



A response to the Civil Justice Council Consultation on costs

DisputesEfiling.com Limited

13 October 2022

1 Foreword

1.1 This consultation is undertaking a strategic and holistic look at costs, particularly given the ongoing transformation of civil justice into a digital justice system in England and Wales (E&W) (the Consultation). For reasons explained in the Introduction (below) we are able to respond with some authority on one set of the issues that arise.

1.2 On page 1 of the Consultation paper makes its approach clear:

“...The costs review is intended to be holistic in nature (albeit focusing firmly on the specific areas identified above), acknowledging that while each of these topics is important in itself, their interaction with one another and the wider context of civil justice as a whole, is crucial..”

1.3 We agree with this approach and draw attention to the number of civil justice reform proposals being undertaken or in Pilot at present. Any one of the reforms (including this consultation) must, in our view, be considered and undertaken taking into account the effect of the other reforms in Pilot or in contemplation.

1.4 We have in mind some specific examples which have a direct effect on the issues raised by this Consultation. Those are:

- a) The Paper Determinations Pilot, commenced 01.06.22 for 2 years covers all cases within the Small Claims Track (SCT);
- b) The digitisation of pre-action phase with compulsory [A]DR processes introduced at that stage once the Online Procedure Rules are promulgated during 2023;
- c) Reform of the Pre-Action Protocols (PAPs) introducing a robust requirement to engage with [A]DR in the Pre-Action phase including a requirement to engage in good faith and an early summary process to strike out or stay claims once issued where compliance with the good faith obligation is not evident. The Final Report of CJC’s PAP Working Group is expected to be published by December 2022;
- d) The DHSC consultation on a pre-action scheme of fixed recoverable costs to resolve low value claims of clinical negligence; and,
- e) BEIS’ proposals for reform of consumer related [A]DR which is noted in the Consultation

We explain our views about the consequences of these reforms for costs below.

1.5 Much of the ground covered by the issues raised in the third group of questions is addressed in a paper we prepared for the Master of the Rolls in June 2022. An abbreviated and updated version of that paper is included at the end of this submission. References in this submission to that paper are to the Funnel Paper.

1.6 Our contact details for the purpose of this Consultation are:

Full name	Tony N Guise
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Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	Director
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We have no objection to DEF's name being published as respondent to the Consultation.

2 Introduction

- 2.1 DisputesEfiling.com Limited (DEF) is an English registered company which was incorporated in 2015. DEF owns the IP and operating systems in a Cloud-based Platform for the management of Dispute Resolution cases (the Platform or the DEF Platform). Unique amongst providers of platform we have forged partnerships with leading dispute resolution service providers including ADR-ODR International Limited (mediation) and Independent Evaluation & Facilitation Service (IEFS) Limited (neutral evaluation).
- 2.2 The DEF Platform was developed in 2015 for the Personal Injury Claim Arbitration Service (PlcArbs) founded by Andrew Ritchie, QC, as he then was. Since that first iteration was launched (in June 2015) and in response to the growing demand for a range of Dispute Resolution options the Platform developed and today offers five modules:
- Pre-Action: which facilitates compliance with the Pre-Action Protocols and, as part of that process, settlement via ad hoc negotiation
 - Arbitration
 - Adjudication
 - Mediation
 - Neutral Evaluation
- 2.3 The development of the Platform has arisen from our Director's close involvement with the issue of IT in the civil courts of E&W which involvement began in 1994 with his appointment as Chairman of the London Solicitors Litigation Association's (LSLA's) Woolf Sub-Committee. The sub-committee drafted the LSLA's evidence to the Access to Justice Inquiry. Fuller details about DEF's and our Director's involvement in civil justice reform may be found in the accompanying Funnel Paper.
- 2.4 Our active engagement with civil justice reform in E&W continues with the preparation of this Response and our Director's participation, for DEF, at the Costs Conference on 13 July 2022 and at the webinar held on 4 October 2022.
- 2.5 Our work with claims management companies led us to explore positioning the DEF Platform within distributed ledger technology integrating with the existing HMCTS portals to provide an effective end-to-end system for resolving large claim volumes. The use of a smart contract to speedily complete settlement agreements in common dispute types is part of

this work. None of this is new technology, a smart contract has been in use for as long as ATM cash dispensers have been used.

2.6 Monitoring and evaluation

As with any civil justice reform it is of crucial importance that quantitative and qualitative data is gathered to inform an empirical approach to the further development of the reforms proposed in the Consultation.

That data should be the subject of academic analysis and the results published in a timely way to inform the civil justice reform debate.

This approach is being adopted in connection with the Paper Determinations Pilot (mentioned above) and we hope it will be applied across all civil justice reform projects.

Given our experience we only respond to the questions concerning costs in connection with the pre-action protocols, portals and the digital justice system.

Our response refers to the Funnel Paper (see above, para 1.5) in the interests of brevity.

3 Part 3 - Costs under pre-action protocols/portals and the digital justice system

3.1 What are the implications for costs associated with civil justice of the digitisation of dispute resolution?

The digitisation of the pre-action protocol phase of dispute resolution and the way in which professional and lay users enter this digitised space is critical. The better done it is the more users will adopt it to resolve disputes efficiently thereby enhancing the integrity and credibility of the civil, family and tribunal justice system as an essential pillar of our civil society.

The User Experience (UX) of the digitised system (often called the Funnel) is vital. If done well the system will enable users to move swiftly and effectively to a resolution. If done badly the opposite will obtain.

The portals built by HMCTS and Insurers are well built with good UX. Unfortunately they create delays and increase costs. This unhappy outcome arises because none of those portals speaks to any other portal. An example is the most recently built, the Official Injury Claim portal (OIC).

Built and paid for by Insurers as a pre-action platform it does not connect with the Damages Claim Portal (DCP). Instead the OIC portal requires users to progress their unresolved claim in court by firstly printing the Court Pack and sending that and a cheque (by post) to the relevant court. Other examples of this counter-productive use of technology can be provided on request.

The OIC is also a good illustration of how costs increase for professional and lay users. Lay users expect access to the courts via an app on their phone and pay via Apple Pay or similar; most lay users will not have a cheque book. Such dis-integration increases costs and time thereby deterring users and inviting criticism of the civil justice system.

We have long argued that these portals should be inter-operable using APIs and describe the current digital landscape as the Portal Archipelago. As professional users begin to use these portals they are also finding it costly to integrate with them as each portal requires a different approach. We noted that our concerns were echoed by two attendees at the recent webinar

hosted by the CJC as part of this consultation on 04.10.22: Jonathan Scarsbrook and Jack Ridgway.

At the HMCTS' Public User Engagement event in November 2021, in response to our questions, we were told Application Programming Interfaces (APIs) would be developed but not until after the Modernisation Programme was completed in 2024. We consider this too late by far. Work should have begun well before now on developing appropriate APIs so that Online Dispute Management (ODM) platforms such as ours can integrate with the DCP and the OCMC, for example.

The costs incurred in accommodating such dis-integration should be dealt with by a common entry point (the Funnel) which connects to ADR Service Providers (ASPs) using appropriate APIs thence to the Courts if ADR does not resolve the dispute. The data about the case (parties' names, addresses, case statements, evidence etc) would be inputted in the Funnel and then seamlessly transferred to ASPs and, if unresolved, to the HMCTS portal via APIs.

Whilst the API concept is well established each API requires careful development and penetration testing. The API related issues are addressed in our Funnel Paper accompanying this submission.

The use of distributed ledger technology (DLT) would also do much to enhance UX, data security and minimise cost. Especially if combined with a smart contract for the pre-action ADR phase. Our Funnel Paper explains these ideas in more detail.

If the Funnel is designed well, tested exhaustively then it can work as well as the new Elizabeth Line the building of which has many lessons for the builders of the Funnel. This comparison is explored in detail in the Funnel Paper.

Such an inter-operable system would encourage users to resolve their disputes via the civil justice system. It would also re-establish the English and Welsh civil justice system as a world-leader.

We conceive of no disadvantages arising from an end-to-end justice system that is fully digital and inter-operable. Even those who are digitally detached by reason of age, health, education or means can be supported on a platform. Please consider the work being done by HMCTS with We Are Digital. This support should be expanded to include users or would-be users of the Funnel. Information about We are Digital may be found [here](#).

3.2 What is the impact on costs of pre-action protocols and portals?

In the Supreme Court's decision in [Bott & Co Solicitors Limited v Ryanair DAC \[2022\] UKSC 8](#), Lord Briggs says this about the issue of when costs arise for recovery:

"In 1917 the issue of a writ was typically the first step in litigation. By 2018 the issue of a claim form had become a last resort." (last sentence, para 145 on p.45)

The evolution of the Common Law in shifting the action from litigation to pre-action will only work if two factors are present:

- a) The existence of an easy to use platform for the pre-action phase that realises the purpose of technology which is to make life easier not harder to manage; and,
- b) Solicitors can make a living from such a platform.

The costs incurred by solicitors in preparing a claim in the Funnel, engaging with an ASP in the pre-action phase and undertaking any other pre-action steps (such as disclosure) should all be recoverable post-issue if a case gets as far as issuing proceedings or by some pre-issue summary process. Otherwise this translation of the PAPs to the digital environment will not realise the benefits that are possible: speedier resolution, fewer claims issued and a Judiciary whose attention is focused on cases requiring their time.

The better the UX of the Funnel the less time and cost will be incurred. Conversely the Portal Archipelago, if left unconnected, is already driving up costs which are being passed to users in the form of higher charges. Higher charges which will be sought to be recovered in proceedings of one kind or another.

A crucial consideration for this consultation is the way in which it interacts with other civil justice reforms the subject of consultations, Government response or in pilot. We have in mind those consultations and pilots that are summarised at para 1.4 of this submission. Unless all of the reforms are considered as a single whole progress is likely to be limited at best and counter-productive at worst.

To proceed with this Consultation in isolation would be like building Crossrail (now the Elizabeth Line) with each part of that project being developed by a completely different organisation without reference to other parts. Integration of the portals is not just about APIs, integration is key at the planning stage too. Bear in mind the outcome of the DHSC consultation on low value clinical negligence claims has yet to see a Government response. That project accounts for ca 7,500 claims p.a. and proposes a costs regime that is within the scope of this Consultation.

Also awaited is the Final Report on Pre-Action Protocols, expected December 2022. The PAP Review Interim Report proposed a summary application process early in the life of any proceedings at which issues about breach of the proposed Good Faith duty to engage in ADR in pre-action could be ventilated and a process by which costs incurred but disputed during the pre-action phase could be resolved.

Such a process will do much to assure the effectiveness of a reformed pre-action phase and encourage all users to engage with it. Please see the Interim Report [here](#). Note that para 3.16 (p.29) deals with the idea of a summary costs procedure to deal with issues about liability and quantum of costs where claims settle in the pre-action phase. Paras 3.26-3.29 inclusive address the early application to deal with other issues about compliance (p.32).

3.3 Is there a need to reform the processes of assessing costs when a claim settles before issue, including both solicitor own client costs, and party and party costs?

Please see our comments above and the Interim Report of the PAP Working Group, link above. The reforms will not realise their full potential unless a summary process is made available for resolving issues about liability and quantum for costs of cases that settle in the pre-action phase.

3.4 What purpose(s) does the current distinction between contentious business and non-contentious business serve? Should it be retained?

This is not a question we consider ourselves qualified to answer.

Thank you for this opportunity to contribute to the debate.

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The Funnel Paper



Discussion points relating to creation of the Funnel and the PAP Platforms

Tony N Guise, Director, DisputesEfilng.com Limited

[This paper in its original form was sent to Sam Allan on 12 July 2022. It was abbreviated and updated for the purposes of the CJC consultation on costs in October 2022]

1 Purpose of this paper

- 1.1 As the civil justice reforms begin to coalesce and before the Online Procedure Rules Committee (OPRC) turns to make the required rules [June 2022] may be an opportune moment to make the case for the formation of a Working Group (WG) to support the OPRC when operating. Such a WG would, we suggest, comprise experienced and informed individuals who have first-hand experience of the technical and other aspects of developing and building cloud based platforms for managing [A]DR processes. We call these platforms Online Dispute Management platforms, ODM platforms. We thank Graham Ross for the term and abbreviation.
- 1.2 The point of such a Working Group (WG) would be to propose and/or draft suggested rules for consideration by the OPRC when it comes to make the rules that will establish what the Master of the Rolls has called the Funnel. Establishing the WG may go at least part of the way toward discharging the obligation on the OPRC to consult as required by s.26(1) of the Judicial Review and Courts Act, 2022 - before making rules "*...the Online Procedure Rule Committee must ... consult such persons as they consider appropriate.*"
- 1.3 The author of this paper is Tony Guise in his capacity as a Director of DisputesEfilng.com Limited (DEF). DEF is a Cloud based ODM. Whilst this paper is his alone the ideas expressed have benefited from discussion with Caroline Sheppard (Immediate Past Chief Adjudicator of the Traffic Penalty Tribunal) on 11 July 2022, Sam Allan (Private Secretary to the Master of the Rolls) on 30 June 2022 and Graham Ross on 22 August 2022. We are grateful to all for the time and ideas given and shared.
- 1.4 Nevertheless, responsibility for the ideas remains ours as does responsibility for all and any errors of omission or commission.

2 The challenge

- 2.1 To create an end-to-end digitised civil justice system integrating multiple pathways to resolution. In achieving this ambitious aim challenges arise from a larger volume of cases proceeding with greater velocity through [A]DR.

2.2 Velocity and volume are the critical paths to understanding the issues that need to be addressed. These pathways in turn give rise to issues of integration (inter-operability), security and novelty.

2.3 In 2016-2017 DEF designed a Pre-Action module for our [A]DR case management platform. Since then time has been spent investigating and trying to solve the Bottlenecks in the [A]DR process. Bottlenecks introduce friction into the process, reduce velocity and discourage users. Whatever process is devised must be quick, easy to use and seamless in its integration with all parts of the end-to-end process.

2.4 As we understand it there are three elements to the proposed process:

The Funnel	Pre-Action Platforms	HMCTS digital systems: CMC/DCP/CE-File
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(together we call these elements the Project)

2.5 The Project is not dis-similar to Crossrail in its challenges. In 2018 Mark Wild became CEO of Crossrail. He has observed (BBC programme: “The 15 Billion Pound Railway”, Episode 1 2022 at 16 mins 10 seconds):

“The real challenge of Crossrail from the point I took over wasn’t so much civil engineering. It was: could we bring this immense system together as a single operating system?”

Link to programme:

<https://www.bbc.co.uk/iplayer/episode/m0018c8k/the-15-billion-pound-railway-inside-the-elizabeth-line-episode-1>

The section of this episode that deals with the issue of software integration (from 15 mins 25 seconds to 26 mins 15 seconds) is well worth watching for its insights about systems integration.

Crossrail has three elements: two existing railways (GER and GWR) at the eastern and western ends of a third, new, section – the central London railway. These were to be integrated into the World’s first railway to be controlled digitally from end-to-end. Pradeep Vasudev, Head of System Integration at Crossrail, said:

“The most important thing about novel systems is it’s got a lot of development associated with it because it’s never been done before.” (BBC, The 15 Billion Pound Railway, Episode 1 2022 at 19 mins 25 secs)

2.6 Crossrail’s ambition was similar in scale to HMCTS’ ambition for the Project. On HMCTS’ ambition please see a presentation to technology suppliers where it explained its aim was to build:

“The world’s first large-scale online court [that] spans all non-criminal work, taking cases from cradle to grave through straightforward digital processes involving a blend of smart online mediation and resolution processes [which] mean citizens can use the court to resolve

cases between themselves online quickly and easily..." [HMCTS Technology Supplier Engagement, Technology Workstream presentation, November 2018 – slide 6]
<https://drive.google.com/file/d/1mPTR7a5zMkljrflMckriKiwgZqweRUK/view>

Transformation on this scale has never been attempted in any civil justice system anywhere else in the world.

- 2.7 A complication that affects the Project which also affected Crossrail is that HMCTS' digital systems are not yet completed. The effect of this is likely to cause delay. Simon Wright, former CEO of Crossrail pointed out, significant delays were caused because Crossrail *"were trying to test with incomplete infrastructure"* (BBC programme, episode 2 1999 at 4 mins 40 secs).

Programme link: <https://www.bbc.co.uk/iplayer/episode/m0002p93/the-15-billion-pound-railway-under-pressure-over-budget-episode-2>

- 2.8 The challenge that needs to be recognised, acknowledged and managed is therefore how much novelty (i.e. how much delay) do we wish to bring to the Project?

- 2.9 When delivering the remaining two-thirds we firmly believe the focus should be on delivering pragmatic solutions involving, where possible, tried and tested technology to maximise the chances of delivery within 36 months.

- 2.10 Remarks made by Lord Wolfson in the House of Lords Committee Stage debate focus on how the PAP Platforms should be designed. On 24 February 2022 (Hansard, foot of col. 407 – top of col. 408) Lord Wolfson said:

*"...the Online Procedure Rule Committee will say, "This is the protocol" and there will be Wolfson Mediation Services and Falconer Mediation Services and people can choose in a market who they go to. **Of course, those services which offer seamless transition to the online courts service are likely to be better placed in the market, because they will have an advantage. However, it will be up to the providers to set up their services so that people can seamlessly transfer in.** The Online Procedure Rule Committee will set up the protocol, so that you know what you are aiming at and the way that you must set up your online procedures so that, if the case does not settle, the data can transfer into the court process."*
[words in bold/underlined - our emphasis]

- 2.11 The standards to be required of ASPs and their Platform providers will be set out in rule form by the OPRC. The preparation of those standards/requirements may benefit from considering other contexts in which Government sets out standards for Cloud based service suppliers. For example, in the context of providers of online identity verification services for would-be tenants.

- 2.12 The Government's "Service Standard" may also be of relevance to the Project and in particular the development of accreditation criteria. The Service Standard and its underlying principles may be found here: <https://www.gov.uk/service-manual/service-standard>

3 The Funnel

- 3.1 In this paper we assume the Funnel is an online process with intuitive questions the answers to which determine the direction of travel for a LiP or professional user toward an appropriate form of dispute resolution managed by ODM platforms. Consequently the design of those questions and the user interface and experience (UI and UX) is critical to the success of not only the Funnel but the entire Project.
- 3.2 It has been suggested that the Funnel may not cost much to build. This may be so if we start on a smaller scale and develop over time through iteration and in an agile manner. Funding may be taken care of by the private sector but any investment must be supported by a sufficient Return on Investment. We say more about funding later in this paper.
- 3.3 The Funnel is a novel element and will require careful planning, development and testing both internally and externally as to functionality and for security penetration.

4 PAP Platforms

- 4.1 As Lord Wolfson put it, above: “**...those services which offer seamless transition to the online courts service are likely to be better placed in the market, because they will have an advantage. However, it will be up to the providers to set up their services so that people can seamlessly transfer in.**” This was also how Sam Allan described the Funnel during our meeting on 30 June 2022. Application Programming Interfaces (APIs) therefore become of central importance to the success of the Project.
- 4.2 The DEF Platform was the first in the UK, launched in June 2015, and has brought together Claims Management Companies/solicitors with ASPs to deliver a quick, online alternative to solving disputes.
- 4.3 DEF is working to utilise Distributed Ledger Technology (DLT) and APIs to create an integrated system beginning with law firm case management systems and ending with compensator banks paying settlement sums under a smart contract to deliver swift, secure resolution.
- 4.4 Approaching the build of the PAP Platform in this way reduces novelty with the associated risk of delay. This approach will, in our view, save significant amounts of development time as the novel elements will be limited to the Funnel and the APIs.
- 4.5 In England and Wales at present there are low numbers of mediation and evaluation cases taking place. To recruit the extra neutrals required will call for the [A]DR industry to train more neutrals and recognise that being a neutral is not the preserve of few but will become a profession of many.
- 4.6 There are two points in the progress of an [A]DR case we have identified that introduce friction and diminish velocity. These are:
- a) Choosing the neutral, booking the date and time; and,

- b) The manner in which the papers are provided to the neutral and other parties. Memorably described by Caroline Sheppard as a Jumble Bundle.

4.7 Some years ago DEF solved the latter issue with our Virtual Filing Cabinet.

4.8 However, choosing the neutral and the booking of the neutral remains a challenge to be solved. The Booking Bottleneck was also encountered by the Small Claims Mediation Service (SCMS) and which the SCMS partly solved by the use of a single calendar. When the volume of cases increases there will be a need for those cases to be processed at a rate that the SCMS' single calendar solution will not support.

4.9 We are currently developing functionality to solve this Bottleneck to which we have given the working title: ADR Administrator.

4.10 The design of ADR Administrator is currently with our ASP clients for evaluation before we begin building the functionality. When built ADR Administrator will enable the selection of an appropriate neutral and the booking of that neutral - both processes being managed entirely online.

5 Inter-operability

5.1 As indicated in numerous speeches by the MR and others data transition should be effected via the use of Application Programming Interfaces or APIs. However, enabling glitch-free, nano-second transition from Funnel, to Platforms to HMCTS is tricky. As Crossrail discovered, APIs Are Pretty Intricate.

5.2 Crossrail built an Integration Facility in Wiltshire solely to test the inter-operability of the Crossrail network before any novel API or function was uploaded to the live railway. Testing took Crossrail 10 months to resolve the up to 250 errors (bugs) that were found in each version of the operating system. The equivalent for the Project would be to create a duplicate of the Project's functionality as a Test Site and this is often done. However the amount of time required for testing and resolving bugs should not be underestimated.

5.3 It should not be forgotten, as pointed out above, that one of the problems which caused Crossrail significant delays was that they *"were trying to test with incomplete infrastructure"* thus the infrastructure must be completed before effective testing may be undertaken (Simon Wright, former CEO Crossrail, BBC programme, episode 2 1999 at 4 mins 40 secs).

6 The rôle of DLT

6.1 We believe the Funnel and the PAP Platforms should be within distributed ledger technology.

6.2 Doing this will enable enhanced security, future-proof the Project and fulfil HMCTS' stated aim to re-establish the English and Welsh civil justice system as a world-leader in delivering timely resolution in a modern way.

7 Data management

- 7.1 It is vital that data collection is addressed with granularity so as to inform the future reform of the civil justice system on an empirical not an anecdotal basis.
- 7.2 Data collection has been a complaint since as long ago as 1857 when civil justice reformers regularly complained that insufficient data was available to inform the reform of the courts of the Common Law and of equity. For example, see Solicitors Journal, issue 18 of 2 May 1857 at p. 426: *“where is the data for this exercise? We must collect all the facts and analyse.”* etc.
- 7.3 The time is ripe to ensure data collection is part of the Project from the start.

8 Support services and training

- 8.1 DEF’s experience in working with users has been of minimal demand for third party support. We believe this arises as a result of lengthy and time-consuming work on the UI.
- 8.2 The same experience may be achieved with the Funnel if it is properly planned with appropriate resources available to users.
- 8.3 If the national digital support service (We Are Digital, WAD) is to extend its services to include the Funnel then WAD personnel will need training once the Funnel is complete. Will WAD have their contract extended to include the Funnel?
- 8.4 As for the PAP Platforms the accreditation criteria should include requirements as to FAQs and other support for users within the accreditation criteria.

9 Penetration testing

- 9.1 It is vital that all aspects of the Funnel and PAP Platforms together with the APIs are thoroughly and regularly pen-tested. This should form part of the accreditation criteria and is also addressed in The Service Standard, see above at para 2.13.
- 9.2 This aspect together with functionality testing is akin to the months of trial running that Crossrail undertook before opening the railway in June 2022. In Crossrail it was found the Find to Fix cycle lasted 2-3 months with further time required to test and approve any fix.

10 Funding

- 10.1 We assume no funding will be made available for the Funnel or the PAP Platforms by Government beyond the additional £200m granted to the Modernisation Programme under the Autumn Statement 2021.
- 10.2 Any suggestion that the Platforms could charge a fee for use (in addition to any fee charged by the ASPs) is inappropriate and unworkable in our view.

- 10.3 At present in the Small Claims Track (SCT) there is no fee to use the SCMS. Will HMCTS pay ASPs to provide such services?
- 10.4 As an aside it is worth noting that PAP Platforms such as the various Ombudsman services, OIC or the RTA Portal make no charge for the platform or the neutral.
- 10.5 Having spent the past 7 years looking closely at this and all other aspects of a Pre-Action platform (and having built such a platform in 2017) it is our view that ASPs must continue to use their platforms as they do now; by meeting the platform cost within the overheads of the business of each ASP. Thus ensuring there will be no additional cost to Government or end users.
- 10.6 The PAP Platforms could pay an Infrastructure Levy to HMCTS to reimburse the development and maintenance costs of the DLT and Funnel. Again, this is not a novel approach and is in fact a tried and tested funding mechanism in the Construction Sector. See the Community Infrastructure Levy (CIL). The CIL pays for, e.g., railway stations, playgrounds, landscaping in the vicinity of housing developments.
- 11 Mastering the detail involved in these issues is crucial to achieving successful delivery
- 11.1 We have become aware of work by the MoJ looking at the issue with a webinar to discuss the issues taking place in the w/c 14.11.22. Natasha Widdowson at the MoJ is co-ordinating this.
- 11.2 We believe a Working Group (WG) should be established to propose and/or draft:
- A standardised approach to holding information and evidence;
 - Standards/specification to enable Providers to build accredited ODM processes;
 - Work with HMCTS to develop APIs; and,
 - The other aspects outlined above
- 11.3 The WG needs to be cross-disciplinary having representatives from the ASPs, ODM platform providers, HMCTS and a Judge familiar with the issues.
- 11.4 We suggest the following:

Name	Organisation	Expertise
Amanda Finlay, CBE	Law for Life	Charity providing accessible resources to enable users to understand their rights.
Peter Freeman	Independent Evaluation	Leading provider of neutral evaluation services that are managed online
Tony Guise	DisputesEfilng	ODM platform provider
Dr Paresk Kathrani	Legal Utopia	Developed AI to enable people to understand their legal issues
Dr Victoria McCloud	High Court Master	Member, Digitalisation Subgroup of the CJC Working Group on PAPs

Aaron Powers	Hunit	Builds distributed ledger technology (DLT)
Sir Andrew Ritchie	High Court Judge	Past involvement in online management of [A]DR: PlcArbs.
Graham Ross	SmartSettle One	Platform provider
Rahim Shamji	ADR-ODR International	ASP
Caroline Sheppard, OBE	Immediate Past Chief Adjudicator, Traffic Penalty Tribunal	Built online resolution platform for traffic penalties
Dr Malcolm Stewart	Academic and claims adjuster	Data analyst with the insurance industry
Emily Wickens	HMCTS	Head of Civil Jurisdiction and Service Manager

11.5 There will undoubtedly be other names that come to mind. The above are those that have occurred to us as having relevant experience in designing, building and operating platforms similar to what appears to be envisaged.

11.6 We have contacted each of the above and each has confirmed they are willing to serve on such a WG if asked. Equally it has been made clear that inclusion of names in the list does not guarantee selection for the proposed WG or, indeed, if a WG will be formed. The usual caveat applies that willingness to serve is subject to agreement as to workload, number of meetings etc being manageable.

11.7 None of the above have seen or read this paper prior to it being sent. This paper represents the views of Tony Guise qua Director of DEF. Following delivery to the Private Secretary to the MR the paper will be shared with each of the above named.

11.8 Should the proposed WG be formed there will need to be the usual requirement to declare interests by members. In the interests of transparency material interests have been disclosed informally by the inclusion of brief biographies at the end of this paper.

11.9 We do not consider there will be any conflict of interest as the purpose of the WG is only to propose. It will be for the OPRC to dispose.

This paper is prepared in a spirit of collaboration with a desire to make available the best of all talents to work on a project that will undoubtedly become the defining reform of the Common Law in the 21st Century.

We are willing to assist further if thought helpful and contact details are below.

TONY N GUISE

29 June 2022 (revised and abbreviated 8 October 2022)

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Information about the DEF Platform can be found at www.disputesefiling.com

Brief biographies of the suggested members of the Working Group

Amanda Finlay, CBE

Amanda is Chair of Law for Life, the foundation for public legal education, a national partner in the LIP Support Strategy. She is a co-opted Council member of Justice, and chaired their working group on Preventing Digital Exclusion from Online Justice.

She was a member of the Civil Justice Council and of their Litigants in Person Working Group, a Trustee of Law Works, and a Public Governor of Oxleas NHS Trust.

Amanda was until 2009 a senior civil servant in the Ministry of Justice working on major access to justice reforms including as Secretary to Lord Woolf's Inquiry, the Human Rights Act, legal aid and legal services strategy, civil and family justice and tribunal reform, and earlier work on unmet legal need.

Peter Freeman

Peter has specialised in PI litigation for 30 years and, so far as possible, sought to maintain an equal balance between representing claimants and defendants.

Peter was an early adapter to Mediation and a qualified Mediator. He recognised the short-comings of both litigation and mediation and the fact that almost all clients – lay, insurance and professional – were dissatisfied and looking for a better alternative. From 2013 onwards, Peter was instrumental within a group including Dame Janet Smith, at establishing and evolving a bespoke system of evaluation and facilitation, which became 'The Independent Evaluation & Facilitation Service', subsequently known as 'IE'. Presciently he saw the need for the online management of [A]DR as long ago as 2018 and was responsible for introducing a Platform (DisputesEfilng) to Independent Evaluation for this purpose. IE is the leading provider of 'early neutral evaluation' operating today, having operated successfully 'on-line' or 'remotely' throughout the pandemic.

Tony Guise

Tony has been a leader of the campaign to introduce IT into the civil courts since the Woolf Inquiry in the mid-'90s. Tony was President of the London Solicitors Litigation Association from 2002-2004 and sat on the Law Society of England and Wales' Civil Justice Committee (policy development) for 9 years until 2016 with special responsibility for costs and IT in the civil courts.

In August 2008 Lord Justice Jackson (as he then was) invited Tony to draft what became chapter 43 of his Final Report into Litigation Costs (2009) – chapter 43 proposes a solution to the challenge of introducing effective IT into the civil justice system.

The work undertaken by the author in the period 1994-2016 eventually led to the founding of Cloud based platforms for the management of civil litigation and then [A]DR in response to a request by Andrew Ritchie, QC (as he then was) in December 2014.

In 2016 Tony ceased to practice as a solicitor and has focused his energies full-time on the development of a Cloud-based platform for the management of [A]DR proceedings via his company, DisputesEfilng. Com Limited (DEF).

Dr Paresh Kathrani

Dr Paresh Kathrani is the Chief Executive Officer of Legal Utopia, a company which uses AI to enable people to understand their legal issues. They can also find a lawyer using Legal Utopia's mobile app.

Paresh taught Law at higher-education level for more than 15-years and worked on EU and other funded projects, including in LawTech. Paresh has looked at LawTech since 2013, including taking part in many presentations and writing in the field. He is the immediate, former Director of Education, Training and Innovation at the Chartered Institute of Arbitrators, where he took their global training and assessment online and developed training programmes for mediators and arbitrators.

Dr Victoria McCloud

Dr Victoria McCloud sits in the High Court as a QB Master. She is a Senior Associate Research Fellow at the Institute of Advanced Legal Studies, an Associate Fellow at the Global Network on Extremism and Terror, Department of War Studies, King's, and a Chartered Psychologist. She is an expert advisor to the All-Party Parliamentary Group on Artificial Intelligence, an expert on the RCPsych Working Group on Historic Child Abuse, and part of the Digitalisation Subgroup of the Civil Justice Council Working Group on Pre Action Protocols.

Her doctorate was obtained in visual psychophysics, allied to computational vision research, and she remains fluent in several programming languages.

Hunit (Aaron Powers, CEO and co-Founder)

Hunit is a British technology company offering a no-code platform for the creation and use of smart legal contracts (SLCs) recorded on DLT. The platform allows legal practitioners to create natively digital, self-executing, and fully compliant legal contracts using natural language authored directly in Microsoft Word.

Hunit's solution addresses the pain-points often associated with present-day agreements and contracts, including the manual execution and monitoring of their terms, performing KYC and governance, running issuances and other financial transactions, and creating legal certainty through contract execution logs and on-chain record keeping.

The company is supported by the UK Ministry of Justice's LawtechUK program, Microsoft for Start-up's Scale-Up accelerator, the UK Dept. for International Trade's Global Entrepreneur Program, the University of Birmingham's Centre for Responsible Business and participates in the British Standards Institute's working group on the development of standards for the use of SLCs.

Sir Andrew Ritchie

Andrew qualified for the Bar in 1985 and went on to practise in personal injury and clinical negligence law for the whole of his career.

Andrew was chair of the Personal Injuries Bar Association from 2014-2016. He is qualified as an arbitrator and a mediator, and he has written and edited a number of legal texts books including: "MIB Claims" (Lexis); "A Guide to RTA liability" (Lexis) and "Kemp & Kemp on Quantum" Vols 2-4 (Sweet & Maxwell).

In 2014 he founded the PI Claim Arbitration Service which was devised to arbitrate claims of personal injury and clinical negligence. This was managed online from the outset using the DisputesEfilng.com Limited platform.

Andrew was appointed to the High Court Bench on 1 October 2021.

Graham Ross

Board Member of The International Council for Online Dispute Resolution (www.icodr.com)

Fellow of The National Center for Technology and Dispute Resolution at UMass (Amherst) (www.odr.info)

Official Observer to the Council of Europe's European Cyberjustice Network

Member, CJC's ODR Advisory Group and whose ground-breaking Report led to the creation of the Online Civil Money Claims project.

Member, CJC's ADR Working Party

Advised on ODR to the courts in UK (including running an online mediation trial in two small claims courts in 2008), Bulgaria, Lithuania, Canada, the Council of Europe. Graham is currently contracted to advise the courts in Ukraine on introducing ODR. Graham has also run two 25 case trials of online mediation for eBay.

Rahim Shamji

Rahim Shamji is barrister turned mediator. Rahim is the CEO of ADR ODR International based in London and with representatives in 41 countries.

Within ADR ODR International, Rahim has been instrumental in developing and advising governments and countries and redesigning their dispute resolution systems, from legislation to court users. Rahim has particular focus on online dispute resolution and this can be used to accelerate access to justice. Rahim has written a chapter on this very topic for a book being published by Lexis Nexis later this year. Rahim brings a global view to local challenges.

Caroline Sheppard, OBE

Caroline Sheppard OBE recently retired as Chief Adjudicator of the Traffic Penalty Tribunal (TPT). She is a renowned and respected thought leader on user-centric approaches to dispute resolution.

A digital champion, Caroline led the development of the TPT's award-winning online appeals management system. The TPT system has increased workloads, accelerated outcomes and provides a more accessible, transparent experience for all users, all while significantly reducing costs.

Caroline was awarded an OBE in the summer of 2017. She is a Member of the Administrative Justice Council and is on the Council of 'Justice', the all-party law reform and human rights organisation.

Dr Malcolm Stewart

- Advising numerous clients affected by the Mauritius Oil Spill in 2020
- Acting for a FTSE top 20 telecom company (subject to confidentiality agreement):
 - a) To prepare claims from major losses causing widespread damage (e.g. flooding), at network node or other significant infrastructure assets.
 - b) To develop quantification methodologies by modelling vast data sets (e.g. 90 million records) and prove claim to satisfaction of insurers.

- Advise reinsurers of a major utility company in New Zealand (subject to confidentiality agreement) on losses claimed arising from the Christchurch earthquake. Issues included managing vast volumes of data.

Emily Wickens

Head of Civil Jurisdiction and Service Manager at HM Courts & Tribunals Service.