



Digital Delivery of Legal Services to People on Low Incomes

Half Year Update

Roger Smith OBE
December 2017

Contents

1	Introduction and Overviews	04
	<ul style="list-style-type: none">• Technology, The Economy and the Law• The Rechtwijzer• The Online court programme in England and Wales• Advances and Opportunities in the Digital Delivery of Legal Services for people on low incomes.	
2	Technology, The Economy and the Law	07
2.1	Machine, Platform Crowd	07
2.2	Samsung Analysis	10
2.3	The two Legal Conferences: Legal Geek and Legal Futures	12
2.4	Artificial Intelligence (AI)	14
2.5	So where does this leave us?	16
3	The Rechtwijzer	18
3.1	The Rechtwijzer : an evaluation Part One	19
3.2	Theory 1: Citizens do not want online supported resolution services	20
3.3	Theory 2: Legal Aid Boards, Ministries, Courts and Law Firms are not ready for online dispute resolution services	22
3.4	So why not move forward?	22
3.5	Theory 3: the market can resolve the access to justice problem so Government not needed and we failed to deliver	24
3.6	The Rechtwijzer: an external evaluation	25
3.7	Relate	28

4. The Online Court Programme in England and Wales	30
4.1 The fear of managed decline	30
4.2 Drawing the line	32
4.2 Online Courts and Crime	34
5. Advances and Opportunities in the digital delivery of legal services for people on low incomes.	39
5.1 British Columbia	39
5.2 The Civil Resolution Tribunal	40
5.3 MyLaw BC	42
5.4 Justice Education Society	45
5.5 Interactivity in England and Wales	45
• Sykpe	
• Chatbots	
• Nadia	
5.6 What Technology is needed for Access to Justice	53

The Legal Education Foundation

This half-yearly report updates the last annual Digital Delivery of Legal Services published in May 2017. It is the latest in a line of periodic reports going back to December 2014 published by The Legal Education Foundation (TLEF) and available on its website. This is the eighth in the series, a testimony to the rapid change occurring at the present time. The focus of these reports is the use of technology in the field of access to justice. However, it is hard to isolate this one area from the more general changes that technology is making to the economy, politics and the overall legal services market.

Information Technology and Legal Services

This update follows annual analyses of developments published by The Foundation since December 2014.

These reports are supplemented by a website (www.law-tech-a2j.org) and a twitter account (@law-techa2j.org). Some of the content of the website has been integrated into this current update.

The Author

Roger Smith OBE is a solicitor; a visiting professor at London South Bank University and a past director of the Legal Action Group and also of JUSTICE. He is a past director of Legal Education and Training for the Law Society of England and Wales. He produces a regular newsletter for the International Legal Aid Group and writes monthly columns for the Law Society Gazette and New Law Journal. He has undertaken various consultancies on legal aid and published a number of international comparative studies.

Disclaimer

All the information in this Report is verified to the best of the author's and publisher's ability, but they do not accept responsibility for loss arising from decisions based upon them and whilst Internet addresses were believed to be accurate at the time of publication they may have changed since then. Where opinion is expressed it is that of the author, which does not necessarily coincide with the views of The Legal Education Foundation.

1. Introduction and Overviews

The first section of this report sketches the general background before looking at developments under three themes that have dominated the last six months. Thus, the layout is as follows:

1. Technology, the Economy and the Law.

This covers two key analytical publications on general current developments, including AI; and issues arising from the two major UK conferences on technology and legal services held during the period – by Legal Geek and Legal Futures.

2. The Rechtwijzer.

The Rechtwijzer is the Dutch programme that combined Online Dispute Resolution (ODR) and interactive assistance, primarily in family matters. For the last few years, it dominated discussion in internationally oriented access to justice debate. Its failure – or, at least setback – raises questions that have to be addressed. Does it reflect innate problems of using technology in this field or did it collapse because of its individual circumstances?

3. The Online Court programme in England and Wales.

The government is proceeding apace with the introduction of ODR in the form both of an Online Solutions Court for small civil claims and more generally through the introduction of online procedures throughout the court structure. What do we make of implementation so far from an access to justice perspective?

4. Advances and opportunities in the digital delivery of legal services for people on low incomes.

The potential of digitalisation lies largely in its capacity to exploit the interactive capacities of the internet. There are increasing examples of its successful use and the Canadian province of British Columbia provides a beacon of what might be done. The way ahead is not, however, easy and what looked like an interesting Australian project using a visual chatbot named Nadia with the melodious voice of Cate Blanchett looks as if it may have met the same fate as the Rechtwijzer. What can we say about the role of technology in providing access to justice?

This report is published by the Legal Education Foundation and reflects its interest in the field. The content is, however, the sole responsibility of its author, Roger Smith. Any opinions expressed are not to be taken as shared by the Foundation. It covers developments up to the end of November 2017. For coverage after that date, consult law-tech-a2j.org and @lawtech_a2j.

'The LASPO cuts'

Nothing in this report should be taken as endorsing the notion that digital delivery of legal services will, to any meaningful extent, meet the deficiencies in legal aid spending that arise from the recent series of cuts made as a consequence of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). These, like the introduction of Universal Credit, have led to considerably suffering among those on low incomes.

Two non-government commissions have debated the appropriate response to the LASPO cuts, one chaired by Lord Low and the other by former Labour legal aid minister Lord Bach. The latter was published by the Fabian Society within the period of this report. The Bach Commission's 'big idea' is that there should be new legislation conferring a right to access 'reasonable' legal assistance. This is perhaps a rather odd place to begin. It raises an argument that goes back to the 1970s when the phrase 'access to justice' took off. As an underwhelmed Canadian

professor (McGill's Rod MacDonald) once wrote, 'before access to justice there was just justice'. It is true that 'access to justice' as a concept has achieved such general use that we have even used it in the title of the website and blog underlying this report. However, it is used there as a synonym for a wide concept of justice, ie fundamental fairness not – as sometimes appears – any limitation on, or lessening of, justice itself.

The requirement on a state to provide justice has three distinct but inter-related elements, all of which are explored below. The state must provide means to resolve and adjudicate conflicts, both civil and criminal, in ways which are – and these are promoted by Her Majesty's Court Service as underlying its reforms – accessible, proportionate and fair. To these might be added – for the avoidance of doubt – timely, effective, public (a concept potentially troublesome in the context of online) and affordable. Further, the state should also ensure that citizens have sufficient information about their rights and responsibilities to comply with, and enforce, them (something on which the Bach Commission is strong). And, finally, the state should ensure that those in its jurisdiction should have such legal and other assistance as they need to enforce those rights and uphold those responsibilities.

Technology must run as a constant stream through each of these three responsibilities – both for accessibility and for financial reasons.

On adjudication, governments should commit themselves to effective digitalisation provided fees are significantly reduced for low value claims; the quality is acceptable; justice is sufficiently public; and effective assistance provided for those digitally excluded. Each individual legal jurisdiction should be examined so that its substantive provisions manifest exemplary standards of clarity, fairness and accessibility. That means, for example, that the increasing calls from the judiciary to simplify divorce law should be heeded. We also need to use digital delivery as much as we can for information, advice and assistance. That is what is explored below.

This six month report does not deal with the impact of the digital divide and consequent digital exclusion of a significant proportion of the population – except in noting that online provision needs to be supplemented by personal services for those unable to take advantage of it.

This is a matter raised in past, and to be returned to in future, reports. For the moment, the intention is to provide a snapshot of the most significant developments in advances in technology (and, in the case – for example – of the Rechtwijzer and the Nadia project, alas – setbacks) over the last six months. A further – and broader – annual report should be available in the early summer of 2018.

As an overview, something of a paradox may be observed. The impact of technology is becoming increasingly evident in the high commercial end of the legal market. But, at the same time, it has received something of a check – at least in relation to some of the major flagship projects – in the consumer-focused market formerly funded by legal aid. Nevertheless, there are indications of how it can be used to leverage such provision as has managed to survive the cuts.

On adjudication, governments should commit themselves to effective digitalisation provided fees are significantly reduced for low value claims; the quality is acceptable; justice is sufficiently public; and effective assistance provided for those digitally excluded.

2. Technology, the Economy and the Law

2.1 Machine, Platform, Crowd

Machine, Platform, Crowd: Harnessing our Digital Future is the latest book from Andrew McAfee and Erik Brynjolfsson. It follows their previous 2014 hit, *The Second Machine Age*, and gives a more detailed analysis of the technological revolution.

The authors give a persuasive account of the major economic changes based on the deployment of digital technology. It is all pretty scary unless you, like both authors, 'have an optimistic vision for the future' and believe that 'the next few decades could and should be better than any other that humans have witnessed so far'. Even they, with all their enthusiasm for a new millennium, have to admit that 'this is not a prediction: it's a possibility and a goal'. We all need to work out how we are going to respond to the titanic forces the authors so convincingly describe: as they admit, 'No single future is predetermined. Just as individuals can chart their own courses, so can companies and so can societies'.

The central thesis is that the second machine age is coming in two phases. The first started in the mid-1990s as the deployment of computers began to cause a significant rise in productivity once they had taken over various aspects of routine work. The second opens around 2010 – illustrated, for example, by Google's announcement that it has been experimenting with autonomous cars. By 2012, smartphones connected over a billion people (the iPhone was only introduced in 2007). Technology is moving to process tasks which are not routine – such as winning at the highly sophisticated game, Go, or developing other uses of AI. Vast numbers of people have instant and constant communication between themselves and the internet: 'They can also engage in many kinds of exchanges and transactions. This is bringing billions more participants into the modern global economy'.

For the authors, the modern age is characterised by significant shifts in work patterns: from man to machine; products to platforms; and from 'the core' to the crowd. People used to design products but now computers have a significant role through their ability to manipulate unfathomable amounts of data. Such physical products are, of course, still necessary but emerging giant commercial organisations like Uber, Airbnb, Alibaba and Facebook all trade without possessing much in the way of physical assets. The transfer from the certainties of the 'core' to the wisdom of crowds is seen in the move from the Encyclopaedia Britannica to Wikipedia or by the emergence of the virtual realities of blockchain and bitcoin.

The authors hold that human minds can be 'brilliant but buggy'. Humans may think they are better than machines but, actually, given adequate data, programming and some degree of human supervision, they are often not. Machines can, for example, make better diagnosticians than lawyers or doctors.

The authors are good at detail and caveat: they are clear about the limitations of computer-based decision-making. Machines tend to be worse than humans in taking everything into account – especially what might initially seem extraneous: 'they have great difficulty gathering more or different data from what their builders and programmers allowed'. Rather comfortably, 'Another huge advantage that humans have is good old common sense.'

One of the strengths of the book is that it is not all theory. There is extended discussion both of developments that worked and, as interestingly, those which did not. For example, Airbnb has established itself solidly in the tourist – but not so much in the business – market. Why? Well, it turns out that business travellers really value location and services – variable characteristics not quite so amenable to bulk transactions as tourist accommodation. Some of the higher end hotels must, of course, be experiencing some effect from other platforms such as Tripadvisor or Hotel.com. But neither these nor Airbnb have radically disrupted this part of the hotel industry.

Of the three identified trends, it is probably machines which will most affect the law.

For the authors, the modern age is characterised by significant shifts in work patterns: from man to machine, products to platforms; and from 'the core' to the crowd.

You can already see the enormous interest of the large corporate firms in AI and new technology – just one example of which would be the joint investment of Baker McKenzie and Allen& Overy and Overy in Ulster University's new Innovation Hub.

Platforms may also play a larger role. In the US you can see also the emergence of increasingly successful platforms like Avvo which matches a market of consumers with a market of providers. There are a number of less established examples in the UK.

In terms of decentralised crowd funding, you can see the emergence of entities like CrowdJustice.

You realise from looking at the early adopters in other fields, however, just how far the law has – and is likely – to go, particularly for those on low incomes. Law is at the very beginning of moving to the machine, platform, crowd world. And here is a problem for legal services for those on low incomes. How will legal services develop when the financial rewards for success are low, non-existent or even negative (as when more clients mean more work but no more money)? It is unclear whether there will be a trickledown effect from commercial services where AI and machine learning becomes routine. Or will legal services for the poor remain unmodernised, under-funded, dependent on the scattered provision of overworked staff operating without much technological assistance just as

a few feudal field systems survived into the 19th century in rural Britain? Will platforms develop where providers compete to deliver low cost services to consumers who may only have five or six legal transactions in their lifetime? Will the pro bono link between large corporate firms and struggling legal service provision provide a unique route for the transmission of technology – which once devised will have relatively little on-cost? Does the crowd have much of a role other than in occasional litigation funding?

Technology is likely to give corporate lawyers a wider role but may require fewer qualified lawyers as automation takes over more of the routine. We need much more discussion of the consequences. We certainly need more discussion of the economic and political power shift that is occurring in the new economy and reflected in this potential shift in the practice of law. Revenues of the top four digital businesses were as follows in 2016: Apple \$215bn; Amazon \$136bn; Google \$90bn; Facebook \$28bn. That is a combined figure of \$469bn – roughly the size of the Gross Domestic Product of Poland, 24th largest economy in the world or the turnover of Walmart. The enormity of the consequent undemocratic power is becoming apparent and legal aid is but one casualty of the shift of resources from the public to the private sphere.

2.1 Samsung Analysis

South Korean technology giant Samsung has no intention of being left out of the emerging new world. It has produced its own assessment of the future in extolling the 'Open Economy' (https://samsungatwork.com/files/Samsung_OpenEconomy_Report.pdf) with a compatible but slightly different emphasis from that of the two Americans. Its message is that the digital revolution has so changed the world that 'for businesses and governments to thrive ... they will need to completely rethink the meaning of work in the 21st century and who does it.' By 2020, the 'building blocks for a new economic model will be in place based on mobile working by a mobile workforce' – for whose success various Samsung products will prove remarkably handy.

A key motor of this transformation is the capacity to work remotely from a physical office in a way which is completely secure – something that Samsung cannot help but note that it can offer. Another, however, will be the more general capacities of AI, particularly as it may well bring together the heavy hitters in the digital village: 'One major alliance, between Google, Facebook, Amazon, IBM and Microsoft, has been formed to develop AI and machine learning systems that can operate across

any platform or operating system, while Samsung itself is investing substantially in AI technologies that will automate many daily tasks for handset users'.

There will be employment consequences: 'A new breed of ultra – flexible freelancers will prosper in the Open Economy. Their advent will present great opportunities for the organisations that embrace them, but the structure of work will change: In the future... companies will shrink their numbers of salaried staff in a major way, becoming a core executive team who design high level strategy and integrate different elements of that strategy on a day-to-day basis.' That core team will deploy the skills of teams of 'radical freelancers', people who trade their talents with many different companies at the same time. That is a pattern that is beginning to manifest itself in the small but increasing number of law firms that offer themselves as a platform for freelancers.

Automation will decimate careers in sectors such as administration, driving and low-skill manufacturing, where a machine can practically and affordably replicate the work involved. Whole new job categories will be created, predicts Samsung, around skills such as intuitive and strategic judgment, creativity and imagination.

It quotes an expert "As machine intelligence improves, the value of human prediction skills will decrease because machine prediction will provide a cheaper and better substitute for human prediction, just as machines did for arithmetic .. However, this does not spell doom for human jobs, as many experts suggest. That's because the value of human judgment skills will increase. We'll want more human judgment."

In the rush to the future, Samsung foresees a corporate coalescence: 'the need to tackle research and development challenges that are too expensive for one company alone ... will see businesses reviewing traditional ideas around competition. In their place, they will favour mutually beneficial collaborations with former sector rivals – collaborations that will inevitably need to take place across secure open platforms.' Samsung has a clear interest in forming alliances with the large American megaliths – which may, or may not, happen. The short and undeniable message is 'adapt or die'. By 2020, Samsung forecasts, the Open Economy will have arrived in force. By then, it fears that it will already be too late for unprepared organisations to pick up the pace.

How does this stack up for legal services? Much is likely to apply at the top, commercial end.

There is likely to be a hollowing out of the big law firms as machine learning and AI take more of the weight. There already are – and have been for years – freelancers in fields like IT who sell their wares to a variety of employees. The law will be subject to particular factors: for example, confidentiality rules are likely to restrict the number of freelancers with client contact who operate for a number of different firms. Over the economy as a whole, there may well be concern at freelancers with rather too much contact with commercial rivals. More likely seems to be an Uberisation of the economy with well paid, highly skilled freelancers tied to one employer by variants of the zero hours contracts surrendering future security for present income.

There may also be more sectors of the economy and government than Samsung foresees which hold onto more traditional ways of working – for a variety of reasons. Legal services will provide its own examples. For instance, those delivering services to the poor may continue in much the same way as now – if only because of their restricted access to capital and low income together with the relative low access of their clientele to digital communication.

2.2 The two legal conferences: Legal Geek and Legal Futures

Two conferences indicate how the sorts of issues raised above are working themselves out in the contemporary legal market. Legal Geek, the not for profit organisation representing the legal start up community in the UK, held a highly successful second annual conference in September. Numbers, at over 1,000 were more than double those last year and, just as impressively, most delegates stayed until after 7pm – drawn by the promise of free beer and an outstanding last session on funding.

The audience appeared a little older than in 2016 – with more grey beards and fewer students. It contained, however, many of the key players both in law firms and in tech startups. There was the same sense of optimism and enthusiasm – though perhaps slightly less ebulliently expressed. Speaker after speaker remarked that it was a good time to be alive and working in the sector. Tony Williams of Jomati celebrated ‘a more vibrant market than ever before’. Dan Johnson of NextLaw Labs said that there had been ‘no better time to be in the legal industry’.

In a way, the key session was the one which began at 6pm. This was shared between investors and incubators: it discussed ‘bringing ideas to market’.

On display were a number of venture capitalists, firm-based incubators and their potential beneficiaries. The capitalists were pretty sobering. They all agreed that they were looking for a threefold increase on money invested plus return of the original stake and they wanted each investment to have the potential to be a ‘unicorn’ with a \$1bn valuation.

Perhaps understandably, one piece of advice was to keep an eye on alternative ways of growing the business. Incubators like Allen & Overy’s Fuse or Mishcon de Reya’s MDR Lab provided other ways of getting assistance through the tricky start up period. In MDR’s case, this involved a 12 week onsite presence with the opportunity to collaborate with the firm. It had accepted six start ups – with a range of international backgrounds including the UK, US and India – to participate in the current, first, round. Emily Forges gave an interesting presentation of Luminance, an AI product supported by Slaughter and May, which ‘reads and understands legal documents in any language, finding significant information and anomalies without any instruction’.

Legal Futures provided a rather smaller conference in November.

Legal Futures is an English web-based resource on the changing business of the law. Its sixth annual conference provided interesting coverage on what speakers presented as the key factors driving innovation in the private sector: de-regulation, external investment, market change and technology. A consistent theme was that 'the traditional ownership model [of partnership] is no longer fit for purpose'.

Investment banker John Llewelyn Jones promoted the idea, also advanced by future guru Richard Susskind, that the future structure of work in legal services will move from the traditional pyramid with partners at the top to a diamond shape with fewer partners and trainees at top and bottom but more paralegals, data and other specialists in the middle.

...John Llewelyn Jones promoted the idea, also advanced by future guru Richard Susskind, that the future structure of work in legal services will move from the traditional pyramid with partners at the top to a diamond shape with fewer partners and trainees at top and bottom but more paralegals, data and other specialists in the middle.

He saw four main groups in the legal services market: the elite, currently of around 300 firms but likely, he thought, shortly to reduce to 200; a middle market, business-orientated group of firms likely to be squeezed by the growth of larger, corporate models of organisation; and a third group dealing with consumers, with whom he seemed less interested, and which he felt would be dominated by fixed fees and digital delivery. There would also be some niche specialist survivors.

The final session showcased three developments directly relevant to access to justice and technology. Joshua Browder promoted his chatbots – discussed below. Chrissie Lightfoot of Robot Lawyer described her product LISA and – in a rather different category – Stephen Ward took the audience through his Billy Bot which is part of a barrister's clerking operation. Mr Browder gets quite enough publicity for products whose potential is outstanding but performance sometimes underwhelming. Chatbots are discussed further below. LISA is a clever system that allows two parties collaboratively to draw up an agreement – such as one covering a tenancy. It is a step up from a basic document assembly programme. www.billybot.co.uk is an engaging chatbot front end to a barristers chambers which can carry out certain automated tasks and is being programmed currently to make coffee in the office!

2.3 Artificial Intelligence (AI)

At the very centre of future technology development – and well covered in both conferences – is AI. Twitter is alive with marketing references to alleged new developments. Max Tegmark's recently published *Life 3.0* opens with an apocalyptic (fictional) vision of a dystopian future from which we are to be (putatively) saved by the (real) intervention of such as Elon Musk and Stephen Hawking in support of Tegmark's Future of Life Institute. Its mission is to 'mitigate existential risks facing humanity, particularly ... from advanced artificial intelligence'.

And even more parochially, the Law Society of England and Wales, as we will see, has predicted the figure on likely job losses due to AI (20% by 2038 compared with what would otherwise have been) and there is a daily stream of legal press coverage of new AI initiatives. All this plus occasional indications that maybe all is not quite as good as some of the hype suggests.

The definition of AI is notoriously tricky. The Government Office for Science in a paper on the impact of AI on the 'decision maker' stated that 'Artificial intelligence is a broad term ... More generally it refers to the analysis of data to model some aspect of the world. Inferences from these models are then used to predict and anticipate possible future events.' A paper from Deloitte offers: 'a useful definition of AI is the theory and development of computer systems able to perform tasks that normally require human intelligence. Examples include tasks such as visual perception, speech recognition, decision making under uncertainty, learning, and translation between languages.' Thus, behind AI lie a set of linked cognitive technologies that include (but are not limited to) natural language processing (the ability of the computer to deal with ordinary language), speech recognition, robotics and machine learning.

The definition of AI is notoriously tricky. The Government Office for Science in a paper on the impact of AI on the 'decision maker' stated that 'Artificial intelligence is a broad term ... More generally it refers to the analysis of data to model some aspect of the world.'

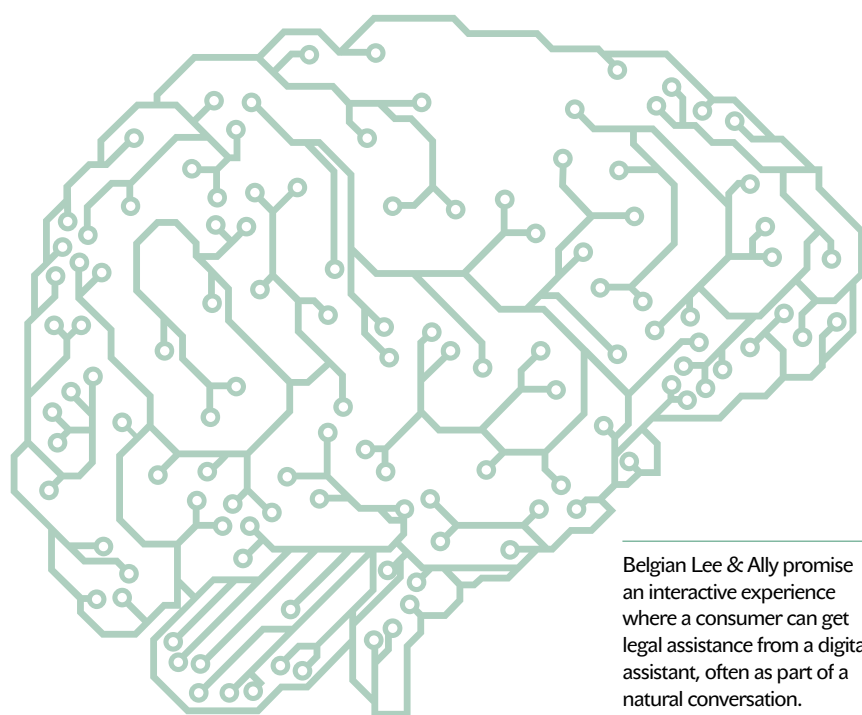
Less grandiosely, the House of Lords artificial intelligence committee has attracted submissions from a wide range of institutions, from an organisation behind Guide Dogs for the Blind to legal futurist Richard Susskind.

Traditionally, a distinction is made between 'strong' and 'weak' – the former, general intelligence, is illustrated by Hal's 'I am sorry, Dave, I can't let you do that' as it develops a 'mind of its own'. Weak AI is its specific usage for set tasks.

For the Lords Committee, Lexis Nexis provides examples from its own products which, if you forgive the self-promotion, help to ground the abstract definitions to legal practicalities: 'LexisNexis UK considers artificial intelligence to be any system capable of performing tasks utilising some aspects of human intelligence such as logic, reasoning, learning and deduction. In our global business, we are investing in artificial intelligence to help benefit the legal industry, including in the following areas:

- **Assisted decision making:** Lex Machina our legal analytics platform, mines litigation data in the US to help attorneys prepare for litigation based on data trends.
- **Automated review:** Our technology scans legal documentation to review and optimise documentation through best-practice clauses, enhanced drafting and case citation checking.
- **Natural language research:** Lexis Answers utilises machine learning and natural language processing to make legal research easier to use and more efficient.
- **Analytical research:** Ravel Law utilises machine learning to provide legal research and insight from massive amounts of legal data.'

AI developer Peter Gunst adds two examples from areas of more application to ordinary people: 'A more recent category of AI applications targets the consumer directly. Initiatives like [Joshua Browder's] [DoNotPay](#) and Belgian Lee & Ally promise an interactive experience where a consumer can get legal assistance from a digital assistant, often as part of a natural conversation. Today, these solutions typically rely on more rigid decision trees, and AI forms only a limited part of the application.'



Belgian Lee & Ally promise an interactive experience where a consumer can get legal assistance from a digital assistant, often as part of a natural conversation.

Joshua Browder's DoNotPay has been the subject of some discussion and considerable hype: he spoke at the Legal Futures conference. Commentator Richard Tromans concluded a thoughtful analysis of his work: 'On one level what Browder has done is quite straightforward and without using anything that one would call 'AI' or any other advanced tech. A pre-set chatbot Q&A routine, a form that gets filled in, some cut and pasted instructions from a local small claims court, is not world-shattering tech. However... [he] has... brought it all together, he's publicised it, he's got people engaged, he's helped people feel they can do something about getting justice.'

To conclude, this seems to be far less about technology and any kind of 'robot lawyer' and more about someone who feels passionately about justice doing a brilliant job encouraging other people to get justice for themselves too. And that has to be a good thing.' So, the hype is useful but the actual delivery is not quite up to it.

The fate of the Australian Nadia project, discussed below, provides another angle. Actually, AI technology – even IBM's much vaunted Watson – has not developed enough to provide an acceptable support for a sophisticated customer care provision answering questions about a government benefit. Response times were just too slow.

2.4 So, where does this leave us?

The development of AI raises a host of general and ethical questions with which we, as citizens, must engage. Max Tegmark has thrown himself into doing that and has participated in drawing up the 'Asilomar AI Principles'. Most of these are of general import but Number 8 is specific to 'judicial transparency' and states that 'any involvement by an autonomous system in judicial decision-making should provide a satisfactory explanation audible by a competent human authority'. This is a reference to the exploration of automated 'black box' systems for determination of sentence or parole.

Wisconsin's use of such a black box system known as COMPAS, Correctional Offender Management Profiling for Alternative Sanctions, was unsuccessfully challenged in the Wisconsin courts and the USA Supreme Court declined to hear the case in June. However, we should surely ensure that any decision derived from AI and affecting the public sphere, especially in relation to justice (law enforcement or warfare), is both explicable in human terms and something for which some real person is accountable.

AI is advancing into the heartlands of commercial practice. That is undoubtedly aided by the existence of large amounts of clean data; the potential international application of programmes; and the availability of money from lucrative practice. The practical consequences of this automation process are a reduced need for labour within the legal services industry as a whole. The Law Society estimates: 'Over the longer term, the number of jobs in the legal services sector will be increasingly affected by automation of legal services functions. This could mean that by 2038 total employment in the sector could be 20% less than it would otherwise have been, with a loss of 78,000 jobs – equal to 67,000 full-time equivalent jobs – compared to if productivity growth continued at its current rate.'

As a consequence, the Society sees employment peaking at its 2016 figure and slowly subsiding. The reasoning behind the figures is not entirely clear but some such impact seems intuitively justifiable.

The impact of AI on services for those on low incomes will be slower as development is hindered by lack of clean data and major sources of funding. The optimistic prospect remains, however, that in this sector, AI will not only reduce costs but will open up the provision of major new sources of opportunity as a wider range of those on low income are able to take advantage of services that use the improvement in communication that AI can bring. In due course, there could be massive benefits from a legally orientated Siri or Alexa. What they are, and who will pay for them, we will have to see.

AI is advancing into the heartlands of commercial practice. That is undoubtedly aided by the existence of large amounts of clean data; the potential international application of programmes; and the availability of money from lucrative practice.

3. The Rechtwijzer

The Dutch Rechtwijzer has been the poster child of the potential of technology in legal services for those on low income. Developed as a collaboration between the Dutch Legal Aid Board, Modria (a US software company) and a Dutch research institute, now styled The Hague Institute for Innovation of Law (HiiL), its progress became the focus of considerable international discussion and debate – this was included in the first of my series of reports in December 2014. This was both because it was a genuinely innovative programme but also because an internationally oriented salesforce spread out across the world to sell it to other jurisdictions.

The Rechtwijzer was best known for its family content – though the intention was always to expand its content more widely. In its most ambitious version, Rechtwijzer 2.0, it brought together a combination of interactive advice and ODR that offered users a cheap way of resolving family disputes.

The Dutch Rechtwijzer has been the poster child of the potential of technology in legal services for those on low income.

Alas, the failure of the programme became apparent during the period of this Report. This has led to considerable discussion as to why. Was the failure due to specific issues relating to this particular programme and the institutions behind it? Or does its failure indicate that the onward march of technology has been checked, at least for that part of the legal market which is concerned with services to those on low incomes?

A new organisation, Justice42, has been formed to develop the Rechtwijzer but within a narrower focus – for the Dutch domestic market and focused only on family cases. We hope to cover this in the 2018 review. This will allow us to see how much of the Rechtwijzer survives. In the meantime, the important issue to determine is the degree to which the fall of the Rechtwijzer was structural – caused by principles integral to its methodology – or contingent – down to individual factors affecting their implementation. Below are two evaluations. The first is from Professor Maurits Barendrecht of HiiL, one of Rechtwijzer's developers. The second is external to the project.

3.1 The Rechtwijzer: an evaluation – Part One

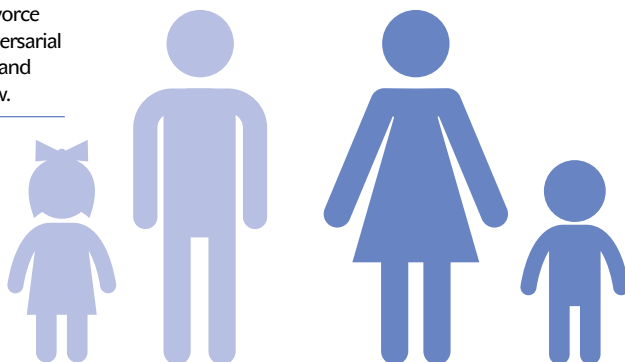
Separation may be the biggest personal challenge most people will ever face. A Justice Needs Survey completed in Holland in 2014 clearly spelled out the impact divorce has on couples and their children. The mission of Rechtwijzer Uit Elkaar was to reduce this burden through innovating the legal process of divorce itself; reducing the adversarial nature of the process; and making it easy to follow. The design was focused on letting people agree on all the things they need to restructure their lives after a divorce. It did not support mediation or adjudication as they are generally known but it offered redesigned mediation and adjudication services so that the parties can make fair, sustainable agreements.

The platform had a diagnosis phase; an intake phase for the initiating party; and then invited the other to join and undertake the same intake process. Once intake was completed, the parties could start working on agreements on the

topics that occur in every separation – such as future communication channels, children matters, housing, property issues (money and debts) and maintenance. The dispute resolution model was that of integrative (principled) negotiation. So the process was based on interests rather than rights, but the parties were told of rules such as those for dividing property, child support and standard arrangements for visiting rights so that they could agree on the basis of informed consent. Agreed agreements were reviewed by a neutral lawyer.

The platform was built on the Modria ODR platform. This was designed for consumer disputes (e-commerce) that are to be resolved quickly, supported by algorithms. It had to be made suitable for separation, where people have to work on their individual solutions and apply them for many years. So HiiL operated a front-end with the ODR. The platform was offered to users by the Dutch Legal Aid Board through its website. Modria and HiiL charged a set-up fee and a fee per user to the Legal Aid Board. The platform charged users a fixed fee for mediation, review and adjudication. The legal aid board subsidised fees for those entitled to Legal Aid.

The mission of Rechtwijzer Uit Elkaar was to reduce this burden through innovating the legal process of divorce itself; reducing the adversarial nature of the process; and making it easy to follow.



The platform met critical acclaim by the media, international experts and in various reports on court reform. We counted over 60 media mentions in 12 countries, including the Economist and major newspapers. We gave dozens of presentations at conferences, parliaments and ministries.

We received visits from civil servants at ministries and leading judges. The only real criticism came from the Dutch Bar that wanted more safeguards for security and informed consent, and also lobbied for having lawyers do the intake instead of doing this online.

3.2 Theory 1: Citizens do not want online supported resolution services

The model of the Rechtwijzer complied with the available research. The latest legal needs survey in the Netherlands (Geschildbeslechtsdelta 2014) suggests that 48% of people seeking assistance in the legal sector want advice about how to solve problems; 45% advice about their rights and obligations; 24% help with approaching the other party; 20% mediation; 18% some kind of financial advice; and 16% help with starting a procedure. The demand for a lawyer making a case in court is much less prominent 9%.

For us, the ultimate test came down to whether the platform actually worked for users. Their evaluations during the process were generally positive, and increased when we implemented improvements. The average ratings for the phases were 7 out of 10, with slightly lower ratings initially for the review phase, which quickly improved when

both platform and lawyers adjusted their working methods.

The most important indication is what users say after six months. Using Rechtwijzer Uit Elkaar led to over half of the participants experiencing low or very low stress levels during their separation, with 36% experiencing normal stress levels.

It may be difficult to believe that users experience less stress when using a platform with an average completion time of 24.3 hours. However, users can spread out these hours as they like, so as to deal with each step of the divorce at their own pace. Our users have reported as a result that they have more control over when and where they utilise the platform. In fact 84% of participants felt that they have more control over their separation as a direct result of this user empowerment.

‘The process is clear and Rechtwijzer takes finding, helping with and resolving issues seriously.’

Traditionally, control in the legal separation process is left in the hands of the lawyers hired by both parties. The Rechtwijzer Uit Elkaar process did not seek to remove lawyers from the equation, but instead to integrate them in the platform. Rechtwijzer Uit Elkaar sought to maximise lawyers’ interventions in such a way as to aid our users but not supersede their judgement. As a result, 82% of users felt respected or very respected by lawyers or mediators on the platform.

Almost 70% of the participants stated that – to a great or very great extent – the emotional pain they felt before using Rechtwijzer Uit Elkaar was reduced after separating on the platform. Indeed, over 70% of the participants found the process fair to a great or very great extent.

‘The process is clear and Rechtwijzer takes finding, helping with and resolving issues seriously.’

Close to 60% of those starting a case found their partner willing to participate; finalised their agreements through the platform; filed them and saw their separation registered. This is a satisfactory percentage. Legal professionals are used to substantial numbers of clients who drop out of the

process or shop around for other options, as legal needs studies consistently show. The quality of the agreements couples have been guided to making are a marked improvement over those of a traditional divorce process. When asked, 72% of the participants rated their experience on the platform with 8 out of 10 or more (7.7 on average) and 70% said that its use led to effective and sustainable solutions. Although there is obviously a self-selection effect that makes comparison difficult, this can be contrasted to an average separation procedure in the Netherlands scoring 2.81 on a 1 to 5-point scale.

There was no ambiguity in the willingness of most users to recommend the process to others. We also observed that the number of Rechtwijzer users went up quickly when major media reported about the platform. The users were from all income-groups, and somewhat more from groups with more education.

So, the conclusion seems to be that a substantial proportion of the population is ready for online supported dispute resolution services and is enthusiastic about using them. Without major marketing efforts, we easily reached a market share of 2–3% of the separation market (becoming the biggest ‘law firm’ for separation) with spikes of 5% after media coverage.

3.3 Theory 2: Legal aid boards, ministries, courts and law firms are not ready for online supported dispute resolution services

The expectation of the Rechtwijzer team was that legal aid boards, ministries and courts around the world would want to move forward with this type of ODR solutions quickly after the Dutch delivered a proof of concept. A legal aid crisis is evident in many countries.

Dissatisfaction with the current court procedures is considerable – with the possible exception of some Nordic countries, Switzerland, Austria and Germany where settlement processes are well developed and integrated in accessible court procedures.

3.4 So why no move forward?

The English NGO Relate worked with us to test an English version. The Legal Services Society in British Columbia implemented a version supporting only negotiation. But it was hard for them to gain financial and regulatory support for a full-scale launch in England or Canada. We tried to bring together a consortium of legal aid boards to develop the system but there was considerable resistance to a public-private partnership between a non-profit foundation for access to justice, a Silicon Valley start-up and a leading legal aid board. Naively perhaps, we thought that such a partnership would make innovation happen.

For those who joined the ODR conference in The Hague in May 2016 and saw the trend report we wrote (ODR and the Courts: the challenge of 100% access to justice),

it is probably no surprise that the necessary cooperation processes did not materialise. We devoted an entire chapter to the institutional barriers to reaping the full benefits of online supported dispute resolution services. At present, legal aid boards, courts and ministries are not actively looking for the best processes to help their citizens resolve their disputes. There is not a lively international market for the best possible procedures for separation, neighbour disputes or drugs related crime.

Why is that 'market' not materialising? Our experience is that legal aid boards are mostly busy with funding lawyers, spending 80–95% of their budgets on that, and have not yet found a parallel financial model for delivering access to justice in innovative ways.

Websites or mediation services are often funded as projects but not as part of the core program. Courts try to digitise their current procedures, spending huge sums on this that mainly goes to IT services companies that deliver tailor-made software. But their procedures, which are prescribed by legislation, do not allow implementation of innovative technologies. Ministries mediate between politicians, courts and the legal profession, without a clear vision on the future of access to justice and funding. There is a lot of talk about ODR, but no serious attempt yet to introduce it for a class of problems that really matters to citizens.

The attempt in British Columbia (Civil Resolution Tribunal) and England and Wales to set up ODR for small claims is a case in point. It may sound smart to start small and then scale up. But will scaling up ever happen? We are pessimistic, based on earlier experience with small claims innovation worldwide. Leaving small claims to the innovators is a nice gesture that shows willingness to innovate. But it does not require real change in the court system or the legal profession, because nobody in the system is dependent on small claims.

The problem seems to be that individual law firms are too small to invest in new technology.

Starting with small claims may just be 'token reform'.

Another option for bringing online supported services to the market is through law firms. Relate sought cooperation with an organisation of law firms serving families with resolution services. In the Netherlands, we had some explorative dialogue with the organisation of family lawyers and mediators. The problem seems to be that individual law firms are too small to invest in new technology. They are limited in their growth and innovation options, because regulation does not allow them to bring in outside investors, entrepreneurs, IT professionals or professionals from other disciplines as co-owners of their firm. Law firms are also not allowed in many jurisdictions to pay referral fees, so business models based on that are difficult as well. Finally, lawyers are restricted in their ability to serve the couple, or the family, because of a conflict of interest.



3.5 Theory 3: The market can resolve the access to justice problem, so government not needed, and we failed to deliver

The third alternative is that Rechtswijzer did not work because we at HiiL failed to deliver. There are certainly things we could have done better. The Dutch Legal Aid Board and Ministry of Justice did not actively market the platform, but perhaps we could have raised money for this and have done this ourselves. We could perhaps have made the platform more attractive for lawyers working on it. Perhaps we focused too much on the satisfaction of users, as well as offering them an affordable platform in the spirit of legal aid.

We debated this a lot internally. One group, let us call them the experienced dispute system designers, pointed to the submission problem. Getting 'the other party' to the table and parties voluntarily agreeing to use the same procedure often just does not happen. This is the reason why voluntary mediation fails to attract huge numbers of disputes, and the same is true for arbitration and many new, voluntary procedures at courts. The causes of this are not well understood.

Emotions, tactics, reactive devaluation of proposals from the other party, lack of trust in decisions of third parties and communication problems may play a role.

In this version of the theory, strong incentives are needed to bring the two parties to an ODR platform in order to let their dispute be resolved. Courts can provide these through rules for decisions by default.

The opposing group looks to encourage parties to use the procedure by making it easy, safe and attractive rather than forcing them to use it. On the Rechtswijzer platform, the respondent did not have to pay. The invitation to participate is worded in a friendly way and users are asked for their views regarding possible solutions, instead of having to react to the proposals and positions of the other party.

We just do not yet know whether an ODR system, used by two parties in a conflict, can exist as an independent service, offered by the market. Until now, it has not emerged.

If involvement of government is needed, we do not know exactly what is necessary. The optimal mix may consist of some elements of endorsement, referral and subsidy. The use of neutral (online supported) dispute resolution services may also be promoted in other ways. The government could make this mandatory for those wanting to use lawyers with a government subsidy, stimulating both lawyers and clients to use the platform.

Or it might be prescribed.

There is nothing new here. Currently, in many countries, only lawyers can give you access to courts. Use of them is promoted in many ways. So why not create a level playing field between lawyers and ODR, as well as other innovative legal services?

3.6 The Rechtwijzer: an external evaluation

The Rechtwijzer was – and remains – an important project whose one-time global eminence, and now demise, merits thorough examination of the kind that Professor Maurits Barendrecht offers. This was a development which, from its beginnings in 2007, set a new agenda for providers of legal aid. Its influence gained pace when it was revamped in 2012 and further expanded when it was re-issued in a new version 2.0 incorporating an ODR element in November 2015. That success was at least fourfold.

First, Rechtwijzer 1.0 was a game-changer in showing how information/advice websites could become interactive and tailor information to an individual user. Its notions of ‘justice journeys’ and guided pathways continue to provide a challenge to all online

providers in the field. The very best of the providers of clear ‘static’ information – such as citizens advice here or CLEO in Ontario – look limited compared to the dynamic approach still visible in Rechtwijzer-derivate MyLawBC. There are other ways of being interactive – such as the use of chatbots or the incorporation of self-assembly documents – but the Rechtwijzer continues to provide a challenge to which all information providers need to respond.

Second, Rechtwijzer 2.0 provided a distinctive route into ODR different from BC’s Civil Resolution Tribunal and the English proposed online court. Dispute resolution grew out of the process of advising on an issue rather than as an offshoot of a court.

That remains a radical approach and it challenges those developing courts to explore the integration of their online resolution procedures with preliminary advice and information.

Third, the Rechtswijzer was accompanied by a major promotional effort that sent members of the support team, largely from HiiL, around the globe to proselytise for its approach. Professor Barendrecht notes the degree of international interest and it was extraordinary. For example, HiiL team members presented both to conferences of the International Legal Aid Group (multiple times) and the US Legal Services Corporation Technical Initiatives Grants conference. That provided an enormous boost to thinking about innovation in institutions traditionally resistant and inward looking.

Fourth, the consequence of this activity was that the Rechtswijzer inspired and set the benchmark for ODR projects in a number of jurisdictions – not least England and Wales where Lord Justice Briggs referred to it in his reports arguing for an online court.

So, if it was so great, what went wrong? Professor Barendrecht blames a lack of marketing and the resistance of institutional justice players. In addition, there were undoubtedly contingent factors that played a part. The alliance of three very disparate institutions – a government-funded legal aid board, a commercial software company, and entrepreneurial not for profit institution – was always likely to prove unwieldy and, by all accounts, it was. In addition, the project was unfortunate in losing its champion within the Legal Aid Board and the Ministry of Justice through his retirement. But, a full list of considerations would also include those set out below.

A general weakness of government or foundation-funded projects is that they are usually one-shot deals. Commercial organisations can even make a fetish of failure – as in the acclaim for ‘building to fail’. They can learn the lessons and arise from the ashes. As Jeff Bezos told Business Insider: ‘I’ve made billions of dollars out of failures at Amazon. com...None of those things are fun. But they also don’t matter ... What really matters is, companies that don’t continue to experiment, companies that don’t embrace failure, they eventually get in a desperate position where the only thing they can do is a Hail Mary bet at the very end of their corporate existence.’

‘...What really matters is, companies that don’t continue to experiment, companies that don’t embrace failure, they eventually get in a desperate position where the only thing they can do is a Hail Mary bet at the very end of their corporate existence.’

Governments and foundations often do not have the luxury of being able to recover and return. Where they do, you can see the advantages – as on the improvement over the years of the UK HMRC tax website. However, a trail of major government IT failures has even merited its own wikipedia entry, revealing rather too many of them from the UK. Unlike Amazon, many governments have settled for the failure rather than seeking to learn the lessons and to return.

There is also an issue about where you start with ODR. It makes absolute sense for Legal Aid Boards and their equivalent to look at online provision of information – though not necessary online determination. Even the UK government – determined to cut funds for family breakup – put resources into a sorting out a separation website which was initially unfit for purpose but is now rather better. MyLawBC limited itself to the pre-court phase. It has followed Rechtwijzer 1.0 in providing interactive information and assistance with negotiating a settlement rather than adding the 2.0 version of ODR.

Rechtwijzer's move to 2.0 was significant in a number of ways. Not least, it brought the fledgling programme into opposition with lawyers instead of, as did 1.0, potentially helping them.

It dived into the resolution process with one of the most complicated types of dispute in terms of the emotional engagement of the participants.

The direct cause of the failure of the Rechtwijzer was version 2.0's inability to obtain more than around 1% of the users going through the system in a context where the project was under pressure not only to balance its books but develop a significant revenue stream for two of the members of the supporting consortium. That goes to Professor Barendrecht's first theory. Users may get comfortable with online interactive advice and information, particularly where supported by offline assistance like the Dutch Legal Counters distributed through the country. But it may have been too big a jump for them to move too quickly to resolution.

Finally, there is the position of the courts. Users will want some incentive to go online. As Professor Barendrecht says, the market alone is likely to provide insufficient encouragement. The courts need to play their part. The court platform should be as welcoming as possible. While always retaining the right of a user to proceed conventionally, there could reasonably be financial incentives in terms of reduced court costs for carrying on from initial advice to online resolution.

Relate

Two projects had negotiated with the Rechtswijzer team to deploy their programme in their own jurisdictions before its collapse. MyLawBC which is considered later. The other was the England, Wales and Northern Ireland domestic organisation, Relate, which undertook preparatory work but has now paused its implementation. Again, the big question is whether the reasons are linked to the fundamental concept or its particular execution. It is again likely to be the latter. The halting of further progress suggests that family dispute resolution just cannot be done properly on the cheap, too quickly or without considerable thought. In England and Wales, no quick fix by a third party is likely to let the Ministry of Justice off the hook. It has made the savings to legal aid by cutting lawyers in family cases: it needs to support other ways of meeting a continuing need for help.

Relate trialed a technology-facilitated negotiation process involving the parties on all issues at stake in a family breakup – together with access to personalised counselling, mediation and legal support if required – in the expectation of scaling it up. Built into the system was a final mandatory review of any negotiated settlement.

Consultation with prospective users and experts suggested considerable basic support. Successfully implemented, it would have transformed the family justice system.

Relate had funding – there was money from Google's Impact Challenge and Comic Relief's Tech for Good programme. More was forthcoming for impact assessment from The Legal Education Foundation. Nevertheless, it pulled back from taking the project further – at least temporarily. The issue was essentially the degree of resources and marketing that full implementation would require. As an internal discussion document put it, 'Design matters, and the bar is high. For a first build it performed well but many elements needed work'. The system encountered the same problem as the Rechtswijzer itself: it 'was not reaching levels at which you would expect word of mouth recommendation to take off'.

There were suggestions from the trial that some predictable improvements would be required – a better mobile interface; more assistance with negotiation; more screening against insulting or abusive exchanges, for example.

Significantly, it became 'clear that an element of personal assistance, albeit delivered through an online channel, would be helpful in assisting users to keep moving through the process'. Relate put considerable efforts into training and change of working method but 'we needed to make training more detailed and action focused, and have a small cadre of practitioners delivering services rather than a larger practitioner base that only "dip in" now again'. Furthermore, it seems that English common law and statute may be considerably more complicated than Dutch civil law in family cases. An issue also arose over the role of lawyers.

In the end, however, the failure to develop the system seems to have arisen from fear of too great a financial exposure. Relate's goal was the creditable one of delivering a service for under £750 (\$1034) per family – to be met largely by user fees. This was the Rechtswijzer model. The inevitably front-ended costs of developing and marketing an appropriate system left Relate

feeling too financially exposed – even with grant assistance. Implementation was perceived as 'betting the farm' or hazarding the whole organisation's financial health. The risk was too big.

The result is that the organisation has gone for a 'phased development approach' – which in plainer English might be put as 'kicking the idea into the long grass'. The project may, one day, arise again. It will be a pity if it does not. The key element is likely to be government. The fundamental problem for families facing breakup is that the legal aid which was once widely available, particularly to women, has been cut without any substitute. At some stage, some government is going to emerge with a concern for the ensuing problems that have arisen and will not simply go away. This probably needs Brexit to settle down and the fixation with austerity to end. So, it is won't be soon – but it should happen sometime and, hopefully, Relate will remain poised to play a role.

The fundamental problem for families facing breakup is that the legal aid which was once widely available, particularly to women, has been cut without any substitute.

4. The Online Court programme in England and Wales

4.1 The Fear of Managed Decline

A video of a University College, London conference earlier this year on The Case for Online Courts still provides a good briefing about the issues involved in the drive for an online court in England and Wales. Participants included some of the major players – the legendary Richard Susskind; head of the Court and Tribunal Service Susan Acland-Hood; Senior Tribunal President and Court of Appeal judge Sir Ernest Ryder; and the two leaders of the different branches of the legal profession. Sir Ernest was perhaps more revealing of the potential problems in the programme than he might have intended.

The presentations were eminently sensible and thoughtful. Professor Susskind proclaimed his commitment to a cautious and empirical approach to development. We should proceed, he said, through an approach that starting modestly with pilots; involved studying the results; building incrementally, and then refining – specifically ‘not one big bang’. Nothing from Ms Acland-Hood contradicted such caution. Reform was to build ‘from the bottom up’ and, in the language of the times, in a suitably agile way. Sir Ernest Ryder revealed a similarly sensitive and incremental approach to implementation in the tribunals for which he is responsible and which is festooned with consultative groups. It did seem, however, that everyone envisages pretty well full implementation in three years’ time. So time for research and refinement may prove rather short.



We should proceed, he said, through an approach that starting modestly with pilots; involved studying the results; building incrementally, and then refining – specifically ‘not one big bang’.

Sir Ernest extolled impeccable virtues of the future: one integrated first class system; one integrated judiciary; improved quality; more specialism; more innovation; and the provision of a valued service. Enthusiast though he be, Sir Ernest had warnings: 'We need to solve the problem(s) of ... restricted access to justice – not least because of cost – that has led to managed decline ... We can no longer sustain managed decline ... You get to the point of a precipice ... We are on the very edge of that. Our judges tell us we are on the very edge of it and our users tell us we have gone beyond that edge in certain circumstances'. In other words, all the good work could be undone by government ministers uncommitted to access to justice.

Such thoughts reveal the absence of the one key player from the UCL line up. The view of Her Majesty's Courts and Tribunals Service is not, after all, that of the government. Digitalisation is but one of a range of policies being pursued by Ministers of Justice.

Others, to which Sir Ernest is alluding, relate to cuts in government expenditure and rises in user costs. The Supreme Court saw fit to issue a magisterial rebuke to government policy in relation to employment tribunal fees which were set at levels restricting access. Legal aid has been cut from matrimonial cases with ministers doing little more than still soliciting ideas on how to mitigate the effects.

Behind any discussion of the role of online courts in England and Wales must be an acknowledgement of the elephant in the room: Ministers are proceeding at speed because – it seems – ideologically they want to sell court 'assets' (though credit to Ms Acland-Hood for apparently getting an undertaking that sales proceeds would finance technological development). The adjudication of social security cases – the first area for digitalisation in Sir Ernest's plans – suggests already some problems. Current rules allow the relevant Department to announce the timeless review of any case which is appealed. This has severely staunched the flow of appeals but users can get stuck in limbo: the good news is you can appeal; the bad news is that your case can be passed into a review without time limit from which you can only escape through the actions of the government body which you are challenging.

Sir Ernest extolled impeccable virtues of the future: one integrated first class system; one integrated judiciary; improved quality; more specialism; more innovation; and the provision of a valued service.

4.2 Drawing the Line

The line between the role of the courts and the preliminary identification of causes of action ready for ODR was highlighted both in a speech in June by Sir Terence Etherton, Master of the Rolls and Civil Justice, and also in a very practical way at an innovative hackathon held shortly afterwards.

Sir Terence presented an optimistic view of the court modernisation programme. Courts will become more accessible; easier to use for lawyers, businesses, and members of the public. They will help individuals take steps to prevent their disputes escalating into litigation and incorporate mediation into procedure, helping parties resolve their disputes consensually. Where consensual resolution is not possible, they will provide effective online adjudication. They will provide a far more tailored form of process than has historically been possible.

Sir Terence dealt with the failure of the Rechtswijzer.

There is a fundamental difference between the Online Solutions Court and the Rechtswijzer. Our approach is to develop a court, which incorporates ODR into its processes, rather than to develop an ODR platform which sits outside of the court system.

The Rechtswijzer's failure should properly be seen as more a consequence of individuals preferring the courts to resolve their disputes than their rejection of online processes. The low user uptake of its consensual settlement mechanism will not apply to our court, as all cases within the Online Solutions Court will be subject to its three-stage process. Settlement and adjudication will not operate within rival systems, but as complementary mechanisms within an holistic system. We are seeking to enhance our civil court, not create an online alternative to it. As such the question of preference that undermined take-up in The Netherlands is unlikely to be replicated here.

Sir Terence, thus, skipped rather lightly over the issue highlighted by the winners of the multi-agency hackathon who extolled their approach as follows:

The first stage of the process will ... see the Online Solutions Court expand our ability to secure access to justice in two ways ... it will help individuals identify the nature of their problem. The very essence of securing access is to secure an understanding of the legal framework.

Such understanding will enable those individuals who have not yet reached the stage where a legal action has arisen to take steps to avoid that point being reached. It will secure access to preventive justice.

The winning team was a collaboration between legal start up Wavelength and the Law Society. It involved a chatbot using Amazon's Alexa to guide a user through a problem. The demonstration posited a user, Steve, concerned that damp in a rented flat was ruining the health of his daughter. It is well worth reading Wavelength's blog on its product and viewing the video within it. Some impressive thinking has gone into this and the use of a chatbot as a front-end could easily be developed using a physical face like that of Nadia being developed in Australia (see below). Like Nadia, CoLin follows a pathway to obtaining relevant information; it will then populate a draft letter of complaint; present this for correction; and can build up a bundle of documents for subsequent litigation.

Wavelength's Ben Gardner was clear about the benefit of the approach that his team took:

We will miss a trick, a real opportunity, to allow people to interact with technology if we don't take the chance to improve the way that they interact with courts.

If we achieve only the technology and efficiency benefits, we will have failed. We need to find a solution to the problems faced by people, not just a use for the technology.

In organisational terms, this has radical implications. Traditional demarcation would have the sort of solution seeking which formed the basis of the Wavelength/Law Society bid as the role of advisors and information providers – the Citizens Advice and solicitors. Sir Terence gave some measure of support to Mr Gardner's position in rather more abstract terms:

The transformation of court administration and processes from being paper-based to electronic ones could reasonably be seen as no different to the electrification of the railways. The trains continued to run to the same destinations. All that changed was the way in which they were powered. The introduction of the Online Solutions Court however goes further than changing the means of delivery. It expands the court's purpose. At the present time, it only does so in terms of its presently intended jurisdiction: claims up to a value of £10,000 in specified areas of civil work. This must properly be seen, however, as a template for securing now and over time in the future the critical object of greater access to justice.

Online courts and crime

The online proposals affect both civil and criminal cases. The potential of the Online Solutions Court is still to be explored in practice but considerable concerns are being widely expressed about developments in crime. A hard-hitting report from the charity Transform Justice (TJ), published in September, called for a halt to 'the expansion of virtual justice (video and telephone) for defendants until we have more research on its impact.' The Guardian reported a generic defence from the Ministry of Justice: 'We are investing more than £1bn to transform and modernise our court system. We know video hearings reduce court time, improve public safety and save money for the taxpayer. Videolink technology is also being used to make the court process easier for thousands of vulnerable victims and witnesses.' The official line is that the digitalisation process is expensive (undeniable); increases efficiency (contested by TJ) and improves access (also contested by TJ); no claims about standards or principles. Should the TJ report put us on notice that plans for the online court are in trouble?

The TJ report is susceptible, as is virtually every report by an outside body on government actions, to the criticism that it is based on anecdote and a skewed sample. However, its criticisms follow very much how the Magistrates Association

responded to draft proposals on digitalisation in the draft Prisons and Courts Bill currently delayed first by the election and now by Brexit. The Association responded to the TJ report by tweeting: 'We've consistently raised concerns about the use of video links – so good to see examples in this report of some of the problems experienced.' Some of the most damning quotes in the TJ report come from magistrates.

One of the most disturbing stories of current failures of technology is provided by upstart internet news provider BuzzFeed. Its Emily Dugan wrote that the court transcript in a Court of Appeal case involving Folarin Oyejoba revealed that the video feed was 'inaudible 71 times'. He was presenting his case against a confiscation order from Pentonville Prison. He told her:

It was horrible ... [the Judge] didn't understand what I was saying at all. It was like speaking into a hollow chamber. I was shouting and it was echoing back.' He added, 'The Court of Appeal is such a big hall. People sitting in the court can hear themselves very well but when you are listening on video there is an echo ... In video link there's that delay which is not live and therefore you don't want to interrupt the judge. It's better when you are in court.'

A court clerk made a general observation to TJ: 'communicating by video hampers understanding. Delays in the sound cause people to simplify their points of view and misunderstandings can happen easily'.

Simplification and inefficiency are not the only problems: there is also alienation. TJ reported a criminal lawyer as saying: 'I have had communication breakdown entirely with defendants who become agitated – it a lot easier for them to become frustrated and take out their anger with a "face on the screen" than a human being in the room with them'. A magistrate reported that defendants 'appear disengaged and remote. They often give a nonchalant/poor account of themselves'. Unsurprisingly, the problems are magnified when there are language, hearing or cognitive barriers to communication. These are not being picked up in advance by police and prison officers.

The 2017 report of the Infrastructure and Projects Authority has the HMCTS programme at Amber/Red ('Successful delivery of the project is in doubt, with major risks or issues apparent in a number of key areas. Urgent action is needed to address these problems and/or assess whether resolution is feasible') and the CJS Common Platform at Amber ('Successful delivery appears feasible but significant issues already exist, requiring management attention.

These appear resolvable at this stage and, if addressed promptly, should not present a cost/schedule overrun.').

The main source of official information about the digitalisation programme is an official HMCTS blog written by its chief executive officer, Susan Acland-Hood. She acknowledged that 'people do often reflect concerns about whether we will be able to do what we have said we will and whether our reforms will be implemented well, and will work properly. Many point (not unreasonably) to criminal justice or wider Government IT problems of the past to illustrate these worries.' It would be surprising, however, if her line were not essentially that all is for the best in the best of all possible worlds or, as she puts it, 'At the start of our reform programme we set ourselves a stretching list of things to have done by September 2017; and we are doing extremely well against that list.'

The TJ report, on the other hand, argues that the HMCTS should 'implement a moratorium on the expansion of virtual justice (video and telephone) for defendants until we have more research on its impact'. It states that no objective research has been carried out on the criminal digitalisation process since 2010 – the formation of the Coalition Government. Even more worrying perhaps is, it says, a general point of lack of transparency about objectives, targets and performance.

It is undesirable that the main source of information on a major government project that involves a number of stakeholders should be a blog. There needs to be open discussion and reporting of current thinking on when, where and how video and audio conferencing is acceptable in principle. There should be a public debate, led by Ministers who have been noticeable absent from any recent discussion. It is not suitable for decision by civil servants as a by product of implementation issues.

What is more, the handling of cases like Mr Oyebola is unacceptable. The Ministry must be living on borrowed time in relation to a fair trial challenge. If the equipment is not currently good enough, the courts cannot just bodge a way through on the basis that only a very determined and well advised defendant will take up a court challenge. And, as TJ says, even when the equipment works, those required to use digital communication must be better screened for suitability. There must be more flexibility and better quality in and of the technology which solicitors use to communicate with their clients. Not only are there currently operational problems but also there is often an inflexible timetable which restricts communication to an arbitrary quarter of an hour. These cannot just be written off as implementation glitches. They are fundamental failures of the

system both to operate properly and probably to meet the standards of Article 6 of the European Convention on Human Rights.

The TJ research raised what it called 'the billion dollar question': 'do virtual hearings affect outcomes?' This issue is clearly important. Defendants may feel uneasy and alienated when restricted to video communication with the court. Such concerns may be dismissed by hard-nosed administrators as a regrettable sacrifice merited by cost savings but, if the use of video actually impacts on outcomes, then a fundamental problem emerges. TJ says that this should be researched: 'We need comparative figures [between on and off-line determinations] of guilty pleas, bail and remand decisions, convictions, and severity of sentencing'.

The initial research on prison-court links was undertaken by the respectable team of Joyce Plotnikoff and Richard Woolfson: it was published in 1999 and 2000, basically giving a green light to expand what were then a relatively small pilot of a prison-court video link. The researchers noted, however, that 'strategic oversight is needed in relation to the growing use of video links. The quality of justice administered at video link hearings can only be assured if equipment performs to an acceptable standard and procedures designed to inform and involve the defendant are rigorously adhered to.

This applies both to the hearing itself and to consultations between lawyer and client before and after the hearing. Mechanisms are needed to ensure acceptable levels of service. Identifying such mechanisms will require consultation with judges and the legal profession.’ Thus, the researchers identified issues relating to the standard of equipment; the engagement of defendants; and consultation with defence lawyers as key issues for a strategic response. The TJ report questions all three, of which the most important must be the engagement of the defendant in the process.

Other jurisdictions have seen valuable research on online procedures. An American study by UCLA Professor Ingrid Eagly of immigration hearings, published in 2015, found ‘an outcome paradox: detained televideo litigants were more likely than detained in-person litigants to be deported, but judges did not deny respondents’ claims in televideo cases at higher rates.

Instead, these inferior results were associated with the fact that detained litigants assigned to televideo courtrooms exhibited depressed engagement with the adversarial process – they were less likely to retain counsel, to apply to remain lawfully in the USA, or to seek an immigration benefit known as voluntary departure.’ This was in relation to federal immigration hearings but it raises the question more generally of whether video may increase the alienation of criminal defendants from the criminal justice process and, thus, their participation – leading in turn to less favourable outcomes.

Both the American and British researchers found plenty of evidence of participant disengagement. Professor Eagly observed: ‘None of the people detained there like televideo hearings. Everyone hates it... They say they feel like their due process rights are being violated—that they’re not getting a full fair hearing.

...it raises the question more generally of whether video may increase the alienation of criminal defendants from the criminal justice process and, thus, their participation – leading in turn to less favourable outcomes.

I mean even the ones, even people who win. . . . "How is it fair? I can't see the judge. This is my day in court and the judge can't even see me. I can't hear the judge. I can't see everyone in the courtroom at the same time. I don't know who to look at. . . . If I were there in person, I could just hand [my documents] up [to the judge] and now I have to mail [them]... 'a domestic criminal practitioner told TJ: '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.

There is a great tendency for less respect to be given to the court. Many is the time that defendants show disrespect by calling the bench "mate" or worse.'

The implication is not necessarily that we need to halt or curtail video hearings in criminal cases. But we certainly need to know whether they affect the quality of justice and work out how to respond. A potentially explosive finding would be that there was a racial element to disengagement. We need to get ahead of any such assertion and find out what is happening.

5. Advances and Opportunities in the digital delivery of legal services for people on low incomes

The key to the successful use of technology to increase access to justice is likely to pivot on three particular factors: increased use of the interactivity possible through the internet – in the shape of websites that use pathways that take the user through information interactively; greater accessibility and better packaging of information – such as the adding of an informal

out of court ‘Solution Explorer’ to the online small claims court in British Columbia; and developments such as chatbots – like Alexa, Siri or the Australian produced Nadia – which allow information to be both interactive and presented visually and orally. Behind each of these stands the potential, as yet unexplored, of deploying AI to maximise provision.

5.1 British Columbia

Canada’s British Columbia has no less than three organisations that set global benchmarks in their approach to online dispute resolution and legal assistance: the Civil Resolution Tribunal, the Legal Services Society and the Justice Education Society. The three are very different. The Civil Resolution Tribunal is established by statute, the Civil Resolution Tribunal Act [SBC 2012].

The Legal Services Society is the statutory body responsible for the delivery of legal aid services in the province. Among its suite of provision is MyLawBC.com, the legal assistance website established with the help of the Rechtwijzer team. Biting at the ankles of these two is an NGO, the Justice Education Society that produces a range of videos and other materials to help the resolution of disputes.

5.2 The Civil Resolution Tribunal

The Civil Resolution Tribunal (CRT) has two remarkable attributes. First, it actually exists; has been taking a specialist form of housing (known as 'strata') disputes for a year; and has been dealing with small claims under \$5000 (a shade under £3,000) since June 2017. That puts it ahead of the proposed Online Solutions Court in England and Wales as well as most other jurisdictions in the world. Second, it has incorporated an innovative Solution Explorer as its initial front end.

The Solution Explorer embodies what Richard Susskind's Civil Justice Committee called 'Tier One' of the proposed online small claims court, suggesting that it 'should provide Online Evaluation. This facility will help users with a grievance to classify and categorize their problem, to be aware of their rights and obligations, and to understand the options and remedies available to them.'

Lord Justice Briggs, who visited BC between publishing his interim and final report, bought into the idea in a big way: 'The main feature of the proposed Online Court which sets it apart from any process of digitisation along the above lines is its stage 1 interactive triage process. It is this which (if it works) would provide a quantum leap in the navigability of the civil courts by those without lawyers on a full litigation retainer. Without it,

the blank sheet (or blank screen) approach of the existing systems would leave the court as un-navigable as before.'

It is worth looking in detail at how the solution explorer works. The CRT website provided a helpful video. Users are taken down guided pathways in which they select options that narrow their enquiry. On the way, they are given information about their problem; choices as to how potentially to address it; and assistance such as draft letters. It is a very simple idea; for small claims, it has only been running three months and is partly still under development; but, intuitively it looks a really good resource. Translated into an English context, it would be revolutionary because it involves the court assuming a responsibility for assisting a user in the formulation of a problem, not just giving them a form to fill and a process to pursue. Traditionally, this would be seen as beyond the court's remit and the job of someone else – lawyers (who no longer have much of a presence in small claims), advice agencies or others. It is an illustration of how digitalisation can transform rather than simply translate services.

An animated guide to the Solution Explorer has been published on Youtube. The Chair of the Tribunal, Shannon Salter, and its chief legal architect, Darin Thompson, have also written about it in the McGill

Journal on Dispute Resolution. The CRT seeks to provide an holistic service, 'an end to end civil justice architecture'. It has been conceived as the opening procedure within a coherent whole. Its authors warn against a 'pick and mix' provision in which different elements are grafted together.

The notion of end-to-end design, combining dispute resolution phases, contrasts with initiatives that graft a single dispute resolution process onto a larger, pre-existing one. For example, the addition of a mediation step into an adversarial court process that generally follows typical court procedures, with an orientation towards inevitable trial, will not necessarily reflect an end-to-end design or achieve its goals. The mediation step could certainly generate benefits. But it does not reflect the same type of complete system proposed in [the Civil Resolution Tribunal].

This is the CRT's own explanation of the Solution Explorer:

The Solution Explorer is a simple, web-based expert system that carries out several functions to assist a user in understanding and resolving their dispute. It does not collect any personal information, and is available for free to the public, regardless of whether they have a CRT claim. An expert system is a technology-based platform that imitates or emulates the feedback, guidance, or reasoning of a human expert. ... This knowledge is structured in a specific way to make

it computer readable, and accessible to the expert system user through the system's user interface.

A fundamental design principle ... is to create opportunities for early resolution. The Solution Explorer provides these opportunities in different ways. First, the system helps to diagnose a user's problem by narrowing it from the level of a wide domain, down to a much more granular level. A representative model would look like this:

- > Karin has a Small Claims problem
- >> Karin's Small Claims problem relates to the purchase of a good or service
- >>> Karin's purchase is a consumer (personal, family or household use) type
- >>>> Karin is the consumer (purchaser)
- >>>>> Karin's purchase is a service contract
- >>>>>> Karin's service contract is a continuing service contract (e.g. a tennis club membership)
- >>>>>>> Karin wants to cancel and is having a disagreement over the terms of cancellation.

The way that the user experiences this 'justice journey' or 'guided pathway' is through a series of questions that follow on from each other. The best way to understand this is to follow through an example in relation either to 'strata disputes'

on the CRT website (cases involving rights in relation, largely, to blocks of flats) which are already in the system or, on a wider range of questions, in relation to residential tenancies (and still in beta form) on the BC Ministry website. The latter also comes with its own Youtube video guide. You can choose whether to be a tenant or a lawyer and are then taken through a decision tree similar in essence to the small claims example above. You can stop at any time and your search will be saved for 28 days. You get a password to allow your return. At the end, you get a summary of the information given.

The Solution Explorer – like MyLawBC and the Dutch Rechtwijzer programme – represents a major step forward in the use of the internet to provide legal assistance because the programme is tailoring the advice to the user; giving only what the user needs; and, in the process, framing the questions asked by the user into problems that are susceptible to solution rather than a mess which is not. Roll over, Gutenberg: you had a good run. Legal assistance on the internet is no longer constrained by the form of the book.

5.3 MyLawBC

MyLawBC has somewhat stalled its future development as the Legal Services Society has scrambled to disengage from the failing Hiil/Modria partnership. However, it provides four pathways on separation, divorce and family matters; abuse and family violence; missed mortgage payments; and wills and personal planning. Proceeding through these, you can end up building documents like a separation agreement or a will.

The common features of family breakdown around the world allow transnational comparison of advice provision. So, as examples of two different approaches, there is an interesting contrast between the Citizens Advice website for England and Wales and MyLawBC.

The information on both is pretty similar and of a comparable depth; there are the same 'red flags' for those suffering from domestic violence and chances to be referred to lawyers; but the comparison allows a test of MyLawBC's interactivity against the more conventional 'linear' approach of Citizens Advice.

For the purposes of this comparison, let us assume a pretty standard situation. A husband and wife with two children wish to split. They are living in rented accommodation. There is a degree of tension between the two but the consulting parent thinks there is a chance of an agreement on the issues between them which are mainly custody and maintenance.

First up is Citizens Advice. Family is one of nine areas highlighted in the strip at the top of its opening page. Click on this and you come to a choice of seven issues on which to click for further information plus a general search facility. Let's go to 'Ending a Relationship'. This gives us 18 options separated into four categories – how to separate; sorting out money; making agreements about your children; if you were living together. Go to 'how to separate' and a number of further choices appear, the most relevant of which seems 'Deciding what to do when you separate'. This general section provides a domestic violence 'red flag'; a cross reference to possible visa issues for non-nationals (excellent lateral thinking); a link to a script on mediation and two drop down choices depending on whether you think you can agree matters with your partner or not. Information is then given under seven major headings. You can also get referred to the government service on child maintenance options. Another page gives more information and a link to a website run by another charity that will help you draw up a parenting plan. This puts its choices in terms of emotional tensions (eg 'I feel that I am the one doing all the work') rather than blunt questions about, for example, money.

By contrast, one of MyLawBC's current four categories is 'separation, divorce and family matters'. This offers to find a solution for you in 15–20 minutes.

There is domestic violence red flag and a choice between 'Make a separation plan', 'get family orders' and 'I've been served with a court document'. You are offered a link to legal aid and told that 'This pathway will give you the best available resources for your situation. It gives you a toolkit to help you understand and work on your family matters. And it gives you information on who can help you, such as professionals to help you and your spouse to work together, or where you can get legal advice.'

There are no general pages of advice as on the Citizens Advice website. Instead, a series of specific questions narrow down your question asking eg if you are married or have been living together; you then pass through a short page on options; more detail is required on how many children you might have and whether they are certain age categories; you pass more options to go to lawyers. You then get choices phrased like this:

How have the financial decisions you and your spouse made during your relationship affected each of you?

- Check all that apply.
- One of us will need financial help while they work towards being able to support themselves after separation
- One of us had financial opportunities because of the relationship. For example, they were able to work longer hours.

- One of us lost financial opportunities because of the relationship. For example, they moved or stayed home to care for the children.
- After we separate, one of us will be much better off financially than the other. For example, one of us will have a much higher salary than the other.
- Our situation isn't listed here.

Your answer generates a short piece of general information and more chances for lawyer referral. A series of specific questions identify more about your financial circumstances. You get a bit more general information and a chance to measure your partner's communication skills. You then get the following very specific information:

Most couples resolve their issues without going to court. You can work together to resolve your issues. Or you can get help from lawyers and/or mediators.

Mediation

A mediator is a neutral third party who helps you resolve your issues without going to court. Mediators are specially trained to help people reach agreements.

Legal costs vs. mediation costs

A two-day trial costs an average of \$39,900. A five-day trial costs an average of \$66,850.

(Only your lawyer can tell you what the cost of a trial will be in your case.) (Sources: Canadian Lawyer Magazine, "The Going Rate," June 2015; mediatebc.com.)

On average, paid mediation costs \$3,044. Family justice counsellors can provide free mediation services.

If you indicate that you might be able to settle matters outside of court, you are taken to information on a separation plan which incorporates a video on mediation and allows you to download a plan or get taken to the 'get family orders' pathway. A separate dispute negotiation module will assist you in negotiating a solution.

Sherry MacLennon, responsible for MyLawBC at the Legal Services Society (LSS) reports that, despite the extended contract re-negotiation occasioned by the Rechtwijzer breakdown, 'usage on MyLawBC is growing exponentially. We closed our last fiscal year on March 31, 2017 with 20,000 unique users of the website. This year, we are forecasting a 200% increase in users based on our first two quarters (20,403 users as at September 30th). We are extremely pleased with these numbers, particularly as we put our promotional plans on hold due to budget constraints and then the delays in upgrades associated with the contract negotiations.

The guided pathway on making a separation plan has now edged out the wills & personal planning pathways as the most popular.' The LSS is now implementing an independent evaluation of its website – which should be revealing.

MyLawBC has just developed to trial phase its first internally

created guided pathway. Says Ms McLennan: 'our team was able to develop a new model using branching logic to build pathways that eliminates a number of the challenges we experienced with the Rechtwijzer. These relate to ease of maintenance and flexibility to adapt pathways in response to either changes in the law or user feedback.'

5.4 Justice Education Society

Finally in BC, the Justice Education Society which wins the prize for best videos (of which the section of its website on its domestic works contains an impressive 100). It has the best (indeed, only) avatar – a video of a real figure who talks to you; is called Jes;

and which provides you with information (just begging to be upgraded with sophisticated AI) . It also has the best guide to negotiation (including sections which include 'preparing for a tough talk').

5.5 Interactivity in England and Wales

Domestically, we have no equivalent to the drive for interactivity in British Columbia. But, there are two interesting examples of interactivity – relating to automated document assembly and to communication with users by Skype.

England and Wales has two national general advice agencies operating digitally, Citizens Advice and AdviceNow. This again allows comparison of the interactivity against the best available static advice because AdviceNow has

just posted two user-completed forms for claimants of disability benefits. The first was originally published last year and revised in May. It related to a benefit known as a Personal Independence Payment or PIP. AdviceNow reported that, at the time of publication of its new version, its tool had just over 70,000 visitors in the previous year and had drafted 7,845 personalised letters. The second, released this month, relates to Disabled Living Allowance (DLA).

The tools send an email with a draft letter to the user. They also allow a directly downloaded copy which introduces itself thus:

Here's a copy of your personalised Mandatory Reconsideration request. Copy and paste it into a letter and make any changes or additions you want to there. When you are finished, print it off and post it to the address of the DWP office on the letter. Make a note of the date you send it, just in case anything goes wrong. Keep a copy – if the DWP do not change the decision, you should ask for an appeal. You can use the same wording on your appeal form. Most decisions aren't changed at this stage, but are changed when you go to appeal. Good luck.

By contrast, the Citizens Advice coverage of DLA for children gives the following advice on a mandatory reconsideration letter: '

You need to write the reasons specific to your child's claim and why you disagree with the decision. Look at your decision letter. It will say how the DWP has decided on your application. Make a note of the statements you disagree with and why. In your reconsideration letter, give facts, examples and medical evidence (if available) to support what you're saying.

One way to be clear about what you disagree with is to use the same words that they use in the decision. Below is an example of what a reconsideration request letter might say. Every reconsideration request letter will be different – yours needs to contain examples that are specific to your child's needs as a unique individual.

Example

Your letter says I'm not entitled to DLA because my child doesn't need continual supervision to avoid substantial damage to himself or others. This is incorrect. When my child is at home I have to be in the same room with him at all times because he can hurt himself when I'm not there to watch him. He often throws fits – in the past he has knocked heavy things off shelves and hit his head on furniture. This could cause him substantial damage. He needs continual supervision to avoid damage to himself."

The website also advises a degree of caution: 'It's possible that you could end up with less DLA than you were originally awarded, or nothing at all. However, many people have their original decision overturned. We recommend that you get help from Citizens Advice if you're about to challenge a decision.' The Citizens Advice website offers an online chat facility.

The Citizens Advice substantive information is sound; accessible; the example very clear; and the warning is useful. It should be noted that AdviceNow have a specific guide for parents and carers on 'how to win a DLA appeal'. The point, however, is not so much to compare content but approach – and potential. In relation to this, Americans may be familiar with a2j author, a programme that allows the drafting of a user-completed document assembly. It has assembled 2 million documents since 2015. A2j author incorporates a visual element and takes the form of a 'guided interview': it has, however, largely been used in relation to the preparation of court documents. You could imagine something similar being developed from AdviceNow's letter which would seem to offer very interesting potential.

Skype

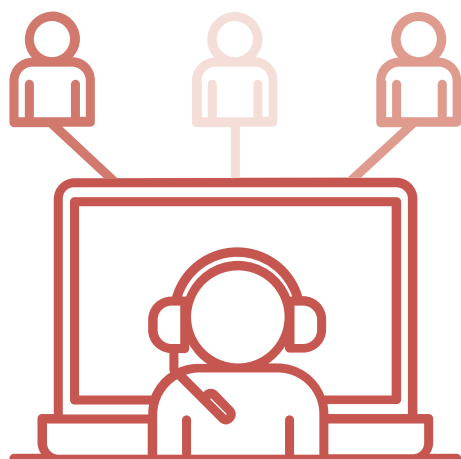
Video provides a way to leverage limited legal services' resources. Two English projects, both funded by The Legal Education Foundation (TLEF) indicate the possibilities – particularly when used as a way of maximising pro bono assistance. They follow an earlier very similar use of video which has been absorbed within the routine way of working in a third agency. All use Skype.

Legal Advice Centre (University House) (LAC) is based in Bethnal Green, a traditionally poor area of London once the prowling ground of Jack the Ripper and now a centre for a large immigrant Bengali community. The centre pre-dates the law centre movement of the 1970s and was founded during the Second World War, as a late entry to the University Settlement movement. Among its past legal volunteers, it can boast the Blairs, Cherie and Tony, as well as Sir John Mortimer, creator of the fictional barrister Rumpole. The centre is substantial – larger than most law centres. It now has eight lawyers and a paralegal among its 11 staff. As a legacy of its history, it has support from City law firms and a breadth of funding that many law centres, largely tied to resources from their local authority, would die for. That clearly encourages a certain entrepreneurial spirit.

TLEF suggested to the centre that it might be interested in devising a project to help deliver services to Cornwall, a county in the far west of the country that includes Land's End; has a lot of poverty with the decline of its once profitable tin mining and fishing industries, and is generally regarded as 'an advice desert', an area without acceptable advice provision. The LAC devised a project based on its successful use of Skype to deploy barristers in Chambers via video conferences to communicate with clients in Bethnal Green.

The LAC formed partnerships with a community centre in Cornwall's Falmouth (the Dracaena Centre) and the local Citizens Advice Bureau (CAB) that struggles on a low budget to provide advice to the county. LAC offers the Dracaena Centre two half day advice sessions by video. The Falmouth centre provides staff who manage the space, the bank of computers and the users. They provide assistance with uploading documents. The LAC staff advise on debt and social security as they would if they were physically present with the clients. For the CAB, the LAC provides assistance with disability benefit appeals. LAC's director, Eddie Coppinger, claims a success rate of around '80%'.

It is still early days for the project. It has been running only for three months and it has taken time for users to filter through to the new provision but it looks as if it will be a success. The centre will produce an assessment after another quarter. An interesting twist to the project is the involvement of pro bono lawyers from the commercial firms on the LAC's doorstep.



An interesting twist to the project is the involvement of pro bono lawyers from the commercial firms on the LAC's doorstep.

A further twist to that may be the possibility of opening a video clinic other than in the evening – US law firms in particular might be attracted to providing pro bono assistance before New York, with its later time, gets going.

Bristol and Avon Law Centre comes, by contrast, out of the mainstream law centre movement. However, cuts to once generous regional funding have encouraged it to look at obtaining contracts to deliver legal services out of its immediate area. Its Skype project is delivered in two areas of Somerset, a county in the west of England but more central than Cornwall. The basic package is the same: volunteer pro bono lawyers delivering advice by Skype at specified times of the week at the local offices of the CAB. Again, there is the possibility to upload documents in advance. The pro bono lawyers operate either from the law centre or from their own offices. Services at present cover employment and family law.

The idea behind both projects is that they could become sustainable through a wider range of funding and pro bono resourcing by local lawyers. Both centres are happy with how the projects have begun. We should await their reports in the New Year on how well they have continued and how successfully they can sustain funding – though the model is cleverly devised to keep costs to the minimum and to represent a supplement to an already existing operation.

A number of other centres in England and Wales have explored Skype. The most organised previous project was probably that run by Brighton Advice Centre. This was evaluated by respected consultant Vicky Ling. She concluded that:

the major successes can be summarised as: A good example of partnership working and collaboration between a wide range of voluntary sector organisations ; Strong user involvement the design of the service; Having overcome some initial scepticism to become a valued part of advice services in Brighton and Hove; Delivering additional casework in the complex areas of welfare rights and housing, which has become significantly less available since the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) became law in 2013; Reaching client groups who find it difficult to access traditional face to face services; Increasing users' confidence in accessing digital services more generally; Having potential for development through involving law students.

She was particularly impressed by the potential opening up of new partnerships with the centres providing video for users.

Skype has particular advantages as the means of video communication in projects of this kind. It is relatively robust; many users will be familiar with it; it is easy to use; and many lawyers will have it on their

desktop as part of Microsoft Office. Americans – and those providing mental health services – will be uneasy about its confidentiality. All the UK projects satisfied themselves that this was adequate – and it has undoubtedly improved since first launched. As systems like this proliferate, as the likely success of the projects suggests they will, security will have to be kept under review. But, for the moment, and for the United Kingdom, Skype does seem to have potential to increase the leverage of limited resources in the area of legal services for those on low incomes – and potentially be applicable both in the profit and not for profit sectors.

Chatbots

Hype bedevils the world of chatbots, hailed by some as the next revolution in digital delivery. Among the most vocal of their promoters is Joshua Browder. The Stanford student's DoNotPay parking ticket chatbot obtained worldwide coverage to die for. He moved on to covering asylum claims (Chatbot that overturned 160,000 parking claims now helping refugees claim asylum – *Guardian*) and has now thrown himself into the major Equifax data breach in the US (equally well publicised) with a chatbot that helps users to issue a small claim for breach of their privacy.

James Browder is a Marmite kind of guy and it is difficult to steer a middle way in forming an opinion of what he is doing.

He is rather attracted to hyperbole. The Washington Post quotes him as saying: "I want to make the law free for all consumers," ... noting that his long-term goal is too "upend" the legal profession. "Lawyers are charging huge amounts of money for doing very little, so I decided to launch a product that will make all small-claims litigation free." So, he has two targets: Equifax (which he apparently aspires to bankrupt) and lawyers (ditto).

None of Mr Browder's products are particularly sophisticated. They do not use AI in any meaningful way – although media coverage often suggests otherwise. Nor do the guided pathways down which his chatbots send users involve much legal advice (in the US, they probably could not anyway). They direct you to claims procedures and help you fill out the appropriate form in an appropriate way.

Richard Tromans, founder of the Artificial Lawyer website and a thoughtful commentator on the advance of technology in the law, has posted an analysis of Mr Browder's latest ventures. He concluded that they were best described as 'justice sign-posting' or a 'justice empowerment'. They do not 'replace or remove lawyers – yet', if only because 'none were ever going to be part of a small claim in any case'. That is not necessarily a criticism of what is provided (though it is of the hype): 'DoNotPay has filled a gap in the way justice is delivered, by helping people to access systems lawyers

put in place to allow such claims to be made. Browder is in effect acting as a promoter and cheerleader for access to justice channels.'

So, the positive of Mr Browder's contribution is that he 'has brought it all together, he has publicised it, he has got people engaged, he has helped people feel they can do something about getting justice'. The weakness is that this is a far more limited aim than is actually presented. It certainly is not going to put lawyers out of business: he has done little more than put an approachable front end on existing systems and websites.

The real questions surround the future. On the one hand, a lot of the coverage of DoNotPay and the Equinox chatbots gives way to exaggeration. This could be seriously dangerous if significant numbers of users find that their cases are much more difficult to solve than they were led to believe. Or if governments started to argue that a couple of chatbots might supplant more conventional assistance for those on low incomes with legal problems. On the other hand, it may be completely valid to argue that these simple beginnings will precipitate more sophisticated developments and that this is the way that progress is made.

Lighter touch regulation may mean England and Wales is actually a better place than the US for automated legal assistance of the kind prefigured by Mr Browder's chatbots.

No prohibitions on unauthorised practice of law. It would be good to see some of the voluntary sector providers talking up the challenge; getting some funding; and following Mr Browder's lead in exploring what could be done through chatbots that help people with claim procedures of various kinds. Indeed, the introduction of the Online Solutions Court may open up an opportunity to help users frame their applications appropriately.

Nadia

The path to the interactive future will not be easy. Uncertainty swirls about what might have been the world's most imaginative use of AI to deliver information and advice to members of the public. Nadia was developed by the Australian Disability Insurance Agency (NDIA) to answer questions on a new national disability insurance scheme (NDIS) with the voice of actress Cate Blanchett and a computer-constructed face. The Australian Broadcasting Company reported on 20 September 2017: 'NDIS' virtual assistant Nadia, voiced by Cate Blanchett, stalls after recent census, robo-debt bungles'. However, the next day the London Guardian announced that the 'NDIA denies Cate Blanchett-voiced 'Nadia' virtual assistant is in doubt'. Needless to say, the NDIA's website is silent on the subject.

Whatever Nadia's future, issues which have emerged seem both general and specific. The Australian

government has got cold feet on technology after the same bad experience with large IT projects as virtually every other government, magnified by somewhat insensitive – not to say incompetent – implementation. An attempt to move the national census online proved a disaster. The creation of an online automated system designed to collect debts due to the government initially raised demands from 20,000 a year to 20,000 a week. This was not quite the success it might have seemed: many were wrong; sent to old addresses; and led to debt collectors demanding repayment as the first intimidation to taxpayers that they were subject to the attentions of what became known as the 'robo-debt' machine. It was all too clear that the attempted elimination of human supervision was just too ambitious. The Nadia project is budgeted at a significant Aus\$3.5m (£2.04m, US \$2.68m). You can see why the Australians did not want yet another debacle of a similar kind.

There were also specific problems. It sounded fantastic and attracted considerable attention. Cate Blanchett donated her time to the NDIA. The developer is a New Zealand company FaceMe had a proven track record. Nadia was linked to commercial developments. FaceMe's day job is to develop 'an omni-channel digital employee platform: the embodiment of AI with a range of defined skillsets, ready to learn and evolve to your business needs to solve real problems –

delivering amazing experiences at scale...’ Or to put this more simply, it offers you a chatbot with a human face to answer customer queries – initially as pre-programmed but with an AI capacity to learn. The NDIA is understandably excited by its collaboration and its head of technology authority Marie Johnson is quoted on FaceMe’s website as saying ‘What we are doing here with FaceMe and people with disability, is creating the new ‘world beyond websites’. So it may be but, interestingly, the FaceMe website emphasises the potential to integrate whizzy virtual presentations with old-fashioned physical interaction through a ‘human in the loop’, one of the lessons which may also have been learnt by the Rechtwijzer and, by implication, MyLawBC.

Alas, the arrival of Nadia’s brave new world has been somewhat delayed. It turns out that IBM Watson, on which Nadia’s AI systems are based, is too slow. Answers lag thirty seconds after the question terminates. The agency is looking at other providers who can be faster and, indeed, IBM is racing to update its product. The NDIA’s line is that Nadia is only stalled. Chief Information Officer at the Australian Department of Human Services Gary Sterrenberg told the *Guardian* ‘As the technology matures we will be making the appropriate decisions about it.’

The delay to Nadia raises the same question as the failure of the Dutch Rechtwijzer and disappointment at early versions of chatbots: are the reasons contingent to the individual project or systemic to the concept?

You could argue that this is just one more example of how technology reveals that it cannot deliver. However, more likely is that the project has fallen victim to the hype surrounding AI where future potential is too easily conflated with current performance. Just like the Rechtwijzer, Nadia has been required to fulfil expectations that were just too unrealistic in too short a timescale. In that case, the lessons may be threefold. First, keep the faith. These systems will ultimately deliver on their undoubted potential. And, in the field of access to justice, we need to monitor those projects like MyLawBC which continue to explore the possibilities. The second may be rather paradoxical and at odds with the first. If you are a government funder with one shot at getting it right, consider holding your hand until others have played theirs and you have seen the early difficulties surmounted by someone else. Third, FaceMe’s emphasis on integration with the human in a commercial context is significant. Governments, obsessed with savings, have a tendency to forget that. AI and technology has the capacity to revolutionise legal services delivery but only in co-ordination with human assistance.

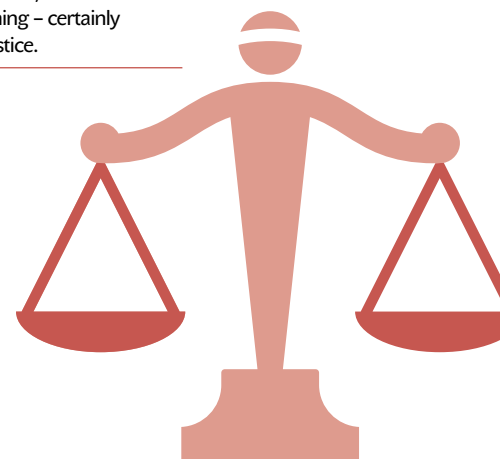
5.6. What technology is needed for access to justice?

Finally, The American Bar Association (ABA) Journal has published a piece by Mary Juetten, an American expert on the use of technology in the law and CEO of Evolve Law intriguingly headed 'What is the Technology needed for Access to Justice' in the ABA Journal. It is a good title: and follows a companion piece entitled 'How can technology solve our access to justice crisis?'. How would we answer this question from a domestic UK perspective?

The obvious response, of which Ms Juetten must be aware, is that the questions have a logical flaw. Technology, by itself, is not an answer to anything – certainly not access to justice. Indeed, those who suffer exclusion from justice may well not express any desire for technology at all. They might just want a walking, talking, breathing lawyer like everyone else. Witness the dislike of defendants for video connections to courts: they want to be where the action is, not isolated in a small booth miles away. Similarly, the most sophisticated chatbot is not much use as the bailiffs break down the door to your rented flat and put your stuff out on the pavement. Technology is particularly bad at dealing with inherent power imbalances between parties.

England and Wales has a different history from the US in relation to legal aid but it has arrived, as we saw in looking at the LASPO cuts, at very much the same place. Eligibility for civil legal aid has declined in terms both of scope and financial qualification. By 2008, the percentage of households eligible for legal aid on financial grounds was 29%, roughly equivalent to the percentage of households in receipt of means-tested benefits. Centrally funded legal advice has been largely withdrawn for social welfare (poverty) law since cuts implemented by the LASPO. The number of not for profit legal advice agencies has reduced by more than a half – from 3226 in 2005 to 1462 in 2015. Legal aid was withdrawn without replacement in relation to most matrimonial cases. Largely as a consequence of that cut, legal aid private practice providers have fallen by 20% in five years – from 2393.

Technology, by itself, is not an answer to anything – certainly not access to justice.



We are a jurisdiction which knows from the experience of our recent past exactly where our 'justice gaps' are. They are: those, largely women on low incomes, who used to receive assistance in matrimonial cases; those with cases relating to matters like housing disrepair and social security failures who used to be helped under the legal advice scheme; those on low incomes with a range of legal problems, including small businesses, for which legal aid was never available; those now reduced to litigating in person in civil cases; and those, from the most marginalised communities, who have always fallen through the net of available provision for reasons of lack of language, cognitive or other skills. The Government has been consistently criticised, not least by the Justice Select Committee of the House of Commons for refusing to research the numbers affected by the recent cuts – though it has now agreed to undertake some study.

Technology is evidently no answer on its own to helping these excluded groups. For a start, the digital divide will extend the communities excluded by the haphazard and limited provision of services – by adding to them those who cannot effectively access digital communication.

There are at least four ways in which technology can help to extend the reach and leverage the use of such services as do exist by supplementing – and not replacing – physical provision.

First, technology can help bring down the cost of commercially provided services to representatives of Richard Susskind's 'latent legal market', those who would buy services if they were cheap enough. This could happen through greater investment and development of case support services specifically designed for low cost areas where much of the administration would be done through technology in the form of pre-consultation questionnaires; consultation/post consultation prompts; and user-completed forms supervised by practitioners.

Second, technology can do much of the heavy lifting in terms of the provision of legal information, education and simple advice. We are on the cusp of a revolution in the digital provision of information where we move from traditional linear provision as exemplified by the Citizens Advice website to the interactive possibilities first exemplified by the Rechtwijzer and now to found in websites like MyLawBC.com.

Third, technology can help litigants in person. We know this from the Royal Courts of Justice CourtNav programme and also the legacy of the Rechtwijzer how a litigant in person can receive both advice, mediation and adjudication through the internet.

We also have the example of the CRT in British Columbia and its innovative Solution Explorer which seeks to bridge the gap between information, advice and the court.

And, finally, we stand on the brink of a general revolution in digital communication with the animation possible through developments like chatbots, ultimately boosted by AI. As we get used to Siri and other voice activated assistants, the potential to shift the interface with a computer to the oral from a keyboard will not only revolutionise our use of home shopping and central heating: it has fantastic possibilities for a quantum leap in the use of the internet to answer legal questions.

You can also see this foreshadowed in developments like the over-hyped chatbot DoNotPay programme and the stalled Nadia project.

So, can technology solve what has become widely known as the justice gap? No, it can't. But, can technology help alleviate the justice gap? Yes, it can. Keep reading law-tech-a2j.org to see how.

As we get used to Siri and other voice activated assistants, the potential to shift the interface with a computer to the oral from a keyboard will not only revolutionise our use of home shopping and central heating: it has fantastic possibilities for a quantum leap in the use of the internet to answer legal questions.



For more information, or to learn more about this and other projects funded by the Foundation, please visit **www.thelegaleducationfoundation.org**