third layer of the funnel. That third layer is the court-based online justice process epitomised already by Online Civil Money Claims and Damages Claims Online. Almost 300,000 OCMC claims have already been made online, and Damages Claims Online is taking off rapidly and will soon be joined by Possession Claims Online. There are compatible systems for public and private family claims and for immigration and employment tribunal claims.

4. The integrated whole will need coordination and governance to link these layers and the pre-action portals and ombuds processes. This will be overseen by the new Online Procedure Rules Committee, whose existence, I hope, is shortly to be confirmed by the Judicial Review and Courts Bill, now in its final stages in Parliament.

5. All this is good news. Moreover, by the end of the formal HMCTS reform programme, most smaller and bulk claims will be capable of being brought and progressed online. Some less important issues will be resolved online either administratively for very minor questions, such as whether a response is to be made by 4pm on Monday or Wednesday, or asynchronously by a judge for more significant questions. Remote or court hearings will remain for judicial resolution of the significant issues that ultimately emerge from the process.

6. The whole system will be focused on resolution. The platforms will identify the issue or issues that truly divide the parties, so that the most appropriate resolution process can be applied. Continuous mediated interventions will be integrated into the whole digital justice system, making use

of every available kind of dispute resolution from online or telephone to in-person mediations, early neutral evaluations or the use of AI to suggest outcomes.

7. So, let me assume for the purposes of this lecture that all that I have described has happened, and that by, say 2024, an holistic integrated digital justice system is operating for civil, family and tribunals. There will be no more paper in the county courts. I might mention in that connection that, as I go round the country visiting judges in courts everywhere, I find more and more judges and lawyers who welcome the convenience and practicality of the on-screen environment. The days of carting trolley loads of papers around courts are mercifully numbered.

8. In some ways the digital justice system I have described is revolutionary. It will certainly be the first such ubiquitous system in a major developed economy. But it is hardly using what would now be thought of as ground-breaking technology, and I cannot imagine that it will be the final development required if we are to continue to provide access to justice to citizens and families, to SMEs and larger businesses and to the state itself.

<u>Other technological changes in society</u>

9. I want pause there for a moment to consider other technological changes within our society.

10. We know now that truly new technologies are going to change the way things are done across business and personal life – whether you are a consumer, a family or a small business. The changes that I am now going to mention are all interconnected, they add up to a rapidly changing technology driven world which will look very different even

as compared to the recent developments in today's world which are driven mostly by universal adoption of increasing conventional processing power and the internet.

11. The first change that is occurring quickly as we speak is the inexorable rise in blockchain technologies. These technologies will immutably record every event or transaction in our lives. To give but one example, in the telecoms industry, when a single call is made a payment is due between the networks and that transaction along with billions of others will all be recorded on-chain. Utilities, telecoms, energy companies alongside property registries and those buying and selling non-fungible tokens are using the blockchain now. I am told that its growth is equivalent now to where the internet was in 1995. The internet was unstoppable in 1995 and the growth of blockchain technology is unstoppable now.

12. The second existing change is the progression towards mainstream Central Bank Digital Currencies or CBDCs and stable coins, which will allow wholesale and digital payment transactions to take place 24/7 instantaneously. I am told China is close to launching its retail CBDC and, once it does, other central banks will undoubtedly follow suit. This change will start to move the existing 2.6 trillion dollar unregulated crypto, Bitcoin and de-fi sector towards the regulated financial mainstream.

13. The third existing change is the one highlighted by the UK Jurisdiction Taskforce's recent Smarter Contracts report. That report was launched in London on 24 February 2022 and showcased the widespread and growing use of smart machine-readable automated contracts for employment and derivatives and across the financial markets. The

continuing love affair between lawyers and paper is almost as extraordinary as the fact that, in 2022, so many are still wedded to the use of analogue non-smart document programmes such as PDFs and Word. As I repeatedly joke, gaining very few laughs, the end of the Word is nigh …

14. The fourth existing change is the progression towards electronic transferrable documentation for bills of lading, bills of exchange and all other commercial documentation. This development taken alongside the exponential growth in the adoption of e-signing is already changing the complexion of international business.

15. The fifth existing change is the development of the internet of things that allows every device from a domestic fridge to a laptop, and from a smart television to self-driving vehicles to communicate and record their activities on-chain. We already think correctly that every aspect of our lives is recorded somewhere, but I suspect we are only at the beginning of that particular journey.

16. Sixthly, we are seeing a rise in the importance of Decentralised Autonomous Organisations (DAOs), which are essentially automated corporations composed of a highly sophisticated collection of smart contracts. The danger here is that company legislation will not move sufficiently quickly to provide a suitable legal infrastructure for the operation of DAOs.

17. The seventh existing technological development that is worth mentioning is the metaverse which is well advanced. We should not ignore it, but will need to distinguish between business, consumer and leisure usages.

18. Finally, we are already seeing a meteoric rise in quantum computing that I have seen described as being likely to "upend" every industry.

19. So that, in a nutshell, is the current landscape and the existing direction of travel. The need for digital development is now accepted and is unashamedly mainstream. The task of looking forward, however, needs to look a few years further ahead. I know that others, notably the Civil Justice Council's Futures Group, are lifting their eyes beyond what are now imminent developments to the horizon and to the technologies of the future. I want perhaps to give a fillip to that process.

<u>The background to disputes that will be arising in the future</u>

20. Let me now try to give some background to the disputes that our new digital justice system will need to be resolving the future.

21. Every justice system has to cater for the types of people and entity who are entitled to access it. It is important to understand that justice is no longer a binary process. This important principle underpinned Woolf's reforms last century and it remains true. For small claims, the parties often want a swift cost-free resolution, without much caring whether the outcome is robust and dependable. In large disputes and some other types of claim, the parameters will be different, and the parties may be prepared to invest time and money in achieving a more just and perhaps objectively correct solution.

22. It is important also to understand that it is no longer appropriate to provide a one-size fits all litigation solution for all types of case. The situation in family cases where

children may be removed from their parents cannot be compared to a possession claim where a family may lose its home or to a personal injury claim for damages or to an employment claim where a right in respect of discrimination at work is being vindicated. This reflects the intrinsic human purpose underlying the justice system.

23. But far more work needs to be done on evaluating what disputes are likely to arise in future. Some of the ones I have mentioned may last into future generations, but some may not. Certainly, personal injury claims will look very different when every car records its every move on-chain so that there is no need for the measurement of skid marks and no dispute as to how fast colliding vehicles were going at the moment of impact – or even who programmed the system piloting the vehicle.

24. A really careful look at the types of dispute that a justice system of 2040 will need to resolve is a vital starting point. If one is looking for universals, the evidential landscape is likely to look very different in 2040 when most of what individuals and corporations do will be indelibly recorded and payment systems will be using cryptoassets on-chain. Factual disputes as we know them will become almost entirely a thing of the past certainly in most civil claims, but perhaps also in some family and criminal contexts, which, as you will all have realised, are not at the centre of my considerations this evening.

25. There is a further universal consideration. And that is the crucial issue of cross-border disputes. The blockchain is borderless, so that much of the immutable data on which claims will be based will not be recorded in any one country or on any one node. But legal systems and justice systems

are likely, even in 2040, to remain largely parochial. I shall return to that question in a moment.

Disputes in the future

26. Against that background, I would like now to stand back for a moment to look at what kinds of dispute can we see now that we are likely to need to resolve in 2040? I want to consider the kinds of bulk claims that will arise in 2040, not the types of large commercial claims.

27. I suspect that the 60 million small claims brought every year on eBay concerning what one might describe as micro transactions will still arise. The downloads, music, non-fungible tokens and things that are exchanged may be different, but there are still likely to be dissatisfied parties to such micro transactions. But in 2040, I would suspect that the parties to these transactions will be even more unwilling to wait any time at all for such issues to be resolved, and even less willing to consider paying for the privilege of such dispute resolution. I would expect that most such disputes will be resolved very quickly indeed by AI driven portals that provide a rough and ready resolution.

28. As I have already suggested, personal injury and medical negligence claims are likely to look rather different once the events that give rise to them are recorded on-chain. I would hazard a guess that such claims will be more about the evaluation of indisputable evidence and the assessment of compensation than anything else.

29. Transactional claims in personal banking, financial services, derivatives and insurance will be equally affected by the factual sub-stratum of the disputes being recorded on chain. In these cases, however, human injury is not involved

and one would imagine that there will be much less to argue about in the absence of fraud or deceit, which I do not anticipate being eliminated in the next generation. Indeed, it is worth highlighting that we are already seeing massively increased litigation concerning a wide variety of crypto-frauds, and I foresee that area of dispute increasing as the new technologies take hold. Properly thought through and effective regulation will be essential, as we move from the unregulated world of Bitcoin, other existing cryptocurrencies and tokens to the more regulated world of CBDCs, stable coins and smart legal contracts with an agreed governing law and jurisdiction.

30. There will still, of course, be claims about living accommodation and about children and matrimonial finances. There will also be disputes between employers and employees and disputes between the citizen and the state about citizenship, immigration and state benefits to name but a few. They may have to consider a virtual dimension with relationships created and experienced in wholly new ways. And again, at the least, the evidential scene will look very different when we have left analogue recording methods behind.

<u>How then should such disputes as do exist in 2040 be resolved?</u>

31. I want to repeat by way of introduction that our dispute resolution systems must always remain responsive to the reasonable expectations of those whom those systems serve. Those constituencies will probably be broadly the same in 2040 – individuals, consumers, businesses of all sizes – perhaps mostly DAOs rather than companies - and the various emanations of the state.

32. We will be starting from the new basis of an integrated online digital justice system composed of pre-action dispute resolution portals resolving different kinds of disputes backed by a court-based online dispute resolution system, across civil, family and tribunals. How will that need to change?

33. There are two further preliminary points. First, the recent development that has been provided by the UK Jurisdiction Taskforce (UKJT) as part of Lawtech UK. In April 2021, the UKJT published its Digital Dispute Resolution Rules intended for on-chain digital relationships and smart contracts. The rules provide for arbitral or expert dispute resolution under English law in very short periods for digital and blockchain disputes; they allow arbitrators or experts to implement decisions directly on-chain using a private key, and for the optional anonymity of the parties. These ground-breaking innovations are beginning to be adopted by small tech businesses, confirming that a different kind of dispute resolution is necessary for the digital space.

34. Secondly, I must make clear that both the currently developing digital justice system that I have described, and any future dispute resolution process must cater, and cater effectively, for the vulnerable and digitally disadvantaged. Whilst not my focus today, I am certain of the need for this aspect to be taken very seriously indeed. But that approach should not prevent us taking full advantage of new technologies. In every change we make to dispute resolution processes, there will be a need for the principle of access to justice to apply as much to the majority of system users who are able access every digital service as to those who cannot do so.

35. The terrible Covid pandemic has taught us that parties, lawyers and judges can actually adapt. They now even quite like remote rather than in-person hearings to resolve a range of types of dispute. That innovation was considered unthinkable by many in 2019, yet just 2 years later, it is embedded in our court-based dispute resolution system.

36. Technological change is also not new to the justice system. Even since the last major round of structural reforms to the courts in the 19th century, we have seen trains, planes, and derivative trading, to name but a few take off. The justice system has more or less successfully adapted to deciding new kinds of dispute.

37. The technological changes we can now see on the horizon may well prompt even more foundational change to society than that caused by new forms of transport or innovation within an existing industry. At a risk of really sounding like a fan of science fiction, I can illustrate the possible effects of this on the justice system with reference to time and space.

38. I will consider time first. A major change that I would envisage in dispute resolution in the coming generation is speed. I have tried to avoid a full historical exposition of the development of dispute resolution systems since Sir John Langton, the first Master of the Rolls was appointed in 1286. But it is worth noting that the pendulum of legal delays has swung slowly. When the English legal system was developing in the 16th century, there is no reason to suppose that it took long to resolve disputes, but by the 19th century delays had become both legendary and hopelessly embedded in the system. With some local initiatives providing occasional relief, delays have continued to be a fact throughout the 20th century. The situation is perhaps a

little better today. I forecast though that parties to disputes will become rapidly and increasingly intolerant to delay. As society speeds up, a relevant justice system must keep up with and match that speed.

39. We can already see the signs. Ordinary citizens now expect immediate satisfaction in every aspect of their lives on their smart phones. Their impatience and unwillingness to accept delay will inevitably grow.

40. The online space allows for much quicker dispute resolution, but its objectively absolute speed is determined by the slowest part of its function, namely, of course, any human or judicial interventions required.

41. A key question for the next 20 years is, therefore, likely to be the extent to which artificial intelligence can or should be used in the digital dispute resolution process. If the limiting factor is actually public confidence in the process. I hope that the new funnel of digital dispute resolution that is being created will attract as much public confidence as the justice system with which I grew up. There is no reason to suppose it will not. But many lawyers and others are asking whether such public confidence would survive judicial decisions made by AI.

42. My answer to this important question is that it will, provided the public understand what is being decided by a machine and what is not, and provided that ultimately there is the ability to question an AI driven decision before a human judge. In the first instance, there is no reason why very minor decisions should not be made by the system – time limits can be extended by days in this way. I have already suggested that integrated (alternative) dispute resolution processes can and should be driven by AI, so that

the parties are faced with regular logical proposals for the resolution of their dispute. This kind of intervention is likely to increase quickly.

43. The smart systems that already drive our online digital justice system will, of course, become much smarter. As they do, the processes will speed up. This is important, because the existence of lengthy personal and business disputes remains a massive drag on the economy. Individuals are less productive in their work and businesses when obsessing about disputes of any kind. The quicker they can be satisfactorily and justly resolved, the better it is for the parties themselves and for the national economy.

44. Turning now to consider space, a further universal consideration is the crucial issue of cross-border disputes. Blockchain is borderless, so that much of the immutable data on which claims will be based will, as I have said, not be recorded in any one country or on any one node. But legal systems and justice systems are likely to remain largely parochial.

45. The authority of municipal justice systems is derived from the coercive power of the state, and that is unlikely to change. But the legal system also derives its authority from the people whom it is there to serve. A shared concept of law is one of the hallmarks of a successful society.

46. This means that one of the largest questions that is likely to arise in future is how national legal systems will seek to resolve disputes which may have parties in several countries and may be governed actually or potentially by more than one legal system. The 2022 answer to these questions is the application of the principles of the conflict

of laws, but those systems may not be sufficiently flexible in the world we can envisage a few years hence.

47. I think that the national digital justice systems we are creating will, within a generation, start to be accessible to systems operating in other countries. There will be much less obvious difference between a digital dispute resolution system operating in a civil law country and one operating in a common law country. Both will have programmes which are subject to the governance of online rules committees that operate at a high enough level to ensure the justice of the process but are not hidebound by the historic civil procedure processes of old-fashioned domestic court-based processes.

Conclusions

48. To conclude then, I think I can draw a few simple points from what I have been saying.

49. Justice is changing fast already, and in England and Wales we can expect a truly integrated online digital justice system to resolve civil family and tribunals disputes by the mid-2020s at the latest. Analogue systems and paper will be things of the past.

50. Those who's focus is the future, should now look beyond the immediate developments of reform.

51. The types of dispute will gradually but inexorably change as more and more data from our everyday lives are recorded on-chain and become incapable of serious challenge.

52. The mid-2020s systems will be smart, but not as smart as they will need to be for the coming generation, when delays in dispute resolution will not be so widely tolerated.

53. The great prize in the coming generation will be to work out how national justice systems deriving their authority from individual states can work efficiently alongside similar justice systems operating in neighbouring and other states. They will need to do so as the new technologies that are changing all our lives are technologies without borders that may re-define the fabric of society.

54. We will need to be astute to ensure that regulation keeps up with technology to control cyber-crime. Risks must be properly controlled and limited, but they must not be used as excuse to impede technological progress. That progress will benefit citizens and businesses alike, nationally and internationally, because such disputes as happen in 2040 will be resolved more smartly and more quickly, but as justly as they are today.

55. I look forward to your questions.

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