

REFORMER THOUGHTS

REFORM



Delivering Digital Courts

Liberata

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Introduction

Delivering digital courts for all

Our legal system is centuries old, but the way that legal services are delivered is changing. There has been a drive from HM Courts & Tribunals Service (HMCTS) to modernise its processes and the means by which citizens access justice, and to save money by becoming more efficient. The advent of the digital court is a welcome change, but it is crucial that justice remains accessible to everyone.

The HMCTS court reform programme that began in 2016 is designed around three principles. First, courts should be used proportionately. Digital courts can allow some cases to be handled out of court when you would once have had to attend. Now divorce and many civil cases can be settled online.

Second, courts should be accessible. Outmoded paper forms aren't easy for people to use and burden an already-strained justice system. Previously, around 40 per cent of divorce forms were returned with errors. Now, using an online form, the error rate is down to 0.5 per cent. These developments change the way that court proceedings work, too. Evidence can now be shared with litigants and lawyers in a digital format, and people can appear 'in court' via a video link.

Third – and most importantly – courts need to be just. Everyone must be able to access justice, including those who are not digitally able. If processes that were once face-to-face are going to move online, HMCTS needs to ensure that they understand the impact these changes will have on people so that no one is left behind. Alternative arrangements will need to be made for those who can't access digital services.

There are ongoing challenges to HMCTS delivering this £1.2 billion programme, which involves new processes, reorganising the estate and introducing a common platform to share information between the police, the Crown Prosecution Service, and HMCTS. But as *Reform research* has shown, implementing these changes can benefit citizens and the taxpayer. Looking further ahead, the use of Artificial Intelligence could further transform the way that courts process information, and may even become part of the judicial decision-making process.

This *Reformer Thoughts* brings together voices from across the legal sector to discuss the implications of courts going digital. It presents views from those who are delivering digital court services, arguments for keeping users at the heart of change, and a vision for what digital courts might mean in the future.



Aidan Shilson-Thomas
Researcher at Reform

"HMCTS needs to ensure that they understand the impact these changes will have on people so that no one is left behind."



Rethinking justice

Our justice system is renowned around the world. It is the ultimate protector of the fundamental rights and freedoms we enjoy, and the principles that underpin it are enduringly important.

Yet for many people, the system can be hard to navigate and understand. It can be complicated and intimidating – and, at worst, can feel like it is built to suit those who work within it rather than the needs of those who turn to the courts to solve their problem.

This is compounded by a system of administration that has, for too long, been dependent on paper files and documents, and archaic ways of working that make it hard to do simple things simply.

Our programme of reform – led jointly by the judiciary and government – is breaking down these barriers by introducing ways of working and technology commonplace in other walks of life. Fundamentally, it is reshaping the justice system around the needs of all those who use it by simplifying and streamlining how people can access justice.

Anyone with a claim under £10,000 (say, someone who has been ripped off by a rogue builder) can now do so by answering a series of straightforward questions online, and those subject to the claim can respond and make settlement offers online too. Where both parties agree, settlement can be reached within hours or days.

The service has been used more than 70,000 times in just over 12 months and nine out of ten users say they are satisfied or very satisfied with it. Even when the case can't be resolved online, the average time taken to settle disputes has fallen from more than three months to a little over five weeks.

It is one of a number of new, online services we have introduced over the last year to enable people to apply for a divorce or probate, appeal against welfare benefit decisions, or enter a plea for many low-level, summary and victimless offences like speeding or fare evasion.

Online pleas worry some. Yet offering people this choice alongside the traditional paper and post route has increased the number of people responding to such prosecutions from around 16 per cent to over 20 per cent. That means fewer people having cases decided without their input.

Shaping change around the needs of users is more efficient too. More than 40 per cent of completed paper forms had to be returned to divorce applicants because of errors. For online applications, we return fewer than one per cent saving time, cost and stress for everyone involved.

We are also testing different ways to hear cases that do need to go to court. One is called "continuous online resolution" where judges or tribunal panels are able to ask questions or request evidence online to allow them to make decisions. We will be testing this in social security tribunals this summer.

Fully video hearings is another. Video links have been used successfully in courts for many years. But some hearings, such as preliminary hearings, might benefit from using video for all participants rather than expecting everyone to travel to one location.



Susan Acland-Hood
Chief Executive, HM
Courts & Tribunals
Service

"Our programme of reform is breaking down these barriers by introducing ways of working and technology commonplace in other walks of life."

Last year, we piloted video hearings in a small number of tax tribunal cases. It was welcomed by users who were able to join the hearing from their home or office. We are now piloting this in some family cases too to enable victims of domestic abuse to seek urgent injunctions without having the stress of travel and appearing in court in person.

Such approaches will only ever be suitable for some types of cases and hearings, and will always be dependent on judicial decision. They are being tested in close collaboration with the judiciary, legal professionals and users and are subject to proper evaluation and scrutiny – as is the reform programme as a whole.

Innovation is essential yet there are many things that won't change. Physical hearings in courts and tribunals will always have a pivotal role, online services will complement not replace existing paper forms and fundamental principles of an open, fair, just and proportionate system will never be compromised.

But our processes don't need to be as ancient as our principles. By putting people at the heart of our change, and looking afresh at how things are done, we have a unique opportunity to ensure that a system that has served us so well for so long continues to do so for decades to come.



Unlocking efficiencies in digital courts at scale

The adoption of digital technologies in the courts has the potential to save time and money, and to make it easier for people to access their services.

A number of new technologies have been adopted in order to reduce the administrative burden on public sector staff. One area that has benefitted from the implementation of a tailored solution, built on the in-depth analysis of data, is the 'Fee Account' system used by HM Courts & Tribunals Service (HMCTS).

Fee Account allows HMCTS to record payments and the use of services by those who are heavy users of the courts, such as large corporations and law firms. A direct debit mechanism channels these users' payments directly to HMCTS, helping to cover some of the costs of running the courts. Traditionally, HMCTS has faced a huge demand to process fee payments due to the old system being clunky, difficult to use, and time consuming for hard-pressed employees.

In line with the Government's strategy to improve efficiency and streamline processes in the provision of court services, Liberata conducted analysis and redeveloped Fee Account to improve user experience and reduce running costs. Fee Account has introduced user authentication, approval hierarchies and other elements of self-service like password resets.

The solution, which collects nearly a quarter of a billion pounds annually, continues to deliver essential management information to HMCTS for financial reporting and income planning. It is fully integrated with HMCTS's existing direct debit system and support management of customer credit limits.

The impact of the new system was stark and revealed the true scope of the network of the nation's court services system. In the first full quarter of live operation to 31st March 2019, on average some 70,000 fee transactions per month were input by nearly 2,000 court staff, on behalf of 2,500 customer accounts, across 450 sites.

For HMCTS, most importantly, it means a better performing system that is easier to use for HMCTS staff. Other benefits include the removal of multiple software licence costs, the continued use of their existing direct debit mechanism, and the improved streamlining of authorisation controls whilst retaining the controls' integrity. Best of all, it demonstrates the overall benefits of partnerships to harness expertise for public benefit.



Charlie Bruin
Chief Executive
Officer, Liberata

"Traditionally, HMCTS has faced a huge demand to process Fee Payments due to the old system being clunky, difficult to use, and time consuming for hard-pressed employees."

True innovation is about creating better services

On the face of it, you could argue a legal evidence management platform only digitises a paper-based process. There's nothing wrong with that of course. Digitising is cost-effective, takes the stress and risk out of bundling and it's good for the environment.

Our internal data shows that 100 million pages stored on CaseLines is equivalent to 72,000 trees. It adds up. Government data shows paperwork is the [third biggest cost](#) in policing. Year on year, this will help to reduce the reliance our legal system has on paper, and eventually eliminate any need for it.

So, in that sense, evidence management platforms are more modernisation than innovation, except that there's more to innovation than just shiny new technology. True innovation is about improving services and making our lives better. This is exactly what digital justice does.

Since the UK implemented CaseLines, one of the positive results has been that the number of Crown Court hearings has reduced by [50 per cent](#). This is because digital evidence is available much more quickly than paper evidence was, so legal professionals can see the case earlier. Another really interesting thing we are seeing as a result of this has been more early guilty pleas. Earlier access to evidence gives the defence more time with it and more time to advise appropriately. Of course, the converse is also true; if you're innocent, you have more time to prepare your case. This could have a huge impact on the speed and quality of justice.

Digital justice also speeds up hearings, so solicitors spend less time in court. This reduces the number of adjournments, therefore meaning a lower number of hearings per case. One customer estimated a cost reduction of £70 per hearing, equating to a direct cost saving of over £60,000 in their first year using a digital justice system.

Then there's hidden costs you don't consider. Digital systems ensure there is no way evidence can be lost or tampered with. In many jurisdictions, key evidence often goes missing, resulting in cases being dismissed, time being wasted and guilty people walking free. Cutting the risk of losing or misplacing files means protecting the integrity and the time of the institutions that use it.

This is particularly reflected in the artificial intelligence (AI) the systems use. Like digital justice, it's practical rather than futuristic, and is built around augmenting current processes for the people who work in law, rather than replacing those individuals. The solutions are simple; AI can scan entire bundles in seconds and highlight duplicates, read written text and even detect faces in images. Entire documents can be translated into another language in seconds and spoken word can immediately be converted into written. Obviously, this saves lots of time, but it saves people from the drudgery of mundane tasks, and frees them to focus on more important parts of legal services.

Contrary to the common perception, law isn't stuck in the past. Judges value the shift to digital justice because they see how it is improving services. The Lord Chief Justice of England and Wales described the digital court system as a "[God-send](#)". Now that's innovation.



Paul Sachs
Founder and Chief
Technology Officer,
CaseLines

"True innovation is about improving services and making our lives better. This is exactly what digital justice does."



Video Enabled Justice: A catalyst for modernising access to justice

Video Enabled Justice (VEJ), is digital public services at their best. My first reaction to the proposal to scale up the use of video technology for giving evidence was “why aren’t we doing it already?” An approach that can save money and increase productivity, while also improving the experience for victims, witnesses and police officers, should be a no-brainer, provided it does not adversely affect justice outcomes.

We began with a lot of ambition and the past two years have shown that all criminal justice partners, including the police and courts, recognise the need to make the system more efficient and effective.

Police officers would be freed-up from hours of travel to, and waiting around at, court – often to find that trials were postponed or collapsed. Victims and witnesses would also be saved this time-consuming and demoralising experience. No wonder there was such appetite from the Home Office and Ministry of Justice, as well as local partners.

The challenge was not getting people on board with the idea, but working out how to deliver VEJ in a system that is not in fact a seamless, coherent entity. As everyone who works in and around criminal justice knows, it is a set of multiple systems that co-exist without universal docking points.

In 2017, I secured £11.5 million from the Police Transformation Fund to embed VEJ across the South East Region, Norfolk, and Suffolk. As well as saving police officer, witness and victim time, the aim was also to minimise the need to move defendants to court for remand hearings.

In 2018, a proof of concept programme was launched in Kent that introduced a VEJ Video Manager tool across seven police custody suites, operating at the Medway Magistrates’ Courts.

In Sussex, my team introduced 14 live link video end points into specially adapted rooms across the police estate. The result was 2,000 officer hours saved – the equivalent of 241 shifts, or more than four and half hours per officer.

I also funded a video suite for vulnerable witnesses, including children that is sited in West Sussex. It is one of only a few such facilities in the country, and several witnesses have told us that without it they would not have come forward. Over the next year, three more video suites for vulnerable witnesses will be established in Sussex.

The VEJ project in Kent proved the concept of video technology for first appearance video remand and, since June 2019, 4,000 hearings have been video enabled.

One promising outcome from the collaboration with criminal justice partners, which has involved mapping interactions and inter-dependencies, is the development of a criminal justice “dashboard”.

This displays the time and resources necessary to get evidence into court and, combined with software tools, can forecast and track efficiency benefits across our partners. In short, it visualises the benefits of the investment.

The VEJ approach has helped to accelerate aspects of the much bigger HM Courts & Tribunals Service programme, highlighting for example, the need for extended court hours and the higher volume of cases that could then be processed.

As a Police and Crime Commissioner and principle sponsor of the VEJ programme, I have been able to challenge, explore and support innovation because of my independence. At times, our ideas and my enthusiasm to implement them have made waves, but these have subsided as the benefits of Video Enabled Justice has become clear for all to see.



Katy Bourne OBE
Sussex Police & Crime
Commissioner

“My reaction to the proposal to scale up the use of video technology for giving evidence was ‘why aren’t we doing it already?’”

Putting users at the heart of change

"I have had communication break down entirely with defendants who become agitated – it's a lot easier for defendants to become frustrated and take out their anger with a face on a screen than a human being in the room with them."

Criminal lawyers are wary of the Government's digital court reform programme. They and every other court user welcome digitisation of case files and better booking systems. But the programme also involves an expansion in the use of video hearings and of online court processes.

Video links from prisons to courts have been running for nearly 20 years but they have been expanded without any good research into their impact on users and on court outcomes. They are justified as saving money on prison transport and making court hearings more convenient for those in prison. They certainly do both, but do they really serve justice or the needs of the user – the defendant? [Transform Justice](#) surveyed magistrates, lawyers and court staff about video links. Most had grave concerns.

Lawyers complained that video links damaged the relationship between lawyer and client and sometimes destroyed trust – lawyers are forced to have private consultations with their clients on video. Sometimes, lawyers on video have less than 15 minutes to introduce themselves to a new client, to get the stressed client to reveal their background and any disabilities they might have, to discover as much as possible about the alleged offence, to advise the client whether to plead guilty or not guilty and to prepare them for the court hearing. Not surprisingly, lawyers say defendants are short changed. Our interviewees also suggested that forcing defendants to go on video influences their behaviour for the worse – "many, or even most, defendants seem to feel disconnected from the court process when appearing via video-link. It's almost as if they are being processed by a machine as opposed to humans." Being on video, isolated from the court, defendants either disengage from the court process or become frustrated and end up being rude. Clearly angry, rude defendants may get worse outcomes.

The [only UK study](#) which monitored the outcomes of video hearings should have rung alarm bells. In 2010 the Government evaluated a pilot of magistrates' court hearings where the defendant appeared from a room in a police station. Their lawyer, the judges and all others involved saw the defendant on video from the courtroom. In the pilot, the defendants who appeared on video were less likely to be represented by a lawyer, more likely to plead guilty and likely, if convicted, to get a higher prison sentence. It's not clear whether this is correlation or causation, but if being on video does significantly change the court outcome for a defendant, we all need to know why.

Since 2014, HM Courts & Tribunals Service (HMCTS) has secured over a billion for their digital court reform programme, and in return the Treasury has committed them to a very tight timetable. This has prompted a leap to digital solutions – more video links, wholly virtual courts, online processes – without first having the information to properly analyse the problem. Last year HMCTS published a [study](#) on court users which showed that the most important driver of satisfaction was being "listened to" and that those who had gone in person to court were far more likely to feel "listened to" than those who had communicated with the court online or on the telephone. The digital court reform programme cannot and will not be reversed. But let's slow it down a bit so we can assess how it impacts on access to justice, and ensure that it helps vulnerable people to get redress.



Penelope Gibbs
Director,
Transform Justice

"If being on video does significantly change the court outcome for a defendant, we all need to know why."

Must a judge be human?

To what extent will the judicial role be not only augmented, but even taken over entirely by new technologies?

Technologies are already reshaping the way the legal profession operates, with implications for judges in terms of how cases are prepared and presented.

In relation to courts, the judicial role is also being augmented, and modified, by technological advances, including the growth of online adjudication. There has even been speculation that the role of the judge not only could be taken online, but as computing techniques become more sophisticated, be fully automated. This appears more likely in relation to lower level judicial decision making and some categories of judicial making (for example administrative decision making).

However, the role of the human judge is not merely that of a data processor. To reduce judging to such a definition may reject not only the humanity of the judge, but also that of all those who come before them. A better understanding of the essential humanity of the judge will help ensure that technology plays a principled and appropriate role in advancing a responsive justice system.

At present, even before a case comes before a judge, artificial intelligence (AI) may already be having an impact on the judicial task by virtue of [AI's impact](#) on the legal profession and how cases are prepared and presented to the court. Impacts here may even include influencing [which cases get before a judge](#), as AI is now able to predict what the outcome of litigation would be if a case were to go to court.

Once cases are before courts, Judge AI is now playing some role in aspects of judicial decision-making. In Mexico, the [Expertus system](#) has advised judges and clerks "upon the determination of whether the plaintiff is or is not eligible for granting him/her a

pension." In the United States, [AI-driven tools](#) have been used to help determine whether recidivism is more likely in criminal matters and to assist in making decisions about sentencing.

These developments have not been without controversy. A due process challenge by a Wisconsin inmate to the use of a recidivism prediction program was rejected by the state's Supreme Court, even though the inmate was unable to examine the detail of the software being used against him (it being protected proprietary information). There are also issues about whether "any involvement by an autonomous system in judicial decision-making should provide a satisfactory explanation auditable by a competent human authority" (see Future of Life Institute). The need for such scrutiny became clear in relation to the Wisconsin case, when the investigative journalism organization [ProPublica](#) carried out an analysis of "Compas" (the program in question) and found that it was prone to overestimate likelihood of recidivism by black defendants, and underestimate that of white.

Many of the developments in the use of AI in courts to date also assume that the role of a judge is limited to adjudication whereas it is in fact multifaceted. It can incorporate activism, complex interactions with people, dispute settlement, case management, being an educator, social commentary as well the core adjudicatory functions which might be conducted with other judges, or less commonly in some jurisdictions with lay people (juries).



Professor Tania Sourdin,
University of Newcastle



Dr. Richard Cornes,
University of Essex

These varying functions are relevant when considering how technology might impact on the role of judges within our society. Alongside technological developments, modern trends in judicial approaches are leading some judges to be more responsive and to embrace the realization that judging requires not only knowledge of the law and the facts of a case, but also the empathic ability to understand the emotions underlying the matters which come before their court; "emotion not alone but in combination with the law, logic, and reason – helps the judges get it right."

The great British judge, Lord Reid of Drem, famously rejected the notion that judging is a merely mechanical exercise in *The Judge as Law Maker* in 1971. The right legal answer, he said, was not simply a matter of saying the right "magic words" – or, for our time, using competent AI systems. As we embrace the opportunities AI and online courts can bring to the legal system, we must not lose sight of the importance of human beings in dispensing justice.

"A better understanding of the essential humanity of the judge will help ensure that technology plays a principled and appropriate role in advancing a responsive justice system."



Conclusion

Realising the potential of digital justice

HM Courts & Tribunals Service (HMCTS) has embarked on an ambitious programme of reform to modernise the justice system. Digital courts aim to free up judicial time and create systems that are user-friendly for staff and citizens, but it must be ensured that no one is left behind as courts take the digital leap.

To create new ways of administering and accessing the courts, HMCTS needs to build on the right foundations. Many services still rely on old legacy systems and paper-based processes. HMCTS is drawing on a range of expertise to create the right 'digital architecture' and systems that are more efficient and cost-effective. We've heard that digital technologies can bring a range of improvements, from making transactions between HMCTS and its regular users easier, to allowing digital evidence to be stored on a secure platform.

New technologies such as video link hearings are now being used to cut costs and speed up court cases. This has the potential to create a better experience for court users who will not need to travel for physical hearings. However, we've heard from Transform Justice that these services need to be designed 'for and with' the people who use them, and that HMCTS needs to develop a more robust evidence base. The CEO of HMCTS, Susan Acland Hood, has committed that digital services will undergo "proper evaluation and scrutiny" to understand their impact.

It is a fundamental challenge for digital courts that an estimated one in ten UK adults do not use the internet - a higher number than might be expected. Crucially, many who are excluded from digital services have other vulnerabilities, such as being old, having a disability, or having a social or economic disadvantage. There can be no 'one-size-fits-all' model for court services. It is encouraging that HMCTS wants to provide support in several formats, from webchats to face-to-face appointments.

In the future technology in the courts could have more far-reaching consequences than better administration and video links, and this will bring scrutiny. Professor Sourdin and Dr Cornes have highlighted that artificial intelligence (AI) is becoming more widely used in the judicial process. We must harness the benefits of AI but should question whether it should ever replace human judges. In the short term, we should create digital courts that run smoothly, focus on creating value for the taxpayer, and ensure equal access to justice for everyone in society.



Claudia Martínez
Research Manager
at Reform

"It is a fundamental challenge for digital courts that an estimated one in ten UK adults do not use the internet - a higher number than might be expected."

Related content

In February 2016, Reform published *The future of public services: digital justice.*

In March 2018, Reform published *Crime and information: using data and technology to transform criminal-justice services.*