



Reform Podcast Transcript

Susan Acland-Hood sits down with legal academic, Richard Susskind to reflect on digital courts and the progress of the reform programme so far.

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Richard Goodman: Welcome to our first HMCTS external podcast. We're joined today by Richard Susskind who is a serial author on Law and Technology and on the verge of producing his tenth book, touching on the future of online justice and who's advised the senior judiciary for many years now on the future of digital justice. And by Susan Acland-Hood, chief executive of HM Courts and Tribunals Service who's been leading the digital reform program to date. We're recording this as we reach a new milestone in the reform program taking over 100,000 users through new digital services that have been launched across civil claims, divorce, probate, Social Security Appeals and some of the least serious criminal offenses too. And the aim is to have a short reflection on how far the program's come but perhaps more importantly: what the future looks like. On that front you recently co-hosted the first international forum on online courts with dozens of jurisdictions attending. What did you learn?

Richard Susskind: The first thing we learned, which I think was a pleasant surprise, was how much global interest there was in the subject. We got around 300 people from 26 countries, some very senior officials and judges. And so there's certainly an appetite globally for the idea of delivering court services in new and different ways, ways that make the system more affordable, quicker, more intelligible and more proportionate. We can sense we're at the early stages of a fundamental global change to the way in which the courts work and justice is administered.

Susan Acland-Hood: I agree. And I think there were some really interesting common themes that came through from nearly everyone who came. The first was, that when people are making digital change to their systems, everybody spoke about the most successful changes being the ones that started with people, with human experiences, with what people feel like as they go through the system. And there was also a really strong theme around the most successful changes being the ones that didn't just take the system as it worked at the moment and tried to in some way kind of turn on a digital version of it but really stepped back and thought differently about how we could do things in a different way that made more sense and was easier and more streamlined. There were also some really encouraging things about the way we're going about this in the UK, in that we're not doing something that's unusual or outlandish. In some ways I think we are in the forefront of what's happening but we're absolutely part of something that everybody is engaged in. And also we've got some really clear advantages. There were certainly a few jurisdictions there who were very envious over the fact that we are doing this so closely in partnership with the judiciary and certainly some places where they haven't had that judicial support that we have had in order to start and move this program forward.

Richard Goodman: So what do you say to the people who are a bit skeptical about the transactional nature of how digital looks and feels? So, one person's intuitive service is another person's conveyor belt. How far are those accusations well-founded, that what we're building here is not an improved justice system it's a it's a digital machine?

Richard Susskind: There's a generational issue here. I think our children will regard these services intuitive and natural and indeed may wonder, why on earth so much court service was ever conducted in the traditional way. Whereas, people who are either steeped in the justice system: they've been lawyers or judges for many years or people of my generation who can't really imagine a court service that's not based on something that's seen on television or read about in books and so forth. But for a younger generation coming through for whom the first port of call when information or guidance or service of almost any dimension, is digital, it seems to me this will follow quite naturally. We have a natural and sensible expectation. Very clearly, the idea that one can have a justice system that's

intelligible and accessible and affordable seems to me to tick the right kinds of boxes in an era where - and I think this is an issue in the private sector we're seeing alternative spring up - where people say - actually we shouldn't be using the court system, we can use some kind of private sector online system. I personally think it's terribly important that we have a public court system, that on a daily basis is affirming the importance of the rule of law or confirming the importance of the judiciary. And so, it's incumbent on us to modernise and to digitise and to keep pace with what we're seeing in the private sector.

Susan Acland-Hood: I think all of that's right. I take one different perspective I think on what we mean when we talk about digital systems I think digital systems can support lots of different ways of doing things in the courts. And I think it's really important that we are offering people different routes to justice for different types of problem. And, I think really thinking about this from a human being's point of view means, working out what's going to work best for people in different circumstances. And there's an analogy I've used before and I know it's not a perfect analogy but I think works to a certain extent. I remember when I was small that in order to get your money out the bank you had to get your bank book and go to the bank and pass it under the counter to the teller who would write a set of things in it and pass it back to you with your money. And I remember the growth of the cash point and I don't use a cash point to get money out because that's cheaper for the bank. I use a cash point to get money out because that is massively more convenient for me, than going to the bank. However, if I want to have a conversation with somebody about a mortgage I would still absolutely want to have a conversation. I actually wouldn't necessarily be that bothered about whether it was a face to face conversation or whether it was by phone, but I'd like to have a conversation with somebody, and that's a completely different sort of activity. And so I think there's something about there will be some things we do which may feel like, we are putting in place really, really simple quite basic processes that might feel a bit transactional. But if what we are dealing with is something where what people prize most is speed, efficiency, convenience and the fact that it fits around their life - I don't think that's a bad thing. I think the important thing though is that where we have something that is different in character, where people need to be able to come and present themselves, their evidence, their feelings in a human way, we are also doing that. And it's about having the right routes for the right thing.

Richard Susskind: I think the intuition of many people when they hear about online courts is to think about very complex cases. They may think of murder trials, or very large commercial disputes. My preoccupation has always been with the everyday case - the idea that the high volume of relatively low value cases where you need a proportional system to help resolve those. I have the sense that we're emphasizing digital, we're talking about online justice and so forth because we're at this transitional phase of moving from a print based court system to a technology-enabled system. But in due course, it'll just be court service that's delivered through a variety of facilities.

Susan Acland-Hood: I'm absolutely sure that's right. I mean we have, if you want to think about it in those terms, at the moment we have a thing called a paper court where cases are heard on paper and don't come before a judge and we never speak about the paper court. It's not a thing. It's just that it's a route through which cases for which it's most suitable go. There is judicial discretion about what routes are most suitable for most cases. And I'd be very surprised if we weren't necessarily talking about the online court as a kind of standalone thing in the future. I think we're much more likely to talk about the court system and have it as a kind of piece of tacit understanding that there are a sensible set of different ways to get things dealt with. And again, I also think that there's a kind of peculiarity in talking as though the only good use of digital is as an entire replacement for

in-person activity, a lot of the reform that we're making is not about replacing physical hearings with wholly digital or indeed wholly video hearings, a lot of it is about technology that will support the holding of good quality physical hearings. So I think there's something in that, and it might well be that even now we should be thinking more carefully about the language we use.

Richard Goodman: So how are we going to understand what's happening in this bright new system so, a good deal of what we've been talking about reflects different and various routes in, but we are also describing what the common understanding is and how that is built up over time, and how you can get in and see that justice is being done to understand how your case will pan out. And it seems to me the digital revolution creates just as many challenges on that front, as it does to build a thing in the first place. So how are we going to open this system up?

Richard Susskind: One is transparency of the system as a whole. And there's transparency on individual cases so that there may be a feeling for individuals there wanting some kind of vindication so that the result is made publicly available. And I've no doubt on both fronts., that we will make a system that is more rather than less transparent. I think already and Susan you can speak more about this, there is going to be an availability of data; there's going to have some visibility of the mechanics of the system generically and generally that would outstrip what we've seen in the past. The issue of transparency raises the vexed issue of open justice. Many people are concerned that there's some kind of black box distributing and making decisions. I should say first of all, that for most of us we're thinking about a first generation of systems which is just still involving human beings, it's just that they're working with different tools so it's no question at this stage, of algorithms making judicial decisions. One can imagine in the future that is a possibility that's something we need to talk deeply about. But at this stage we're talking about the question of open justice being visibility on individual cases.

Susan Acland-Hood: I think from the point of view of the work that we're doing our agencies yesterday well we've absolutely set the principle that we are not going to be any less open than we are now in any part of the system. And where possible we will seek to be more open and I think Richard as you've said that operates both at the level of the system as a whole and at the level of individual cases. For the system as a whole, I think one of the most exciting things about the reform program is the opportunity that it gives us, both to use our data much more powerfully internally and to share it much more widely externally so that people can see what's happening in the system much more clearly. There's a huge opportunity to make the system work better for people, and also to demonstrate the way it's working to people at scale. I think in terms of individual cases, using different ways of doing things means that you have to think through what openness means again from scratch and this has never been a completely straightforward question in the justice system. So we've always held the deeply fundamental principle that you do justice in the open that justice needs to be seen to be done that one of the ways that you assure yourself that your system is fair is that people can examine it and that remains paramount. However, it's never been a completely absolute principle. So if you think about the criminal sphere there's always been a balance between making sure that you have openness and transparency and that you are managing the rights of offenders to be rehabilitated in due course and so some of the things that you might do to make justice extremely open you need to make sure that you aren't creating opportunities for people to tamper with a set of principles around rehabilitation of offenders and that means that when you do things in new ways you have to think about them.

Richard Goodman: Susan you mentioned that there is a wealth of data and information which is, or which can emerge from these systems over a period of time having taken over 100,000 cases through these data rich intelligence systems so far, what have we changed as a result of hundreds of thousands of bits of intelligence and information?

Susan Acland-Hood: It's difficult to kind of pick out a big slam dunk and I think this is one of this is actually quite a good illustration of what this rich internal data gives you, it gives you the ability to make lots and lots of small changes that together add up to a much better service. So if I take as an example the divorce service, some of you listening to this podcast may have heard this statistic before because I confess that I use it quite a lot: but the old paper form that we used had a rejection rate of about 40 percent, about 40 percent of people had their forms sent back to them saying you've made a mistake you need to do it again and that's incredibly irritating for people getting divorced and not very efficient for us either. So one of things we set out to do and when we created the new service was to try and make it really intelligible. Now, the first version of the digital service got that rejection rate down to about 8 percent which was pretty good, but not good enough. One of the things that we did through the data that was coming through the system was look really forensically at why those eight percent of people were having their forms still sent back to them on the digital system what it was that they were finding difficult to answer or they were misinterpreting or they were getting wrong. So we tweaked and changed and adjusted to the questions in response to that data and whittled that error rate down and down and down. There were a couple of big jumps, so for example when we allowed people to upload their marriage certificate by taking a photo on their phone, we had a big jump down in the error rate because there were lots of mistakes that were around how people were copying details from their marriage certificates into the system. But the result of all of that was that we whittled down that rate of error from 8 percent in the first version down to where it is now which is around about 0.3 to 0.4 percent, and that's been now very consistent for quite some time.

Richard Goodman: It's unquestionable that digital is here and is here to stay. But what would you say to the people who think they're over focusing on digital? And neglecting face to face interaction and the fabric of our working environment and the human species in which we come together, which feel inevitably different from a digital environment.

Richard Susskind: All of us have this opportunity. It's incumbent on our generation to make the most of this technology. It's not to neglect the human element. It's to wonder whether or not there might be different and better ways of complementing traditional service, how we can preserve the human elements that are important to us, but allow for a greater reach and a lot of the discussion about online courts with lawyers and judges, tend to be about the downsides. What I say to law students and law graduates is like no other previous generation, you have the possibility not simply of taking the baton from the lawyer or judge ahead of you but actually in helping to reshape the justice system. And that's an exciting possibility. And so, I want to discourage debate about online courts always being with proponents on the back foot defending and seeing this by a long margin holds - certainly in my 40 years almost of looking at how we can improve our courts - this by a long margin holds the greatest potential for radically increasing justice, as never before. This is a global challenge and we discussed this at the conference it's unthinkable that only 43 percent of our world live under the protection of the law. I said that in the event, more people now have access to the Internet than have access to justice. This is disengagement alienation on a remarkable scale, and I think most of us working in the field who enthuse, see that we have at our fingertips something exciting and very special.

Susan Acland-Hood: I think the opportunity is here and cannot be missed. I do think it's worth saying though that we often end up talking about digital because it is the bit that feels newest to people and most unfamiliar, and also because it represents the most obviously changing part of our system. But I mean the HMCTS reform program is not really a digital program, it's a program about changing the way we do things in a whole range of ways some of which are underpinned by technology. There's a large chunk of the program that's about buildings, and a huge chunk of it that's about people not just the people who use the courts around whom we want to build the system, but actually also the brilliant staff of HMCTS who are fantastically important in the way the courts work. Their commitment and dedication is extraordinary and that's something that I've seen every day since I started in my job, it's a huge privilege to work with the people who work in HMCTS. But our best chance of making sure we can get the investment that I'm absolutely happy to say we still need, in our physical court estate is to make sure that when we make the case for that investment, as I do on a regular basis, we can put our hand on our heart and say we are running this system in the most efficient way that we can and using all of the money we've got in the best possible way. On that basis, I can tell you exactly what I need in order to be able to run this system and that I will spend it really well.

Richard Susskind: I wouldn't want it to be thought though that this is only about efficiency and savings because you and I agree that this is about improving quality of service and above all, about improving reach too.

Susan Acland-Hood: Yes, it's about doing it better. But a part of doing it better, is making sure that however much money we've got we're pointing it at the things that are going to make the most difference.

Richard Goodman: We've spoken quite a lot around access to justice for people who want to engage with the system, who want to bring a claim, who want to have their day in court or their day digitally. What about the people who don't get a choice about whether they engage or not? So, the defendants, the people who've got claims against them, those who get mixed up in litigation, for example with public authorities or fighting at the center of that. How will online courts work better for those sorts of people?

Richard Susskind: I think the same principles apply, however once participating in the system you should want it to be affordable, you should want it to be progressed at an appropriate speed, you should want - particularly for people who are representing themselves - for the process to be intelligible, and we should want for confidence in the system that this doesn't seem an antiquated way of going about resolving one's disputes. So, whatever end of the system one is at it seems to me the same basic principles apply.

Susan Acland-Hood: I think to some extent, that for the people who have come into the system, not because they've chosen to but because something external has dragged them there, the principle that it needs to be intelligible, that it needs to be straightforward, that it shouldn't take more of your time than it proportionately needs to in order to get the issue resolved, are almost more deeply for the people who have chosen to be there. What we talk about in HMCTS a bit now as the human voice of justice, we can really think much harder about how the system feels to somebody who is pulled into it externally, not through their own choice and really work to make sure that we don't do things that are alienating, or confusing, or unnecessarily alarming to people who are put in that position.

Richard Goodman: So, to close then, give us your brief picture of what all this looks and feels like in ten years time.

Susan Acland-Hood: So I think the most important thing for me is that in ten years' time the barriers to people getting resolution for the wide range of problems that they may face which might lead them to come into contact with the justice system, feel really low. And I think the best way of expressing that is actually to take some of the user feedback we've had from some of these systems. I want everybody who touches our system to be saying things like - this is from somebody coming through with a new social security and child support submit your appeal service who said: "this is a totally new experience for me and I never thought I could do it. I am so pleased at how easy it was." I think ideally in 10 years' time people will be less convinced before they start that it's going to be impossible because they will have more experience from themselves and from others around them that tells them that the justice system is for them, it's not for some other group of people, that it's intelligible to them that it's navigable by them and that they can go into it in the reasonable expectation that if they've got a good case and something that needs to be done, it will be possible to get it sorted out. And for me that is the most critical thing, that's more critical than thinking about the means: how things are done. It's all about the feeling that somebody has that if they've got a burning injustice that they are suffering or a wrong that needs righting, it is not going to be an overwhelmingly difficult business to get that sorted out.

Richard Susskind: I feel very similarly. I should say that on the one hand, ten years is not a very long period. But I should also say that technology is evolving at such a rapid rate, that it's more likely in my view that our lives will be transformed in many ways, in the next decade, by technologies that haven't yet been invented. We're entering a decade of quite remarkable change. What this means in law, I'm clearly of the view that for everyday law, forgetting just now, courts and I do look at the world through, I accept digital spectacles, but forgetting courts for a second - I think within ten years, issues of everyday law will be resolved for most people online. In some way I feel, court facilities will feel far more integrated in the daily lives of people. That is to say, it wouldn't seem like some distant highly forbidding, different world that they can only inhabit with the help of other specialists. Nothing that I say about the future of laws and the future of course is about getting rid of lawyers. I want to stress that nonetheless, I think it will be the sign of an increasingly civilized society if people are able to understand and enforce their entitlements through a largely online facility and that they can do this in a way that doesn't scare the living daylights out of them, that doesn't cost them a great deal that seems painless, that's convenient. And by these very features, is wonderfully empowering.

Richard Goodman: Susan, Richard, everyone who has listened to us, thank you. You can get all the latest on the HMCTS reform program - fittingly enough - online including the details from the International Forum on GOV.UK/HMCTS. It is also where you can subscribe to e-alerts, the monthly ebulletin, and also read the reform update which gives the latest on all the reform projects across each and every jurisdiction. If you've got questions on anything you've heard today then you can also get in touch with us. The email address is changesomethingthatmatters@justice.gov.uk. We hope to hear from you, and thank you for listening.



