

INTERNATIONAL FORUM ON ODR

Greenwich University

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Keynote Speech

The Digital Justice System: an engine for resolving disputes

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Introduction

1. It is a pleasure to have been invited to speak at this international forum on ODR.
2. Since Richard Susskind and others began talking about digital justice many years ago, things have changed. They have changed quite dramatically. You will have noticed that from what Richard said when he spoke to you yesterday. We are all now considering how AI will or may be used to expedite, assist and even to make decisions on the path to dispute resolution. I remember, even a year ago, I was frightened even to suggest such things, but now they are commonplace ideas. People are considering the hows and the whens; no longer the whethers.
3. This afternoon, however, I don't really want to talk about the future, but more about the here and now. I know Richard spoke to you yesterday about the 2030s and beyond. Today, I will say something about what is being done now and the effects that that is likely to have on civil justice here in England and Wales and beyond.

The background

4. In my view, one major break-through changed the debate here in England and Wales. That was the enactment of Chapter 2 of Part 2 of the Judicial Review and Courts Act 2022. Sections 19-33 of that Act changes everything for ODR, because they

laid the foundations for the birth of the Online Procedure Rules Committee (the OPRC).

5. The OPRC has now been established for more than a year and is expecting to promulgate its first rules this Summer. The Online Procedure Rules (Specified Proceedings Regulations) 2025 are expected to come into effect on 1 May 2025 – tomorrow. So, this speech is indeed timely. These regulations give the OPRC the power to make rules for civil and tribunal proceedings in relation to property and family proceedings for financial remedies. Those powers are in addition to, rather than replacing, the rule-making powers of the existing rule committees. But the intention is that, over time, online processes will be governed by rules made by the OPRC.
6. The OPRC will cut its teeth in making rules for the new property and possession online platform, which will deal initially with all possession claims made under the new Renters Rights Bill that is at the moment completing its passage through Parliament.
7. In addition, however, the OPRC has rule making powers in relation to the pre-action space – before legal proceedings are actually issued. It is here that I believe the ground-breaking nature of what has been achieved is apparent.
8. There are, as I always like to say, even though the figure may just be a ballpark estimate, some 15 million civil, family and tribunals disputes every year in England and Wales. That means that at least one quarter of the adult population is likely to be involved in some kind of dispute every year. It may be a demand for money from a utility company or a local authority, but even these small matters have to be resolved fairly and expeditiously. In addition, of course, there are family disputes, property disputes, disputes with banks, insurance companies and employers, disputes on eBay and many many others.
9. Using analogue methods to resolve so many disputes causes delay and inefficiency, and ultimately economic harm. There is a critical imperative for us to develop digital methods to

resolve so many disputes quickly and cheaply. It is obvious that the 1,800 full-time judges that we have in this country could never resolve all those disputes themselves. And luckily they do not need to, since we have a range of other ways of doing so long before any of them get into the court system.

10. It is those “other ways” that I want to explore in a little more detail now.

The Digital Justice System

11. Since we coined the term “the Digital Justice System” 3 or 4 years ago now, it has been much misunderstood. It has been understood to mean that the Government would be building a vast costly digital infrastructure to resolve everyone’s business, financial and consumer disputes online in one place at gov.uk. In fact, the Digital Justice System is the exact antithesis of that.
12. The Digital Justice System builds on all the existing provisions for pre-action dispute resolution that is already available. There are ombuds portals in numerous sectors, mostly financed by industry or financial organisations. There are mediation portals and arbitration portals. There is the Official Injury Portal dealing with hundreds of thousands of personal injury claims each year. And there are online legal advice platforms such as Advicenow, ACAS and the Citizens Advice Bureau. The problem is that these provisions are not properly connected in a way that allows individuals to find the right advice and the right dispute resolution mechanism quickly and efficiently. What is needed is the mechanic to fit the pieces of this vast engine together to make one smooth operating system. That is where the rules or guidance to be provided by the OPRC comes in.
13. The research undertaken by MoJ and the OPRC demonstrates that the biggest difficulty for most people is navigating the online space so as to find the most suitable means of resolving their problems. As Dame Hazel Genn has repeatedly explained, vulnerable people rarely have one monochromatic

issue. They may have an employment issue that leads to them losing their job, which leads to their becoming homeless or to losing their spouse, and then on to financial issues of many interconnected kinds. It is finding the key to the resolution of such issues that is the difficult part. But the online space and artificial intelligence provides opportunities to help in ways that we must, as a society, not overlook.

14. Even the most disadvantaged are routinely able to use the internet for some things, but they are probably less able to use it constructively so as to find real and effective problem-solving assistance. That is where the OPRC and the Digital Justice System can help. The OPRC can provide connections and data standards that will help those needing help to find the existing online pre-court dispute resolution mechanisms most suited to them.
15. They may need legal advice. This is a crucial part of the dispute resolution ecosystem. Some legal advice is available online, but, I hope that, in time, legal advice, funded by legal aid, will be widely available online so as to provide legal help directly to people to enable them to find the most effective online solution.
16. None of this is either rocket science or even very expensive. It is making the most effective use of what exists already. Of course, it needs to be regulated so that people are directed only to reliable pre-court online dispute resolution processes. But that too is not rocket science. Many disputes are very easy to resolve if you know what to do and where to go. The courts are really the last resort. But obviously, if a dispute proves stubbornly resistant to resolution by online ombuds or mediation mechanisms, then the data created in those initial stages can and should be capable of transmission by API into the online court processes that already exist in civil justice in the form of the Online Civil Money Claims and Online Damages Claims.

The economic advantages of the Digital Justice System

17. As I see it, dispute is costly. That is not just because lawyers are expensive and courts take time to resolve disputes. It is because of the stress caused by unresolved disputes that people are unproductive at work and in their personal lives. It has always proved hard to put a reliable figure on the cost of unresolved disputes. But the estimates that have been made show that resolving civil family and tribunals disputes more quickly and efficiently would save billions. You must all have seen people preoccupied when a problem has arisen in their home life, taking their attention away from their work – whether that is in shops, offices or on building sites. If they could only find their way more quickly to the right dispute resolution platform, much of that economic drag would be ameliorated.
18. Unresolved civil dispute also causes health problems that take people into the health service with depression and other psychological stress. Again, that leads to the double whammy of lack of productivity and additional pressure on public services.
19. Over time, I hope that the infrastructure of accessible and reliable pre-court dispute resolution and legal assistance will be created by the OPRC.

Artificial intelligence

20. You will have observed that I have concentrated this afternoon on the social and peculiarly human problems caused by disputes in general, and unresolved disputes in particular.
21. I am not, however, overlooking the role that AI will play in solving these problems. AI is already capable of providing reasonably accurate legal advice. Many of you will have tried some of the dedicated programmes offering advice on employment, property and other issues. They may be scary for lawyers, but they will not actually replace them, in my view at least, since many of the issues that arise concern the explanations that need to accompany legal advice. Persuading people to accept legal advice is a peculiarly human activity.

22. AI will also be instrumental in providing the diagnosis and direction for the problem solving within the Digital Justice System.
23. Judges in this jurisdiction at least are not ignoring AI. The senior judiciary has just published its Updated Guidance for Judicial office Holders in relation to the use of Artificial Intelligence. It records that every judge now has access to a private AI tool on their ejudiciary laptop. They will, of course, use it responsibly in accordance with the guidance. But becoming familiar with its value will help judges contribute to and enhance the Digital Justice System.

The international dimension

24. Before I finish, let me say a few words about an international dimension to the Digital Justice System. I am not aware of other jurisdictions that are trying to bring coherence to the pre-action, mediation and ombuds space in quite the way that I envisage happening, through the OPRC, here. Many jurisdictions are, however, trying to allow legal claims to be brought and progressed to a greater or lesser extent online.
25. I think we are in a peculiarly advantageous position here in England and Wales, because we already have so many online pre-action platforms providing mediation and dispute resolution in civil, family and tribunals cases.
26. In the EU, the AI Act places limitations on the Use of AI in the justice environment. Article 6(2) and paragraph 9(a) of annex III to the EU's AI Act makes AI systems concerned with the administration of justice into "High Risk AI systems". The definition is as follows: "AI systems intended to be used by a judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts". That definition might, you may think, encompass almost any such system when applied to justice. It remains to be seen how one would incorporate AI into a pre-action digital justice system in an EU member state.

27. AI is, of course, used far more extensively in justice systems in China and in Singapore and elsewhere in SE Asia. There is seemingly a spectrum between cautious jurisdictions and those prepared to regard AI as a useful tool that needs to be employed where it can help. It is obvious that AI needs to be used carefully and responsibly in a justice setting.

Conclusions

28. So, let me conclude on an optimistic note. Amazon and eBay have proved that online dispute resolution for small disputes can be peculiarly effective. I am certain that digital mechanisms will be adopted for all kinds of dispute resolution. In England and Wales, the OPRC can be the catalyst for the necessary change.
29. I look forward to answering any questions you may have.