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**ONLINE DISPUTE RESOLUTION IN THE UK:
NOT JUST A JUSTICE SUBSTITUTE?**

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Online Dispute Resolution in the UK: Not Just a Justice Substitute? **

Introduction

This article provides a contextual discussion of current online justice developments in the United Kingdom.¹ In the opening section the provision of mass justice is related to the origins of the conception of the modern welfare state. Although far from being comprehensive the system of law and administration which emerged piecemeal during the course of twentieth century encouraged wide participation and provided remedies available to all citizens. It is apparent that in the current age of financial austerity the context has changed. While bottom up initiatives to expedite cases and minimise cost have featured for more than twenty five years, the recent changes have largely removed the universal cushion of state assisted justice. In consequence, the adoption of the current online justice initiative is being promoted as an alternative way forward. Before turning to consider the features of online courts and tribunals as conceived by Briggs and Susskind, the essential characteristics of the process of digitisation are identified from the standpoint of technical innovation and as a form of knowledge engineering. In the concluding section there is a brief critical evaluation of the challenges presented by the technological revolution ahead.

Popular Justice from the 'Bottom Up'

In the United Kingdom the concern to establish a system of accessible justice falls within a functionalist or 'Green Light' tradition of law which can be traced back to the social democratic political movements committed to achieving social justice originating in the nineteenth century.² Although the major steps toward the introduction of a welfare state were realized more fully later, particularly under the post-war Labour Government 1945-51,³ there was an acknowledgement here that it is very much more difficult to deliver a universal and sustainable provision of services without having the law on your side.⁴ In the fields of education, health, social security, housing etc the statute containing the legal detail, not only provides the vehicle for policy delivery, but it also comes to embody the political legitimacy and the moral persuasiveness behind the policy.⁵ A legal framework is established by Parliament which both sets out the extent of the organisation, powers and duties of administrative authorities, and of particular relevance to this article, it also provides relatively informal often *intra vires* remedies. Under many statutes tribunals were the grievance handling mechanism, customised to deliver expeditious justice at an appropriate level, often free of

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¹ The UK initiative is part of a wider trend for adopting online justice. For example, the Canadian Civil Resolution tribunal regulated under the Civil Resolution Tribunal Act 2012 which deals with claims up to 25000 Canadian Dollars is referred to by the architects of the UK scheme. See R Susskind 'Online Dispute Resolution For Low Value Civil Claims', Online Dispute Resolution Advisory Group, *Civil Justice Council*, February 2015, 12.

² See C Harlow and R Rawlings *Law and Administration*, (London, Weidenfeld & Nicolson), 1984, particularly at 39ff. The functionalist or 'green light' approach is associated with many historical social movements including: the utilitarian tradition of Bentham and Mill, the foundation of the Fabian Society, the formation of the Labour Party and statist ideas of Sidney and Beatrice Webb.

³ C Glasser and C Harlow 'Legal Services and the Alternatives: The LSE Tradition' in R Rawlings (ed) *Law, Society and Economy: Centenary Essays for the London School of Economics and Political Science* (Oxford, Oxford University Press, 1997), 325ff.

⁴ M Loughlin *Public Law and Political Theory* (Oxford, Oxford University Press), 169.

⁵ See e.g. H Laski *A Grammar of Politics*, (Allen and Unwin, 1925).

any charge.⁶ Viewed from a bottom up perspective, the core objective was to deliver social reforms, and, at the same time, to provide social justice for the entire community.⁷

The contemporary move towards the introduction of online justice reminds us that procedures for remedying grievances still need to be accessible, open, well publicised and with remedies provided to the citizen, either without charge or at minimal cost.⁸ The trend however has been in the opposite direction. In administrative law the response to the procedural shortcomings exposed by the Human Rights Act 1998, combined with the Leggatt reforms to administrative tribunals, has placed tribunals clearly within the judicial branch, functioning as adjudicative court like bodies, often with an adversarial procedure.⁹ Most obviously this increased formality conflicts with those other important objectives, particularly that of providing accessible and participatory justice open to all comers.¹⁰

In order to minimise the cost implications of formal justice resort to Proportionate Dispute Resolution (PDR) has been a significant influence, especially in the field of public law. The proportional element here refers to the requirement that a dispute should be resolved at the lowest possible level, with a court or tribunal regarded as the method of last resort.¹¹ In respect to civil justice Lord Woolf favoured a case management approach with pro-active judges¹² and recognised that judges should, where possible, divert cases away from the traditional adversarial hearing. In a much quoted judgment when Lord Chief Justice he stated that ADR should also be an option in the public sphere:

‘... even in disputes between public authorities and the members of the public for whom they are responsible, insufficient attention is paid to the paramount importance of avoiding litigation whenever this is possible. Particularly in the case of these disputes both sides must by now be acutely conscious of the contribution alternative dispute resolution can make to resolving disputes in a manner which both meets the needs of the parties and the public and saves time, expense and stress.’¹³

As we will observe below when considering Online Dispute Resolution such an approach needs to provide potential claimants with access to early and appropriate advice and assistance when it is needed. This element is essential in order that problems can be solved and potential disputes dealt with long before they escalate into formal legal proceedings. Of course, PDR depends on the availability of an appropriate range of tailored dispute resolution services, so that different types of dispute can be resolved fairly, quickly, efficiently and effectively, without recourse to the expense and formality of courts and tribunals where this is not necessary.¹⁴ In a similar vein, Alternative Dispute Resolution (ADR) techniques involve a number of different remedies and processes, some of which may be available under a statutory framework. Wider recourse to ADR and PDR also improves the performance of a cost-effective court and tribunal service which can become increasingly targeted on those cases where a hearing is the best option for resolving a dispute or for enforcing the outcome. In sum, for ADR and PDR settlement is reached between the parties where

⁶ H Laski (1923) 'The Growth of Administrative Discretion', 1 *Public Administration* 92.

⁷ The basic system of legal aid was introduced in the UK under the Legal Aid and Advice Act 1949.

⁸ P Birkinshaw *Grievances, Remedies and the State* (2nd edn, London, Sweet & Maxwell 1994), 285.

⁹ M Elliott 'Ombudsmen, Tribunals, Inquiries: Re-fashioning Accountability Beyond the Courts' in N Bamforth and P Leyland (eds) *Accountability in the Contemporary Constitution* (Oxford, Oxford University Press, 2013), 241.

¹⁰ P Leyland and G Anthony *Textbook on Administrative Law* (Oxford, Oxford University Press, 2016), 165ff.

¹¹ P Cane *Administrative Tribunals and Adjudication* (Oxford, Oxford University Press 2009), 272ff.

¹² Lord Woolf 'Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System of England and Wales' (1995), HMSO, London.

¹³ See *Cowl v Plymouth City Council* [2001] EWCA 1935.

¹⁴ A Le Sueur 'Courts, Tribunals, Ombudsman, ADR: Administrative Justice, Constitutionalism and Informality' in J Jowell and D Oliver (eds) *The Changing Constitution* (6th edn, Oxford University Press, 2007).

possible without recourse to formal justice, diverting cases away from the courts while, at the same time, minimising expense and delay.

Justice System in Crisis?

The reforms involving the introduction of Online Dispute Resolution are being adopted as an integral part of the Civil Courts Structural Review conducted by HMCTS.¹⁵ In a recent report the Public Accounts Committee of the House of Commons stated: ‘Collectively, the planned changes to the courts and tribunal system are on a scale never before attempted anywhere in the world’.¹⁶ The Chair of the Justice Committee of the House of Commons stated on the launch of an inquiry by the Justice Committee into the access to justice implications of the reforms that: ‘There is no doubt that the HMCTS reforms represent a significant change in the delivery of justice across all areas of the system. ... We are worried about the access to justice implications and will take this opportunity to put those at the heart of the inquiry’.¹⁷ The cuts in legal aid in the UK have drawn attention to manifest gaps in the legal system. Individuals with savings of more than £8000 no longer qualify for legal aid.¹⁸ This means that many types of justice are simply not accessible to most of the population. The fact that the majority of citizens cannot bring a judicial review claim has been regarded as the gravest and most urgent issue facing public law.¹⁹ The criticism is not confined to the ranks of academic commentators and practitioners, the UK Supreme Court found that the fees imposed by the Lord Chancellor/Secretary of State for Justice on employment tribunals were unlawful because they impacted on access to justice.²⁰ The problem has been amplified in recent years because of a rise in court costs and the introduction of court fees, taken together with far reaching cuts in the availability of legal aid.

Streamlining procedural rules and Video Links

In considering the spread of online justice there is also a recognition that in the future IT technology will have an integral part to play in the justice process, with the elimination of paper forms and of the physical court room combined with the elimination of complex procedural rules. Setting up an effective IT system costing £1.2 billion which works at all levels is a formidable technical challenge. At the time of writing, it is proving difficult to deliver and the government has fallen behind the timetable for the introduction of a universal case management system. The start date is currently predicted for July 2020.²¹ Nevertheless, the Ministry of Justice (MoJ) is fully committed to digitisation and the use of state-of-the-art IT for all procedures and hearings, whether

¹⁵ HM Courts and Tribunal Service (HMCTS) is the executive agency under the Ministry of Justice responsible for running the courts and tribunal service.

¹⁶ ‘Transforming courts and tribunals’ Fifty-Sixth Report of Session 2017-19, *Public Accounts Committee*, 20 July 2018, HC 976.

¹⁷ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news-parliament-2017/court-and-tribunals-reform-launch-17-19/>

¹⁸ Legal Aid, Sentencing and Punishment of Offenders Act 2012 impacted heavily on legal aid provision. See Sir Stanley Burnton ‘Delivering Justice in an Age of Austerity’, *Justice*, April 2015.

¹⁹ T Hickman ‘Public Law’s Disgrace’ *UK Const L Blog* (9 Feb 2017).

²⁰ See *R (On the application of UNISON) v Lord Chancellor* [2017] UKSC 51. The UK Supreme Court stated: ‘A fees order will be ultra vires if there is a real risk that persons will effectively be prevented from having access to justice’ (para 87); ‘... even where primary legislation authorises the imposition of an intrusion on the right of access to justice, it is presumed to be subject to an implied limitation’ (para 88); ‘In order for fees to be lawful, they have to be set at a level that everyone can afford, taking account of the availability of full or partial remission’ (para 91).

²¹ ‘Transforming courts and tribunals’ Fifty-Sixth Report of Session 2017-19, *Public Accounts Committee*, HC 976, 20 July 2018, 9 para 7.

or not the case in question is conducted online. The objective is to achieve a simplification of processes and procedures, so that there is a uniform common IT platform for civil, criminal and family law and for the tribunal service. The simplification is achieved by incorporating and standardising procedural rules within all forms and processes by adopting a common database which conforms with the case management systems already used by nearly all law firms. It is envisaged that processes will be accelerated by the combination of online procedures and the e-filing of data. Once achieved this innovation opens the way for the instantaneous paperless circulation of complex information between the parties.²²

It is interesting that Lord Justice Briggs does not regard the development of Online Justice as simply an IT challenge concerned with the supply of appropriate hardware and software, but rather, he regards this as primarily an exercise in ‘knowledge engineering’ meaning that: ‘It depends first upon a detailed and accurate understanding of the underlying law relating to each case type Secondly it requires the construction of a series of questions for litigants (in the form of a decision tree for each case type) which will extract from them the alleged facts and evidence Thirdly it will require the questions to be framed in non-legal language. Fourthly the whole edifice will then need to be coded into interactive digital form, before rigorous testing’.²³

The facilitators available for users to consult at the various stages of the new process have a crucial part to play in assisting them as they grapple with the software, and also in informing potential claimants of the consequences of making formal declarations as part of the procedure. The initial data supplied as answers to the phased questions is intended to assist in reaching a suitable resolution of a case. This might include filtering out cases with little or no prospect of success, or redirecting claimants where alternative avenues/remedies may be available.²⁴

The traditional courtroom venue will increasingly become a thing of the past. For certain types of proceedings the use of video links eliminates the need for parties and witnesses to be physically present at a hearing, thereby opening up the possibility of online resolution. The trend towards online resolution is controversial and it raises many difficult questions. As discussed more fully later, these include the extent to which it is possible to reconcile any new initiative with the availability of open justice and a popular expectation by the general public of a full oral hearing as part of a system of open justice. Up until these reforms adversarial justice has been regarded as the norm, not only by claimants but also by lawyers. By way of contrast, in continental style legal systems where the procedure is generally inquisitorial, an oral hearing is less common and cases are more likely to be decided on the papers.

What’s Coming Online

It has already been stressed that the initiative to introduce online dispute resolution (ODR) is a direct response to increased cost and formality, coupled with the removal of civil legal aid for most litigants. After the introduction of the Human Rights Act 1998 and the implementation of the Leggatt reforms²⁵ tribunals incorporated procedures to ensure the formal protection of rights at hearings, but they also tended to become more rule bound and complex and were now regarded by

²² ‘Transforming Our Justice System’, statement by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, *Ministry of Justice*, September 2016.

²³ *Civil Courts Structure Review: Final Report* by Lord Justice Briggs, Judiciary of England and Wales, July 2016, 6.62.

²⁴ ‘Transforming Our Justice System’, statement by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, *Ministry of Justice*, September 2016.

²⁵ See *Tribunals for Users: One System, One Service: Report of the Review of Tribunals*, (HMSO, 2001).

many commentators as a species of courts.²⁶ At the same time, general access to justice was affected by a deliberate government policy to cut back on the availability of civil legal aid (and also some types of criminal legal aid). In consequence, potential claimants are faced with the prospect of high legal costs and increased court fees. Such a financial burden and general formalisation has created a serious problem, and in reviewing the current position as part of a review of civil justice, Lord Justice Briggs stated that: ‘the current system is one which altogether excludes a silent but growing class of ordinary people ... from any real access to civil justice. The true comparison lies between their continuing exclusion and the creation of an affordable civil justice system, using every aspect of modern technology which may be brought to bear for that purpose.’²⁷ From this standpoint it is important to recognise that quite apart from the cost considerations, a combination of complex law, intricate procedures and the adversarial approach typical of courts and many tribunals has resulted in many citizens and small businesses finding themselves unable to use the ordinary courts. Indeed, according to its advocates the online initiative could become a form of empowerment, allowing resolution of cases without the physical need for courts or tribunals in the majority of cases.

The reports by Briggs and Susskind into online justice recommended that HM Courts and Tribunals Service establish an internet-based Court Service, with the initial scheme confined to small claims and debt recovery up to a figure of £25,000.²⁸ The system is based upon digitisation and utilisation of state-of-the-art IT for all procedures and hearings. In essence, the online court operates at three distinct levels. Tier one is specially designed to provide online evaluation of the case. The online evaluation stage depends on the development of specialist software as part of a common platform for initiating claims. In particular, it gives litigants an indication of the options before them. The three staged system is intended to provide the integration of online advice and dispute resolution strategies, such as mediation, with formal judicial determination available as a last resort.

Tier Two provides online facilitation to be achieved by a process of conciliation/mediation by phone or face to face online. The facilitator (sometimes referred to as case officers or registrars) will assist litigants in articulating their claim. This online facilitation is provided by independent case officers employed by the court and trained in conciliation and/or mediation techniques. A facilitator might be a legally qualified registrar with the expertise and authority to deal with disputes by mediation/conciliation. The idea is to achieve resolution and that cases are only referred to a judge in those cases where no other form of settlement is possible.²⁹ It is as yet unclear whether all case officers employed by the court will be fully legally qualified, and whether they may also have an investigative role. Tier Three allows for the binding determination of cases. If the case is contested there is an online hearing. Judges equivalent in rank to County Court circuit judges are able to decide suitable cases online. The new process eliminates the need for the physical presence of the parties. The online court makes binding decisions equivalent to other courts of the same level. While there is a strong financial incentive to opt for online resolution it is also important to emphasize that litigants retain the right to use the courts and a right of appeal to formal courts.³⁰

²⁶ P Cane *Administrative Tribunals and Adjudication* (Hart Publishing, 2009), 72.

²⁷ Briggs LJ ‘The Online Solutions Court Affordable Dispute Resolution for All: A Reform Case Study, Justice Lecture, October 2016.

²⁸ It is sometimes referred to as ‘The Online Solutions Court’.

²⁹ *Civil Courts Structure Review: Final Report* by Lord Justice Briggs, Judiciary of England and Wales, July 2016, 13.

³⁰ For more detailed evaluation of the procedural rules see: Sir Terence Etherton, MR ‘The Civil Courts of the Future’ *The Lord Slynn Memorial Lecture*, 14 June 2017, paras 47ff. <https://www.judiciary.uk/wp-content/uploads/2017/06/slynn-lecture-mr-civil-court-of-the-future-20170615.pdf>.

Online Tribunals and Administrative Justice

It has been observed that the objective of the modernisation programme is to streamline the system by having a common online platform for initiating claims, with a single process and a common set of new rules operating across civil, family and tribunal cases. In the field of administrative law although postal appeals remain available as an alternative online justice has been available since the Spring of 2018.³¹ Tax tribunal appeals can be made over secure camera and audio connections. These tribunals rule on claims about disputed assessments by HM Revenue and Customs.³² The hearings involve a judge in court taking evidence from a claimant over the internet using a digital end to end service where parties and judge view evidence online line through a continuous oral hearing.³³ The procedure is based on software which allows the parties to communicate and this is free to install. If claimants wish to be represented their lawyers can sit beside them or participate by video link. In addition, certain decisions of the Department of Works and Pensions relating to Social Security and Child Support can be appealed using the online Tribunal and there are plans to extend online resolution to more tribunals. The online system has obvious advantages of accessibility. In the first place, it enables appeals to be filed online; and secondly, it sends the appellant automatic notification of the progress of the appeal by SMS and/or email and it allows the appeal to be tracked online. On the one hand, the new procedure is not a substitute for a full oral hearing with expert legal representation for the claimant. Moreover, ‘Under the new system ... all participants in cases, including the appellant, respondent and Government department, and the tribunal judge will be able to iterate and comment online on the case papers so that issues can be clarified and explored.’³⁴ The upshot is that a determination is reached over a number of linked stages rather than as part of single formal hearing. Some have claimed that this new approach is part of a trend towards differential standards of justice.³⁵ On the other hand, advocates of these reforms see this as part of an inevitable response to financial constraint and technical innovation which has the potential to deliver the simplification and demystification of justice and that the trend will be extended to much of the legal system. However, as we note below the online procedures call into question the traditional role of lawyers in giving advice and representing clients as it does the approach of judges in resolving routine cases.

Will these reforms deliver enhanced justice?

The introduction of this radical system of online justice faces obvious challenges as there are many obstacles to overcome.³⁶ In the first place the implications of sacrificing the right to a hearing should not be underestimated. An online remedy must be perceived as fit for purpose, even if it obviously falls short of previous expectations allowing for a full oral hearing, available as part of an established tradition of open justice. In a well known judgment Lord Justice Megarry explained:

‘As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which,

³¹ R Thomas and J Tomlinson ‘The Digitalisation of Tribunals: What we know and what we need to know’, *Public Law Project*, 5 April 2018.

³² <https://www.gov.uk/tax-tribunal/appeal-to-tribunal>

³³ <https://www.judiciary.uk/wp-content/uploads/2017/09/lcj-report-2017-final.pdf>, 7ff.

³⁴ H Genn ‘Online Courts and the Future of Justice’ Birkenhead Lecture, Greys Inn, 2017, 9.

³⁵ R Thomas and J Tomlinson *The Digitalisation of Tribunals: What we know and what we need to know*, Public Law Project, 5 April 2018, 20ff.

³⁶ H Genn ‘Online Courts and the Future of Justice’ Birkenhead Lecture, Greys Inn, 2017.

in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion suffered a change.’³⁷

The practical difficulties in the absence of oral advocacy concern the presentation of evidence and the weighting of evidence during the course of a partly automated process that dispenses with routine cross examination. There needs to be a clear indication of how any new process (iterative or otherwise) is designed to evaluate the evidence coming before it, but perhaps more to the point, the process needs to flag up cases where legal representation and advocacy are regarded as crucial. Moreover, to date there has been no dedicated research to measure on a comparative basis the impact the new system will have on case outcomes.³⁸

In addition, there has been particular resistance to the use of technology for sensitive hearings since some classes of potential litigants are challenged by having to use computers.³⁹ This concern particularly applies to unrepresented litigants and vulnerable groups including the elderly, those with disabilities, mental health problems, learning difficulties and having a limited command of English.⁴⁰ Furthermore, not everyone is online and a percentage of users have a preference for telephone or paper based procedures. Safety net provisions need to be available to deal with such claimants. The Public Account Committee of the House of Commons is: ‘... concerned that the reforms are being pursued at the possible expense of people’s access to fair justice. HMCTS has already closed 258 courts between 2010–11 and December 2017. These courts have been closed before moving services online. This meaning that many people are having to travel further to access justice’.⁴¹

For the type of hearing envisaged under Tier 3 of the new online scheme there is an absence of open justice.⁴² The procedure is the equivalent to cases being heard in camera, with no scope for media reporting and attendance by the general public. Although cases will be recorded on a routine basis, an online procedure by video link lacks routine public scrutiny. The cut off level for claims is set at a relatively low maximum of £25,000 but nevertheless important issues might be at stake which deserve to be brought to the attention of the media and the wider public. Uncertainty remains concerning the approach to awarding costs as part of the online system.

This reform presents us with a revised model of justice which is likely to spread. Rather than the ‘adversarial dispute model’ now there is a ‘problem that needs to be solved model’. The transition involves changing the legal culture and it calls into question the role of judges and lawyers, and perhaps even the need for lawyers.⁴³ The intervention of a facilitator or judge as part of an inquisitorial process fundamentally changes the way cases are conducted. Now judges must be good managers and tend to ask more questions than previously. They are essentially performing an enabling function in order to ensure they have sufficient information to decide the case.⁴⁴ Parties can exchange information and seek clarification as the case proceeds. Although legal representation

³⁷ *John v Rees* [1970] Ch 345 at 402. See P Leyland and G Anthony *Textbook on Administrative Law*, (8th edn, Oxford, Oxford University Press, 2016), 401.

³⁸ R Thomas and J Tomlinson *The Digitalisation of Tribunals: What we know and what we need to know*, *Public Law Project*, 5 April 2018.

³⁹ Civil Court Structure Review by Lord Justice Briggs, July 2016 para 6.11.

⁴⁰ *Ibid.*

⁴¹ ‘Transforming courts and tribunals’ Fifty-Sixth Report of Session 2017-19, *Public Accounts Committee*, HC 976, 20 July 2018, 12 para 16.

⁴² See e.g. Sir Ernest Ryder ‘The Duty of Leadership in Judicial Office’ *Centre for Contemporary Coronial Law*, 22 October 2018, para 22, 23.

⁴³ S Roberts and M Palmer *Dispute Processes: ADR and the Primary Forms of Decision-Making* (Cambridge, Cambridge University Press, 2005).

⁴⁴ H Genn ‘Online Courts and the Future of Justice’ Birkenhead Lecture, Greys Inn, 2017, 9.

for those that can afford it remains an option, the participation of lawyers is no longer routine and this is reflected in the inquisitorial style adopted. However, in some situations the absence of professional legal advice might prove to be a major disadvantage in the way the case is pursued.

A further critically important point, the new system has to be reliable and it has to be secure. At one level the online court and tribunals requires the development of specialist secure software suitable for home users. At another level, the entire system for the courts service as whole needs to be dependable. In advance of the full incorporation of these changes severe problems have arisen with the MoJ IT platform. There have been a number of much publicised IT breakdowns that have drawn attention to the lack of reliability of the IT element and the absence of any back-up or fall back position.⁴⁵ On these occasions, widely reported in the press, the secure system crashed nationwide leading to the disruptions of thousands of cases, with lawyers and judges prevented from working and the system was not fully restored for several days.⁴⁶ This increased reliance on a universal online system also opens up the possibility of deliberate cyber attacks. In his report Lord Justice Briggs had emphasized the importance of the rigorous testing of the IT element before it is activated to avoid such problems from arising.

Conclusion

In principle, the aim of accepting technological change and providing state of the art IT should be welcomed. In modern society citizens have become accustomed to dealing with everyday issues online in many areas of life. Digitisation has enormous potential to improve the delivery of justice at a time when the existing system is obviously failing to serve the interests of a substantial portion of the population. This article has reported on a fundamental change which will undoubtedly transform the way the entire legal system operates, impacting on the experience of the public as users, the role of lawyers as legal representatives and the approach of judges when presiding over cases. The universal IT element will be up and running within the next two years and the new models of online courts and tribunals promise to at least partially address the vexed question of access by overcoming many of the current perceived barriers in terms of cost, speed and procedural complexity. Defenders of the reform argue that even if the online option is an inferior form of justice it is better than having no recourse to justice at all and that '[w]e have an opportunity to modernise and reshape our public dispute resolution process to provide greater access for those who feel excluded...'.⁴⁷ On the other hand, the Public Accounts Committee in their report suggest that the reforms are being badly managed and 'could reduce access to justice and fairness of outcomes'⁴⁸, for instance, as existing courts close before their replacement is set in place and tested. Clearly, the new system will need to be integrated with the courts, tribunals and the existing system of ADR.⁴⁹ At the same time as integrating the IT benefits (assuming that concerns over reliability and security are addressed) and allowing virtual hearings in an increasing number of instances, many legal professionals continue to believe that it is essential to retain a physical court based adversarial system alongside any replacement. Finally, there is one further obstacle to overcome. Full implementation of these reforms requires primary legislation at a time when the attention of Parliament has been taken up with its preoccupation over Brexit. The Prisons and Courts Bill

⁴⁵ 'Law courts in chaos as IT meltdown disrupts thousands of cases' *The Guardian*, 23 January 2019.

⁴⁶ 'The entire digital infrastructure of the courts has been broken for days. Phones are not working, court computers are offline, email is down. Imagine the headlines if it were the NHS. But it's only justice, so no one cares. No accountability, no lessons learned.' the secretbarrister.com.

⁴⁷ H Genn 'Online Courts and the Future of Justice' Birkenhead Lecture, Greys Inn, 2017.

⁴⁸ 'Transforming courts and tribunals' Fifty-Sixth Report of Session 2017-19, House of Commons, Public Accounts Committee, HC 976, 20 July 2018, See 5 para 1; 12 para 15.

⁴⁹ Sir Stanley Burnton 'Delivering Justice in an Age of Austerity' *Justice*, April 2015, 16 para 2.21.

introduced in February 2017 which supported these changes failed to complete its parliamentary stages before the June 2017 election. The replacement bill or bills had not been published at the time of writing.

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