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UCL - THE FUTURE OF COURTS: EXPERT PANEL AND DISCUSSION

**UCL BENTHAM HOUSE
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Introduction

1. I am grateful to Hazel Genn for inviting me to explain what is being done in England and Wales to create what we call the Digital Justice System or DJS.
2. It is important first to understand what is not being done. The court-based online portals created by the HMCTS reform programme are not being expanded to cover the entire pre-action space. That was an idea promulgated back in 2016 by Lord Briggs' report and by Professor Richard Susskind. What is now in progress deals with the problem from a rather different standpoint.
3. Instead of expanding the court-based portals to cover the pre-court space, the DJS facilitates digital connections between: (i) the numerous existing non-court public and private dispute resolution services, and between (ii) those services and the digital courts and tribunals.
4. The objective is to provide the means to integrate the many non-court public and private dispute resolution services that currently exist in the pre-court ecosystem. I will explain what I mean, but the key to understanding what is going on is to grasp how the rules for the pre-court and the court-based processes will be provided by the newly formed Online Procedure Rules Committee, established by sections 19-33 of the Judicial Review and Courts Act 2022 (Chapter II).
5. The OPRC is really a watershed towards making all kinds of dispute resolution accessible to the citizens of England and Wales. The integration of online advice services, mediation and arbitration portals, ombuds services and the digital court process will, in time feel like a one-stop-shop for those that need it most.
6. The DJS will ultimately give tangible digital reality to the 'shadow of the law'; the way in which the operation of the courts provides tacit authority within the much larger non-court dispute resolution sector.

How will the OPRC operate?

7. The first critical component in harnessing digital development is to provide a set of open digital standards. This will enable existing digitisation to be coordinated. Those building new systems will be able to see where their advice portal or dispute resolution process fits alongside others. We thereby create a common data architecture, similar to that seen in "open banking", or even the internet itself. These digital standards do not stifle, restrict, or replace the current diversity of provision in our system. We do not lose the many private settlement and dispute resolution services celebrated here and abroad. But, as all these

services digitise, they can do so knowing how they can integrate their systems with those of others and ultimately with the court.

8. High-level rules for the online space may require adherence to these specified standards. Such rules will be unlikely to take the same form as those made by the existing rule committees. It is not necessary for them to prescribe specific process behaviours. Instead, the rules imposed by the OPRC will maintain shared standards, and quite probably values. They may, for example, dictate that solutions should not be finally proposed or imposed without hearing both sides of the argument.
9. As an aside, the combination of values and standards may also offer the opportunity to provide transparency and data that is simply unimaginable now. There could, for example, be a rule to require participants to report on the volume and types of resolutions or advice services they are providing.
10. The OPRC will also, in a less novel way, provide the rules and govern the data infrastructure for the online courts and tribunals. For example, the new property and possession platform being built to provide an online system for the Renters Reform Bill will have rules provided for it by the OPRC.
11. To achieve all this, the OPRC has recently established two sub-committees of the OPRC: Liaison and Rule-Making, and Data and Tech. They will report to the 6 members of the OPRC.
12. I want to emphasise why integration is important. It will ensure that users will not fall between the cracks of the system as they do now. Instead, they will be able to be directed and redirected around the digital ecosystem in order to find the resolution process most appropriate for their problem or problems. The whole process is aimed at fast solutions and resolutions.
13. Integration will also allow users to be directed to online legal advice, and hopefully legal aid portals, when they cannot navigate the system without assistance.
14. The OPRC then provides the governance and coherence to enable our justice system to digitise coherently. We are all digitising, the OPRC just seeks to ensure that we are coordinated in doing so.

Summary of the objectives of the DJS

15. The objectives of the DJS are threefold:
 - a. To increase access to justice by allowing disputes to be resolved quickly and at proportionate cost online and wherever possible without the need for legal proceedings.
 - b. To allow disputes across Civil, Family and Tribunals to be resolved more efficiently, at lower cost and more quickly.
 - c. To allow the dispute resolution process to achieve greater transparency and openness – in other words to demystify the existing complexities of dispute resolution.

The Collaborative Nature of the DJS and the OPRC

16. The DJS and the work of OPRC are collaborative exercises. None of us can go it alone. The moving parts include:
 - a. MoJ which has delivered Chapter II of the 2022 Act, and is now committed to delivering the architecture for a truly online digital justice system ranging from the

- delivery of legal services and advice, through pre-action portals and protocols, to online court-based dispute resolution for all CFT cases.
- b. HMCTS which is building the CFT and the Property platforms which underpin online court-based dispute resolution for civil family and tribunal claims which need an independent judicial process to resolve them.
 - c. The judges up and down the country, mainly at CJ and DJ level, who have been collaborating with HMCTS to make the court-based part of the DJS work, as it is rolled out as part of the HMCTS Reform programme.
 - d. The legal professions, the Law Society and the Bar Council and CILEX, who have also been committed to helping to create digital online delivery of legal services within the context of the developing digital ecosystem.
 - e. The third sector, such as Advice Now, CAB, ACAS and many other providers already providing excellent online advice and information mostly without charge.
 - f. The mediation sector including the Civil Mediation Council, the Family Mediation Council, CEDR, and many other providers of mediation and dispute resolution, early neutral evaluation, arbitration online services such as PinqDR, and other non-court-based dispute resolution mechanisms.
 - g. The ombuds sector providing non-court-based dispute resolution in so many sectors including FoS, Housing, Communications, legal services, energy, rail, and property and pensions.
 - h. The established rules committees, such as the FPRC, the CPRC and the Tribunals Rules Committees, which will be working alongside the OPRC.
17. All these organisations, and many more, are instrumental to making the DJS and the OPRC work.
18. In addition to the common good, each will have their own reasons for participating:
- a. An online arbitration process will be far more attractive and saleable if its digital platform can link clients to the court for enforcement.
 - b. Ombuds portals will both receive and redirect those in need of dispute resolution services, thus allowing them better to fulfil their statutory or industry objectives.
 - c. Charities aiming to provide advice increase their reach and make swifter referrals for their clients.
19. So how will the OPRC and the DJS improve access to justice?
20. First, there are many millions of disputes every year in England and Wales. The courts have not got the capacity with less than perhaps 1,000 FTE CFT judges to resolve all these disputes.
21. Many disputes are already dealt with by public and private providers of dispute resolution. But these currently operate in silos. Connecting them up will allow more of these millions of people and businesses to resolve their disputes, ideally before they need to go to court. What is missing from the existing ecosystem is the coherence, the integration and the connections.
22. The objective is not to build or grow the online court to cover the entire ecosystem. The idea is to make the connections between the incredibly effective dispute resolution portals that private enterprise can create and has already created, such as ACAS, the Official Injury Portal, the Ombuds portals, many mediation and arbitration portals, and new dispute resolution portals that are being created all the time (such as SME and IP Portals).
23. None of this will forget that some, if not many, of the millions of disputants I have mentioned are either digitally disadvantaged, or, if they have digital access, they do not

have the digital confidence to use the online space to resolve their legal disputes. At every stage of the journey through the pre-court DJS, it will be possible to obtain “early legal services and advice” online so as to diagnose the problem and make sure that the individual reaches the right dispute resolution portal or process.

24. I have not mentioned the important wild card in this whole process. That is, of course, artificial intelligence. It is inevitable that AI (or as we may now call it less intimidatingly “ET” or Emerging Technologies) will be engaged to ensure that it is easy and intuitive to navigate the DJS. Having a common data architecture may well mean we are better able to make best use of all these ETs as they arise.

Conclusions

25. Some of you may wonder why I am no longer talking about my, famous, or perhaps infamous, digital dispute resolution “funnel”. The reason is that research has shown that the dispute resolution pathways are more complicated than that. That research has not, however, falsified the principle that online dispute resolution, whether by ombuds, mediation or other portals, alongside online legal information and advice, can effectively and quickly resolve many, if not most, of the millions of disputes that arise every year in England and Wales.