SHOULD THERE BE A CO-ORDINATION AND REVIEW OF COURT PROCEDURES WITH A VIEW TO PROMOTING EFFICIENCY WITHIN A DIGITAL CONTEXT?

Lord Justice Gillen
Northern Ireland Court of Appeal

Introduction

Par les soirs bleus d'été, j'irai dans les sentiers,
Picoté par les blés, fouler l'herbe menue:
Rêveur, j'en sentirai la fraîcheur à mes pieds.
Je laisserai le vent baigner ma tête nue.
[Rimbaud 'Sensation']

That times and circumstances change, and require a re-examination of one's position was thematic to a lot of youthful, individualistic–asserting Romantic artists and, dare I say it, appealing to an old romantic like me. Hence the theme of my address today is captured in the first verse of Rimbaud's poem 'Sensation'. To cater for my less romantic brethren and sisters may I also invoke Lord Mansfield's famous adage 'As the usages of society alter, the law must adapt itself to the various situations of mankind'[1]. It was a theme that we in Northern Ireland strove to capture in a recent Civil Justice Review (CJR) which I was privileged to lead.

August 2016 marked the twenty fifth anniversary of the world's first website going live. A quarter of a century later the web is dominated by social networks, search engines and online shopping sites. From here we can expect to continue to leak from the computer screen into the real world with the rise of the internet of things, biometric confines, artificial intelligence and superfast speeds hailing a new era for the World Wide Web.

Since the beginning of this century a fundamental change has occurred in society in general and the law in particular with the advent of the digital era. We now, as a matter of course, conduct many of our business arrangements, daily communication functions and activities using tablets, smart phones and even smart watches. Personal computers, the Internet, and all the collateral consequences that followed from these innovations - such as laptops, notepads, cell phones, smart phones, Facebook, YouTube, Google, Wikipedia, and Twitter

[1] *Barwell v Brooks* [1784] 3 Dougl 371, 373

- have radically changed the information world we live in today. The public not only expects easy access to information, but also expects it to be instantaneous, wherever one is located. Arguably, we in the legal profession are the last analogue profession. Those who cling to the digital less past are gradually losing their eccentric charm.

Hence to serve the needs of the 21st century society, the justice system must be digital by default and design. We in the law must not get left behind and to that extent a coordination and joint review of court procedures is crucial. The advent of the photocopier, email, texting and our increasing propensity to communicate with each other in written form has fed a tendency to put everything but the kitchen sink into general disclosure in legal cases. History will record our current subservience to mountains of paper as having the appearance of an absurd Luddite fantasy. Sir Brian Leveson, President of the Queen's Bench Division, speaking in 'Modernising justice through technology' in June 2015 said: 'We cannot go on with this utterly outmoded way of working … it is a heavy handed, duplicative, inefficient and costly way of doing our work'.[2]

The Paperless or Digital Court

Every Judge in Northern Ireland and I suspect every judge here today – particularly those engaged in family, judicial review, commercial, chancery or clinical negligence cases – is well familiar with innumerable lever arch files produced by the parties and copied several times, lined up in court but which remain unopened or largely unreferred to during the course of lengthy trials. A small proportion of what is often literally thousands of pages of disclosed material bear some relevance to the case.

When the files are explored, one often finds that delving into them reveals a lack of pagination, or worse still pagination that varies from party to party, an absence of chronological ordering, photocopied documents which are blurred or cut off with multiple vertical lines running down the pages, files which are not adequately labelled, papers which have poor indexing or missing pages, supplemented often by papers served at the last minute which are not contained on the judge's papers or the opposition papers. All of which creates a nightmare for transportation or manipulation during the trial.

The continuing maturation of the digital age has created an environment where court systems can maintain all or part of their information electronically. When these electronic records are properly compiled and maintained with well-defined

[2] Sir Brian Leveson, Président de Queen's Bench Division, discours d'ouverture : « Modernising Justice through Technology », 24 juin 2015.

data fields, searching for and retrieving data is often as simple as pushing the appropriate button on a computer.

Moreover, this database, with the advantages of automated search technology and keyword searches, can be remotely available in a searchable format to anyone. Given this new electronic access, most activity by courts must now centre on how they should align their traditional policy with the new capability of providing remote access to searchable records and enact rules and regulations to deal with this new reality.

Courts must be able to efficiently store and process an increasingly large volume of data and information, frequently in complex civil proceedings. The collection, holding, editing and transfer of this information in the form of paper documents generates considerable expense, is time consuming and impedes flexibility and timeliness in the running of cases. It is widely accepted by the judiciary, practitioners and academics that there is a pressing need to deliver 'mess for less' by 'digitising' the current system.

The judiciary in all our jurisdictions must lead in enabling the ways in which we conduct cases to match the expectations of the public in that sense. It is time that we gripped the concept of the paperless court. The waste in terms of costs, time in preparation and presentation to court is simply unacceptable. This concept must be taken forward as representing a significant cultural shift and should be regarded as an IT-enabled business change rather than simply the provision of new technology.

Resolution of the problem is not easy. Currently, many members of the profession and judiciary, particularly those of a certain vintage, declare a strong preference for documents in paper form which facilitates underlining, highlighting, cross-referencing, commenting, etc. as part of the process of ordering their thoughts. Despite the attachment of some to the older paper system, most if not all of the practitioners and judges to whom we have spoken are agreed that there must be a more accessible, efficient, less costly and technologically proficient system that reflects the digital era in which we live.

It is already progressing throughout the UK and Ireland - Electronic bundles have been used in the Mercantile Court in Birmingham since September 2014, Nottinghamshire and Manchester Family Courts have used electronic bundles in care proceedings since 2014 and 2015 respectively. The local authorities will not provide paper documents in the family courts. They simply provide USB sticks with the court bundle contained in the electronic file and so counsel, and anyone else who wants a hard copy, must print it. A judicial delegation from Northern Ireland paid a most productive study visit to Manchester in February 2017.

Electronic file management systems are used in the Chancery Division, in the Bankruptcy and Companies Court in London (Rolls Building) and, most notably, in the United Kingdom Supreme Court (UKSC), both of which we have visited and experienced.

The Ministry of Justice Criminal Justice Strategy and Action Plan[3] is committed to turning courtrooms paperless and fitting them with WiFi. Great progress has been made in implementing a fully digital criminal justice system, with police adopting digital case file management and sending case files electronically to the Crown Prosecution Service (CPS) who in turn submit digital case files to Magistrates' Courts. The majority of police forces in England and Wales are now transferring a vast amount of case information electronically.

In Northern Ireland, it is estimated that over 95% of all correspondence with the Directorate of Legal Services (DLS) Family Law Section is now via email and email attachments. Some counsel already operate from electronic briefs. The infrastructure and basic IT skills required for the use of electronic bundles is already widely available throughout the legal profession.

The recent Historical Institutional Abuse Inquiry in Northern Ireland under the chairmanship of Sir Anthony Hart used largely a paperless system, whereby the information was logged onto a central network established and maintained by The Executive Office via IT Assist. Each individual user was given an electronic key to access information, including court bundles relating to the case. In this inquiry, The Executive Office via IT Assist was responsible for the running of the system, which included the provision of IT support throughout the hearing – for example, by calling up relevant extracts from the bundle. Each party had to install the software on their own machine or 'borrow' a laptop from IT Assist for the duration of the proceedings. The system worked well for an Inquiry which lasted a lengthy period with the same parties.

The High Court in Northern Ireland has already list at least two paperless clinical negligence cases and the Northern Ireland Court of Appeal has now fixed for the first time 2 cases to be heard on a paperless basis accompanied by an element of 'paper light' with a page limited core bundle/skeleton arguments/starred authorities being the sole non electronic documentation permitted .NICTS has engaged for a one off trial basis a web based software solution from an independent 'Case Line ' and training for its use is being provided to judiciary and lawyers involved.

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330690/cjs-strategy-action-plan.pdf

As part of the implementation of its Strategy for Justice in Scotland, following on from the review carried out in that jurisdiction in 2007-2009, the intention is to move to an entirely digital system which goes well beyond issues such as digital disclosure and paperless courts to encompass the entire justice system. Of particular relevance are the proposals for digital recording of evidence, reports, judgments and submission of pleadings, wide scale use of live video conferencing TV links and a secure digital platform to store all information relevant to a case, conforming to set standards of quality and security, which is capable of being used by users without need for further manipulation. It is understood, however, that this is at a relatively early stage in terms of actual implementation.

The Irish courts have moved one step closer to paperless litigation with the use of the bespoke eCourt app in a recent Supreme Court case.[4] Android-powered tablets took the place of 'outdated' lever-arch folders and bankers' boxes. Using the eCourt system, pleadings and other court documents are scanned and uploaded to Android tablets, where they can be searched electronically and private annotations made.[5]

Paperless is the inevitable future and in truth the moment to jointly grip and coordinate our efforts to implement the concept jurisdiction wide is now.

Skype and Virtual Reality Courts

As regards general courtroom technology provision, video links and video conferencing facilities are already available in all main court venues in Northern Ireland and are used to support witnesses giving evidence remotely in the criminal, civil, family and coroners courts and also used to facilitate remand hearings in the magistrates' courts without prisoners having to be produced at court.

Increasingly, this technology is also being used to facilitate witnesses from Northern Ireland to give evidence via remote link to courts in other jurisdictions, including Europe and other parts of the world. Technology is available within courtrooms at these centres to facilitate the presentation and display of video/DVD evidence, photos and maps and most courtrooms in the court estate now also have digital audio recording facilities.

[4] Lannigan v Barry [2016] IESC 46

[5] Lawyer Kieran Morris, along with his colleague Dáithí Mac Cárthaigh, co-founded eCúirt Teoranta. Morris explains the technology as follows. When the presenter changes pages, the page reference is passed to a remote server. The page reference is transmitted to each device, and saved on the server. As a result, people can submit pages in court. The application also has many additional features, for example, one can independently display files, and one can also annotate and make a hyperlink on PDF files. Documents are never uploaded to the Internet or cloud storage, and each device is encrypted for a high level of security. A solution has also been developed by eCúirt Teoranta for courts that do not have Wi-Fi access. For example, there is no Wi-Fi in the Four Courts in Dublin; then they developed the eCourt Box, which is a local Wi-Fi hotspot with an integrated server build as a plug-and-play mobile unit. In Northern Ireland, a preliminary demonstration of technology had already been presented to Queen's Counsel.

A natural progression for the use of electronic courts however is for the application to be determined without the need for any party to attend for an oral hearing. Interlocutory applications, second reviews, unopposed applications in all Divisions of the High Court and in the county court would provide a fruitful field for such electronic applications. Leave applications to the Judicial Review court and to the Court of Appeal would also seem an appropriate use.

In a digital system, parties would potentially be able to initiate cases online, pay fees online, or attend hearings remotely either by exchange of text or video conferencing tools from their homes (or, more likely, the offices of their legal representatives). Some of these solutions are already employed on an ad hoc basis by courts.

Hearings in trials will, of course, continue to be held in open as they are now. Open justice is the central means by which civil justice courts are kept under scrutiny by the public. That is not to say that all hearings must be held in physically accessible courtrooms. From the perspective of the litigant, their solicitor and counsel, the court staff and the judiciary, attendance at court in the current manner at multiple junctures of every case is time intensive and unnecessarily expensive. The functions of the court require to be being exercised on each appearance. However, the means by which that function is exercised could, in certain types of cases, and at certain stages of each case, be managed in an alternative format which would maximise the efficient running of the case in isolation, and the entire body of cases which the court processes at any given time. A number of jurisdictions have piloted, and adopted a variety of schemes.

If video, live link or telephone conferencing systems are available to converse across the world, there is no reason why, with suitable facilities for the public and for recording what happens, they should not be used as a mechanism for improving efficiency and avoiding needless trips to court, whether for lawyer or participants.

There really is no good reason why certain hearings - straightforward case management hearings, some interlocutories, date fixing, reviews, explanations for various matters, adjournment applications, undefended divorces, etc. - cannot be conducted virtually or on papers, both parties having had the opportunity to submit their argument. Well prepared papers could be filed, and the decision ultimately left for the judge to exercise on papers or on, for example, telephonic or Skype communication.

Telephone conferencing is already an increasingly common feature with reviews of the Masters in the Queen's Bench Division where a pilot is currently being run

with the concept of moving as many hearings to telephone conferencing as can be done is now in operation. This is a classic arena where a move towards hearings on paper or even online should be instituted in the very near future. There is no reason why straightforward interlocutory applications on paper cannot be considered for example in personal injury cases with an even greater use of telephone conferencing not simply for reviews but also the interlocutory hearings themselves.

This is not a fresh concept. Paperless – or, in the interim, paper light – courts, teleconferencing hearings, video link evidence and examination, technology-guided mediated dispute resolution systems and minimising oral presentation in favour of judicial officers making determination based on papers electronically filed are all part of the legal fabric not only here in some cases but as far apart as the USA, Australia, Poland, Brazil, India, Sri Lanka, Israel and, of course, England and Wales. The time has come for us to enthusiastically embrace these concepts.

Online Dispute Resolution

With the impending huge reductions in legal aid, our fear must be that civil justice may become beyond the reach of a great number of individuals and small businesses where they are involved in claims which are modest in financial terms. This arises even in Northern Ireland, where the costs of litigation are much less than elsewhere in the UK. The danger in such cases is that the legal costs will be wholly disproportionate to the sums that the participants are claiming and that in some instances the costs at risk could well outweigh the value of the issues that are to be determined.

Clearly there are emerging expectations of other less costly means of accessing justice. Nowadays, clients expect to be served, through the legal processes, by multiple channels as part of the same experience that they encounter elsewhere in their daily lives: in person at a desk, in a courtroom, by Smart phone, by e-mail, by chat, by video conferencing and through web interfaces helping them to navigate complicated procedures. People are less likely to rely on authoritative experts and want to be empowered to take informed decisions. Professor Susskind, the driving force behind the Civil Justice Council Working Group Report,[6] has said that in the legal world, three times as many disagreements each year amongst eBay traders are resolved using 'online dispute resolution' than there are lawsuits filed in the entire US court system.

Online dispute resolution (ODR), with its symbolism woven into the texture of its realism, is not *le dernier cri*. It can be a powerful tool for courts to address these

[6] https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version.pdf

challenges and expectations and provide such channels. It may not be necessary to confine such channels to adjudication. It can help parties to understand the scope for a structured outcome and help them to understand the parameters of their problems.

Guided pathways that help people navigate their own first steps in their justice journey need to be available. They can organise and select relevant data and inform people about their rights. Every participant in a court procedure can add to the process at his own pace, at her own time and from their own home.

During a hearing, the interface can guide the process and nudge people towards fair resolution, much similar to how problem solving lawyers do that. Results can be immediately logged. Roles, such as helpers to parties or expert case managers and deciding judges, can be assigned and configured. The promise of ODR is even that it can break the problematic cycle in which every real improvement in court procedure is threatened by the prospect of attracting too many cases, putting courts under pressure. With ODR, the marginal costs of serving an extra pair of clients can drop to levels that make it feasible that court interventions are primarily paid for by the users.

We are reaching the period where people will engage with the justice system through an app or an online platform. Many disputes are already being resolved online through websites such as Amazon, eBay and PayPal. Bearing in mind the public's experience of the online revolution it is sensible to conclude that people 'may now actually expect the court procedures to go online and place less shore by the rituals and traditions of face to face trials.'[7] The potential is enormous. It is anticipated that in due course it will result in significant savings to the public purse. Of far greater importance are the improvements in access to justice that will result from such a programme.

The benefits, however, of modern IT can only be enjoyed if the systems in place are sufficiently advanced and supported by up-to-date hardware and appropriate training. The returns on investment in such technology, despite high initial costs, can be vast. Funding must not only be adequate but also stable. Fluctuations in funding will result in adverse consequences.

Consideration has, therefore, been given in Northern Ireland to the creation of an online court (OC) for lower value disputes of £5000 and under as part of a developing landscape. A move towards digitisation and the creation of digital channels does create an opportunity to create an online court which will permit civil disputes under a certain level to be litigated without lawyers (or with lawyers for those who are prepared to pay for it).

[7] Civil Justice Quarterly 2017 (Briggs's Online Court and the Need for a Paradigm Shift), par Rabeea Assy.

In the wake of the proposals of Lord Justice Briggs in England and Wales, £25,000 has been provisionally identified as the amount at stake below which the disproportionality usually occurs in that jurisdiction and thus this is the figure invoked as a maximum for the new online dispute resolution court there. According to Lord Briggs, the online court should deal with 'simple and modest value disputes'. It would be conducted online rather than on paper, designed primarily for use by litigants in person, investigatory rather than purely adversarial, with conciliation including mediation and early neutral evaluation (ENE) as a mainstream option rather than only an alternative for resolution Face to face hearings would be for resolution only if documentary, telephone or video alternatives are unsuitable.

Costs of implementing ODR modules can be very limited compared to the costs of the current generation of custom-built case management systems for courts. Suppliers and investors will be willing to bear most of the development risk, if they see a realistic opportunity to deliver their online services to courts.

The new thinking involved in an online court does not dispense with the services of lawyers. What it does mean is that lawyers will be involved in these cases possibly in a different manner. There will still be the opportunity for affordable advice at the beginning of cases and indeed, in some instances professional representation will still be considered appropriate for a litigant, albeit those costs will usually not be recovered even if they were successful.

Moreover, importantly, online cases in our proposals will have an online judge in the final analysis and still have the potential to be moved to a court setting where they are complex or the importance of the case renders this a proper method of progressing. Technology may have turned traditional models upside down but justice will always require sophisticated human interventions when the need arises.

We must make certain that the changes we introduce do not cement a situation whereby those who can afford to have lawyers to handle their litigation will be able to do this, while for others the potential lack of any cost recovery or funding for advice and representation will preclude those who are most likely to need legal support from actually getting it.

Moreover, online courts must not be the pathway to unregulated, uninsured and often untrained providers of legal advice who are unrestrained by ethical codes of practice.

We must also recognise that not everyone has access to or the ability to use the technology required to participate in an online court. Thus the concept of an online court potentially could become a barrier to accessing the justice system unless adequate assistance is available.[8] Technology will not solve all our problems.

How ODR works

The model proposed in the interim and final reports of Lord Justice Briggs, and the model which we propose in our own Civil Justice Review, is essentially a three-stage process advocated in the Susskind Civil Justice Council Working Group Report.

Lord Justice Briggs has said:

> 'There is clear and pressing need to create an Online Court which aims at the £25,000 designed for the first time to give litigants effective access to justice without having to incur the disproportionate cost of using lawyers. There will be three stages. Stage 1 – regards the automated interactive online process with identification of the issues and the provision of documentary evidence. Stage 2 – conciliation of case management by case officers. Stage 3 – resolution by judges. The courts will use documents on screen, telephone, video or face to face meetings to meet the needs of each case.'

Tier one should provide Online Evaluation. This facility will help users with a grievance to classify and categorize their problem, to be aware of their rights and obligations, and to understand the options and remedies available to them.

Litigants would be required to present their cases at the outset in some detail, using software, that would lead both the claimant and the defendant through a set of questions, the answers to which would then be collated and organised online as detailed statements of case, uniformly structured.

Triage software will therefore be developed to help unaided litigants to present their versions of the case effectively, intelligibly and coherently by winnowing the relevant from the irrelevant, all in a format uniform for claimants and defendants. The contemplated software would perform this task by taking parties through

[8] Professor Smith of 'Justice' drew attention to the Justice Department's September 2016 report, 'Transforming Justice' which found that 30% of people had the skills to use digital services without help, 52% need help and 18% could not or would not commit online at all. The June 2016 report of the House of Commons estimated the proportion of excluded people to include 23% of the population (12.6 million people). Of these, 49% were disabled, 63% were over the age of 75, and 60% were unqualified.

detailed questionnaires prepared in advanced and tailored to specific types of cases. Designing the software would require the construction of a series of questions for litigants that will extract from them the alleged facts and evidence about their case which the court will need to know in determining it and to which the opposing party will need to be able to respond. The efficacy of such software and promoting effective access to the court for unaided litigants will depend solely on its developers' ability to imagine the widest range of scenarios and contingencies, and create questionnaires sufficiently detailed to address the vast range of human disputes.[9] The framing and narrative of cases are crucial. Creating a tree of questions in advance will mean that the relevant facts are determined by questionnaires' authors, and the facts presented by the software will be offered in a specific, uniformed way.

Tier two should provide Online Facilitation. To bring a dispute to a speedy, fair conclusion without the involvement of judges, this service will provide online facilitators. Communicating via the internet, these individuals will review papers and statements and help parties through mediation and negotiation. They will be supported, where necessary, by telephone conferencing facilities. Additionally, there will be some automated negotiations, which are systems that help parties resolve their differences without intervention of human experts.

Tier three should provide Online Judges – full time and part time members of the judiciary who will decide suitable cases or parts of cases on an online basis, largely on the basis of papers submitted to them electronically as part of a structured process of online pleading. This process will again be supported, where necessary, by telephone conferencing facilities. Lord Briggs has indicated that 'stage 3 will consist of determination by judges, either on the documents, on the telephone, by video or if face to face hearings but with no default assumption that there must be a traditional trial'. Stage 3 affords judges a very broad discretion to decide whether to conduct a trial and in what form.

How ODR is progressing elsewhere

We felt that it was vital to explore other jurisdictions where ODR had been commenced and we conducted a tour d'horizon of other jurisdictions. It is always better to borrow rather than to re-invent the wheel. The new approach advocated by this Review to ODR is similar to that already used in other jurisdictions where the trial process is an iterative one that stretches over a number of stages that are linked together. There are examples that already work.

[9] Civil Justice Quarterly 2017 ibid

We recognised fairly quickly that Courts around the world are investing massively in digitising their services and bringing them online. At the same time, the technology of online dispute resolution is rapidly developing.

Courts, tribunals and legal aid organisations worldwide are exploring the options, following the lead of the Susskind Group Report. For online dispute resolution services, procedures and outcomes at courts and tribunals remain an important point of orientation. Users operate in the shadow of courts, having a court procedure as an exit option.

British Colombia, Canada

We were privileged to have had the benefit of time generously given to us by Shannon Salters, the Chair of British Columbia's online Civil Resolution Tribunal (CRT). British Columbia has been a leading light in initiating online tools for providing online dispute resolution to citizens with most success in small property, zoning disputes and consumer protection cases.
The Civil Resolution Tribunal Amendment Act 2015 provides an accessible forum for the resolution of strata (condominium) property disputes and small claims. It is mandatory to use the CRT. It was found that the voluntary dispute resolution programmes produced low uptake. The CRT authority is to resolve claims eventually up to an amount of $25,000 Canadian relating to civil claims and strata disputes. The pioneering digital tribunal will begin resolving small claims disputes worth under about $50000r £3,000 on 1 June. Claims covered include contracts, debts, personal injury, personal property, and consumer issues.

The CRT claims to be 'the first online tribunal in the world that is integrated into the public justice' The operation is in the three stages similar to England and Wales. Fees are payable at each stage of the process. If there are credibility issues it must be referred to the Court. It offers free self-help information pathways and tools that can be used to help people better understand the issues and explore early resolution options.

Cases of C$5,000 or less may still be referred to the provincial court on occasion, including where one of the parties files a notice of objection to a CRT decision, or where a party asks to have the CRT order enforced in the higher court.

The tribunal, whose adjudications are equivalent to court orders, can be accessed via smartphones, laptops and tablets 24/7, with telephone and mail services for those without internet access.

The Netherlands -- Rechtwijzer

We were once more privileged to have the opportunity to consult personally in Belfast with Maurits Barendrecht of the Hague's Institute for the Internationalisation of Law (HiiL), who presented the Dutch Rechtwijzer Programme. The Dutch Legal Aid Board came forward in 2006 with an online dispute resolution project, which became the Rechtwijzer (law signpost).

This underwent several transformations in its short life, constantly being developed and enhanced in terms of the services and supports on offer to service-users.[10] It provided online mediation services for a range of disputes including landlord and tenant, consumer financial transactions and divorce and separation.

The Rechtwijzer 2.0 product was launched in 2015. This was intended to provide a web-based interactive negotiated settlement service for separating couples. Sadly it seems HiiL has become disillusioned with the lack of commercial success of the product. To date, only 813 couples have completed cases using Rechtwijzer 2.0.

According to sources close to the organisation there were not the numbers of clients paying to use the platform which HiiL needed to generate revenue and there was a failure to sell the product to providers outside the Netherlands. This led to their Board's decision to discontinue Rechtwijzer from July.

The Dutch Legal Aid Board plans to re-launch its web-based products in September this year and is working with a new organisation, Justice42, to develop a new version of the family law program concentrating on the Dutch market rather than trying to expand through selling the product internationally.

New Zealand

New Zealand has an online application system but the adjudication is court based.[11]

Interestingly, in addition to submitted online applications, an applicant can approach their local District Court or a community agency, such as a Citizens Advice Bureau, or a Community Law Centre. Staff at these offices can assist the applicant filling out the claim form and with queries regarding the hearing.

Australia – New South Wales

[10] Professor Roger Smith OBE, 'Online Dispute Resolution: ten lessons on access to justice' and a research paper dated March 2015 by Bickel, van Disk and Giebels, University of Twente.
[11] http://www.justice.govt.nz/tribunals/disputes-tribunal/documents-new/guidelines/dt-guidelines-full

New South Wales offers an online application facility and online scheduling. The state of Victoria is progressively offering online applications. There is a growing interest in Australia in how design thinking and artificial intelligence can improve access to justice and close the 'justice gap'.

United States of America

The USA allows for 'blind bidding' negotiations to enable parties to submit a secret offer in respect of calculated money disputes and parties reserve the right to access the courts where negotiations fail. Providers such as CyberSettle Inc.[12] and Squaretrade Technology provide companies such as e-Bay with online dispute resolution for their customers. Reportedly, US law attorneys utilise the procedure for settlements concerning insurance disputes, property disputes, business and presumably minor sidewalk claims. It is understood that failed negotiations often proceed to conciliation, mediation or arbitration services via the American Arbitration Association (AAA).[13]

European Online Dispute Resolution Platform

European legislation has introduced options for ADR and ODR for the resolution of consumer disputes. Customers living in the EU are concerned about their consumer rights should a difficulty arise with a seller in a different part of the EU. Directive 2013/11/EU on alternative dispute resolution for consumer disputes and Regulation (EU) No. 524/2013 on online dispute resolution for consumer disputes are two pieces of legislation that have been introduced in an effort to address such concerns.

The ADR Directive provides for the establishment of an ADR entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution to a dispute between a trader and a consumer. The ADR does not provide for disputes initiated by a trader or disputes between traders. Nor does the Directive stipulate that any proposed solution will be binding on the trader.

The ADR entity must issue an award in writing, setting out the reasons for its findings. The award must be made available within ninety days of the receipt of the complaint.

The ODR Regulation applies to ADR disputes arising from online sales or service contracts between a consumer and a trader and provides for the

[12] It is estimated that $ 14.5 million was its largest negotiated settlement online.
[13] Computer and Telecommunications Law Review 2009, A European legal perspective on consumer ODR

development of an Online Dispute Resolution platform which will be available to consumers and traders. The platform will consist of an interactive website for consumers and traders seeking to resolve cross-border disputes. The complaint, together with documents relevant to the complaint, may be filed on line. The complaint will be forwarded to the respondent trader and, once the ADR entity is agreed, to the ADR entity. The ADR entity must conclude the ADR dispute procedure within ninety days.

A Note of Caution

A note of caution should be struck not only in the wake of the problems met by the Dutch experiment but also emanating from the two UK academics most expert in online justice, professors Richard Susskind and Roger Smith, who have recently expressed caution about the pace at which the OC might proceed.
68. Professor Susskind told a conference that he believed the value cap on claims should at least initially be 'well under £10,000' instead of the proposed £25,000. He said: 'You start at a modest level and you build up … it's not just about value.'

Professor Smith recently called for 'a minimum dual running period of five to ten years' until the evidence showed the OC could enable proper access for the 'digitally excluded'. This has reflected the same caution we have adopted in our Civil Justice review where we have advocated a voluntary pilot scheme across Northern Ireland at a level of £5,000 with an increased value of up to £10,000 if the pilot scheme proves successful and a proper funding regime was established for a one year/two year period.[14] It can then be reassessed, possibly under the guidance of the new Civil Justice Council. Equally so, it may be sensible to subject the system to a robust peer review. We could, therefore, have a system of stepping stones towards a final picture starting with lower figures, albeit the higher figures would give a better sample to assess.

Algorithms

Lawyers are the latest to find themselves in the firing line of robots - or artificially intelligent algorithms, at any rate. The robotic revolution has been predicted to spread its techno-tendrils far and wide in the job market, and a recent report by UK consultancy firm Jomati Consultants suggests that they'll be creeping ever further into the legal profession by 2030. The report suggests that the 'economic model of law firms is heading for a structural revolution, some might say a structural collapse'.

[14] In England, there are those who have campaigned for longer trial periods, for example 5-10 years 'because so many people will be excluded' - Dan Bindam, January 3, 2017

While robots stealing jobs is nothing new, that lawyers could see their jobs be automated might seem surprising on the surface. In a much-publicised 2013 report that predicted 47 percent of US jobs were at risk of automation in the next two decades, authors Carl Frey and Michael Osborne put lawyers at comparative low risk of robotic replacement.

The kind of roles Artificial Intelligence (AI) could take over in law are evident, and computers have already carved a niche in some tasks. The most obvious are routine tasks like combing through documents—something a human's eyes and brain find tiresome after a while but a computer has no problem with.
That could be as simple as searching tons of documents for keywords, but more intelligent tools can go further, taking in context and sentiment. 'Predictive coding' algorithms are increasingly used by lawyers to help in the discovery process—when they're trying to unearth evidence to support their case. E-discovery will soon be with us. It is not only more efficient but also gives better results. Of course, the documents an algorithm picks out still have to be reviewed by a human—but it reduces the workload, the man hours, the cost and the low-level jobs.

But even before a case gets rolling, AI may start to play a part in getting the legal cogs turning. AI may help complainants decide whether it's worth going to the hassle and expense of bringing a lawsuit—by predicting if they'll win. Michigan State University, recently published a paper in which it was claimed a computer model was able to successfully predict US Supreme Court decisions 70 percent of the time. The model used 'only data available prior to the date of decision', effectively comparing similar cases in order to forecast the logical outcome.

Conclusion

All of this serves to illustrate that the digital revolution is not a dot on the horizon. It has now an air of grinding familiarity and no longer serves to puncture the orthodoxy. It is already upon us in various courts and fretful backward glances to a digital less past are a relic of times gone by. Whilst the concept of digitisation and the paperless court is in some measure a polymorphous kaleidoscope and we do need to distil the frenzy engendered by it, real progress has been made towards digitising elements of the process already. Online courts and virtual reality are an inevitable further development.

It is particularly noteworthy that in England every aspect of the digitisation reform programme involves judicial participation; much of the programme requires judicial leadership. The judiciary have established Judicial Engagement Groups (JEGs) to ensure every level of judge takes part on a jurisdiction by jurisdiction basis. At the local level the judiciary are establishing Local Leadership

Groups to ensure that principles agreed nationally are implemented with local knowledge and guidance. There is, in truth, an 'E-Judiciary' in England with the entire judiciary recently given new model flexible laptops with Window 465 service.

In England, the Government has primed the pump for digitisation with £748 million recently committed to investment in the courts and tribunals system with £160m invested in IT systems, software and kit. Wi-Fi will be installed in the majority of the nation's 500 courts.

The HM Courts & Tribunals Service (HMCTS) reform and mission statement is based around three key features: a new online court using digital tools to improve case management; the rationalisation of the court estate and less reliance on the buildings themselves with a move towards a paperless court; and the use of Case Officers to assist and manage allocated aspects of work in order to maximise the use of judicial time and resources.

Here in Northern Ireland, there has also been universal caution expressed that this progress will only be achieved if there is adequate funding and investment by the Government in this concept. In truth therefore, without unflinching commitment from Government and the NICTS to the necessary modernisation of the courts process through digitalisation, these vital steps will not occur or, even worse, will be so inadequately implemented that simmering concerns about the future will develop into full blooded unanswerable disquiet. Nonetheless as Napoleon said 'He who fears being conquered is sure of defeat ' and so we must remain confident that government will carry this through .

I started with a citation from a French poem. Let me finish with an English one by Philip Larkin.

'Watching the shied core
Striking the basket, skidding across the floor
Shows less and less of luck, and more and more
Of failure spreading back up the arm.'

If we remain in a state of remote unavailability and regulated equivocation thinking this whole digitisation process is somehow going to arrive by chance and does not require our shared and joint perseverance and earnest endeavours at every tier and level, then it will fail and of us future generations will patronisingly say, accompanied by a Wagnerian raspberry, that times changed but we did not. We desperately need to coordinate jurisdiction wide our procedures and practices so that a sense this discussion today is yet another intervention in a never ending conversation about the future of the whole concept of justice.