



International Forum on
Online Courts

The Cutting Edge of Digital Reform

London 3 - 4 December 2018

An overview of panel sessions,
jointly hosted by HMCTS and the
Society for Computers and Law.



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Introduction

The Cutting Edge of Digital Reform was the [inaugural international forum](#) jointly hosted by HM Courts and Tribunals Service (HMCTS) and the Society for Computers and Law (SCL), in London on 3 and 4 December 2018.

Over 200 national and international academics, legal professionals and court reform experts attended the event to exchange ideas, forge new partnerships and discuss the cutting edge of court reform.

They were joined by the Lord Chancellor and Lord Chief Justice to discuss the successes, challenges and technological advances being made in justice systems globally.

The first day of the forum was devoted to finding out what is going on at the cutting edge of court technology around the world. We have [published presentations from jurisdictions](#) including USA, China, India, Japan, New South Wales and Europe.

In the second half of the forum we looked forward, into the 2020s, and discussed some of the central issues that will face policymakers, judges, technologists, and lawyers, who are planning or introducing online courts.

These discussions took place in panels chaired by leading legal figures from the UK. We heard provocations by experts in each topic, with panellists responding, followed by contributions from the floor.

This document contains summaries of the discussions of the following panels:

- Open justice and fair trials
- Technology platforms and obstacles
- Artificial intelligence
- Challenges for policy makers.

Thanks to contributors Rob Hack, Alexander Gaze, James Palmer and Harriet Ainsworth-Smith from HMCTS, all chairs and panellists, and the delegates for the lively and informative discussions.

Visit www.gov.uk/hmcts for more information about the HMCTS reform programme in the UK and Wales.

Open justice and fair trials

Chair: Lord Briggs, Justice of The Supreme Court.

Keynote speaker: Dr Orna Rabinovich-Einy, Associate Professor, Faculty of Law, University of Haifa, Israel.

Panel members: Judge John Aitken, President of the Social Entitlement Chamber; Andrew Walker QC, Chair of the Bar Council.

The discussion focussed on the theme of open justice and ensuring that court users retained access to a fair trial against the backdrop of digital court reform.

Lord Briggs reflected on the scope for online courts to improve access to justice, and the need to find alternative ways of achieving full openness in a digital environment, giving as an example his ambition to make the public sections of the supreme court's case bundles available online, in order that those accessing them remotely can follow live-streamed hearings thereby increasing transparency.

Dr Rabinovich-Einy's areas of expertise are online dispute resolution (ODR), alternative dispute resolution (ADR), and civil procedure. Her research focuses on the impact of technology on dispute resolution, the relationship between formal and informal justice systems, and dispute resolution system design.

She broke down the court transformation process into three distinct strands:

moving processes from offline to online

moving away from third party humans to fourth party automated processes

the increase in case data made available as a result of moving processes online.

The increased case data helps us to learn far more about our courts - a 'macro bonus'.

Dr Rabinovich-Einy stated her belief that both efficiency and fairness of justice can be improved by online courts, provided there is careful design and monitoring after it has been implemented and urged critics to look at the reality on the ground rather

than an 'idealised version' of the justice system.

Digital reform programmes also need to look at the digital divide in terms of use, not just access. The acquisition of case data and usage stats from online courts should help courts understand the problems that users have and force them to adjust processes to improve access and efficiency.

The discussion raised an interesting point on the human vs machine debate. It could be argued that a down side to automated and online court processes is the risk of losing sight of the person involved as an individual, seeing them more as merely a statistic. A judge can show mercy when they see a person before them whereas there is a risk that such empathy and feeling is lost in an online setting.

On the other hand, using online courts may reduce the traditional biases that are can appear when delivering face to face judicial decisions. To illustrate this point, Dr Rabinovich-Einy gave the example of a recent study into speeding offences data. When cases were heard in person, younger drivers tended to receive harsher penalties and higher fines than older ones. However, this trend was eliminated in cases heard online. Moving forward it will be crucial to choose the cases to apply an online environment to carefully and continue to further investigate and assess what these might be over time.

She concluded her talk with some take-home messages. Online courts bring about many challenges but at the same time a huge potential for fair trials and increased transparency, whilst designers should continue to seek a broad input of perspectives in a commitment to efficiency and fairness. She advised attendees to maximise machines but warned not to lose sight of human values, feelings and commitment.

Judge John Aitken provided an overview of his welfare appeals jurisdiction. He made the point that online hearings can bring in more parties because the barriers to attendance, such as travel, are lower. He believes that this leads to an improved quality of individual decision making.

He explained that in his jurisdiction, they had tried to make hearings as informal as possible ('more like a job interview than a hearing') and tried to keep process communications to platforms that parties are used to and comfortable in using, such as Whatsapp, as part of keeping engagement between the parties within the 'online box'. This, he argued, enables the stripping out of case management, which is only there to rectify issues that have themselves been caused by human error.

He gave an overview of studies that have been undertaken looking at the user and how they engage with online cases. According to the research, if they felt they had been given the opportunity to get the detail of their case across and had been listened, appellants were accepting of the decision made in the online environment. In short, a full face to face hearing in front of a judge was not a driver for their satisfaction of the process itself.

Andrew Walker QC questioned whether the ambitions that had been set out would actually happen, or whether expediency would in fact take over.

He also pointed to a deeper concern, that the move towards digital justice is engaging the state to a far greater extent in designing the judicial process than it ever has been before. Practicing lawyers and judges, those that use the system and have an in depth understanding of the consequences, he

said, should instead be at the heart of its design in England and Wales.

Questions from the floor followed, with topics broad and wide-ranging from anonymising published judgments to how online systems can embed effective feedback loops within them to increase access to justice.

One question that sparked particular debate was around how the balance is struck in regard to transparency. Dr Rabinovich-Einy accepted that transparency is important but it does have its limits and can be open to abuse, using an example of disputes over domain names to highlight her point. In the example, parties who were well versed in these proceedings (often bigger organisations) learned how to interpret the preferences of the respective arbitrator and therefore which way to direct their argument in order to win the case. Her point was that increased transparency is not always a guarantee of fairness.

It is clear that there is much assessment and analysis still to be done on what impact digital justice and online courts will have on the principles of open justice, fair trials and transparency.

"I've got a lot to go away and think about" Lord Briggs reflected as he brought a lively and stimulating discussion to an end, "but in the meantime, I think it's time for some coffee."

Dr Orna Rabinovich-Einy's [full presentation is available online](#).

Technology platforms and obstacles

Chair: Joshua Rozenberg QC, British legal commentator and journalist.

Keynote speaker: Caroline Sheppard OBE, Chief Adjudicator, Traffic Penalty Tribunal.

Panel members: Chris Bentley, Managing Director, Legal Innovation Zone; Martin Stockdale, Partner, Kennedys.

Caroline Sheppard introduced the Traffic Penalty Tribunal (TPT) system, used in England and Wales. It provides an online service to appeal against traffic penalty charges, dealing with 25k cases a year, mostly related to local authority penalties (paid for by them).

There are 28 adjudicators and the service is manned by 12 customer support staff. The system is automated so support staff are able to help individuals. The system has been developed to be scalable and is bringing other appeals processes online in the near future.

The system was developed using clear guiding principles and it aimed its digital transformation to be digital by default. The continuous development of the system has been, and continues to be, user led.

Its development was heavily dependent on local authorities who would be connected to the online system. Delays to their integration were a clear risk to the delivery of the project, therefore significant efforts were made to ensure this was covered.

Assisted digital was also a key part of how the system would operate with various methods available:

- by proxy through the customer service team
- agreeing what was the best communications channel for each individual
- providing guidance on how to use the system if needed
- always looking for ways to make the system more accessible.

The system has developed over time. In the instances where there is a need for adjudication, feedback has shown that face-to-face hearings were unpopular and there were many instances of no-shows from local authorities.

User feedback has shown that telephone hearings, and lately video hearings (through a pilot) are the channel of choice. All face-to-face hearings were phased out in 2017 with hearings now taking place by telephone.

The recent video hearing pilot has been successful so far, and is ideally suited for more complex cases, particularly where evidence needs to be shown on screen.

In both telephone and video hearings there is also the opportunity for interested parties to join as 'virtual visitors'.

The system has been developed to allow good communication between all parties. Examples shown highlighted how evidence can be shared and evidence can be visible for each cases - colour coding comments and monitoring/recording access/viewing.

Workload for TPT has increased in recent years but the system has become more efficient.



The Legal Innovation Zone supported the focus on the user and asked the audience to consider approaches to technological development which have focussed on transformation, ambition and speed/urgency.

Kennedys discussed ways in which they can support clients through a digital application process so they do not need representation. This results in savings for the clients but an increase in more complex cases. Although there is now less work per client, they have seen an increase clients.

Discussions that followed included access to those who have limited IT skills or access to digital services, consideration on the use of the word 'customer' (specifically how,

as a government body, HMCTS defines users). The panel considered how users see themselves and the services they use and reflected that their behaviour is similar to standard 'consumer behaviour' and therefore their expectations are similar.

They reiterated the importance of developing systems based on audience and its changing behaviour.

Caroline's Sheppard's [full presentation is available online](#).

Artificial intelligence

Chair: Christina Blacklaws, President of the Law Society of England and Wales.

Keynote speaker: Dr Sandra Wachter, Research Fellow, Oxford Internet Institute, University of Oxford.

Panel members: Orlando Conetta, Head of SmartDelivery, Pinsent Masons LLP; James Slessor, Global Managing Director, Accenture Public Safety.

Artificial Intelligence and data had been recurring themes in many of the presentations and discussions earlier in the forum, so the afternoon's panel discussion offered a great opportunity to consider the topics in more detail.

The panel were in strong agreement that there were positive opportunities for the use of data, and artificial intelligence to benefit the online court, and noted that the conversation has already begun to shift from are we going to use AI, to how are we going to use AI.

AI is already deployed effectively in a large range of sectors around our everyday life, insurance sector, banking, health and transport. However, for the purpose of discussion the session looked at some of the challenges that may be faced as progress is made in these areas. Using algorithms in real life situations, with real people, with real life consequences raises ethical, moral and legal considerations.

Machines can identify patterns in huge volumes of data, more quickly and with greater accuracy than humans. However, the way in which they do so can sometimes be opaque and difficult to explain. The keynote speaker, talked about some of the things we should expect when introducing AI in to society:

1. Fairness: when using historical data to make inferences about the future, the quality and accuracy if that data is fundamental to ensuring that any predictions or assessment are accurate.

We also have to cautious that there are not historical biases¹, conscious or unconscious, in the data which may be replicated or even magnified by the algorithms.

2. Explanations: the complex nature of AI means that the functions used to make decisions may well be too complex for humans to comprehend. This raises questions about our ability to completely understand and justify the full decision-making criteria or rationale. How do we approach the development of AI, and what tools can we use² to overcome these challenges?

3. Transparency: what rights do those whom the decision is made about have in understanding how the decision has been arrived at, and how is that balanced against the intellectual property or trade secrets of those who own the systems?

The future of AI requires dialogue between developers and society about not only what is possible, but what is reasonable. As well as the engineering of systems in an ethical way, recognising the limitations of both AI but also the existing systems which we are expecting to replicate. The data we use is fundamental to the fairness and effectiveness of any systems developed.

1 <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>

2 <https://pair-code.github.io/what-if-tool/>



The panel took questions from the audience about these topics and existing examples of AI in justice. In the New South Wales federal court jurisdiction, they are considering what role AI system might play in supporting the settlement of matrimonial cases. This led to discussion about the extent to which bias matters if both parties agree on the resulting decision.

A federal judge from Brazil referenced the example of algorithms being used to predict recidivisms, and its result being compared to judicial decision making - reiterating that these things should always be tested before being fully implemented.

There was also discussion about how to balance the need to eliminate bias with the accuracy of systems, when removing variables in data may lead to bias.

Reference was made to work already

underway internationally to explore these topics, and the Technology and Law Commission³ has been convened by the Law Society, to explore the impact of technology and data on human rights and justice.

Dr Sandra Wachter's [full presentation is available online](#).

Challenges for policy makers

Chair: Professor Dame Hazel Genn, Professor of Socio-Legal Studies, Faculty of Laws, UCL.

Keynote speaker: Professor Pablo Cortés, Chair in Civil Justice, Leicester Law School, University of Leicester.

Panel members: Amanda Finlay CBE, Chair of Law for Life and Dr Sadanand Date, Joint Secretary, eCourts, Justice-II, National Judicial Academy and eOffice, Ministry of Justice, India.

Professor Hazel Genn opened by setting out a landscape of change: we should embrace it – it is upon us, but in doing so we need to remember the public justice system is important and we shouldn't lose sight of that. The panel discussion was focussed around users of courts and tribunals and how in modernising we need to be mindful of both the opportunities and challenges these can present for access to justice.

Professor Cortes provided an overview of the HMCTS new Civil Money Claims Online service, and the policy considerations that he considers derive from the new service at various stages. He set his thinking with the following structure: Stage 1: Claim submission do I have a case? Stage 2: Conciliation Claim – is this the right avenue for resolution? Stage 3: Online adjudication – is there a role for technology assisted decision making? Then underlining that how we deal with Litigants in Person (safe guards, information and advice) and lastly, monitoring performance (best practice, capturing information and data).

There were a number of themes running through the subsequent panel session:

- Firstly, data and how it is so important to understand not only how a process is performing, but equally and more importantly the impacts of change both for people who are already users of the system, and those who are yet to be.
 - Professor Cortes set out the case for judgements being a key part of published data – and that design choices should be derived from best practice and data is key to enabling that.
 - Discussion then turned to the importance of data not just for looking at the here and now – but also about the impacts in the future and careful consideration needs to give now to the data needed to ensure true evaluation of changes – not only looking at impacts in the first few years but also in 10 years.
- Secondly, legal advice and support sitting alongside new services to enable and empower litigants in person.
 - Amanda set out the case that we should think wider than technology as to what should be in place to enable a more effective system – public legal education and the role of the third sector in helping to prevent people 'drowning' within the system and legal problems. It was also commented that the idea of 'drowning' in legal problems was not only being applicable to vulnerable users or those with chaotic lives, but equally those with a legal education can struggle to navigate the current systems.



- Thirdly, opportunities and risks of participation by parties when proceedings are conducted online. This chimed with the previous panel discussion around Open Justice and Fair Trials.
 - It was reflected by having hearings/ adjudication online consideration needs to be given for litigants in person - not only to digital exclusion but also to the ability for advocates and courts to spot signs of vulnerability and how that is accounted for in an online environment – as well as signposting to support services.
 - It was also reflected that by having proceedings online, in some areas, it can lead to greater participation from parties, who would not normally attend physical hearings. The example given was the in tribunals where there has been greater attendance by the responding government departments given the ease in which they are able to attend.
 - Dr Date underlined the importance of understanding those who you are designing the system for and who should have a stake and a say in the future design.
- There were a range of questions from the session a number of which centred around the creation of online courts moves the system from adversarial to inquisitorial – and how there are pros and cons in each approach but we all need to be conscious of the change.
- Professor Cortés’s [full presentation is available online](#).



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