The Future of Justice: Harnessing the Power of Empirical Research

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UCL Faculty of Laws

The England and Wales justice system is undergoing rapid change in an ambitious reform programme designed to transform processes in criminal, civil and family courts, and tribunals. The move to online determination of disputes and court closures represents a shift away from the model through which the principles of public justice have traditionally been advanced. These changes have implications for citizens, the judiciary, the legal profession, and court staff as they adapt to new mechanisms for delivering justice. The reforms also create important opportunities for generating robust data on court processes, and the individuals that use them and case outcomes. The wide-ranging nature of the reform programme represents a challenge to the existing community of justice system researchers and funders, with answers needing to be found on what new skills, methods and approaches are required to properly understand the impact of justice system reforms.

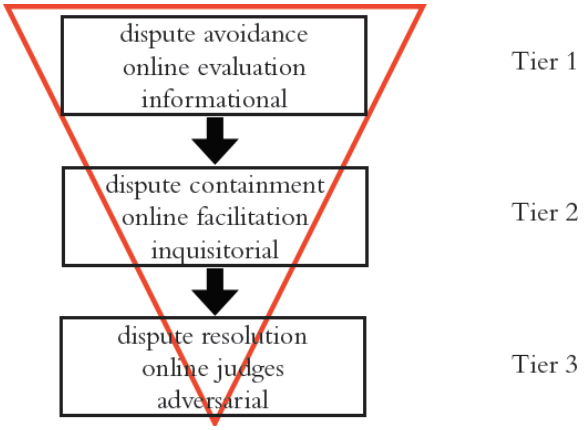
This international symposium, jointly convened by UCL Faculty of Laws, the Nuffield Foundation and The Legal Education Foundation brought together leading researchers, members of the judiciary, funders and practitioners to explore these issues and learn from existing best practice. The aim of the symposium was to develop a sense of the emerging priorities for research and a consensus on the level of commitment needed to build capacity to deliver this research agenda. This note provides an overview of the speakers' presentations and Q&A sessions at the symposium. An outline of the headline messages from the symposium is provided at the end of this note. Presenters' slides and a full video of the proceedings can be accessed on the conference website.

KEYNOTE ADDRESS: Professor Richard Susskind OBE (President, Society for Computers and Law) – 'The Case for Online Courts'

Users want outcomes. They want their problems resolved. The questions that need to be asked in the move to online courts are, therefore, bigger than simply asking how existing processes can be streamlined. There are more fundamental questions that need to be addressed: what outcomes do we want of our justice system? How can these outcomes be delivered in the most convenient and cost-effective ways? What is intrinsically worth retaining from current court systems? And in answering these questions on the future of the justice system, it is impossible not to engage with the remarkable technological developments which have taken place, and which continue to evolve.

Online courts are a state-provided online dispute resolution service. In short, these courts represent a way of providing a court service which is affordable, quick, intelligible and proportionate. They thus speak to the widely-cited problems with the existing court system – that it is too costly, too slow, unintelligible to the non-lawyer, excessively combative and out of step with an increasingly internet and AI-based society.

In response to these problems, the Civil Justice Council Advisory Group on ODR's initial recommendation, following its work in 2014-2015, was for the establishment of an online court, which would be delivered through a three-tier service. The recommendation was not to remove judges from the system, but rather for judges to decide cases asynchronously on the basis of evidence and arguments put to them electronically. The Group's view was also that the emphasis within the current system on dispute resolution (courts and judges) should shift towards greater dispute containment and dispute avoidance. The Group saw, for example, value in implementing an inquisitorial facilitation process prior to cases reaching judges, blending alternative dispute resolution with common sense, to ensure that the cases reaching judges are the right ones, both from the parties' and courts' perspectives. And even before dispute containment, the Group thought people should be supported to understand and evaluate their legal entitlement and the options available to them, in order to avoid disputes where possible. This model would not work for all cases, but for those for which it would be suitable, it could provide greater access to justice at lower cost.



We are living in a period of unprecedented technological advancement and the pace of change is accelerating. It is easy to overstate the short-term impact of artificial intelligence and understate its long-term impact. It is simply not possible to contend that technological advancements are irrelevant for court systems. There are significant opportunities to maximise these advancements for the better administration of justice. Debates within this space should be framed positively, exploring how the power of technology can be harnessed to deliver the outcomes which best serve users. And several important qualities should be present within these debates. One of these is the avoidance of 'irrational rejectionism', the kneejerk push-back against technology without personal experience of online courts or online dispute resolution. Another relates to 'technological myopia', the need to avoid evaluating tomorrow's systems in terms of today's capabilities. There is also a need for honesty on what it is which excludes people from the justice system: it is not technology which bars access to justice, but literacy more broadly, with people commonly being unable to identify and analyse their legal problems. Imagination is also key in finding ways to make the justice system more transparent. And it is important to be open to innovation, rather than simply grafting technology

onto existing models. Finally, it is necessary to be realistic, not expecting more from machines than we expect from humans.

PANEL DISCUSSION ONE: WHAT IS HAPPENING IN JUSTICE? THE VIEW FROM ENGLAND AND WALES

The Rt Hon Sir Ernest Ryder (Senior President of Tribunals)

We live in an age of transformation, and rapidity creates risk. In embracing the potential of technology in modernising our court systems, risks to access to justice must be minimised and the rule of law protected. The transformative shift is not simply from an analogue paper-based system to a digital system. It is imperative that this opportunity is used to deliver increased access to justice and increased quality of justice. We need to build a system which best safeguards the rule of law for the 21st century. The aim of the modernisation programme is to give the administration of justice a new operating model, with a sustainable and affordable infrastructure that delivers better services at lower cost in order to safeguard the rule of law by improving access to justice. The modernisation programme is underpinned by six core principles:

- access to justice must be accessible to those who need it;
- systems should be designed around the people who use them;
- a system needs to be created which is financially viable using a more cost-effective infrastructure (better IT, new working practices and decent estate);
- the most common sources of delay should be eliminated;
- our national and international standing must be retained as a world-class provider of legal services and in the delivery of justice; and
- the constitutional independence of the judiciary must be maintained.

Access to justice is an indivisible right. There can be no second class, particularly in an age of austerity. The law administered through an independent judiciary requires effective and efficient governance. In modernising the court system, reliance must be placed on evidence-based and tested improvements to governance of the system and the quality of decision-making in individual cases. There must be data embedded to enable each project to be tested and improved over time. Only through rigorous testing can good and better practices be developed.

There is no one size fits all: the reforms underway within the tribunal system are not automatically transferable to other aspects of the justice system. The modernisation of the tribunal system has several strands, including changing the way in which it uses the estate, providing innovative and digital ways of working, improving the management of workloads and providing greater support to the judiciary and users. Some of these reforms will change access to justice in ways not contemplated within the current system, such as in providing assisted digital support for users, and in particular the most vulnerable. Present projects include: the establishment of an online tribunal, providing a continuous online decision-making process; separate online interfaces for users and judges; intuitive online application systems in place of forms; online notifications and tracking; e-filing; online triage and dispute resolution, prior to merits-based evaluation; documentary and case management; online fee payment; online identification of people; online video hearings; online

support services for judges and hearings; online services for face-to-face hearings; and services for people who need to use them, including litigants in person.

In planning for change, Judicial Ways of Working 2020 has just been launched. There are a number of essential components of reform, including improving governance and maintaining openness and accountability. The transformation of the courts, tribunals and judiciary is the means through which we can, and must, ensure that as a society, we can render everyone their due. As a society committed to the rule of law, this is a responsibility we cannot shirk.

Susan Acland-Hood (CEO of HM Courts & Tribunals Service)

We have a world-class justice system, but it is not perfect, and work is needed to ensure it maintains its word-class status. Reform does not mean doing away with the principles which underpin the justice system. Within this reform process, it is necessary to address the question of what it is which should be retained from the current system, and much of what should be retained is concentrated on its principles, rather than its processes.

There are a number of problems with current systems and processes, which the modernisation process is working to address. Existing systems and processes are paper-based and labour-intensive, and they lack proportionality, both in terms of use of resources and time spent. Reform cannot be confined to pumping greater resources into the existing system, even if these resources were available. Reform has to be concerned more fundamentally with proportionality, ensuring the best possible use of resources.

The modernisation process underway is the most ambitious in the world, and it is taking place at unparalleled speed. Guiding the reforms are a number of principles: ensuring that the system is built with its users at its heart, that it is financially sustainable, that transparency and accountability is increased, that our strong independent and trusted justice heritage is strengthened, that the system is proportionate and segmented, that accessibility is increased, and that work takes place in partnership with others, consulting and engaging users in the process of reform. The system is being designed for 2050, not 2018, which does not mean the system is being built for operation in 2050, but rather than it is being built in the anticipation of future change. Components to the system are being built to fit together, rather than the building of one giant system, since this approach is agile and reduces risk.

A number of components of the new system have already been built, or are undergoing development, and these components are showing real promise.

- Divorce applications can now be submitted online. On the paper-based system, 40% of applications were returned due to non-substantive errors in form completion. With the introduction of the new online system, this error rate dropped down to 8%, and then down to 5%. It is now possible to upload documents online, which has brought the error rate down even further to between 0.5% and 0.7%. The process is making it easier and faster for users to submit applications and for court staff to process these applications. Satisfaction rates for the new system are high.

- Civil money claims under £10,000 can now be dealt with within a fully online service. This removal of the postal system from proceedings is significantly speeding up the resolution of disputes. The system also has a number of built-in functions to support users, such as prompts to resolve the dispute and the offer of telephone mediation. People are also given the opportunity to make an offer without prejudice and if the offer is accepted, it is turned into a settlement agreement which the parties can keep. Feedback on this service is extremely positive, and the indications are that people will use the new online system who would never have engaged with a physical court.
- A system is being developed to enable social security and child support appeals to be submitted online. The system is being structured to support users in answering the questions. Appeals are getting into the system far quicker than appeals submitted on paper. It is also possible to track Personal Independence Payment appeals. The roll-out for tracking appeals was brought in before the submission of appeals online because the ability to find out what was happening with their appeal was the priority identified by users.

Work is also being invested in continuous online resolution, although this work is exploratory and is very much in its infancy at this stage. Furthermore, progress is being made on video hearings, and in particular fully video/online video hearings, in which every party to proceedings attends through video. These have been tested in the Immigration and Asylum Chamber for preparatory hearings, which did not involve the appellant. The feedback received was extremely positive. Some hearings are also being trialled in the Tax Chamber and these involve litigants. The trials are all being carefully evaluated.

There can be no one size fits all in this major programme of reform, but it is possible for learning to take place across the justice system and for certain components to be employed across the system, fitting together in different pathways. This reform process is about finding new ways to deliver justice, rather than simply replacing one route with another.

Reform must be evidence-based, but it must also maintain its momentum. The key to overcoming this potential tension is small-scale reform roll out, with each roll-out being tested robustly to find out what is/is not working so that systems can be tweaked and developed accordingly. Independent academic research has been commissioned to trial fully video hearings. There is also a dedicated strand of work focused on MI and data as part of the reform programme to enable greater evidence-driven future practice, and routes are being found to share anonymised data with the research community. HMCTS and the Ministry of Justice are also developing plans for a programme-wide evaluation of courts and tribunals reform because both individual project evaluation and evaluation of the impact of reform on the system as a whole are crucial. Careful thought is also being given to creating and interacting with an eco-system, reflecting on how this reform fits in with law-tech development more broadly. HMCTS wants external input and to continue the conversation as widely as possible.

Joshua Rozenberg QC (Hon) (Commentator and broadcaster)

There are minor and major problems with the current reforms to move legal processes online. At the more trivial end, the use of ‘them’ rather than gender-specific language in relation to adultery on the

new online divorce portal has created misleading questions. More fundamentally, it is highly questionable whether independent online court processes should be housed on websites headed 'Gov.uk'. The online court, regardless of the formal title given to it, must have a strongly independent brand and cannot be affiliated with Government.

There are broader concerns about the current reform programme. First, there is reason to question whether the new systems being designed by HMCTS are truly innovative. The more radical proposals of the Civil Justice Council Advisory Group, that the judgment stage of the online process ought to be delivered first, do not appear to have been implemented. Second, the Government has, to date, given little indication of when, or even whether, it will introduce the legislation essential to the reforms. Third, it is felt that HMCTS has been insufficiently willing to engage with journalists, despite the media being an important source of information for the public/court users. Access to the reform roadshows is limited to legal professionals and professional court users. And, finally, progress on the reform programme has not progressed as successfully as planned, as recently highlighted by the National Audit Office. Blame cannot be put at the door of HMCTS for the challenges involved in delivering this programme of reform, since the scale and pace of reform is unprecedented. However, where there is reason for concern about the actions of HMCTS is that it appears insufficiently committed to genuine engagement with academics, journalists and the wider public on the detail of reform.

Joshua Rozenberg QC's paper (*The Online Court. Will IT Work?*) is available for purchase and will soon be published without charge by The Legal Education Foundation. Joshua has also been delivering a series of Gresham College lectures on this topic.

Susan Acland-Hood's responses to Joshua Rozenberg QC's concerns:

- HMCTS is exploring where the online processes should be hosted, and it is aware of the concerns raised about the connection to Gov.uk.
- The gender-neutral wording used within the online divorce process is driven by the concern to avoid the use of discriminatory/gender binary language.
- The thinking of the Civil Justice Council Advisory Group on early adjudication is informing the court modernisation programme and is being incorporated into the new systems to different degrees within different jurisdictions.
- Progress has been slower than anticipated but that is a product of the scale and complexity of the project. This is a hugely ambitious programme of reform. Some of the issues highlighted by the National Audit Office relate to the shift from a four-year programme to a six-year programme, which was decided before the work commenced and had major cost/benefit implications.
- HMCTS is alert to the need to engage further with the media. Few people self-identify as 'users of the justice system' but HMCTS is keen to continue to engage with the public and court users in order to ensure that court users are put at the heart of the new systems.

Themes/key issues from the Q&A and discussion following Panel One

The consequences of increasing access to the court system: It might be argued that increasing ease of access to the court system is undesirable, particularly in relation to increasing access to divorce. The new online divorce process in this jurisdiction, however, is purely a matter of procedural reform. The substantive law remains unchanged. There is also a persuasive argument that process complexity should not be permitted to exist as the barrier/gatekeeper to the legal process. If the barriers to entry into the court system are lowered, as has been the case in relation to some civil money claims, careful thought needs to be directed to the paths people take through the system and the signposts issued to users, encouraging users to reflect on whether court proceedings are the right option for the resolution of their dispute.

The importance of new systems identifying obstructive parties/abusive parties/parties who do not act in good faith: It is important to consider how the new online systems will operate with/identify parties who are not acting in good faith, and in particular how the system will respond to situations in which one of the parties is dominant and deliberately abuses his/her power. The counter argument to this concern is that the move to online courts represents an opportunity to level the playing field, particularly when combined with more active case management. Exploring how to empower those who are, or who risk being, excluded from the justice system is forming an important component of the reform process. Judicial training on this will also be important. HMCTS is monitoring system usage to enable patterns to be identified, both broadly and in specific cases. One of the problems which can arise within the existing system, for example, is the issuing of civil actions by controlling/coercive perpetrators as part of their harassment of their partners, and HMCTS is alert to the need to monitor this. It is also vital to keep in mind that there have been no proposals to move the entire justice system online.

The importance of demographic and equalities data: There is an argument for the embedding of data collection on demographic and equalities data into the new systems to promote transparency and accountability, and to enable monitoring of whether the move to online processes is creating disparities for particular groups. One of the arguments advanced against this is that there is a principle that users should not be asked questions which are not necessary for them to proceed through the process. If fully embedded collection of demographic data is not possible, the data collection could be conducted on a randomised basis or through the targeting of a statistically significant sample. HMCTS is committed to finding a way to enable the demography of users' paths through the system and the outcomes secured to be measured in a robust and statistically significant way whilst not undermining the system's usability.

PANEL DISCUSSION TWO: WHAT IS HAPPENING IN JUSTICE? THE VIEW FROM OVERSEAS

Shannon Salter (Chair, British Columbia Civil Resolution Tribunal)

The Civil Resolution Tribunal ('the CRT') forms part of the public justice system in British Columbia. British Columbia has a population of around four million and it has 27 administrative tribunals, which have their own specialisms. These tribunals deal with party to party disputes between individual citizens, rather than disputes with government. That the CRT is part of the public justice system is significant because it dictates the mandate: to use technology as part of an access to justice project which disenfranchises no-one along the way. The CRT is Canada's first online tribunal, and it is thought to be the first online tribunal in the world. However, it is important not to let the online aspect of the CRT distract from its true mission, which is to find a way to take the justice system and build it around the people who use it, rather than expect people to bend over backwards to fit into a brick and mortar justice system which was built for legal actors but not for them. This is all the more important in the light of a tipping point having been reached, with the majority of civil claims now involving at least one self-represented litigant.

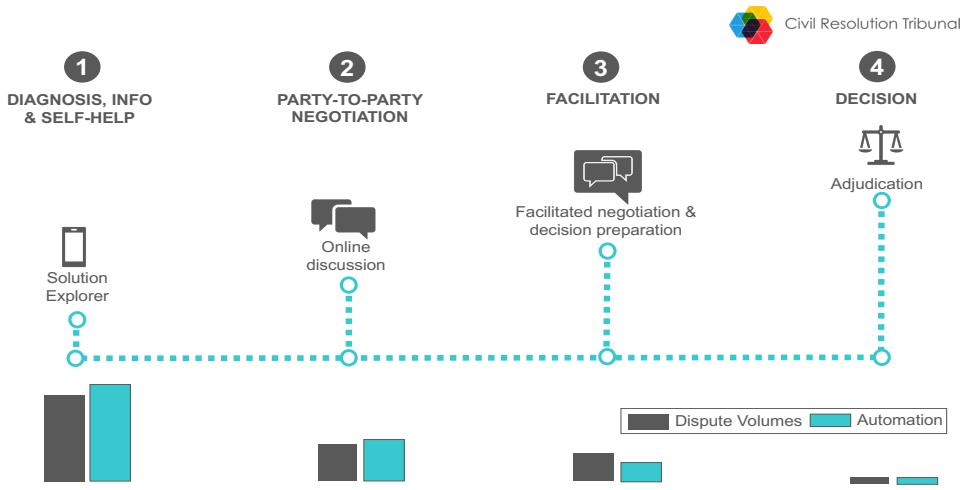
There is an access to justice problem in British Columbia, and in Canada more broadly. This problem is exacerbated by the existence of concentrated urban centres and sprawling rural areas, where access to court houses and legal services is extremely difficult. Legal processes are prohibitively expensive and complex. And when people engage with the court process, the empirical evidence shows that only 2% of people who file their claims will get before a judge. There is also some research which suggests that around 50% of the cases which do not go to trial do not settle, and thus leave the system by virtue of attrition rather than resolution. There was a need, therefore, to move away from the system being oriented to giving people their day in court, which was not working, and re-think the model.

The CRT introduced this new model, a model driven by evidence which puts users at its core and does not assume that everyone will go to adjudication. Where evidence has been lacking in building the CRT, it has either been extrapolated from other fields or generated, such as through surveys. Survey evidence showed that what people wanted from their civil justice system was not tribunal resolution or full representation, but rather to have every opportunity to craft solutions, ideally through negotiation or mediation. The new system was also designed around the evidence base on how people already use the internet, which predominantly consists of everyday activities, such as emailing. There is a digital divide, but it is rapidly closing. The demand for online services is extremely high. The CRT was built around its users through strategies such as user-testing, focus groups and speaking to people within communities. This evidence was used to establish its guiding principles, that the system should be: timely, flexible, accessible, affordable and efficient. Even now the CRT is operational, it is constantly user-testing and will continue to do so.

The CRT initially had jurisdiction over strata property disputes (condominium disputes). Prior to the CRT opening its doors in 2016 to these claims, these disputes had to be resolved by the superior courts, which were extremely expensive and were not used as a result, leaving people's problems unresolved. The CRT then assumed jurisdiction over small claims disputes of $5,000 and under, and

it is now being given jurisdiction over the vast majority of motor vehicle and personal injury disputes. This is a significant leap forward, but the evidence-based implementation model remains the same. The announcement that the CRT will have jurisdiction over motor vehicle disputes has been met with consternation among lawyers because, unlike small claims and condominium disputes, motor vehicle disputes are big business for lawyers.

The CRT is open 24/7 and its model works as follows.



The CRT works on the basis that the vast majority of users will not need to reach the final adjudication stage, instead resolving their disputes at the earlier stages. The CRT provides a host of materials and services to help people resolve their disputes. For example, free legal information and support is provided through a decision-tree system, and pre-written template letters are available. If people reach an agreement at the negotiation/facilitated negotiation phase, this can be sent to a Tribunal member to be turned into an enforceable order. Hearings at the adjudication stage are mostly conducted on a written basis. The CRT structured its costs around the findings of a user fee survey, such as allowing people to pay as they use the services. Fee waivers are easily accessible for low income cases, and this has not been abused. Everything within the CRT is presented in plain English. The CRT's decisions are published on its website using a rigorous searchable database. It publishes its data as much as possible. The CRT is helping people to resolve their disputes collaboratively, quickly and affordably. Further information about the CRT can be accessed here: https://civilresolutionbc.ca.

Dory Reiling (Senior Judge, Amsterdam District Court)

Within Continental Europe, courts are going digital because everyone is going digital: digital is the new normal. Discussions often take place on IT without the use of a uniform definition. The best information on the state of court IT in Europe comes from the European Commission for the Efficiency of Justice (report published in October 2016 based on data collected in 2014). The next report is expected later this year. This information is limited and should therefore be used with caution. Digital filing for people other than lawyers remains largely experimental in Europe as a result of security issues. The trend across Europe is that there are now fewer courts, with greater concentration of court buildings, more technology and greater use of technology in relation to

quality indicators. The Consultative Council of European Judges is an advisory body to the Council of Europe and produced an opinion in 2011 on court IT (Opinion 14).

There are a number of reasons why projects fail. Projects fail, in part, because executives usually operate without a comprehensive model of what IT does for companies, how it can affect organisations and what the leadership must do to ensure that IT initiatives succeed. As soon as the primary process goes digital, it imposes a new work process on everyone involved. This represents a dramatic change, and the entire organisation needs to re-think how it works together. Legal culture can make the implementation of digital systems difficult because this judicial and legal culture looks to blame when something goes wrong. This attitude is a barrier to innovation. Innovation demands a commitment to keep working and learning from mistakes until the correct solution is reached. A culture change is, therefore, required to reward risk-taking and experimental approaches.

Caseloads are going down, which means the courts are having less of an impact in society. There has been significant privatisation. There are major risks in leaving justice to the market because this affects the credibility of the justice sector.

Professor Dawn Chutkow (Cornell Law School)

The move to online courts provides an important opportunity to use legal scholars to crowdsource the problems that it is thought exist, and the potential problems that are yet to be discovered. External analysis is important and beneficial. It is also important to keep in mind that empirical research can be highly informative to the judiciary. For example, three separate journal articles from the *Journal of Empirical Legal Studies* were expressly cited in a decision on the death penalty in the US in 2015.

Raw data (court decisions, opinions and dockets) drive the more theoretical and descriptive aspects of empirical research. Uploading PDF documents of judgments to websites is of limited value from a research perspective because these are not analysed or coded data. What is helpful from a research perspective is coded data. The majority of the data used in journals published in the *Journal of Empirical Legal Studies* come from pre-existing data sets. When court dispute resolution is put online, every click through the system is a data point which can be captured, saved and used to analyse how the system is operating. And it is far easier to have that done at the intake end than the back end. It is imperative to understand what is happening, and who is using the system, at each stage of the dispute process.

The systematic collection of demographic data within new online systems is key because it acts as a proxy. Without these data, it is impossible to understand how the systems are operating and what the access to justice consequences are for different groups. These data need to be open and accessible to researchers. The most innovative research can happen when access to data is enabled. Access to data makes it possible to understand the consequences of opening up access to online dispute resolution processes, such as who is using the systems and for what kinds of claims, and who is succeeding in these claims. This is all the more important in the light of the increase in self-representation. Research can also hit at salient social issues beyond court functioning when access to data is supported.

The trend is big data and predictive modelling, such as whether domestic abuse perpetrators are more likely to re-offend based on certain characteristics. Allowing researchers to examine and evaluate the underlying algorithms and assumptions is crucial to understanding how the system is operating. Researchers can provide a vital partnership with data holders, ensuring that systems work in the way they are intended. The importance of allowing researchers access to data is difficult to overstate.

Themes/key issues from the Q&A and discussion following Panel Two

Monitoring outcomes and settlements in accordance with the rule of law: There is an argument for putting in place a rule of law framework to measure outcomes and settlements reached in order to ensure that people are not reaching settlements which undermine their entitlements under the law as it stands.

The line between legal information and legal advice: The Civil Resolution Tribunal in Canada was built with a neutral front end, which does not involve staff members giving legal advice. The intention is for the system to go just as far as it can with providing legal information, but not legal advice. The line between legal information and legal advice can, however, be a grey area. Where necessary, this line between advice and information can be pushed a little further because the reality is that people cannot afford lawyers. The provision of legal information is necessary to level the playing field between sophisticated corporate parties with access to extensive legal information and those who do not have this access.

There is also an issue on how users can be supported in the use of technology without this blurring into the provision of legal advice. For example, a user asking the question 'What do I put in this box?' relates to technology, but it also risks crossing into legal advice. The Civil Resolution Tribunal in Canada has avoided these types of problems through rigorous systems testing with users, which has resulted in simple and user-friendly systems. The systems are tested with lawyers last because their input can lead to systems becoming unnecessarily complex since lawyers tend to try to cover every scenario experienced in their practice. When queries are raised, court staff are available to support users, not in telling them what to input but in providing broader information, such as what 'evidence' is, and in signposting to further sources of support.

Student involvement in the creation of self-help and legal information materials: Students have played a key role in the creation of self-help materials as part of the work of the Harvard Access to Justice Lab. These students are uniquely placed to create these materials because they understand the law, but they also have the capacity to view the materials through the eyes of a non-lawyer. The Civil Resolution Tribunal in Canada is also working on collaborations with law schools. In one of these projects, Law students are the knowledge engineers who develop the information used within the solution explorer for the online system. These students are able to take legal information and convert it into a format accessible to non-lawyers. From an educational perspective, it resonates with students to be able to create content that real people are using in practice.

Accessing online court systems through computers versus mobile devices: There is an argument for granular analysis to be conducted which compares the use, and consequences of use, of accessing online court systems through computers versus mobile devices.

The role of the European Commission in the digitisation of justice: The European Commission has established its role, including devising procedures. While a little competition between dispute resolution mechanisms may result in raised quality, more rigorous quality monitoring is needed.

Comparative research and big data: The key here is whether it is possible to obtain 'apples to apples' for comparisons and it depends on the questions asked. Statistical methodology, however, allows much to be controlled. There is a robust literature comparing systems across jurisdictions.

PANEL DISCUSSION THREE: OPEN JUSTICE, TRANSPARENCY AND ACCOUNTABILITY

Professor Judith Resnik (Yale Law School)

Jeremy Bentham said, 'Publicity is the very soul of justice … . It keeps the judge himself, while trying, under trial.' Bentham was inventive in many ways. He wanted 24/7 judging. He wanted justice to be available at lower cost. His work is not antique: his concerns are not only alive and well, but they are driving activity in this space. The move to online courts is raising fundamental questions about access to justice and the role of public justice systems. There are questions to be asked about whether physical court spaces are now obsolete, what role courts should be playing in contemporary societies and how the move to online courts fits in with Bentham's conceptualisations of courts as platforms for the dissemination of information.

The political economy, and one of the key drivers of the conversations within this space, is the volume of cases – the perception that there are too many people waiting too long for a system which some cannot understand. Self-representation is presenting significant challenges too. One answer to these challenges is to add more material spaces in which people can come together. This demands more resources, which at the state level in the US raises difficult questions about the use of fines and fees to fund the system. The alternative answer is to change processes. And in changing processes, how online courts are branded on their websites matters. A multi-jurisdictional trend is being observed of people being encouraged to find alternative dispute mechanisms which do not involve the courts. Courts themselves are conveying the message that their central function is to discourage use of the court system.

The move to online dispute resolution presents risks that while there is doctrinal openness at the formal level, there is functional privatisation in practice. There are major questions to be resolved on how the public is to be invited into this online resolution process. There are also important questions to be addressed about the place of collective redress within online dispute resolution systems. It is often argued that online dispute resolution empowers individuals. To test this, there is a need for data. And collective redress matters because collective action functions to respond to the problems experienced by individuals. It is necessary to find a way to create the political and social will to ensure that the transition to online dispute resolution represents a meaningful move towards greater access to justice, rather than the move being used to promote the message that the state court system is not open to its citizens.

Antoine Garapon (Secretary General of the Institute of Higher Studies on Justice)

It can be taken for granted that algorithms are always accurate, fair and indisputable, when the reality is that this is not necessarily the case. The basic condition for access to justice is common access to writing and reading, and the digital era makes this common playing field disappear. Algorithms are a new kind of writing, and they make us illiterate: it becomes necessary to trust algorithms, and more specifically engineers, because we cannot understand them ourselves. There is a real challenge, therefore, in holding algorithms accountable, and there are four principal barriers to achieving this accountability.

- Invisibility: we are mostly unaware that we are already living in an ocean of algorithms. It is difficult to complain about alleged wrongs that can be neither assigned nor figured out.
- Opacity: algorithmic complexity means that we can only access outcomes. There are problems with the black box of deep learning. Some algorithms are covered by business confidentiality or secret defense.
- Entrenchment: algorithms are not isolated functionally-specific phenomena. The majority are created collectively by teams of coders using pre-existing lines of code. They work as a tool box in which developers combine several pieces. They are woven into a complex algorithms ecosystem.
- Legal inaccessibility: computer science is the latest step in the long history of writing. No court extends its jurisdiction all over the world, and it is therefore possible to escape jurisdiction. Judges have to compete with so-called 'oracles'. Those settle controversies outside of the courts and are perceived by some to have more legitimacy and authority.

The solutions to these barriers include the following.

- Delegation to independent experts: it is possible, for example, to appoint independent mathematicians and computing engineers on oath to control algorithms used by parties on trial or public authorities.
- Ethical by design: programmers can, for example, be demanded to engrave legal values into the system. No solution, however, can replace judicial review.
- General principles rather than rigid regulations: governments or the European Union are entitled to pass regulations, such as GDPR. The task of judges, however, is to enforce legal principles (such as liability, civil rights and due process). Digital justice is a formal approach to justice, and judges must examine how algorithms work in the 'real world'.

Joshua Rozenberg QC (Hon) (Commentator and broadcaster)

HMCTS is not a Government department. It is an executive agency of the Ministry of Justice. Its Chief Executive is not a civil servant, in the sense that civil servants defer to ministers in Government. There is an argument that HMCTS is run as if it is a Government department. It is run as if it is accountable to ministers, which means that its attitude is that it needs to be frightened of the public and the press. This attitude stands in conflict with the principles of open justice, transparency and accountability. Judges, in contrast, understand well that they are accountable to the public. Televising court proceedings is perceived by some judges as having a considerable effect in demonstrating to the public that they are accountable to them and that they are not 'enemies of the

people', an accusation made by a portion of the British media in response to the legal challenge launched over Brexit.

In the move towards fully video/online video hearings, where no-one attends in a physical courtroom, there are major questions to be asked about what this means for media access. These are tricky issues. The courts need to retain some control over fully video/online video hearings because it cannot be permitted for people to record proceedings but, at the same time, proceedings need to remain open and accessible. More broadly, however, there is the problem of the media being unable to capitalise on the move towards greater open justice, transparency and accountability as a result of the decline in mainstream media. There are now fewer reporters in court. We are witnessing the collapse of the business model of newspapers. There are several challenges, but the basic principle that public court hearings should be open and easily accessible to the media and the public must still be protected. This cannot be taken away by the move to online courts.

Professor Karen Broadhurst (Centre for Child and Family Justice Research)

The Nuffield Foundation is launching a Family Justice Observatory for England and Wales. This Observatory is aiming to improve access to data to increase transparency. Social science evidence currently does not have any significant impact on the family justice system. Family courts are largely closed but these courts make highly consequential decisions for families, such as whether children should be permanently removed from their parents' care. These decisions need to be informed by empirical evidence, alongside other forms of knowledge. This is not about replacing professional knowledge. It is about introducing greater use of social science evidence alongside professional knowledge, both in relation to system intelligence and decision-making.

Questions about fairness (how do we know practice is fair or consistent?) and effectiveness (are the best decisions made for children?) are coming to the fore within family justice in the light of the unprecedented cuts which have taken place to legal aid, particularly in private law cases. The national consultation – conducted as part of the Scoping Study carried out prior to the decision being taken to launch the Observatory – found that there were concerns about the 'black box' of family justice, with particular concerns raised about effectiveness, fairness and accountability. There was also concern that anecdotal evidence could not currently be substantiated by sufficient intelligence about the system. There are a number of questions which cannot, at present, be answered about children's pathways into the court system and beyond.

Data and the digital transformation presents a real opportunity for positive change. The family justice system is data rich. In order to deliver richer digital futures, it is necessary to forge collaboration between stakeholders (academic, policy, practice, data science) in system design and analysis. Big picture independent statistical analyses offer an important counterbalance to the typical focus on high profile individual cases. It can also help to build public trust and confidence. Methods for capturing data must, therefore, be designed into new systems from the start.

There are a number of ways in which the opportunities offered by digital transformation can be missed: poor system design focused narrowly on performance; insufficient computational and

quantitative capacity among socio-legal researchers to exploit the growing volume and range of digital data resources; and insufficient awareness on the part of researchers and funders of the quantitative and computational challenges that the current justice landscapes present, as well as those that lie over the horizon. It is necessary to work collaboratively to ensure that the opportunities presenting themselves by digital transformation are not missed. The Family Justice Observatory is a capability building project and its immediate role is to: increase access to data records; support and demonstrate the use of single and linked datasets; mobilise findings, support interpretation and application; and horizon scan and experiment. The Observatory is an ambitious project, but also an exciting one.

Themes/key issues from the Q&A and discussion following Panel Three

The extent to which system level information is as good as, better than, or a substitute for, individual case scrutiny: In thinking about the opportunities presented by the move to digitisation, it is important to explore the extent to which system level information is as good as, better than, or a substitute for, individual case scrutiny.

Opposition to/concern about private ordering: In some contexts, there is no problem with consensual private ordering, but there is reason for concern about its use in other contexts. Careful thought should be directed as a result to the barriers put in place to court access and the accessibility of justice. The increase in the privatisation of justice raises fundamental questions for the future of justice, and these questions must be carefully and comprehensively addressed.

The fallibility and opacity of human decision-making: In highlighting the risks in the use of algorithms, there is an argument that it is also important to be mindful of the risks involved in human decision-making. It is not evident, for example, that a human-run justice system is any more transparent or accessible than one run through algorithms. This is a complex debate but one counter argument to this is that it is simply not possible to compare algorithmic and human decision-making because they are so radically different.

System governance: It is necessary to be alert to system governance, and in particular who understands the system and who is accountable for how the system is working.

Openness and access to online courts: There are routes other than live streaming to enable open access to online courts. The Civil Resolution Tribunal in Canada, for example, has a searchable database of decisions written in plain language, with decisions issued in real time. It is easy to lament the closure of physical court spaces but there is an argument that very few members of the public actually attend court. It is important that debates on court accessibility are framed in terms of what open courts actually mean to real people in today's society.

Access to online courts and Article 6: In cases in which Article 6 is engaged, it is important that nothing is lost in the move to online courts, with access being maintained to every judgment and every reason, either online or through video. These data must be mineable by the academic community.

PANEL DISCUSSION FOUR: CITIZEN EXPERIENCE OF JUSTICE AND THE CONNECTION BETWEEN THIS AND TRUST AND CONFIDENCE

Professor Tom Tyler (Yale Law School)

The courts exist to respond to a universal need present in every society for some method for resolving disputes among individuals/enforcing shared rules. The fundamental question is what these forums need to look like: whether they need to be public or private and what kind of framework is required. One lens through which to explore these issues is through subjective evaluations: people's attitudes, values and behaviour. Subjective evaluation is not purely abstract. It is important to understand when people feel fairness has occurred because these perceptions bleed into concrete issues, such as whether people accept and abide by decisions.

In the US, the traditionally held view is that the right way to deliver justice is to have a public forum – a physical courthouse with a judge. It is important to avoid the automatic assumption that change away from this traditional model is a negative development. An important question is what evidence needs to be collected to evaluate change. The traditional model is, in many ways, already changing, such as through the rise in online dispute resolution and the decline in individualised, personalised justice, with more and more decisions being made by algorithms. Driving the reforms are arguments about greater access, increasing ease of use and lowering cost, and faster resolution. What needs to be understood, however, is whether these are the issues that drive how people react to their experiences in court, both in relation to whether people will accept the decisions that are made and how people will respond to the forum, whether it be government or private. How this then impacts their views on government and society is also significant.

It is necessary to find a way to resolve conflict, or enforce rules, in ways that lead to a solution that the parties will accept and abide by. It is possible to think of three different models on what determines people's attitudes towards their experiences at court: first, that people just want to win (outcome favourability); second, that people want what they see as the 'right' outcomes (outcome fairness); and, finally, that people want a fair process (procedural justice). People's attitudes, values and responses can be tested through interviewing and through exploring people's reactions, such as whether they voluntarily accept decisions or whether they appeal.

The key finding from many studies is that the overwhelming factor that shapes people's responses is whether people felt they received fair treatment, and this extends to evaluation of judges. Procedural fairness matters far more to people than whether they win or lose. Judges wear wigs, for example, to create a sense of legitimacy and fairness, and this is consistent with what people want. Four factors repeatedly come up in people's evaluations of procedural justice, two relating to decision-making and two relating to treatment.

- Voice: whether the litigant has an opportunity to state their case.
- Perceived neutrality: whether there is any evidence that the decision-maker is biased; whether the decision-maker is making decisions in accordance with the law.
- Respect: whether the person feels they have been treated with dignity, courtesy and respect.

- Trustworthy: whether the authority is regarded as sincere, willing to listen, willing to consider the parties' issues and committed to doing the right thing for the parties.

The question is, then, what kind of forums will provide people with this sense of procedural justice. Both prospective and retrospective research is needed on different forums. Procedural justice cannot be traded off through rhetoric about cheaper and faster systems because this is not what people care about. More broadly, legitimacy of government and the courts is at issue here too, so it is important to reflect on what promotes legitimacy. It is often not the structure of the forum that matters, but rather what happens within that forum. People need to feel that whatever the forms of justice created, these are experienced by people as being fair procedures for managing their cases.

Dr Ayelet Sela (Bar Ilan University)

It is important to understand how technology and choice architecture affect online court users' experiences and behaviour. Online courts have commonly been justified on necessity grounds, relating to volume, efficiency and resources. This framework, however, does not necessarily speak to concerns about the quality of procedures. The term 'online court processes' is an umbrella term. These processes are not homogenous: there is a multitude of technologies and process designs, along with different court settings, such as civil and family. There are numerous factors which can affect users' experiences of, and responses to, online processes. The challenge facing researchers, policy makers and system designers, therefore, is to unpack these different factors and understand how they interact and impact on users' experiences. User experiences can differ on the same technology depending on the type of process. It is necessary to acknowledge that technology is not neutral. The way that technology is designed affects the way users use that technology. Technology has been identified as the 'fourth party', influencing the process in the same way as litigants influence it.

There are different process design changes introduced by online dispute resolution: transposition (moving existing processes online); restructuring (such as re-organising and simplifying existing processes); and novelty processes (more radical developments, such as artificial intelligence). And, in practice, there are hybrid processes, combining different elements of these technologies. The question to be answered is how specific online process design affects users' procedural experiences and their behaviour. In answering this question, it is necessary to explore the impact of the specific dispute resolution method, the type of technology, the role played by that technology and the context. There is little research on this in legal contexts, but there are other frameworks and data which can be built on, such as the procedural justice literature and research conducted in other settings. There are a number of methodologies which can be employed in researching online processes:

- 'simple' online experiments (presenting a hypothetical and asking people to respond);
- 'immersive' online experiments (creating mock online platforms and manipulating different elements to measure impact on behaviour);
- A/B tests (real-life settings) (researching the way in which actual users respond to changes in design of the process); and
- data analysis (taking data from related services, both public and private).

The findings from Dr Ayelet Sela's immersive online experiment research are outlined on the conference slides, which can be accessed from the conference website.

There is an argument that reliance on automation and artificial intelligence may be helpful for users, and it may thus be justified not only on the grounds of efficiency, but also in improving the quality of users' experiences. It has the potential, for example, to overcome the power imbalances which are currently found in practice.

Professor David Abrams (Penn Law Faculty)

Experiences of justice are changing, and increased access to data and algorithms is an important component of this change. Algorithms have been used in the justice system for centuries, just of a lower tech variety (for example in relation to criminal history and charge severity to determine sentence length). Technological advancements are immense, taking us closer and closer to being able to, for example, predict crime, at least in aggregate terms. The question is how these advancements can be used in positive and productive ways, and in ways which do not undermine notions of fairness and justice. It is important to keep in mind that algorithms can be used in conjunction with lawyers and judges, and that these algorithms hold tremendous potential to improve our judicial systems.

Fairness and justice can be understood as people in similar situations achieving similar outcomes. In many justice systems, a major problem is the degree of randomness in the outcomes people secure, with outcomes varying depending on factors such as where they live. Professor David Abrams's study, currently being conducted in Las Vegas, is exploring whether machine learning can be used to decrease sentencing disparities, focusing on attorney disparity. Las Vegas uses random assignment of attorney, which is significant because previous research has shown that attorney allocation has a significant impact on outcomes. The study is exploring whether issuing attorneys with a tool to advise them on what similar cases look like could help to reduce disparities in sentencing, addressing the hypothesis that some of the difference in outcomes is due to some attorneys being more adept than others at predicting case outcomes. The study is also seeking to establish whether greater information provision could impact on recidivism, time to resolution and attorney time and cost, and to explore more broadly whether providing experts with machine learning-based recommendations could improve their performance and consistency. This study is not replacing attorneys with algorithms, but rather augmenting attorneys with algorithms. The pilot is currently running, with the full experiment launching this summer.

Machine learning is 'learning from data', with algorithms that can recognise patterns without explicit programming. A key question in the light of the 'black box' of algorithmic complexity is whether enough can be gained from algorithms to justify their use. A further concern beyond the 'black box' is the risk of reinforcing existing biases. For example, if race has historically been influential in ways which are not justified in sentencing, then the use of historical data to make predictions about future sentences could risk reinforcing existing biases. This is less of a problem for defence attorneys, who are charged with making the best argument for their clients using the best data available and are not tasked with doing 'justice'. However, if this predictive information is provided

to prosecutors, judges and parole boards, then they will have to grapple with this issue. Despite these challenges, the potential of machine learning to improve access to justice is considerable.

Themes/key issues from the Q&A and discussion following Panel Four

How unfair an outcome people are willing to accept through a procedure which they feel is subjectively fair: Research/further thinking would be helpful on how unfair an outcome people are willing to accept when they consider the procedure to be subjectively fair.

The extent to which court users are equipped to make decisions about court performance: If court users are charged with making assessments about court performance, it is important to establish the extent to which these users are equipped to make these assessments and what information they require in order to do so.

Procedural fairness versus the legality of outcomes: There is an argument that designing systems around procedural fairness can overlook the fact that the public justice system is backed by the state, and that the primary function of the justice system is to enforce or apply the law. Citizens are not equipped to determine the legality of outcomes, so it is unsurprising that outcome legality does not feature highly in their assessments of fairness. For the courts to be perceived as legitimate, they have to demonstrate that they are making decisions in accordance with the law as it stands. This raises the question whether it is incumbent on the government or the judiciary to rigorously police the ability of processes to deliver substantive justice, and to provide that information to the public, so that the public retains its confidence in the legitimacy of the system.

Judicial bias: There is an argument that there is an issue of bias within the justice system: different judges decide cases in different ways. Lawyers are already aware of this, but the more data there are, the more obvious this will become to the public. Judges in this jurisdiction when interviewed speak strongly about their constitutional position on independence: judges do not want algorithms, or any information aimed at reducing bias which could be perceived to undermine this independence. It could be argued that there is a breakthrough to make in establishing whether the judiciary should be shelved as a result of their biases, or whether the judiciary should be retained but tamed to reduce their biases. Within family justice, people are concerned about the outcomes they secure, and are not solely concerned with procedural justice. These decisions within family justice concern not just the adult parties, but also children. Disparities in outcomes are particularly concerning in this context as a result. There is a significant difference between having to serve extra months on a prison sentence and having your children removed from your care.

This view that there is a problem of bias within the family justice system is not universally held. Some argue that there is no true problem with bias, and where there have been problems, these have been robustly addressed by the Court of Appeal. There is an argument that what judges do not want is prescriptive guidance on how cases should be resolved because the infinite kaleidoscope of individual factors within each unique case makes generalisation impossible.

PANEL DISCUSSION FIVE: WHAT DO THE REFORMS MEAN FOR THE JUDICIARY AND LEGAL PROFESSION?

His Honour Judge John Aitken (President Social Entitlement Chamber)

Case numbers at the Social Security and Child Support Tribunal ('the SSCS') are remaining fairly steady but case complexity is increasing, with Personal Independence Payment appeals representing the most common appeal and growing at a faster rate. The core expectation of reform is that the system should work better for everyone involved. The SSCS has been exploring the possibility of implementing an online court. The research conducted on the proposed reforms to date indicate that the direction of travel is right. The cornerstone of the reform proposals has been that if the appellant and respondent have the opportunity to communicate with one another and with the judge/panel from the outset, then they would have sufficient confidence to accept a fully online decision.

There were indicators that an online court system would work. The Traffic Penalty Tribunal, for example, installed an online case management system, and added an interactive communication feature. The Tribunal found that when people were in contact with the adjudicator, they no longer wanted an oral hearing and just wanted their case resolved. Eight-five percent of people who had asked for an oral hearing changed their mind and wanted their case dealt with by the adjudicator. Furthermore, research has demonstrated that while it was better for appellants to have an oral hearing, had the paper-based panel had the benefit of all the information available at the oral hearing, the differences between oral and paper hearings reduced significantly, pointing to the significance of information over attendance.

The SSCS is clear that the intention of reform is not to divert people away from the system. Mediation, and other forms of out of court resolution, are seen within the jurisdiction of social security and child support as a response to system deficiencies, and a substitute for judicial involvement when the system cannot cope. Instead, by adopting continuous online hearings, people will be better served by having a judge handling their case from the outset. It offers a more convenient system for users, without compromising on rigorous assessment. This continuous online hearing system is in development. Users will have a choice whether to have an oral hearing or proceed with a continuous online hearing.

It is hoped that the continuous online hearing process will open up greater opportunities for representation by compressing the time representatives need to spend on cases. Most appellants within the current system self-represent. By enabling asynchronous interaction, it becomes possible for representatives to offer consultations to clients and support them with the submission of their appeals, with each case demanding less of representatives' time. The continuous online hearing process also speaks to the problem articulated by the Department for Work and Pensions ('DWP') that when decisions are made against them, it is almost always because the judge has heard evidence which was not available to them at the time the decision was made. By getting the decision-maker, rather than the DWP representative, into the system, the decision-maker can see everything said by the appellant, and everything seen by the judge, and will have the opportunity to

respond. Much work is still required in building the new system, but the early indications are positive.

Shannon Salter (Chair BC Civil Resolution Tribunal) (speaking in a personal capacity)

Within the Civil Resolution Tribunal ('the CRT') in Canada, the majority of disputes are not resolved by humans. This feels uncomfortable for judges and lawyers, but the nature of legal information and legal services is going to change. The system used in the CRT is a nascent version of an expert system, which uses 'knowledge engineering' to provide legal information to the public. Knowledge engineering is a skill which lawyers will have to develop, and this is one of the reasons that it is starting to be offered as a course within law schools. The core question is how to take information which used to be exclusive to lawyers and distil it. Expert systems enable the synthesis of this information.

These developments make it necessary to evaluate how the roles of lawyers and judges will change. It is important to keep in mind that court users want their problems solved. They do not want full legal representation. Lawyers must adapt to this new environment. It is not in society's interest to retain a system which is too complex, too slow and does not serve its users solely on the basis that the move to online resolution is taking away the work of lawyers. Suggestions for how lawyers can adapt to this new environment include:

- assess their value proposition;
- unbundle their services;
- learn technology skills;
- help lead justice transformation; and
- build multi-disciplinary teams.

Sound judgement and clear communication are skills held by lawyers which will endure. Earning a living on the basis of being able to navigate outdated and unjustifiably complex systems will not. The new environment will provide new opportunities for lawyers: people would not pay $5,000 for advice on a small claim, but they might pay smaller amounts for some advice now the CRT provides an accessible forum for the resolution of their disputes.

It is imperative that debates among judges and lawyers shift from *whether* transformation should happen to *how* this transformation should happen. We are witnessing the 'alternativisation' of the public justice system. Change is happening, and people are voting with their feet. The risk is that these alternative providers are not under the same duty as the state justice system to serve the needs of all citizens and safeguard the rule of law. It is necessary to take on the modernisation programme or risk obsolescence. A further risk for judges is the technology gap – that the judiciary do not, on the whole, feel comfortable with technology. This creates a disconnect between the public, who are technologically engaged, and judges. To adapt to these challenges, judges and the courts need to lead change. They need to put themselves in the public's shoes, embrace technology and new processes and consider how litigants in person might require a more inquisitorial/informational approach to judging. And in doing all of this, judges must continue to safeguard the rule of law.

Dory Reiling (Senior Judge, Amsterdam District Court) (speaking in a personal capacity)

Reform raises a number of important issues for the judiciary and the legal profession, which need to be both reflected upon and acted upon. Firstly, access to justice is often regarded as part of a market. On one level, this is accurate because there are a range of tools available to help people resolve their legal problems. And in creating tools, it is necessary to put the solution as close as possible to the problem, and tools must be visible and accessible. On a more fundamental level, however, access to justice cannot be seen as part of the market because it is citizens' right to have legal protection.

Furthermore, Legal Design Thinking is significant. The most important people to consult in creating new systems are the users. If users cannot handle the system, then the system is ineffective. Legal Design Thinking is a rigorous methodology for thinking about users. A tool used within Legal Design Thinking is personas, which make it possible to imagine the person who will be using the system. A further important phenomenon is legal hackathons, which are concentrated events where teams devise solutions to problems. It is crucial to keep in mind that people do not have legal problems and people are not 'a case'. They are people with a problem, and people want information on how to solve their problems themselves. If that does not help, then they want expert advice. And courts are part of a cloud, not a chain. People's search for solutions to their legal problems does not take a linear path. Instead, people go back and forth in their pursuit of solutions.

In designing court systems, it can be useful to learn from private online dispute resolution, although there are limits to the lessons which can be learned because these services tend to be one trick ponies. That said, in designing court systems, there might be value in creating numerous one trick ponies, rather than trying to replicate existing court processes. There are arguments for and against this view.

Values change as we become more digital. There is a constant demand for consistency, but this conflicts with judicial discretion, and judicial discretion is necessary for judges to be effective. People want to have a voice. They want to feel they have influence on the outcome of their cases, and this means that the judge has to be responsive to the individuals in front of them. Voice and consistency values are, therefore, in some respects in conflict, and this will intensify with the increased use of artificial intelligence tools.

Artificial intelligence raises questions about transparency. There is a role for artificial intelligence tools in structuring information. These tools can also be used for advice provision because people have a choice whether or not to follow advice. If we are concerned about the application of Article 6, however, then it becomes imperative to understand how algorithms reach their output.

District Judge Chris Lethem (Judicial Adviser to the Online Court (Civil Money Claims project))

The judicial system remains marked by the 19th Century approach. It is still a largely adversarial process. Judges are drawn from the professions, so one of the biggest problems which has to be overcome is supporting the judiciary to unlearn the ways of doing things that they have used for their entire professional lives. And even with the modernisation agenda, we are still struggling to

develop effective strategies to support litigants in person. In order to avoid spending money on lawyers, it is necessary to spend money on the decision-makers. The decision-makers need to be given the right training and the right expertise.

The new reformed systems will be underpinned by HMCTS' guiding principles. The following of these are most influential in defining judicial interaction with the system:

- systems should be user-driven (systems are being built from the ground up, with the fingerprints of litigants in person all over them);
- systems should be accessible and digital by design (judges will have to develop their technological capacity); and
- systems should be built upon a strong, independent and trusted judicial brand.

The modernisation programme raises a number of significant challenges. First, one size will not fit all. There are similarities between different jurisdictions, but the solutions found in one jurisdiction cannot be automatically transplanted to another where the parameters are different. Furthermore, in relation to researching and teaching the judiciary, it is not yet known what the final court modernisation design will look like. The Civil Money Claims project is beginning to reflect on, research and develop its next project stage, but there is no overarching blueprint. It is difficult to speak in any certain terms, as a result, about what kinds of judicial training will be necessary. A further challenge is that, at present, much of the work online is based on the minimum viable product, and this is concerning because the focus needs to be on how systems can better support litigants in person. And the future of justice is increasingly likely to be delivered from a much-reduced court estate, which might mandate the more remote handling of cases, reducing and refining interaction with clients.

One of the aspects of the reform programme which has particular potential is the use of asynchronous conversations. It is concerning to think that people are currently asked questions in court and are expected to give immediate responses, which are often ill-considered. It is far better to manage an asynchronous conversation, which provides the parties with opportunities to provide considered responses.

However, just because we are living in a new environment and are on the edge of a revolution in the way in which justice is delivered, this does not mean that everything we have learned should be discarded. What is clear is that it is imperative to ensure that litigants in person are empowered and feel comfortable in the digital age. In the move to online hearings, there are a number of important questions to address:

- how to bridge the gulf created by the flat screen;
- how to make the connections which can be made in person in a remote system;
- how to maintain the authority and gravitas of the court outside the physical court space;
- how to police the court when the judge cannot physically see who else is in the courtroom; and
- how to maintain open justice, both in courts being open to the public and those within the courtroom being able to see who is viewing them.

To make the reforms a success, the baby cannot be thrown out with the bathwater. And not all cases should move to remote determination, such as children's care proceedings. It has to be a blended system. It is also necessary to be careful about the commoditisation of justice. Research priorities include the following.

- Understanding how the new system works for users: there is little experience at the moment about what people want, and what people do not want, from the new systems.
- Understanding who is being excluded and what is being done to address this: some work is ongoing on this, but it does not appear that any research is being undertaken on cultural or gender-based exclusion.

It is also crucial to understand whether the system works for the judiciary because data are about them, and data collection invests data holders with considerable power in an age when power is misused. The ethical and constitutional considerations this raises need to be addressed.

Furthermore, it is likely a Director of Digital Studies will be required and thought ought to be directed to this now. Traditionally, the Judicial College has worked on the basis of judges deciding how to deliver judging. It is questionable whether this is a sustainable model in a digital world. Training needs to be a continuous experience, rather than only being conducted once or twice a year, as is currently the case.

Themes/key issues from the Q&A and discussion following Panel Five

Increasing pressure on the advice sector: It is possible that the move to online courts will increase pressure on the advice sector, at least in the early stages, as people will require support to navigate the new systems. This is significant because the advice sector has shrunk significantly in this jurisdiction following the reforms to legal aid.

Asynchronous processes, identity verification and undue influence: In building asynchronous processes, it is necessary to be alert to how to ensure identity verification and the identification of undue influence.

Data collection – access, useable data and data ethics: The question is not only who has access to data, but in what form data are being collected. There would be significant value in consulting researchers as part of system design to discuss the ways in which data can be collected to ensure the data are useable. And data ethics are crucial. The way in which data are collected on behalf of the state is of great significance. The Nuffield Foundation's next major project is going to address the ethics of data.

Fee structures within modernised court systems: In this jurisdiction, legislation to support court reform is not yet in place. This means that in relation to the developments taking place within the Civil Money Claims project, for example, it is necessary to work within the civil justice system, which means working within the civil justice fees system and this is producing anomalies. The present fee structure is not defensible in a digital age and reflecting on how the fee structure should change must be an important component of the modernisation programme. In Canada, the Civil Resolution Tribunal ('the CRT') has fees because fees have a deterrent effect, but this is not cost recovery. Removing the small claims cases from the court system and putting these within the jurisdiction of the CRT has significantly reduced caseloads and associated costs.

Remote working: The vast majority of the staff and tribunal members within the CRT in Canada work remotely. In addition to cost savings, remote working has had a positive impact on the recruitment and retainment of tribunal members and staff because it enables flexible working, which is compatible with childcare and other responsibilities.

Court closures: Judges do not close or open courts in this jurisdiction. The scale of the estate will fundamentally change as the way in which justice is delivered fundamentally changes, but the scale of the estate is not a judicial decision.

Local justice and local courts: There are numerous consequences of local court closures. For example, it is being observed that the closure of local courts is driving increasing numbers of women to Sharia courts. There is an argument that it is the most vulnerable communities who suffer the most from court closures.

Some legal processes are unlikely to move to remote delivery, at least in the foreseeable future, because in areas such as children proceedings and housing, face-to-face hearings remain necessary. There is some provision in train for temporary/'pop up' courts. The priority has to be ensuring that the broader move to remote resolution does not undermine access to justice for people involved in proceedings which require face-to-face hearings.

Maintaining gravitas within a remote system: A different skills set is required to maintain authority in remote systems and this mandates investment in training. The Civil Resolution Tribunal in Canada, for example, provides specialist training on this. There is an argument that it is a fiction that the source of judicial authority comes from artefacts. Many of these artefacts, such as the wigs and robes, are experienced as intimidating by the public and operate to distance judges from them. There is an argument, however, that this varies by jurisdiction, so it is important to be sensitive to context. And there is an argument that artefacts, such as robes, are important in signalling to those involved in proceedings that they have entered the judicial system.

A balance needs to be struck between formality and informality. It is important that the parties to proceedings are not intimidated but, equally, formality must be maintained. The party who has to leave the system feeling that the decision was acceptable is the losing party, so it is necessary to establish what it is which will make that party sense the authority of the court and accept the decision. This will not solely be judicial dress, but factors such as demeanour matter, and these have to be translated into the online system. Having a judge sitting in front of an independent crest, for example, might be important.

Cultural competency training: The Max Planck Society in Berlin is holding a major conference later this year on cultural competency, and the English and Welsh judiciary will be participating.

Trust predictors: There is research which points to the indicators which predict trust in websites, and these indicators include relatively minor issues such as the colour palette used, the amount of content hosted on the landing page and where the buttons are located. People make these judgements about trust instantly, so it is important to understand these indicators.

PANEL DISCUSSION SIX: CAPACITY BUILDING – CREATING AN ENVIRONMENT CONDUCIVE TO THE CONDUCT OF ROBUST EMPIRICAL RESEARCH

Professor Jim Greiner (Harvard Law School)

The discipline of Law lags majorly behind medicine in its use of randomised control trials to establish 'what works'. In research, it is necessary to establish what instrumental epistemology should be adopted, in other words what counts as evidence that something 'works'. There are two views here. One view is that we should reify professional judgement, placing reliance on what has been observed in professional practice and the views of others. The alternative view is that we should use investigation, scientific methods and measurement to establish what 'works', including the use of randomised control trials. The case is stronger for this alternative view.

In any system, some mechanism has to decide how cases are treated, for example which cases get X treatment and which cases get Y treatment. If we reify professional judgement, then humans make that assessment. If, however, we take an evidence-based approach, it becomes necessary to randomise that assessment because in order to learn, we have to treat like cases differently. And it is this randomisation which sparks significant resistance within the legal profession and the judiciary because the essence of the rule of law is that like cases should be treated alike.

Put simply, the consequences of not using randomisation, however, is that we will get the wrong answers. To take the research question of whether assigning lawyers to juveniles reduces the probability of incarceration as an example: non-randomised studies have found that the incarceration rate is higher when juveniles are assigned lawyers; but the major problem with these findings is that the incarceration rate is higher because judges assess cases at an early stage and when they suspect the cases might involve incarceration, this mandates the assignment of a lawyer. Non-randomised studies, therefore, can create a consensus about what works without actually understanding what works. To understand the true impact of lawyer assignment, it is necessary to randomly assign some juveniles a lawyer and others not.

If we want to understand what works, then we have to redefine our instrumental epistemology and transform Law into an evidence-based field. The Harvard Access to Justice Lab uses randomised control trials to provide evidence about what works in access to justice. The Lab creates knowledge and constructs best practice. It also works to equip current and future scholars and practitioners with the skills to be able to transform the US legal system.

There are a number of challenges in taking this evidence-based approach. One problem is finding researchers with the wealth of necessary skills since researchers need legal training, practical experience, quantitative training and quantitative experience. Practice experience is crucial to securing the support of judges and lawyers for research participation. Obtaining these numerous skills takes time. It is necessary, therefore, to change the model, such as through restructuring legal education to better support the development of these skills.

A further challenge is overcoming the resistance to randomised control trials, and in particular the view that randomisation is unethical because it violates the equality norm. In medicine, randomisation is accepted because the medical profession accepts that it does not always know

what the 'best' treatment is, and thus no-one is being deprived of 'best' treatment through study participation. The problem with the legal profession is that it operates on the basis that it knows what the best treatment is. To overcome this resistance, it is necessary to draw on examples, use advocacy (trade press, popular press), garner attention grabbing results and focus on students as the next generation of researchers.

Dr Natalie Byrom (Legal Education Foundation)

The Legal Education Foundation was established in 2012 as an independent charity with an endowment of £250 million. Its purpose is to promote the advancement of legal education and the study of law in all its branches. To deliver this purpose, it awards up to £5 million a year in grants. In the context of global cuts to public funding and legal advice, low levels of public legal understanding and a justice system on the brink of systemic and historically unprecedented reform, driving the Foundation is its belief that legal education, broadly defined, is a vital tool in helping people to secure their rights, protection and fair treatment. Its vision is for a justice system which enables all individuals, regardless of background, to secure the rights, protections and fair treatment that they are entitled to under law.

The focus of the Foundation's research programme is on building the evidence base on what works in helping all individuals to understand and use the law to secure their rights, protections and fair treatment. There is a lack of robust evidence on the outcomes individuals secure in relation to their legal problems and whether these outcomes are in accordance with those prescribed by law. This is a critical impediment both to the delivery of the Foundation's vision and its ability to assess whether its vision is being delivered through its investments. More broadly, the ability of the legal system to deliver rectitude of decision is vital in justifying all justice systems, whether online or physical. The collection of evidence on outcomes secured, whether these outcomes are in accordance with the law as it stands and what factors allow people to secure these outcomes is essential.

Current challenges include the lack of a quantitative evidence base on what works in assisting individuals to secure the outcomes to which they are entitled, a lacuna of research on the outcomes people secure in relation to their justiciable problems, whether inside or outside the legal system, a lack of baseline data from which to understand reform and an absence of a culture of applying advanced methodological approaches, going beyond existing qualitative and mixed methods approaches. There are also issues with the collection of, and access to, data and there is a lack of a co-ordinated field of academics and researchers with the multidisciplinary skills, knowledge and expertise to conduct robust empirical research. Furthermore, there is a lack of a cultural commitment to evidence-led approaches in designing and delivering legal services and legal education, with a strong attachment to the status quo. A confluence of factors presents an immediate imperative to address these challenges, including the withdrawal of public funding for legal advice and representation, Brexit and its associated legislative uncertainty and evidence of an increase in the number of people experiencing problems which could be resolved through legal processes but are going unresolved, with negative consequences for their health and wellbeing.

Legal exceptionalism has to end, and we need to understand that outcomes matter. In designing a system, for example, for allocating legal services to individuals experiencing intimate partner

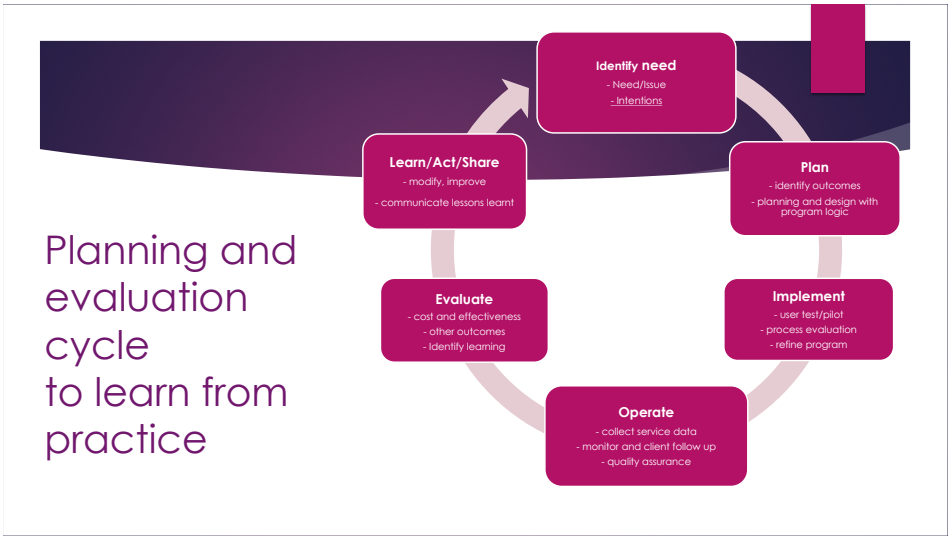
violence to enable them to secure legal protection, if that system is designed without recourse to robust evidence derived from outcomes data about who should be prioritised, then vulnerable people and their children are put at risk. It is, therefore, concerning that little emphasis appears to be being devoted to understanding outcomes and whether these are in line with the law as it stands within the design of the new online processes.

Moving forward, three actions are crucial. First, it is imperative to get the data architecture around the new processes right. The current reform programme presents an unprecedented opportunity to improve understanding of who uses the justice system, how they move through or drop out of processes and the outcomes they secure. It is unhelpful to frame the issue as researchers versus policy makers, or researchers versus citizens. We have a collective opportunity to create a justice system which is superior to what has gone before. Second, we need to invest in strategic initiatives to catalyse new research approaches and build the field, and to establish an equivalent to the Harvard Access to Justice Lab in this jurisdiction. This is not to say that randomised control trial evidence is the only evidence needed, but rather that this evidence is needed to respond to a gap in the evidence base. And finally, it is necessary to grow the field of funders who support this work and to renew the enthusiasm of funders who have historically supported research within this space. In doing this, it is important to stop talking about the need for more legal research and start talking about the need for research to solve social problems, demonstrating through research how the justice system can be used to tackle the pressing issues facing society today.

Suzie Forell (Research Director, Health Justice Australia)

Capacity building for evidence-based justice innovation refers to the skills, structures, resources and commitment to *do* and *use* research to inform policy and practice. The Law and Justice Foundation of New South Wales undertakes empirical research into legal need and access to justice, together with evaluative work on what works to address that need. Health Justice Australia supports the implementation and evaluation of integrated strategies which may address complex need and support system change, informed by integrated research, practice and policy. The current justice environment of digital and service innovation presents opportunities and challenges. An example of service innovation is Health Justice Partnerships, in which lawyers are integrated into healthcare teams to support vulnerable clients with health problems which may be answered by legal solutions. An opportunity exists for researchers to explore the impact of legal problems and legal solutions beyond the usual framework of access to justice, and it is crucial to learn from innovation wherever it is happening in the sector.

A role and challenge for empirical research in a changing justice environment is to inform and influence policy, practice and procedure with relevant quality evidence, and this includes monitoring underlying need and access issues, learning from innovation in process and outcome, assessing 'what works' best across innovations compared to baseline, and translating research findings into policy and practice. This has to include learning from failure and the reporting of failure so that others can learn. To learn from practice, a planning and evaluation cycle is required.



This cycle of learning and evidence-informed practice does not just involve researchers. Other critical players include government, funders and policy makers, along with legal services, courts and tribunal services. And, as justice innovates, it becomes necessary to draw on expertise beyond legal research to build and understand systems, such as system designers, and to collaborate with those who use justice systems to co-design and test systems. It is also important to work with disciplines beyond law to obtain a more well-rounded picture of systems beyond the access to justice lens. Data are crucial, and one of the problems in Australia is that those who hold the data do not have the time and resources, and potentially also interest, to interrogate the data to answer policy-relevant research questions. Those that have capacity cannot always access the data.

It is necessary to build capacity across the system. In relation to policy makers, governments and funders, it is necessary, for example, to build capacity to enable distinctions to be made between high and poor-quality evidence, and to ensure that research and evaluative questions are asked which are appropriate to project scale and capacity of those providing information. In relation to courts, tribunals and service providers, it is necessary, for example, to build capacity to collect meaningful data that informs processes as well as evaluative questions. And capacity needs to be built to enable researchers and evaluators to engage in policy and practice relevant research, to work with courts and service providers to develop research designs and data collection strategies that work in service delivery contexts and to translate research into practice. Universities need to recognise and reward the value of this work.

There are a number of data challenges and solutions. For example, there might be comprehensive information available about individual cases, but this has limitations if these data cannot be automatically aggregated across cases (information in text/PDF attachments versus comparable data fields). In building new systems, it is essential that these systems are built not just around the data needed to resolve the matter, but also around the data needed to assess whether or not the systems are working. Before data systems can be designed, clarity is needed on the research questions and that, in turn, requires integrated thinking between policy makers, researchers and practitioners. Baseline data are crucial in evaluating the impact of new systems, and data are also needed that link across service systems. The aim in learning from innovation and what works best should be to increase evidence and decrease reliance on educated guesses.

Professor Michael Heise (Cornell Law School)

It is a strength of reform that it is an iterative process, but it is imperative that reform builds on a firm understanding of the current system. Baseline data are crucial. It is also crucial to ensure that understandings of what constitute 'data' are consistent, and that data are collected which serve the needs of the research community. The importance of data collection cannot be overstated; nothing else can move without quality data.

Furthermore, there are issues with research capacity. There may be structural or cultural differences separating the UK and US legal systems which may implicate the ability to produce the capacity necessary to address the changes in data availability in the move to an online system in the UK. There are, for example, structural differences between the UK and US in the age and level at which students will study Law, and this makes a difference to the age and experience of research assistants available to collaborate on research projects. Most, if not many, US Law professors receive undergraduate training in fields or disciplines other than Law, and receive PhDs in fields other than Law, which is not as often the case in the UK. These differences matter because academic experience outside the discipline of Law helps to facilitate and lubricate the collaborative enterprise. Furthermore, the place of empirical legal scholarship is largely secure in US law schools, which creates a safe harbour for this work. It is questionable whether this is yet the case in the UK.

There are, however, some common assets for UK and US scholars, such as the Society for Empirical Legal Studies, which cuts across the world. Empirical legal scholarship has been internationalised, and the UK needs to be a bigger part of this movement. There is also the Journal of Empirical Legal Studies, which is a high-quality, high-impact journal dedicated to empirical work.

In moving to online courts, data collection is imperative. Scholars need to be involved in the building of the data sets because they know what data need to be collected and how the data sets should be constructed. There exists now a unique opportunity to invest in the bricks and mortar foundations for future empirical work and a truly collaborative approach is required to maximise this opportunity. Conferences such as this can move the needle within this space, demonstrating the types of collaborations which are possible.

Themes/key issues from the Q&A and discussion following Panel Six

Challenges posed by the time taken to conduct high quality empirical research: High quality empirical research takes time and can quickly become out of date in the light of the pace of change.

The extent to which there is a research-minded culture across the legal system: There is an argument that there lacks a research-minded culture across the legal system, with apathy and suspicion towards research. The counter argument to this view is that policy makers and HMCTS are interested in the collection and dissemination of data. Government and HMCTS are not sitting on data but rather want and support data collection. There is also ministerial appetite for research. HMCTS is building research capacity, including user research and quantitative research methodologies. The conversation that needs to continue is on what data should be collected and how access to that data should be enabled, and that conversation needs to continue now to avoid current opportunities being lost.

Sources of the research capacity problem and the importance of upskilling: While there are examples of excellent practice, there has been insufficient investment in students' social science education in this jurisdiction. Lawyers are not leaving education with advanced methodology skills. There needs to be more funding for socio-legal research, but there is also a need to address the methodological weaknesses in many of the research proposals submitted to funding bodies by upskilling on socio-legal research methods. More studentships are needed, along with more postdoctoral positions and training for mid-career socio-legal scholars.

The importance of collaboration in overcoming the research capacity problem, at least in the short term: There is an argument that it is not necessary to find the 'perfect' researcher but that the answer lies in collaboration, building teams who collectively hold the skills required. The fact that lawyers are not trained in quantitative methods right now, for example, should not hold back the ambition of research agendas. There is a pull for economists into the justice space because they want impact. Within economics, there can be significant delay between research being conducted and its publication in journals. However, while collaboration is valuable, legal researchers should still be encouraged and supported to expand their skills to enable them to be able to conduct more advanced research.

Public trust, security and access to data: It is imperative that data are kept secure. There is a balance to be struck in ensuring that only bona fide researchers have access to data and ensuring that the data access restrictions are not so stringent that replicability of results becomes impossible.

Randomisation, professional resistance and public trust: It can be seen as a challenge to personal professional authority for judges and lawyers to say that they do not have all the answers and that it is acceptable, as a result, to randomise treatment. This lack of certainty can also be perceived to undermine public trust in the authority of judges and lawyers. One route to overcoming this challenge is to use data to show collectively how decisions and judgments vary (collective equipoise), which then provides the case for randomised control trials.

WORKING DINNER – REFLECTIONS AND NEXT STEPS

Articulating the broad agenda – safeguarding access to justice, procedural fairness and just outcomes: It is essential that it is possible to demonstrate that the new systems are delivering on the objectives it is setting itself. The transformation needs to be about ensuring access to justice, not solely cost-saving. It is necessary to understand who is using the new systems in order to understand who is being included/excluded. Procedural fairness must also be monitored, ensuring that users find the systems acceptable and perceive them to be fair, and not solely 'useable'. And it is crucial to understand the outcomes being secured. To understand these issues, data are imperative. The most pressing priority, therefore, has to be data collection and access, both in relation to baseline data on the way in which the current system is operating and data on the operation of the new systems once in place.

The importance of continuing discussion and the need for a vehicle to facilitate this discussion: It is crucial to keep up the momentum in responding to the possibilities and challenges posed by this transformative period of reform. There exists currently a window of opportunity to ensure the necessary issues are addressed, and structures put in place, as part of the court modernisation programme. A collective response will have greater leverage with both funders and policy makers than siloed responses.

One route to maintaining this momentum is the establishment of a publicly accessible international/national forum in which academics, practitioners and funders can come together to keep a register of thinking and developments in the field. Within this forum, it would be helpful to set a research agenda, identifying the principal issues requiring academic investigation. Thought needs to be directed to how this forum could be operationalised and what would represent an effective organisational structure. While this forum could exist online, the power of assembling in one physical space to explore challenges and issues of concern should not be underestimated.

This continuation of discussion and the building of a community is crucial both in the short and long-term. There is a need to articulate the grand challenges facing the access to justice space. Several issues are of immediate importance, not least that of ensuring data collection and access. But it is also important to invest in longer-term strategic thinking to prepare for the significant technological developments which are going to take place within the next 10 years and beyond.

While the establishment of a vehicle, in some form, to enable the continuation of discussion is necessary, it is also crucial for more immediate and focused action to be taken. The creation of a website as a forum to register thinking and track developments has its strengths, but it would be wholly insufficient on its own as a response to current challenges since a more targeted and co-ordinated approach is required to tackle pressing issues, such as ensuring the necessary data architecture is established.

The key priority – data architecture and the imperative of acting now to secure the collection of, and access to, data: It is imperative that action is taken now to ensure the data architecture is

established. This has to be the priority moving forward. It is necessary to identify where the responsibility should lie in mobilising the case for data collection and access. Work has been ongoing on this for some time, but a number of barriers have been repeatedly hit. These barriers must be properly understood if they are to be overcome. Close engagement with HMCTS is necessary and a joint report on data sharing would be helpful.

As part of this, the conversation needs urgently to continue on what data are currently available and what data should be collected as part of the reform process. In creating the data architecture, it is necessary to distil precisely what it is which needs to be measured. The case needs to be strongly made for the types of data required, why those data are required and the use to which these data will be put. Baseline data are urgently needed in order to enable the impact of the reforms to be monitored robustly. Data collection on the basis of the minimum viable product, as currently defined, falls short of the level of data collection required.

One option is to argue for the collection of anonymised aggregate data, which could be collected on a randomised basis if there are concerns that data collection will deter some users from using the justice system. The problem with aggregate data, however, is that they cannot be readily linked since case data with clear identifiers is required for that purpose. To overcome these challenges, there might be interest from funders in funding post-doctoral fellowship positions within Government to work on building capacity within teams to develop a data strategy. More broadly, there are lessons to be learned on data architecture from both Scotland and Wales.

It is important to move quickly. A foot needs to be put in the door of the evaluation framework because this will drive the data collected. In building the data architecture, it is also important to find flexible software, since the data required down the line may well differ from that required now, and the software system will need to be sufficiently flexible to deal with these developments.

Beyond securing the data architecture, it is crucial to ensure that these data are accessible to researchers. And a by-product of securing the collection of, and access to, data could be that this will inspire interest in carrying out research in this space, which could make a contribution towards remedying the problem of the current lack of research capacity within the field.

The importance of engaging stakeholders: In building a collective movement, it is necessary to brief stakeholders on the pressing issues of concern and to explore with them their role in responding to current challenges.

Framing the debate – the future of justice: The court modernisation process raises fundamental questions about the future of justice, and in particular the future of public justice systems and the role of the judiciary. Many judges feel that the integrity of their role is under significant threat. There is an argument that in exploring this issue, and in framing debates within this space, the key question is not what the role of the judiciary should be in 50 years' time, but rather the broader question of what justice system would best serve its citizens and safeguard the rule of law in 50 years' time. There is a counter argument, however, that devoting too much thought to future justice systems serves as an unhelpful distraction from tackling present challenges since so much about the future is, by definition, unknown.

The need for a collaborative approach: Care is needed to ensure that Government is not positioned as the 'opposition' within debates in this area. The key to making the programme of reform a success will be a collaborative and supportive approach, centred around a shared purpose. This does not mean, however, that pressure should not be put on Government to raise its awareness of the pressing issues of concern and to ensure the necessary data infrastructure is established.

The constraints on judicial engagement: There are limits to how far members of the judiciary can be part of the dialogue on the consequences of the modernisation process, constrained as they are by the constitution from commenting on policy issues. It is possible, however, for the judiciary to engage in objective discussions, and structures need to be put in place to enable these discussions.

The value of external evaluations and HMCTS engagement with the academic community more broadly: The video hearings pilot was externally evaluated by the LSE. This form of external evaluation has significant potential over internal evaluation. There could be value in engaging HMCTS on this issue, supporting them in identifying opportunities for external evaluation. More generally, it is important moving forward to work on building greater collaboration between HMCTS and the academic community.

SUMMARY – HEADLINE MESSAGES FROM THE SYMPOSIUM

The **digital revolution** presents significant **opportunities, threats and challenges**. The reform programme is bigger than simply moving existing systems online. This ambitious programme of reform presents opportunities to deliver **increased access to justice** and **increased quality of justice**. The **time to act is now** in taking hold of these opportunities and a **collaborative approach** is required. There are **significant risks in delaying** the tackling of the key issues as the modernisation programme is developing apace.

In order to support ongoing discussion and collaboration, a **national/international forum** should be established in order to keep a **register of thinking** and **developments within the field**. Thought should be given to how this can be best operationalised.

Action needs to be taken now to build the **data infrastructure**. It is crucial that **baseline data** are collected to enable the impact of reform to be robustly evaluated. This requires thought to be directed to what it is that needs to be understood about the current system in order to monitor and evaluate the next. **Data on the operation of the new system** are similarly crucial. These data must be **accessible to, and useable by, researchers**. A **collaborative approach** must be adopted in establishing **what data should be collected** and **how access to that data should be enabled**. **Data ethics** is also of fundamental importance.

It is important to reflect on which **features and values of the current justice system** ought to be **preserved** as the new processes are designed.

The modernisation programme is raising **important questions about how the new systems will meet rule of law principles**. While procedural fairness is crucial, it is also important to think carefully about how the data infrastructure can be established to enable assessments to be made of outcomes secured and whether these outcomes are compatible with those prescribed by law. In the light of the evidence on citizens being ill-equipped to determine the legality of outcomes secured, where the responsibility should lie in policing the ability of processes to deliver substantive justice should also be addressed.

There is an argument that the approach being taken to reform amounts to **crowdsourcing of the new justice system** and it should be evaluated whether this is the correct approach. There are particular questions to be asked about the extent to which court users have the knowledge and information to enable them to evaluate the new systems effectively.

The move to online courts raises questions about how the **majesty of the law** can be maintained outside of the physical court space. There will be a balance to strike between formality and informality in ensuring the authority of the court is not lost.

The modernisation programme carries with it important **consequences for the judiciary**. There are questions to be answered about how the judiciary should adapt to these changes and what new training is required.

Determining where the **new online courts will be hosted**, and the **language/visual presentation** used, is significant and requires careful thought.

In the move to the remote resolution of cases and associated **court closures**, it is imperative that **meaningful access to justice is maintained** for people involved in **cases which will not be heard remotely** (such as children law cases).

There are important questions to be answered on what the reforms mean for **public trust and confidence in the justice system**.

There has been a **proliferation of dispute resolution mechanisms**, and the state justice system is, to some extent, in conflict with these. There is an argument that the **privatisation of justice** brings with it numerous risks, and careful thought must be directed as a result to this issue.

The digital revolution presents **opportunities for greater transparency but also risks** in terms of the accessibility and openness of online courts to the public and media.

It is clear that there can be **no one size fits all**. There are important differences between, and within, jurisdictions and the reform programme must be sensitive to these differences. Systems will have to develop to meet the demands and challenges in different jurisdictions. There are also, however, opportunities for **learning to take place across jurisdictions**.

There are questions to be asked about **what role artificial intelligence can, and should, play within future justice systems**. There are also challenges to explore in relation to transparency, including those posed by the **'black box' of algorithmic complexity**.

There is no place for siloed practice. **Partnerships** must be forged between **policy makers, the court service, judiciary and the academy** in discussing, designing and delivering reform.

Technology is not homogenous and debates about reform need to be sensitive to this.

There is a need for clarity on what the **research agenda** should be moving forward. Greater use of **quantitative methods** is required in order to meet the gap in the evidence base. There is also a need for thought to be directed to **what is needed in order to deliver the research agenda**. There are problems with a **lack of capacity** within the research community, and a consequent need to **upskill** members of that community and **build capability**. There are also crucial questions be asked about **access to data for researchers**.