Future-proofing justice

Making the civil and criminal courts world-leading by 2030

Richard Hyde

SMF Social Market Foundation

Future-proofing justice

Making the civil and criminal courts world-leading by 2030

Richard Hyde

Kindly supported by

Mishcon de Reya

FIRST PUBLISHED BY

The Social Market Foundation, June 2022
11 Tufton Street, London SW1P 3QB

THE SOCIAL MARKET FOUNDATION

The Foundation's main activity is to commission and publish original papers by independent academics and other experts on key topics in the economic and social fields, with a view to stimulating public discussion on the performance of markets and the social framework within which they operate. The Foundation is a registered charity (1000971) and a company limited by guarantee. It is independent of any political party or group and is funded predominantly through sponsorship of research and public policy debates. The views expressed in this publication are those of the authors, and these do not necessarily reflect the views of the Social Market Foundation.

CONTENTS

ACKNOWLEDGEMENTS

SMF would like to thank:

- Mishcon de Reya for the sponsorship of this project, which comprises three roundtables and a follow-up report summarising each roundtable. Specific thanks are owed to Miles Geffin and Matthew Palmer of Mishcon de Reya, both of whom have played central roles in helping steward the project forward.
- All 12 participants in the future of the rule of law roundtable and all those individuals and businesses who responded to the Opinium survey, the results of which also inform this paper.

ABOUT THE AUTHOR

Richard Hyde

Richard is a Senior Researcher at SMF. Before joining he was a Senior Policy Advisor at FSB (Federation of Small Businesses) with responsibility for a diverse range of small business policy issues including the business regulatory environment, data protection and cyber security, crime and civil justice. Prior to FSB, Richard was a Policy Officer at the Law Society of England and Wales. He has also held policy and research roles at Which? and the Small Business Research Centre (SBRC) at Kingston University.

Richard holds an LLM in Law from the University of London and an MA in Global Political Economy from the University of Hull.

ABOUT THIS REPORT

This evidence presented in this report comes predominantly from two sources:

- The first is a 90-minute, high-level roundtable with politicians (including representatives from the Government), legal academics and practitioners and economists to discuss how technology is impacting (and could further impact) the legal system in general and the civil and criminal courts in particular, convened in October 2021 by the SMF. The event was held under the Chatham House rule.
- The second is polling by Opinium of a sample of 1,000 individuals and 1,000 businesses of all sizes (ranging from sole traders to large companies) and operating across all the main sectors of the economy. The business sample included a mix of exporters, importers and solely domestically focused enterprises.

The two key sources are complemented by desk research, which was undertaken across December 2021 and January and February 2022.

While the views and arguments of participants in the roundtable are reported in this paper, the conclusions and recommendations made in this paper are those of the author alone.

EXECUTIVE SUMMARY

Key findings

- The civil courts of England and Wales have been inefficient and ineffective for a long time, especially for those who tend to have relatively low value "civil legal problems".
- The failure of the courts to serve the majority of the population sufficiently well contributes to a substantial "civil justice gap" across England and Wales.
- The criminal courts have been failing to deliver justice effectively for many years. This contributes to higher crime and undermines the essential principles that "justice should be done" and "seen to be done" for victims of crime and the damage caused to wider society by criminals while the wrongly accused are swiftly acquitted.
- The poor state of both the civil and criminal courts is reflected in international rankings where England and Wales are below a number of other common law countries.
- The poor performance of the courts poses a threat to the rule of law in the UK, because the efficacy of law as a basic building block of society (protecting individuals, families, communities, and businesses and ensuring there is fairness when someone is wronged) is undermined.
- To close the "civil justice gap", maximise the safety and security of people and property and help the economy generate more prosperity, the civil and criminal courts need a more ambitious transformation in their organisation and functioning than the current modernisation programme is delivering – which is likely to fall short of its original aims and leave the civil and criminal courts lagging behind other countries.
- A fresh long-term strategic approach needs to be developed by the Government and policymakers in collaboration with other key stakeholders. The goal should be to build world-leading civil and criminal court systems in England and Wales by 2030. The reforms need to:
    - Be future-facing.
    - Based upon a robust body of evidence.
    - Built upon proven approaches, through the application of key lessons learnt from successful examples of court system transformations and models of dispute resolution that have demonstrated themselves to be effective.
    - Have a central role for the right technologies, which can help deliver the transformations in the structures, management and processes of the two court systems that are needed.

The context

The rule of law is essential for a safe, free and prosperous society. However, the rule of law requires there to be effective civil and criminal legal institutions in upholding the law and administering justice without delay or prohibitive cost. Despite their centrality to society, in recent decades the civil and criminal courts (and the associated legal processes) of England and Wales, have demonstrated significant failings. Consequently, the rule of law has begun to erode, and its many benefits diminish.

The civil justice problem in England and Wales

- There is a significant "civil justice gap" in England and Wales, with almost a third of the adult population experiencing a "civil legal problem" each year and more than 4 in 10 dealing with their problem without help. A key part of that "civil justice gap" is the result of the deterrent effect of an inefficient and ineffective civil court system.
- Smaller businesses are suffering detriment of more than £40bn annually due to "civil legal problems", which many businesses cannot get resolved satisfactorily because of the barriers to accessing justice.
- For those who do have the capability and capacity to have their "civil legal problem" resolved in the civil courts, the process is lengthy, costly and disruptive. In the Small Claims Court (SCC) for example – where the process for low-value claims is comparatively simple – cases typically run on for more than 40 weeks. The time, psychological and financial costs, and other disruptions that a slow and costly court process involves further increase the total detriment associated with "civil legal problems".
- The relatively poor state of the civil justice system is also evident in:
    - The World Justice Project rankings, where England and Wales is in 20th place, behind a number of other common law jurisdictions.
    - The World Bank's analysis, which places the English and Welsh courts 34th for efficacy and efficiency in contract enforcement, despite the long-standing reputation of England and Wales for being a commerce-friendly jurisdiction.

The problems in the criminal courts

- The criminal justice process in England and Wales suffers from persistent inefficiencies. The World Justice Project ranked it 16th in the world, below numerous other common law countries.
- Lord Justice Leveson described the criminal courts as a "19th Century system" and the National Audit Office (NAO) – in 2016 – listed a litany of ongoing problems. Recent research by the Criminal Bar Association (CBA) similarly identified continuing deficiencies in the operation of the criminal process.

- In 2019 – illustrating the deep-seated inefficiency and inefficacy in the criminal courts – more than half of the trials in the Magistrates Courts were classed as "cracked" or "ineffective" and 50% of those in Crown Courts fell into these two categories, too.

The court modernisation programme

- The current court modernisation programme is due to be completed by the end of 2023. The view among roundtable participants (which forms a central part of the evidence base on which this report is based) was that the programme will – at best – bring about efficiencies in some of the processes of the civil and criminal courts. This could see an improvement in some of the worst aspects of the two systems. However, the initial hopes i.e. that it would prove to be a transformational programme which significantly increased the efficacy and efficiency of both the civil and criminal courts, look set to be disappointed.
- There has been criticism from the NAO and Public Accounts Committee (PAC) about the transparency of and accountability for the modernisation programme. Specifically, there has been a lack of clarity over the ultimate aims of the modernisation programme and ambiguity about role of rigorous independent external evaluation of both the programme's progress across its multiple strands, and the extent to which the reforms are benchmarked against a robust criteria for success.
- While the evidence base is currently incomplete, not least because of the problems around transparency and accountability identified by the NAO and PAC, there are grounds for believing that some parts of the modernisation plan such as the Criminal Justice System (CJS) Common Platform, which is currently "live" in more than 100 criminal courts across England and Wales, may end-up falling short of achieving the outcomes that were expected of it.
- The NAO noted in 2019, that some elements of the original plans have been dropped entirely and the ambitions associated with other aspects scaled back. Implementation timelines for what is still being taken forward have been extended, and the estimates of the cost savings from the programme reduced.

Court reform for 2030

- There was agreement among most of the experts taking part in the roundtable discussion about the importance to a society with a strong rule of law of maintaining a public system for administering justice. Further, attendees were clear that, in order to have two world-leading systems to administer justice, England and Wales would need a much more ambitious and transformational approach than the current one.
- The findings from the roundtable suggested that effective reform would require:
    - A long-term perspective, the right policymaking structures and governance in-place.
    - A clear focus on delivering outcomes such as much wider access to justice for all.
    - Robust evidence on which to base decisions about reform, including learning lessons from other jurisdictions that have implemented

successful court reform programmes and other effective models of delivering justice, currently in operation in the UK and abroad.

- An extensive re-design of the current processes by which the civil and criminal court systems operate.
- Providing access through channels that suit the users.
- The utilisation of the right technologies (e.g. Rules-based Expert Systems).

What businesses and citizens think about applying technology to the civil and criminal courts

Citizens

- Public opinion is broadly sceptical of the application of Artificial Intelligence (AI) to the civil and criminal courts:
  - 19% agreed that AI decision-making should be used in most criminal cases, while 52% explicitly opposed the idea.
  - 23% of the public supported AI being used in decision-making in Magistrates Court cases, with 43% against
  - 20% of people said they wanted to see AI technology introduced to manage the criminal process and 49% said that such measures should not be implemented.
  - 24% of the public supported the use of AI in decision-making in the civil courts, to some degree, while 43% were explicitly opposed to such developments.
  - 28% agreed that automating resolution of "simple" – "low-value" civil disputes was desirable, with 32% opposed outright to the introduction of such changes.
- There was more support for automation of administration across the court systems and more use of digital-remotely accessible procedures, with 29% and 27% (respectively) outright opposing such changes.

Businesses

- The majority of businesses are supportive of making civil courts digital by default with default with remote access to the court process, while retaining opportunities for in-person hearings/ trials (64%).
- Just under half of businesses (48%) would welcome the automation of the administration of the civil courts where possible.
- Businesses are also more amenable to the wider use of AI in the civil court system than the public.
- Businesses were supportive (51%) of the use of technology to resolve "simple" and "low-value" disputes.
- Substantial proportions of the business community expect the use of AI in the civil courts to deliver benefits, such as swifter progress of cases through the court process (48%) and cheaper access (53%) among other potential benefits.

- However, despite the expectations of possible benefits from the application of AI, a large majority of businesses still wanted to see people play a central role in the civil courts (69%), while confidence in a civil court where humans played a direct and highly involved role, supported by technology, was higher (77%) than alternative scenarios where people were less involved:
    - 71% said they would have confidence in civil courts that were primarily AI-led, with some direct human involvement e.g. through a final approval role over decisions made by the AI systems.
    - 62% agreed they would have confidence in courts that were largely AI-run with some oversight from people.

Challenges to successful reform

- The expert roundtable debate identified a range of problems that any successful transformation programme would need to overcome. These included:
    - Ensuring politicians and policymakers take a long-term strategic perspective on the two court systems i.e. prioritise and implement the kinds of policy measures needed for effective reform in a timely manner, whether that be putting in place the right governance mechanisms and leadership or devising and implementing relevant legislation.
    - Upholding long-standing principles that underpin concepts like due process, including "equality of arms", "transparency" and "impartiality".
    - Understanding the complexity of the interrelationships between different parts of and those involved in the court system, which make reform difficult to achieve. For example, in the civil courts there are the County Courts, the different "tracks" (such as the small claims, "fast" and "multi" tracks) and the High Court which contains various divisions within it. In addition, there are "key actors" such as the judiciary and the court staff, the wider legal profession (advising and representing court users), claimants and defendants (many of which are Litigants in Person (LiPs), bodies like the Civil Procedure Rule Committee, the Civil Justice Council, alternative dispute resolution providers, witnesses, enforcement agents (e.g. High Court Enforcement Officers, County Court Bailiffs), the system of civil legal aid provision, other entities with interests such as insurance companies who can be financially liable in road traffic accident claims or charities and interest groups promoting causes. There is similar complexity in the criminal courts system.
    - Ensuring those who are digitally excluded or vulnerable and therefore find it more difficult to take advantage of technological changes that might improve access to the courts, do not lose out.
    - Avoiding the "easier change" of digitising existing practices and processes i.e. not layering technology over the long-standing "cracks" in the two systems, but aim for the more difficult to ultimately more beneficial changes associated with process re-design.
    - Taking account of external drivers of change such as trends in markets, commercial practices and technological developments in the wider

national and international economy which, for example, can leave any reform plans "out-of-date" before they're implemented.

Putting the foundations for reform in place

- The roundtable discussion emphasised that successful reform will need to take challenges head on. In addition, the expert participants highlighted some of the necessary ingredients for successful transformation of the two court systems including - among others - taking a long-term approach, having the high-quality leadership and good governance in-place, identifying the right outcomes and putting re-design of court processes at the centre of reform.
- Tackling the challenges and implementing successful reform will require a robust evidence base to fully understand the problems, highlight what kinds of changes will work and which are unlikely to deliver positive results. However, legal policy research, was seen by several roundtable attendees as "decades behind" research practice in other fields and incapable of delivering such robust evidence. Specific concerns included:
    - Insufficient data collection about the impact of legal problems, the experiences of users of the courts, the organisation and management of the administration of justice and the nature of the outcomes that courts deliver.
    - The poor quality of much of the data that is currently collected, often means it falls short of what is needed by policymakers and others to thoroughly understand the legal problems individuals and businesses face; the organisational, leadership and management and process failings of the court; and the reasons behind them.
- There was an acknowledgment among those at the roundtable that a robust evidence base involves learning lessons from the failures and successes elsewhere. Several examples of such, from the UK and different jurisdictions, are available to policymakers, which can and should inform a future court reform strategy and the plans to implement it:
    - Singapore provides an example of successful holistic reform of a country's court systems. The Singapore experience has multiple lessons for future reform programmes in England and Wales.
    - The OECD has identified a set of characteristics common to the most successful civil justice systems among the most advanced economies.
    - British Columbia in Canada offers an example of a model of successful attempt civil dispute resolution reform with the establishment of their Civil Resolution Tribunal (CRT) system.
    - The UK has some examples of effective dispute resolution models too, such as the more successful ombudsman services, which civil justice reformers should also look to for lessons.
    - Detailed NAO analysis of the problems with efficiency in the criminal justice system, alongside accumulated academic evidence about the contours of successful criminal court reform around the world, provide useful indicators of the best way forward for future attempts at transforming the criminal courts system in England and Wales.

Recommendations: delivering world-leading civil and criminal courts by 2030

- Tackling the ongoing problems with the civil and criminal courts and making both world-leading by 2030 requires action on a number of fronts, ranging from the highest levels of government (to ensure that such issues are prioritised and an adequate strategy for reform is developed) through to the operational level (the management and operation of the courts, where change has to be implemented and sustained). Specific actions should include:
    - Developing a longer-term and more strategic approach – at the highest policymaking levels – towards the civil and criminal court systems in England and Wales.
    - Establishing a "Justice Research Council" (JRC) with a ring-fenced endowment from the Government, that will institutionalise the arms-length commissioning, funding and publication of high quality, in-depth policy-focused research into a wide range of civil and criminal justice issues – whether that be from academics, expert individuals, or other relevant research and policy bodies and institutions such as the Legal Education Foundation or the nascent National Institute for Legal Innovation (NILI).
    - Implementing, by the end of 2023, as much as possible of the current modernisation programme followed by a full (time-limited) and independent evaluation of its successes and failures, and the reasons behind the former and latter.
    - Utilising to maximum effect the new data that the modernisation programme is expected to generate about the users and functioning of the courts – in order to inform and improve policymaking and operational decision-making. Where necessary, appropriate training for policymakers, civil and criminal court leadership and staff should be funded so that the opportunities the data offers can be maximised.
    - Implementing the recommendations made by Lord Briggs for reforming the structure of the civil courts by the end of 2023 and ensuring that the changes reflect the lessons of successful models of dispute resolution such as British Columbia's CRT and the best ombudsman services in the UK.
    - Putting in place, by the end of 2023, Sir Brian Leveson's proposed efficiency reforms from his 2015 report, including taking forward changes based upon the "out of scope" observations made in Chapter Ten.
    - Developing a comprehensive new long-term court reform strategy (and a plan to deliver on it) to make the English and Welsh courts the best in the world by 2030. Central to the development of the strategy should be collaborating with a broad range of stakeholders in its development, as well as basing it (and the plan to deliver it) on rigorous evidential foundations including examples of success from other jurisdictions and the UK.

CHAPTER ONE – INTRODUCTION

The UK has a long history of adherence to the principle of the rule of law. This is sustained by a clear set of civil and criminal laws that apply equally to all in society. Civil courts are indispensable in ensuring that where civil wrongs are committed, there is a just remedy for the impacted party or parties. Criminal court are essential to making sure that, here the criminal law is breached, perpetrators are held to account through a transparent and independent process.

However, for several decades the civil and criminal courts in England and Wales have suffered from a number of deficiencies that undermine the rule of law. Evidence for the former is found in the existence of a large "civil justice gap" in England and Wales, reflecting the inability of swathes of the population to access appropriate civil remedies for their "civil legal problems" and further, for those that can the process is often lengthy, costly and disruptive. Confirmation of the latter can be seen in the inefficiencies in both the Magistrates and Crown Courts, which are reflected in the high proportion of "cracked" or "ineffective" cases and the time it takes for cases to progress up to and through the Crown Courts in particular.

In Autumn 2021, the SMF convened a high-level roundtable with politicians, legal academics and practitioners, researchers and entrepreneurs to discuss:

- The challenges that the courts face as they try to deliver on the key aims of upholding the law and offering the people of England and Wales the opportunity to access justice (when they might need to)
- How the delivery of justice by the courts can be improved, such that both the civil and criminal court systems in England and Wales are made world-leading by 2030.

The event was held under the Chatham House rule and the discussion ranged widely, across many different aspects of access to justice and court modernisation. However, a number of discernible themes emerged from the exchange:

- The preponderance of evidence currently available suggests that the present modernisation programme, while likely to improve efficiency in some parts of the two court systems, is falling short in some areas and is unlikely to prove transformative. Consequently, it will not see the English and Welsh civil and criminal justice systems propelled to the top of the world rankings.
- A significant rethink of how both systems are organised and operate is required, if those who currently struggle to access the civil justice system are going to be able to in the future and the problems of the criminal courts are to be significantly ameliorated.
- There is a substantial "evidence deficit" in many areas of justice policy, which needs closing if politicians, policymakers in the Ministry of Justice (MoJ), the judiciary and other legal professionals, key civil society interest groups and HM Courts and Tribunals Service (HMCTS) are to identify the best routes to improving the performance of the courts and widening access to justice.

- Lessons about how to transform the courts for the better can be learned from other countries and dispute resolution models, which have succeeded where the civil and criminal court systems of England and Wales have failed.

The roundtable was complemented by polling of 1,000 individuals and 1,000 businesses, exploring the extent to which individuals and firms are happy to see technology play a bigger role in the civil and criminal court systems and – in broad terms – what kinds of technology they are comfortable with seeing deployed.

A number of recommendations are set out in the final chapter of this report. These would see the current modernisation programme and the Briggs and Leveson measures implemented. Further, they provide the basis for a new court reform agenda, that can be taken up by any government and which would put the English and Welsh civil and criminal courts on the path to being world-leading by 2030.

CHAPTER TWO – THE PROBLEMS WITH THE CIVIL COURTS IN ENGLAND AND WALES

The rule of law i.e. a clear and effective body of civil and criminal law underpinned by functioning civil and criminal legal institutions that enforce the law equally and neutrally, is indispensable to a peaceable society and a successful economy. Also important to the functioning of the law, is the wider legal eco-system. This includes legal professionals and the legal services sector that they work in, who play a central role in maintaining and developing common legal systems like that of England and Wales.[1] In order for a society to maintain the rule of law over the long-term and therefore to continue to accrue the consequent benefits, the laws and legal institutions (including their structures, people, culture and processes) need to be carefully nurtured and re-examined and revived from time-to-time.

The "civil justice gap"

The body of English civil (private) law and the courts that enforce it, regulate the private interactions of people and organisations. As a result, together, they:[2]

> *"...support social order and economic activity; and...[serve a]...protective function... in relation to the rights of citizens and business vis-a-vis other citizens and businesses..."*.

The societal benefits derived from civil law, however, depend on individuals, families, businesses, and civil society organisations being able to rely on the civil law when problems arise, through access to the justice system that upholds it. However, there is ample evidence that this is far from the case in England and Wales.

Individuals and families

Research over many years has revealed the persistent presence of a "civil justice gap" in England and Wales. This "gap" represents large numbers of individuals and families that are unable or unwilling (despite the problem they have warranting it) to access appropriate legal advice and/or the civil courts to resolve their problem.

Box 1: Estimating the "civil justice gap" for individuals (and families)

The civil justice system in England and Wales has been failing to fulfil a number of its basic functions for many people, for a long time.

Estimates from research in the early 2010s suggested that around a third of the adult population of England and Wales experienced a "legal problem" across an 18-month period. Which suggests that around 14 million people suffered from at least one "legal problem" at the time. More recent work by YouGov for the Legal Services Board (LSB) suggested that between 2015 and 2019, 53% of adults had experienced a "contentious legal problem", with a third of those problems creating a financial loss, costing individuals £1,000 on average and upward of £2bn a year in aggregate.

It has been estimated that around half of the "legal problems" faced by individuals had a "tangible effect" on those experiencing them. However, in only 6% of cases was legal advice obtained and in 4% of cases it was sought from the "advice sector".[3] The same research found that the most popular strategy for resolving "legal problems" was to do so without help (43%), a further 14% obtained "informal advice" to help deal with a problem, and 11% did nothing, while just under 10% of problems that had a resolution were resolved through a "court/ tribunal or other third-party decision making system".

More recent survey data from Opinium suggested that a third of people had been "involved" with at least one "legal problem" between 2018 and 2021. A quarter of those relied upon "legal advice or an aspect of the law or the legal system" to resolve the most recent instance, while 30% "did not think the law was relevant" to it and a further 27% "did not know how or were unable to utilise legal advice, the law or the legal system" to resolve their problem. Of the 30% that used "legal advice or an aspect of the law or the legal system" to resolve their most recent "legal problem", just over half (55%) reported going to a court or a tribunal to sort it out.

Sources: Pleasence and Balmer (2014); Opinium (2021); YouGov (2019)

The "civil justice gap" is particularly salient for those on middle and low incomes i.e. where their "civil legal problems" are likely to be at the lower value end of the legal problems spectrum. The potential relative importance of a comparatively low value "civil legal problem" – especially in the context of a dispute that ends-up in the civil courts – was recognised by two of the contributors to the expert roundtable. One noted that:

> *"…to some extent…even low value claims for individuals can be the most important thing in their lives…".*

While another added that:

> *"Even in low value claims, if you're poorer, even a low value claim can be the equivalent of a huge claim in a multi-million-pound dispute".*

The contribution of the present civil courts system to the "civil justice gap" is the deterrent effect it has on the individuals and families who otherwise might be able to get a "civil legal problem" resolved in the courts. This fundamental problem was recognised at the roundtable, where one expert attendee stated that:

> *"...even in this country many people's claims just never get near the courts".*

The inefficiency and ineffectiveness of the latter means that the court route comes with a host of risks for those who might otherwise obtain a satisfactory solution to a "civil legal problem" through the system.

The problems created by the court are not confined to a deterrent effect

The obstacles to justice posed by the state of the current civil court system are not just captured in the deterrent effect. The court process itself generates additional detriment, because of onerousness associated with using it. Those that do enter into it suffer additional costs as a result of the time, financial costs and disruption that it can cause, which result from its inefficiency and ineffectiveness.

The challenges are particularly acute for those who end-up having to enter the court process without representation i.e. Litigants in Person (LiP). The latter are a significant and growing proportion of those using the civil courts.[4] Research examining the kinds of costs borne by LiPs found that the impact of having to use the courts and being unable to afford legal representation can come with significant personal as well as financial and time costs. Specifically, the analysis found that LiPs not only suffer stress and anxiety as a result of being LiPs, but some develop significant psychological and physical health conditions trying to use the justice system.[5] [6] Ultimately, many of those who have been LiPs lose faith in the justice system that has caused them such difficulty.[7]

Small and medium-sized businesses

The "civil justice gap" and the risk associated with using the civil court system are not just a challenge facing individuals and families. They also afflict businesses, especially small and medium-sized firms (SMEs). SMEs make up more than 99% of the business population and account for three-fifths of private sector employment.[8] However, like low- and middle-income households, among the business community they are the least able to afford "to go to law" to resolve "civil legal problems".

Box 2 sets out some estimates of the cost of the "civil justice gap" to the SME community of England and Wales.

Box 2: impact of the "civil justice gap" on SMEs and the economy

Analysis for the Legal Services Board suggests more than one in four (29%) small businesses in England and Wales experience at least one legal problem every year.[9] For more than a third of businesses that experience a legal problem (35%), the "main legal problem" persists for over a year.[10]

Legal problems can generate a number of negative consequences for businesses who experience them. These include financial costs, loss of market share, reputational (brand) damage, disruption to and distraction from core business activities and detrimental impacts on the health of the owner-manager(s)/ senior leaders.[11]

Professor Pascoe Pleasance and Dr Nigel Balmer estimated that, in 2013, the total cost to small businesses of all the legal problems they experienced in the preceding 12 months was around £100bn.[12] More recent analysis for the LSB suggested that SMEs experience £40bn of detriment each year, as a result of legal problems.[13] The latter equates – on average – to more than £6,500 per SME operating in England and Wales.

While the court process is only one part of the total cost of legal problems experienced by businesses – of all sizes, across all sectors – the disruption caused by an inefficient civil justice system is not trivial to those who end-up in it due to a legal problem. Consequently, a poorly performing civil justice system can be particularly disruptive to SMEs,[14] as Sir Geoffrey Vos, Master of the Rolls noted:[15]

> *"Small disputes are as important as big ones in economic terms. Big businesses can generally survive if the resolution of their litigation is delayed by the court process. Small businesses often cannot…[ensuring]…individuals and SMEs are paid what they are owed and can continue to trade…will reduce unnecessary personal and corporate insolvencies and enhance access to justice".*

Sir Geoffrey Vos further observed how the problems of inefficient and ineffective civil courts are not confined to individual businesses but come with broader negative aggregate costs:[16]

> *"Delays in payment, and delays in the recovery of monies owed through the civil justice system can create a massive drag on the economy… Dysfunctional…justice systems deter investment…[and has]…a negative economic effect".*

Sources: Pleasence and Balmer (2013); LSB (2015); Vos, G (2020)

The nature of the problems in the civil courts system

The failings of the English and Welsh civil courts system have been evident for a long time and were set out succinctly by one participant at the roundtable:

> *"The problem is fairly straight-forward if we're talking about the civil system…going to court takes too long, costs too much, is unintelligible unless you're a lawyer and especially for a younger generation, what we provide in our courts, is increasingly out of step with digital society".*

Lord Briggs, in his 2016 report on structural reforms to the civil courts system, echoed this list of problems as well as highlighting further ones:[17]

> *"The first is the lack of adequate access to justice for ordinary individuals and small businesses due to the combination of the excessive costs and cost risk of civil litigation about moderate sums, and the lawyer-ish culture and procedure of the civil courts, which makes litigation without lawyers impracticable. The second consists of the inefficiencies arising from the continuing tyranny of paper, coupled with the use of obsolete and inadequate IT facilities in most of the civil courts. The third consists of the unacceptable delays in the Court of Appeal, caused by its excessive workload. The fourth lies in the serious under-investment in provision for civil justice outside London. The fifth consists of the widespread weaknesses in the processes for the enforcement of judgments and orders".*

Box 3: periodic attempts at improving the civil justice system

Previous attempts at reform of the civil justice system have included the Woolf reforms,[18] the Jackson changes to civil litigation funding[i] [19] [20]– and more recently the proposals from Lord Briggs for structural reform of the civil courts[21] followed by further suggestions from Lord Justice Jackson to regulate more stringently some of the cost risks associated cost-recovery by litigants.[22]

In 2015, the then coalition government outlined plans for a significant investment programme in the (civil and criminal) court system in England and Wales.[23] Around £1bn of spending was promised, for modernising the civil and criminal courts and tribunals.[24] The objectives that the expenditure intended to achieve were set out in a 2016 "vision" document, jointly authored by the then Lord Chancellor, Lord Chief Justice and Senior President of Tribunals.[25]

Sources: Briggs, M (2016); Jackson, R (2010) and (2017): Truss, E et al (2016) and Woolf, H (1996)

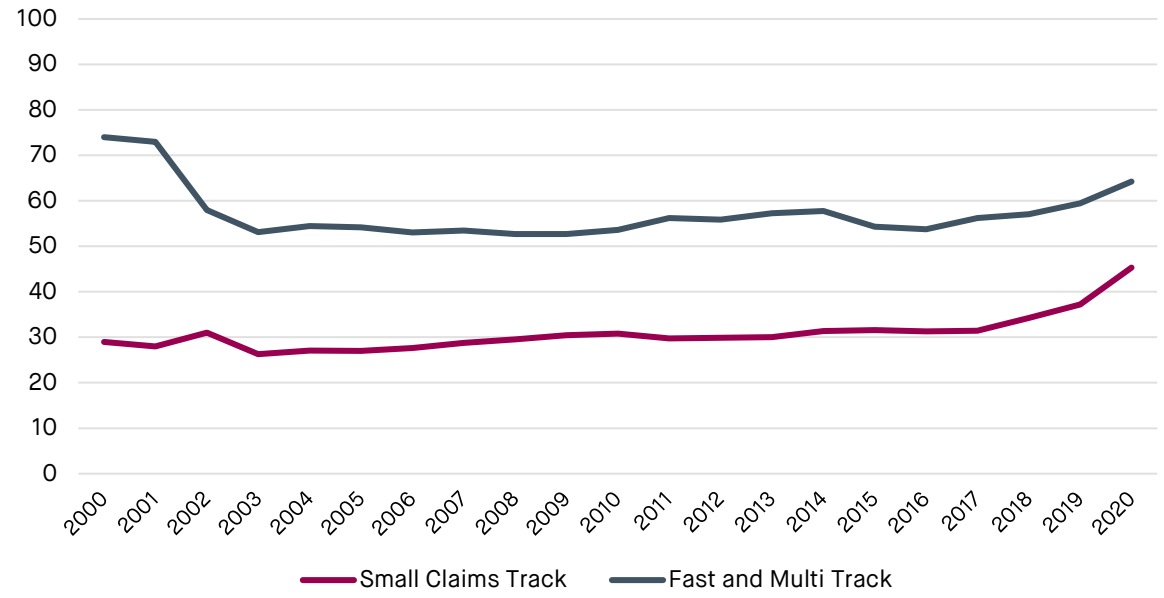
While there have been piecemeal improvements in the English and Welsh civil justice system over many years (see Box 3 for a brief overview of some of the flagship efforts from recent decades) some problems have proven intractable and consequently impervious to significant improvement, at least so far.

[i] Many of which were introduced in the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012.

The intractable "speed problem"

One of the most difficult problems to deal with has been the slowness of the court process. How quickly justice can be administered is closely linked to other problems such as the financial cost incurred by those involved, as well as the extent of the personal and business disruption that many of those involved with using the civil courts experience. Figure 1 illustrates this. It shows the average time (in weeks) it takes for a dispute (e.g., over debts) to reach the trial stage, in the Small, Fast and Multi-Tracks of the civil courts.

Figure 1: Average number of weeks between issuing a claim and the trial in the for Small, Fast and Multi-Track Claims, 2000 - 2020



Source: Ministry of Justice

The "speed problem" is the most visible manifestation of a range of organisational and procedural problems that the various attempts at reform have – so far – failed to solve. These include inefficiencies in administrative processes; the complexity of procedure; an absence of appropriate incentives for higher productivity; inadequate governance, management, and human capital; deficient deployment of technology, and a long running mismatch between resourcing and workload.

Inefficiency is detrimental at the high-value end too

Although the problems of the civil court system are most apparent for those with lower value and typically less complex civil legal problems, the dangers of inefficiency and ineffectiveness in the civil courts are not confined to them.

The UK is a world leader in the competition between jurisdictions to attract legal business such as the litigation and arbitration[26] of international businesses and high-net worth individuals (HNWI) as well as non-contentious activities such as high-value contract work that facilitates international trade and finance.[27] A central reason why the UK is successful in this competition is because of its long-standing adherence to the rule of law underpinned by:

- Comparatively well-functioning and commercially attuned higher civil courts and body of private law.
- An independent and competent judiciary that delivers rigorous judgments
- Respected arbitration services.
- A wider legal eco-system including a sizeable legal profession with a strong international commerce focus supported by a well-regarded legal education system.

As a contributor to the roundtable discussion argued, at the higher value end of the civil legal problem spectrum, technological change has been embraced more enthusiastically:

> *"Technology is…transforming the way disputes are resolved. Where it seems most successful is with sophisticated clients with sophisticated advice, operating mostly in a commercial space…".*

There have been structural, process and facilities innovations in order to improve the litigation and dispute resolution offered to those with high value (and often more complex) cases:

- One example of *structural* innovation is the recent creation of the Business and Property Court[28] and the development over time of different "specialist lists" where experienced judges in different commercial issues hear relevant cases.
- An example of *process* innovation has been the adoption of court proceedings to new technology, whether that be the e-filing of documents and electronic case management across the Business and Property Court[29] or case law which has adapted the rules of governing disclosure and admissibility to new technologies.[ii]
- An example of *facilities* innovation was the opening of the Rolls Building in London, with its modern capabilities for hearing commercial litigation, especially international disputes.[30] [31]

However, even where there has been some adaptation to modern technology by the courts, the law and the legal professions, developments are rapid and no system can "rest on its laurels" - especially where multi-national firms and HNWIs are concerned, as they can select different jurisdictions if one fails to provide the high-quality service they expect, whether that be for litigation or arbitration. One of the participants at the roundtable, set out the case succinctly, suggesting that if the UK is to:

> *"…continue to be a global leader in dispute resolution and…English law [is] to be the dominant platform underlying international trade…it won't be enough in the future to have the best judges, best lawyers, the best reputation, we're going to have to innovate, to use the technology…in a variety of ways that'll keep us ahead of the pack".*

[ii] Examples of the English and Welsh courts adapting to new technologies include cases such as Pyrrho Investments v MWB Property. [2016] EWHC 256 (Ch), in which the court approved the use of (predictive coding) machine learning for use in the discovery process.

International civil justice comparisons

International comparisons of civil justice systems have England and Wales lagging behind many other common law jurisdictions. Table 1 shows how the English and Welsh civil justice system just makes it into the top 20 in the world, behind a number of comparable common law countries.

Table 1: Comparative civil justice systems rankings, 2021

Country	Ranking
Top five	
Denmark	1
Norway	2
Germany	3
Netherlands	4
Sweden	5
Selection of common law jurisdictions	
Singapore	8
New Zealand	10
Hong Kong	16
Australia	17
UK (England and Wales)	20

Source: World Justice Project

For businesses, the role of the civil courts in underpinning and enforcing contracts is essential.[32] However, according to the World Bank, the English and Welsh courts are ranked 34th in the world for contract enforcement efficacy.[33] This ranking demonstrates how, on a key metric of civil court efficiency and efficacy the civil court system of England and Wales is failing to support the business community and consequently the economy, as much as it could.

The comparatively lowly overall position of English and Welsh civil justice in international rankings is commensurate with the kinds of long-standing failings that this chapter has outlined and reiterated. These failings will need to be tackled more rigorously than they have been to date, if the English and Welsh civil justice system has to reach the top of such international league tables.

Latent demand for justice

The scale of "civil justice gaps" and the detriment resulting from the inefficiency and ineffectiveness of the civil court system, indicate that there are considerable societal gains to be made from reducing both. While such gains are hard to quantify accurately (set out in Boxes 1 and 2), the attempts at estimates that have been made suggest that closing the "civil justice gap" could save individuals and families up to £2bn a year in financial losses and the SME community between £40bn-£100bn. Another estimate was provided by one of the participants at the roundtable, they argued that:

> *"There is an £11.6bn opportunity in unmet need. Th[ere are]…people who want access to justice and could pay for it but are not getting it…and that's [both] consumer and SME".*

What is clear from all the estimates of the monetary value of the "civil justice gap" is that it is significant. Further, the detriment is not only monetary but social and psychological, too. Which is much more difficult to quantify. Overall, there are considerable social and economic benefits to be garnered from greater access to justice from those who are currently unable or unwilling to use the civil law and civil justice system to solve their "civil legal problems" and from making it quicker, less costly and disruptive to resolve such problems through the civil courts system, where appropriate.

CHAPTER THREE – DEFICIENCIES WITH THE CRIMINAL COURTS IN ENGLAND AND WALES

The costs of ineffective and inefficient criminal courts

An ineffective and inefficient system of criminal courts comes with a number of negative societal consequences, including low-levels of public confidence in their functioning, higher crime, and damage to the rule of law.[34] It is particularly telling that in England and Wales, trust is lowest among those who have had reasons to come into contact with the system, as noted by the NAO. They found that those who had "experienced the system" in some way, were found to be more likely to consider the system "ineffective" than those who have not.[35] The reasons for this – according to the NAO – included the additional stress and anxiety for victims and witnesses caused by the problems in the criminal courts system, in addition to the inherent disruption that being subject to a crime and being involved with the criminal justice system involves.[36]

The centrality of the criminal courts to a safe society

Perhaps the biggest societal problem of all, that results from an ineffective and inefficient criminal courts system, is higher crime levels than might otherwise have been and concomitantly greater amounts of individual, social and economic costs.

Box 4: the cost of crime in England and Wales

Estimates by the Home Office suggest that crime costs England and Wales £59bn a year.[37] Other estimates suggest the cost is higher. For example, one analysis indicated that financial crime alone cost the UK £187bn a year,[38] another that fraud generated £137bn of harm in 2020,[39] while a third suggested that organised crime cost the country £37bn per annum.[40]

While the exact costs of crime to the country are debateable, the magnitude of the detriment to society is substantial. Further, it is not limited to financial impacts but includes a range of intangible effects on individuals and their wellbeing and communities and their levels of social capital, which are less easily quantified.

Sources: Gee, J and Button, M (2021); Heeks, M et al (2018) and National Crime Agency (2017)

The high-level of crime in England and Wales (more than 10 million committed in 2020-21[41]) and the costs associated with it are in-part the result of failings in policing (e.g. the proportion of crimes ending in a summons or charge fell to 7% of reported crimes in 2020-21).[42] Of course, crime is a complex phenomenon and psychological, social and economic factors all play a role too, in determining its prevalence. Nevertheless, the criminal courts cannot escape their share of the responsibility for crime rates. The speed of prosecution and punishment of the guilty and acquittal of the innocent are also key elements of the fight against crime[43] and in-turn, reducing its impact on society.

Specifically, the efficiency and efficacy of the criminal courts play an important role in:

- Ensuring justice is done for victims and society.
- Protecting the innocent from false charges.
- Maximising the deterrent and incapacitation effects of criminal sanctions.

The Ministry of Justice's own Outcome Delivery Plan for 2021-22 reflects these three roles played by the criminal court process, as it describes the three tasks of the broader criminal justice system, as being to: [44]

> *"Protect the public from serious offenders and improve the safety and security of our prisons…Reduce reoffending…Deliver swift access to justice".*

The nature of the problems in the criminal justice process

The deficiencies of the criminal court process in England and Wales are – like those of the civil courts - long-standing. As Sir Brian Leveson has argued, the fundamental problem with the criminal courts in England and Wales is that:[45]

> *"Our conduct of criminal trials was designed in the 19th Century with many changes and reforms bolted on, especially over the last 30 years".*

The Justice Select Committee of the House of Commons, concurred with Sir Brian Leveson's judgment, highlighting that:[46]

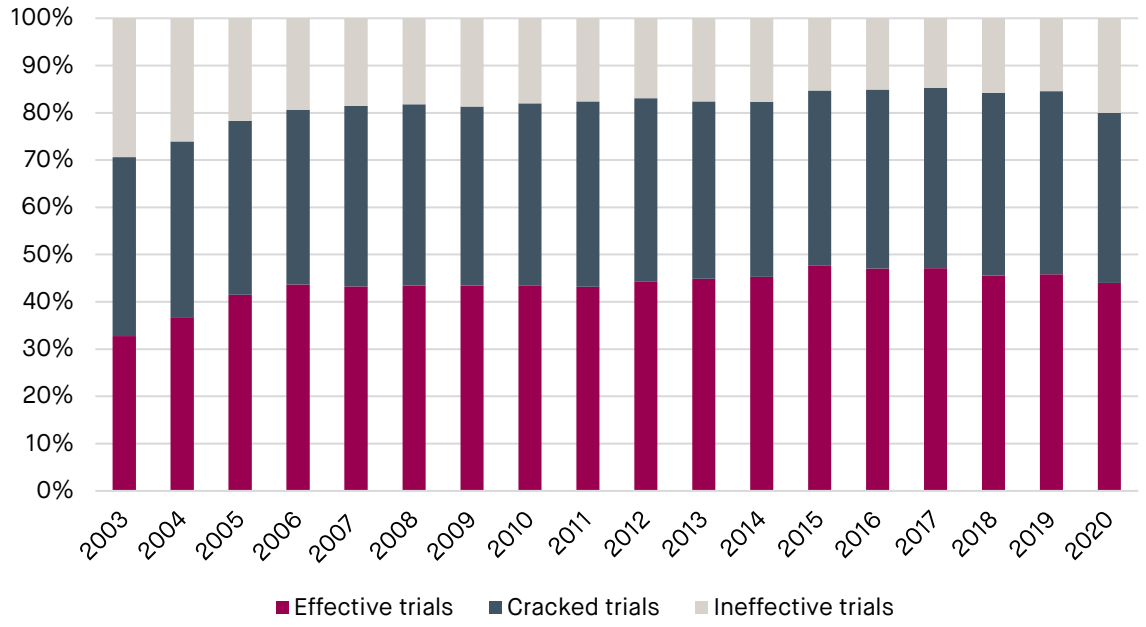
> *"The criminal justice system is bedevilled by long standing poor performance including delays and inefficiencies, and costs are…shunted from one part of the system to another"*

The most recent audit of the efficiency of the criminal justice system in England and Wales, conducted by the NAO in 2016, found a system failing on a number of levels. It said:[47]

> *"Delays are getting worse…the complexity of cases has increased…waiting time for a Crown Court hearing has increased by 35%…since September 2013…Two-thirds of cases still do not progress as planned, creating unnecessary costs. Trials that collapse or are delayed create costs for all the participants, including the CPS, witnesses and HMCTS. In 2014-15, the CPS spent £21.5 million on preparing cases that were not heard in court…".*

The various data on different aspects of the efficiency and effectiveness of the criminal court process presented in Figures 2 and 3 and Table 2 bear out the NAO's 2016 analysis and show that – despite some minor variation over time – significant failures. For example, Figure 2 shows the proportion of trials in the Magistrates Courts that are "cracked" and "ineffective".[48] Consistently, between 2003 and 2020, less than half of the trials in the Magistrates part of the system have been "effective trials".

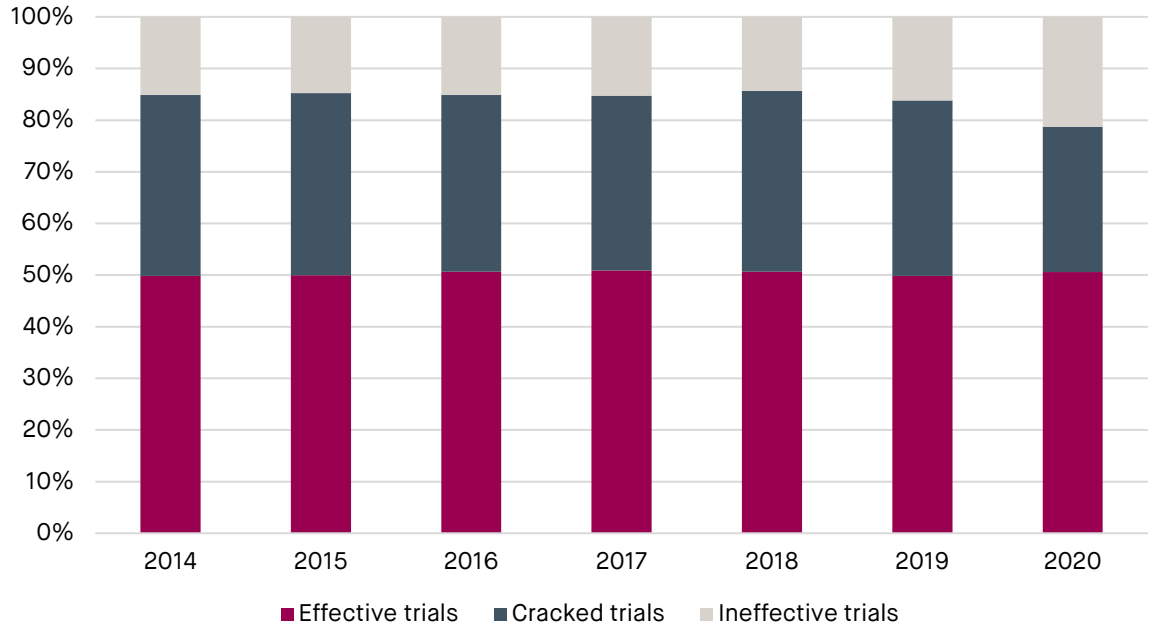
Figure 2: effectiveness of Magistrates Courts trials, 2003 - 2020



Source: Ministry of Justice

Figure 3 highlights the proportion of Crown Court trials that are "cracked" or "ineffective" each year, between 2014 and 2020.[49] It shows that only around half of Crown Court trials cases are classed as "effective" each year.

Figure 3: effectiveness of Crown Court trials, 2014 - 2020



Source: Ministry of Justice

Other data, such as that set out in Table 2, reinforces the picture of inefficiency in the system. It demonstrates how long it typically takes for a Crown Court case to get from the point of an accused being charged to the case being completed.

Table 2: average number of days from charge to completion in the Crown Court

Year	Average number of days
2015	200
2017	189
2019	186

Source: Ministry of Justice

Reinforcing the picture painted by the Ministry of Justice data is evidence from other sources. For example, parts of the legal profession have provided extensive critiques of the state of the functioning of the criminal courts in England and Wales. Box 5 sums up that offered by the CBA.

Box 5: Criminal Bar Association's (CBA) critique of the criminal court system

In a survey of its members, the CBA identified a list of persistent problems with the functioning of the criminal courts, which contribute a significant amount to their ineffectiveness and inefficiency. These problems included: [50]

- Insufficient court sitting time.
- Poor case listing practices.
- Inadequate standards for the use of remote technologies for hearings, etc.
- Low quality Crown Court estate and unsatisfactory facilities in courts that are incapable of dealing with "*...modern, multi-handed and complex trials*".
- An under-resourced Crown Prosecution Service (CPS).
- An under-funding of representatives/ advocates.
- Low morale among staff working in the criminal justice system.

Source: Criminal Bar Association (2021).

The international picture

The long-standing problems with the criminal justice system in general, and the criminal courts in particular, in England and Wales are also evident in international comparative data, such as that produced by the World Justice Project. Table 3 shows that the England and Wales ranks 16th, behind many of the other major common law jurisdictions in the world.[51]

Table 3: comparative criminal justice systems rankings, 2021

Country	Ranking
Top five	
Norway	1
Finland	2
Denmark	3
Austria	4
Sweden	5
Selection of common law jurisdictions	
Singapore	7
New Zealand	10
Canada	11
Ireland	13
Australia	14
UK (England and Wales)	16

Source: World Justice Project

Attempts at improvement prior to the current modernisation programme

It is unsurprising, given the persistent nature of many of the problems in the criminal courts, that there have been numerous attempts at reforming the system over recent decades. One of the participants at the roundtable noted that:

> *"I've seen four different attempts over the last twenty-five years to fundamentally re-engineer the criminal justice system. And they've all ended up as efficiency projects with minor, incremental gains not…addressing the systemic problems".*

Prior to the current court modernisation programme, the two most recent and prominent efforts to improve the efficacy and efficiency of the criminal courts were those by Sir Robin Auld (published in 2001) and Sir Brian Leveson (published in in 2015).

Box 6: attempts at improving the criminal courts

In 2001, Sir Robin Auld published his review of the functioning of the criminal courts system in England and Wales.[52] The report set out an extensive indictment of the court system at the time:[53]

> *"...the criminal justice system...[has]...complexities in every corner of it. Their consequence is much damage to justice, efficiency and effectiveness of the system and to the public's confidence in it...The 'system', a legacy of centuries of piecemeal change, is a mix of autonomous national and local bodies attempting to collaborate and consult with each other through a network of committees at different levels. There is no over-all direction; there are no over-all lines of management or accountability; there is, instead, co-ordination of variable quality, and cross-reporting..."*.

Sir Robin proposed a range of reforms to tackle the many problems he identified, which included among others: creating a unified criminal court system; changes to court management including the establishment of a Criminal Justice Board to coordinate efforts across the whole system;[54] reforms to the rules of evidence, trial procedure and juries; as well as codification of the criminal law.[55]

In 2015, Sir Brian Leveson published a review of the efficiency of criminal proceedings in England and Wales.[56] Sir Brian was asked to identify improvements that could be made, while taking account of existing plans for technological transformation of the courts (such as the CJS Common Platform) and previous proposals such as those from the Auld review, which had not been implemented. Further, Sir Brian's efforts were constrained by the requirement that his proposals should not need legislation in order to be implemented.

The Leveson report identified ways of increasing efficiency through improvements in the deployment of IT across the criminal justice system (e.g. greater digitisation), changes to the charging, case allocation and pre-trial and trial processes in the Magistrates and Crown Courts as well more clarity over management, among other proposals.

Sources: Auld, L J. (2001) and Leveson, L J. (2015).

CHAPTER FOUR –THE CURRENT MODERNISATION PROGRAMME

The ambitions behind the present court modernisation effort

The roundtable discussion about the future of the legal system – which forms a key part of the evidence base of this report – took place in the context of the ongoing £1bn court modernisation programme. In 2016, the then Lord Chief Justice, President of the Tribunals Service and the Lord Chancellor set out the ambitions for the programme:[57]

> *"...justice...delivered...[will be]...proportionate. In day to day, straightforward cases, the procedure will be made simpler and easy to use...we must ensure that everyday language is used. The structure of our courts and tribunals...will be streamlined making the process easier to navigate for everyone...We need to embrace new methods and approaches...the work of the courts and tribunals will use online, virtual and traditional hearings as best meets the circumstances of the case...our aim [is] for all cases to be started online, whether or not they are scheduled for the traditional system or for online resolution. The second will be the completion of some cases entirely online...The reform programme assumes a wholesale shift to accessing justice digitally...improving our technology and putting more services and processes online will make justice more accessible and simpler than ever before".*

Among some in the senior judiciary the ambition of a transformative programme – especially of the civil courts – persists. One attendee of the roundtable reflected this by noting the remarks of the current Master of the Rolls, Sir Geoffrey Vos:

> *"...Sir Geoffrey Vos, Master of the Rolls...really does seem to be on a mission with this...he made a speech...drawing all his plans together for online courts, bringing all the public and private dispute resolution platforms and the ombudsmen, and all the government portals together into a single online platform, that certainly does give us a direction forward".*

Reinforcing the point made at the roundtable about the ambitions of Sir Geoffrey Vos, was the announcement in November 2021 of the establishment of Civil Justice Council's (CJC) legal futures group.[58] [59] The group is tasked with identifying a "road-map" for the civil justice system, through the 2020s.

Disappointment at current reform efforts

However, the view of most of those at the roundtable was that the current modernisation programme is turning out to be something of a disappointment. The participants believed that the way the programme had developed meant that it had become a missed opportunity to make the civil and criminal courts word class by 2030. One participant spoke for many of the others at the roundtable when they argued that:

> *"...the reform programme...started off admirably, with fantastic...aspirations...the reality is, the finances available, the timescale and so forth...when we emerge from the other end of it...[there won't be]...fundamental transformation".*

The same attendee added, as part of their critique, that:

> *"…we shouldn't fool ourselves that dropping hearings into Zoom is a shift in paradigm. I don't think working from the kitchen table is a new model. You've still got the same people involved, the same delays, the same complex process…".*

A brief sketch of progress so far

At best a partial success

The preponderance of the available evidence (from a multiplicity of sources) suggests that the present court modernisation programme can be described, at best, as a partial success, with some objectives achieved. However, other objectives are unlikely to be reached and several have been jettisoned altogether, according to the NAO.[60] For example, while the MoJ suggested that by early 2019, the programme had already generated £158mn in benefits,[61] and as the NAO noted, the original ambitions for cost savings are unlikely to be achieved.

The NAO summarised the progress of the modernisation programme, in its 2019 progress audit, in the following way:[62]

> *"…in common with many government transformation programmes, it is behind where it expected to be and has had to scale back its ambitions".*

Adding:[63]

> *"HMCTS has made less progress than…expected…Our previous report noted that HMCTS was behind schedule and this is still the case….[consequently]…HMCTS…again had to reduce the scope of the reform portfolio and extend the timetable, which…cut expected savings…HMCTS…reduced the scope of the wider reform portfolio by cancelling two projects".*

Other modernisation efforts, such as the introduction of an online court for low-value civil claims, have also fallen behind the original ambitions. The legislation establishing the procedure committee for the online court was only recently passed by parliament, despite the original proposal being made by Lord Briggs in 2016.[64]

Evaluating civil court reform

Questions over transparency, data and measurable outcomes

There have been concerns raised by the NAO and the PAC about the absence of a set of ultimate outcomes for the modernisation programme[iii] by which to measure its

[iii] Dr Natalie Byrom and others have suggested that measuring success by whether the programme increases access to justice is key to defining its success of not. In a report for The Legal education Foundation Byrom et al identified four component parts to "access to justice" as understood in the English legal tradition. These are: access to the formal legal system; access to an effective hearing; access to a decision in accordance with substantive law; access to remedy. Source: Digital-Justice-Exec-Summary-FINAL.pdf (thelegaleducationfoundation.org)

success.[65] [66] Fears have been raised too, about inadequate regular and robust independent evaluation of the progress of the reforms.[67] [68]

In response to this challenge for example, in 2019 (in addition to occasional NAO and PAC audits) the MoJ established an external expert panel, to help evaluate the progress of the modernisation programme[69] and has published specific responses to some of the questions raised by the PAC in 2018.[70] [71] [72]

The topic of data has been a specific area of concern. Analysis by experts such as Dr Natalie Byrom suggested there was a lack of clarity over the MoJ's and HMCTS' plans for effectively collecting and utilising the data that the modernisation programme will generate (about court users, activities, judgments and outcomes).[73]

Concerns over access for the vulnerable and excluded

Fears have also been raised about how the digitally excluded and other vulnerable people may see their access to justice reduced due to the shift to primarily digitally accessed processes. Questions have been raised as to how such potential impacts will be measured and evaluated, as part of any evaluation of the success or failure of the modernisation programme.[74] [75] Beyond indications from HMCTS that such evaluations will be undertaken,[76] such questions remain live ones.

Access for the vulnerable and excluded is particularly salient in light of recent experience of more extensive use of digital technologies, for example for remote hearings in the civil courts – a process which COVID-19 accelerated. In a report by the Justice Select Committee politicians identified a number of challenges to which there was – as of yet – few satisfactory answers. These included access to appropriate technology, along with inadequate IT skills, with LiPs particularly disadvantaged.[77] In addition, it was observed that prescriptive rules for using online facilities (e.g. requirements for the submission of e-bundles) were often beyond the capability of LiPs and put them at a disadvantage.[78]

Indicators of some improvement

Despite the anxieties of some around transparency, data, and defining the success (or otherwise) of the broader modernisation programme, the MoJ has published data on the use and performance of the Online Civil Money Claims (OCMC).[iv] The metrics, for the year 2021, are set out in Table 5.

[iv] Money claims are the most common type of issues brought to the civil courts, with over a million in 2020. Source: Courts data - Justice data

Table 5: Indicators of the performance of the OCMC system, 2021

Metric	Outcomes
Usage	In 2021, there were 6,526 claims per month on average through the OCMC system. That equates to over 78,000 in the year.
Speed	The average amount of time taken to transfer a claim to a local court was 52 days. The average amount of time it took to settle a case was 24 days. 32% of disputes were successfully mediated.
Satisfaction	Among users of the online system, there is 96% satisfaction level.

Source: HM Courts and Tribunals Service (2022)

The "satisfaction" level among those who used the system in 2021 suggests that the OCMC system is proving a success with most users, with relatively high proportion of cases of successful mediation of a dispute helping speed up the average time it takes to reach an outcome.[79] However, there is a notable absence of data on the total time it took a case started through the OCMC – that ends up being adjudicated by a judge e.g. in the Small Claims track of the County Court – to reach an outcome, including the time it takes to get any judgment enforced.

Some way to go but the signs of success so far are mixed

Overall, it is too early to tell how successful the modernisation programme will be for the civil courts, especially in widening access to civil justice significantly and reducing substantially the time and cost of it and the disruption it causes. However, there is sufficient evidence from the expert testimony at the roundtable, the NAO and others, to doubt that it will bring about the transformation of civil justice that was originally hoped for by many and therefore the more ambitious goals it was once hoped it might achieve.[80]

Criminal court reform

The CJS Common Platform and the Single Justice Procedure (SJP)

One of the major elements of the modernisation of the criminal courts has been the development and introduction of the CJS Common Platform. Which is in the process of being rolled out across England and Wales.[81] The Common Platform is a shared secure digital space that is aimed at improving criminal case management and in-turn speeding up the criminal process, for example, by allowing all parties to a case to submit and access case information of all kinds relevant to them remotely and therefore much more quickly than was possible under the paper-based system.[82]

The modernisation of the criminal courts programme also involves the creation of the Single Justice Procedure (SJP). The SJP is aimed at dealing with many minor criminal offences such as speeding fines, by allowing them to be dealt with remotely, without the need for appearances in court.

According to the MoJ:

- By March 2022, the CJS Common Platform was "live" in over 100 (44%) courts across England and Wales and over 100,000 criminal cases have been managed on the platform since its introduction in 2020.[83]
- In 2020, more than half a million cases were heard by Magistrates using the SJP.[84]

Concerns about the CJS Common Platform

Criticism from practitioners such as the CBA and others involved in the criminal justice system have painted a critical picture of the roll-out of the Common Platform.[85] For example, it was paused in August and September 2021 due to problems[86] with it and the Public and Commercial Services (PCSU) Union are taking strike action describing the platform as "not fit for purpose".[87] Specific concerns raised by the PCSU and CBA, and are set out in Box 7.[88]

Box 7: PCSU and CBA critique of the rollout of the CJS Common Platform

The PCSU and CBA compiled examples from their members of the CJS Common Platform rollout and uncovered a range of problems. They argued that:[89]

- Legal representatives have been finding themselves excluded from accessing client files because of mismatches between the data (such as the URN, name or date of birth details) inputted by the police and that which clients or advocates possessed.
- The platform was often "unstable" and unreliable with the platform freezing or crashing and consequently courts unable to access the data needed. As a result, it slowed down the progress of a case.
- Where the platform was operated as intended i.e. inputs entered into system in "real time" as hearings, for example, took place, the whole process was slowed down.
- The data entry process was cumbersome and the user-interfaces where data is entered badly designed.
- One example from Liverpool Magistrates Court suggested that the number of cases processed a day had fallen from 24/25 to 8 since the introduction of the Common Platform.

Source: Criminal Bar Association and Public and Commercial Services Union

The growth in the use of remote hearings

An important element of the modernisation programme is greater use of remote hearings at various stages of the criminal court process, such as remand hearings. However, the onset of the COVID-19 pandemic accelerated some technological adoption trends, and use of remote technologies to enable hearings was sped up.[90] [91] As part of a report into how the courts coped with COVID-19, the Justice Select Committee noted that, the:[92]

> *"...courts and tribunals managed to move...quickly to turn digitally-enabled remote hearings into the 'new normal'"*

The Justice Select Committee further suggested that most (75%) practitioners who used the remote hearings were generally satisfied with them.[93] A HMCTS analysis of this somewhat "enforced experiment" suggested that, overall, the enforced changes had broadly been successful.[94] The (on balance) favourable conclusion suggests that remote hearings are likely to become more commonplace – especially as provisions in the Police, Crime and Sentencing Act 2022 for example, pave the way for greater use.[95]

The challenges associated with remote hearings

In contrast, other research has raised questions about how the use of remote hearings impinges on access to justice for some, such as the vulnerable and digitally excluded.[96] For example, the Justice Select Committee found that there were a number of challenges with relying on remote hearings. These included difficulties for some in accessing appropriate legal advice remotely, communicating with court staff and accessing administrative support as well as inadequate IT equipment that meant remote hearings failed as adequate substitutions for in-person ones.[97]

The Law Society has also been cautious. It acknowledged that remote hearings can play an important role in generating process efficiencies in some circumstances, such as simple procedural hearings involving judges and advocates or cases that involved sophisticated commercial clients.[98] Remote hearings were less useful – the Law Society suggested – in more complex hearings in tribunals and courts, instances where live evidence is given or there is a particular controversy.[99] In findings illustrating the challenges remote hearings present to the most vulnerable, Law Society research discovered that only one in six solicitors dealing with vulnerable clients agreed that their vulnerable clients were able to engage effectively with remote hearings.[100]

Current modernisation plans fail to tackle the fundamental drivers of inefficiency and ineffectiveness

More fundamentally, in an analysis, the NAO noted that the current modernisation plans for the criminal justice system are unlikely to solve the underlying factors driving inefficiencies and ineffectiveness of the courts[101]. The NAO pointed out that:[102]

> *"Better IT infrastructure and a modernised estate would provide the tools for a more efficient, less paper-based system, but are not sufficient to address all the causes of inefficiency in the system...The system as a whole is inefficient because its individual parts have strong incentives to work in ways that create cost elsewhere...[and because]... there is no common view of what success looks like..."*.

As with the civil court changes, the picture of the modernisation of the criminal courts so far, is – at best – a mixed one, with an evidence base that is not yet extensive enough to draw definitive conclusions about ultimate levels of success or failure. Nevertheless, it does seem that overall the programme is stumbling, with some aspects behind their original timetables and other parts of the original ambitions pared back. Therefore, while the current modernisation may bring about incremental

efficiencies compared to how things previously functioned, the preponderance of evidence suggest that – like the civil courts – the modernisation programme is unlikely to bring about the transformation in the efficacy and efficiency of the criminal courts that many originally hoped for, and which is needed if the English and Welsh criminal court system is to be world beating.

CHAPTER FIVE – COURT REFORM FOR 2030

What needs to be done

The importance of maintaining a public system for adjudicating disputes and administering justice

All roundtable attendees were agreed that it is one of the basic duties of the state to maintain a public system of courts that administer the civil and criminal law and, crucially, that the courts should remain the primary place for the enactment of justice i.e., the enforcement of people's rights, ensuring people comply with the legal obligations they have entered into, the conduct of fair trials, the forum adjudicating on whether someone is guilty or not of transgressing against the law and decisions over appropriate punishments. However, there was also an acknowledgment that upholding the rule of law requires effective and efficient courts and, if the civil and criminal courts continued to decline in quality then, as one noted:

> *"…we are going to see the growth of…alternatives, and less and less, the courts will be the daily affirmation of the rule of law. The courts will, less and less, have the credibility as the most authoritative and useful place to resolve disputes".*

Some of the potential gains from effective reform

There was broad agreement among those at the roundtable that efforts to reform the civil court system in particular, need to ensure that those who often find themselves unable to easily access justice due to the financial, time and other (disruption) barriers, can do so. One of those involved in the discussion commented:

> *"In terms of where we can go…the parts where the justice system has struggles, what might be called the smaller scale end, but important issues for individuals, we have struggled to deal with".*

As another at the event noted, a genuine transformation of the courts not only widens access but is likely to reduce their operating costs over the long-term:

> *"One of the opportunities here is to deliver more for less…there is a genuine way we can improve access to justice in ways that place less a demand on taxpayers".*

Others pointed out that the gains from through-going systemic reform will not just accrue to those who currently find it the hardest to access justice, but to those who already use English and Welsh civil courts extensively, such as multinational businesses and HNWIs. A more effective and efficient civil court will increase the competitiveness of the English and Welsh jurisdiction in the international market for litigation, arbitration and associated legal services, as was argued by a roundtable attendee:

> *"…in a world where there is more international competition, for some of that mobile litigation that can go anywhere…there are many advantages to this country if we can be at the forefront of the technological revolution here…across the justice system, from the small-scale disputes to the big, multinational…expensive litigation there is a big opportunity there".*

The key components of successful transformation

Focussing on the right outcomes

The majority view at the expert roundtable was that creating court systems appropriate for the 21st Century required identifying the right goals around which any reform effort could be developed. As one contributor argued:

> *"It's about framing this around outcomes. What do we want our justice system to deliver for people? And how will we know if it's done that? What we should be looking for is how can we support people – on an equal basis – to access their rights and how will we know if our systems have achieved that?".*

There was a consensus among those at the discussion that one of the outcomes that reform should focus upon, should be making dispute resolution:

> *"...more widely available and accessible".*

With another arguing that the question in policymakers' minds should be:

> *"...how do we offer access to people who are never anywhere near the system?".*

More specifically, it was further suggested that dramatically widening access to reduce the "civil justice gap", for example, required a focus on two elements:

> *"The challenge is...to do two things: firstly, to help people understand their entitlements and secondly to enforce their entitlements".*

One person at the roundtable raised the possibility that widening access may require divorcing the services provided by the courts from geography altogether, offering-up the following thought:

> *"Is court a service or a place? Do we need to congregate in one place to solve all our differences?".*

A long-term approach

There was further agreement among many at the roundtable that, for reform to be effective and lasting, it would need to be bold and long-term in its focus with an aim of having in-place world beating courts by 2030. As a contributor at the event argued:

> *"This is a long-term game...everyone wants to think two or three years ahead...we have to rid ourselves of this legacy-based thinking about how do we improve incrementally what we've got today? What we have to do is put in place a roadmap for 2030. So, we think long term and then when we have a long-term vision, we say what are the short and medium-term benefits and milestones on the way to that vision".*

Process re-design

Reform has to be about much more than technology

Many of those at the roundtable felt that, at the heart of any transformative reform programme would need to be a complete re-design of the existing structures, processes and practices of the civil and criminal courts. One expert summed up the view:

> *"This isn't about tech, it's about process re-design. Where you've seen tech bolted onto existing processes that are hard to navigate, it has just exacerbated problems. It hasn't made things better for people".*

There was considerable concern that the current modernisation programme had become too narrowly focussed on technology as the "silver bullet" and ignored the more ambitious possibilities offered by more ambitious plans to close the "civil justice gap" and ensure the criminal courts could deliver justice for individuals and society, where technology played an enabling role to more transformative organisational and process changes. As a roundtable participant observed:

> *"…legal…and court technology has been devoted to automation. Basically, computerising what we've done in the past, grafting technologies onto our old ways of working. This decade and beyond will be about…using technology to allow us to do things that previously weren't possible".*

Another contributor argued that one of the key lessons from the most successful examples of ombudsman services currently operating in the UK, was that delivering a high-quality dispute resolution service involved more than achieving marginal improvements in efficiency through the application of technology to speed up processes. The biggest gains came through identifying ways of adding value for users and re-engineering the entire process:

> *"…it's not just about…digitising what's already there but opportunities to think more widely about how you build capability, how you build intelligence, how you build resilience in the system. Technology is part of that but it's as much about mindset as technology".*

Justice as more than delivering an "adjudication of disputes" service

Reforms based on such ambition could, it was proposed, deliver a more holistic "justice service" that went beyond efficiencies in the judicial process:

> *"The focus so far, of most court reform has been on the enforcement of entitlements, to streamline and optimise the way that the courts work. Increasingly the reality of self-represented litigators is that people don't have a clue themselves what their entitlements are…The reality is, simply providing the primary function of the courts i.e. the delivery of binding decisions with the backing of the coercive power of the state, isn't enough if we're going to offer access to justice".*

A transformative reform programme will need to change the basic "rules of the road"

The view that transformational change to the court systems is needed, rather than just technological updating of existing approaches, is echoed by many in the most senior ranks of the judiciary. For example, Sir James Munby in 2016, when he argued for both new processes and ways of developing court procedures:[103]

> *"We need an entirely new set of rules; indeed, an entirely new and radical approach to how we formulate court rules…The Family Procedure Rules, like their civil counterparts, are a masterpiece of…over-elaborate, drafting…they are unreadable by litigants in person and, truth be told, largely unread by lawyers. They are simply not fit for purpose. The Red Book, like the White Book…[is]…fit only for the bonfire".*

Awareness of the need to make more fundamental changes to the archaic civil courts have also been reflected in Lord Briggs of Westbourne's 2016 report into the structure of the civil courts in England and Wales. As was highlighted by one attendee at the roundtable:

> *"…we have to fundamentally simplify the rules…That is fundamental to Lord Brigg's recommendation…".*

"Horses for courses"

One of the benefits of a fundamental re-design, according to supporters of the idea at the roundtable, would be that the provision of "civil justice services" would become a more tailored experience, as was argued by a contributor at the event:

> *"It's unhelpful for the discussion around technology or online courts to become a binary discussion…there's a whole set of capabilities we have. We can settle disputes in physical court rooms, we can have virtual hearings, we can use telephones, we can use online dispute resolution techniques, in the future we can use virtual reality. What we need to do, and little work has been done on this, is for what kind of disputes is which kinds of platform suitable and appropriate? We should just get the best blend given we want proportionate and accessible services…The methods and techniques that might be used for each…[individual problem]…could be quite different".*

However, it was noted by another participant that a transformational re-design must not leave out those who are excluded entirely from or find it challenging to access services through technological channels:

> *"Whenever we're thinking about the use of technology, we have to think about how we can bring people along with us. What about those who can't use technology at all. Are they going to be left with a second-class paper-based system? While improvements to the way processes are currently done confined to the digital world?".*

The role of technology

Technology is an important enabler of transformation

Those at the roundtable arguing for a transformation of the civil and criminal courts suggested that maximising the potential of new technologies is the best basis on which to base any fundamental re-design. As one roundtable participant opined:

> *"Fundamentally, we've a platform, we've a set of technologies that are becoming increasingly capable and we have to do more..."*.

It was noted by another that:

> *"The tools are available...[from]...AI, to help people understand what their rights and obligations are, to understand the options for dispute resolution are open to them, the tool to help them organise their evidence and put together their arguments, the tools are available to help people come to non-judicial settlements"*.

It is important to utilise the right technologies

However, it was recognised by one supporter of transformational change that the right technologies had to be deployed and that there is, on occasion, a disconnect between what experts know are the right technologies and the public debate:

> *"The AI that has practical significance for the future is...rule-based expert systems. That the diagnostic tool for example that can answer legal questions, that, for example, British Columbia use in their Solution Explorer. You have these discussions, the minute people mention AI, everyone is off talking about bias. Of course, there are issues with one approach to AI which is machine learning...In any event, the dominant practical AI technology for the legal profession, for document automation, for compliance for diagnostics is rule-based expert systems, which won't have the same problems as machine learning"*.

Box 7: Rule-based Expert Systems

"Rule-based expert systems" solve problems by applying a collection of pre-programmed rules to a set of information that is inputted into the system.[104] Such systems have been described as working:[105]

> *"...like human experts to apply logic to problems. Instead of following rigid programming rules, they are more flexible in nature, and can mimic some pathways of human cognition".*

The programming and the information that the system uses are key to the success of "rule-based expert systems". "Rule-based expert systems" have problem-solving capacities, which enables them to identify difficulties, answer questions and determine potential outcomes:[106]

> *"The programmer uses the knowledge base to create a set of rules in the form of if-then statements. As rule-based expert systems encounter problems, they can apply these rules to narrow down the causes and develop solutions. For example, a system might monitor an electrical grid, in which case it would have a number of rules to determine the cause of a fault, so it can recommend an action. These rule-based expert systems use logic that can be familiar to human experts who use similar treed decision making in the evaluation of problems".*

However, "rule-based expert systems" are not fault free:[107]

> *"Rule-based expert systems don't know how to handle situations that fall outside their knowledge base and experience. They can accumulate information over time, but the first instance of an abnormal event may be confusing for the system. It could return a false conclusion, which requires the operator to provide instruction, so it won't make the same mistake again. Sometimes a human would have been able to avoid the same error, illustrating the shortcomings in artificial cognition".*

Sources: Kingston, J. (1987); Kurfess, F J. (2003) and McMahon, M. (2022).

CHAPTER SIX – WHAT CITIZENS AND BUSINESSES THINK ABOUT APPLYING TECHNOLOGY TO THE CIVIL AND CRIMINAL COURTS

Public opinion and court modernisation

The potential for transforming the civil and criminal courts into better functioning institutions is substantial. Technology will inevitably play a central role in any transformation because of its potential to generate and easily share useful information, improve coordination, re-engineer structures and processes, increase the variety and reach of channels of access, lower operating costs and ultimately boost organisational productivity. Further, the possibilities grow as technology evolves, as noted by one of the roundtable participants, who stated that:

> *"Fundamentally, we've a platform, we've a set of technologies that are becoming increasingly capable and we have to do more to help people…".*

While there are opportunities for transformative technology-based change, a number of key questions remain largely unanswered about the capacity of the courts, the judiciary and other stakeholders such as the legal profession, to take full advantage of the opportunities – as one contributor noted:

> *"The lack of understanding…translates to the judiciary…and government decision-makers. There needs to be caution…are our courts and tribunal systems prepared for AI? Are our judges equipped to deal with issues around AI, do they understand how it works?"*

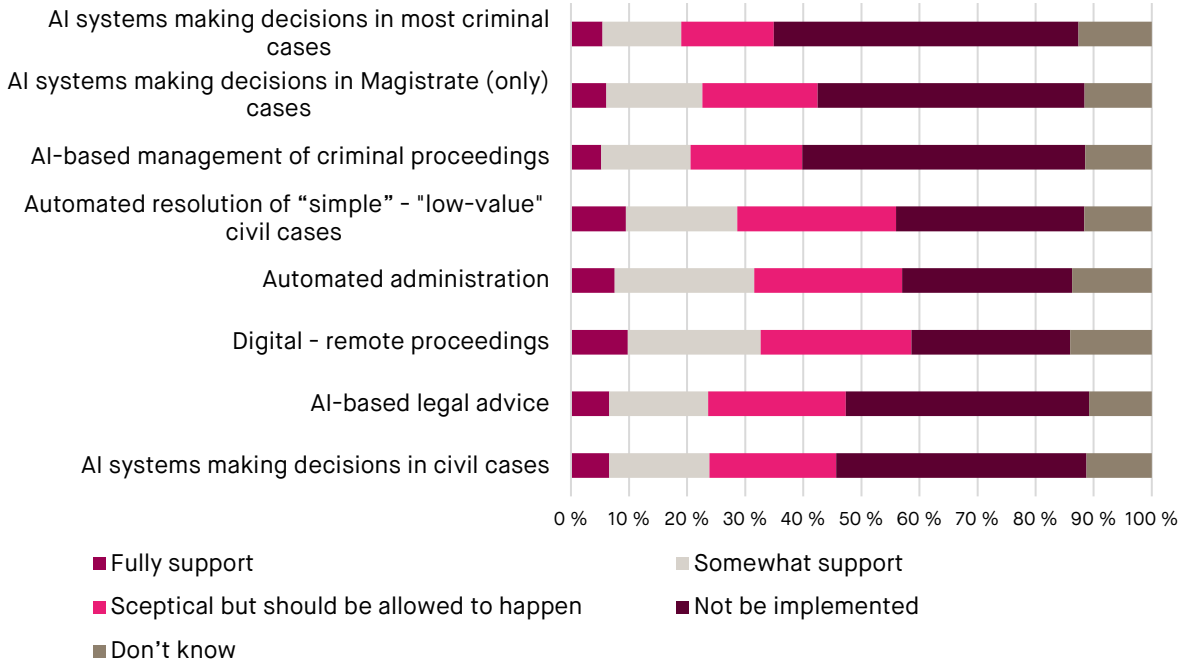
Equally important to the question of whether the courts are ready and able to seize the transformation opportunities presented by technology, is the question of the attitude and understanding of the public towards which technologies and how such technology might change how the court system that they pay for and use. After all, it is vital that both the civil and criminal systems have the trust of taxpayers, operate in ways consistent with the preferences of the public and deliver on their expectations. To help policymakers understand the views of the public and the business community towards the issue of use of technology in the courts, this chapter presents data from public and business opinion surveys on that topic.[v]

The views of citizens

When the public were asked about the ways in which technologies might be applied to the criminal and civil justice systems, there was considerable support for or acquiescence towards greater digitisation and automation. However, the use of AI – especially in sensitive areas such as decision-making – found much less support among the public.

[v] The data presented in this chapter should be read with the understanding that it is a snapshot and that over time, as technological understanding changes among the public and the business community, i.e. where familiarity grows or there are further developments in technologies, the perspectives of both the public and business community could evolve.

Figure 4: the extent to which the public supports the deployment of different technologies to particular activities across the civil and criminal courts



Source: Opinium survey of individuals

As Figure 4 shows:

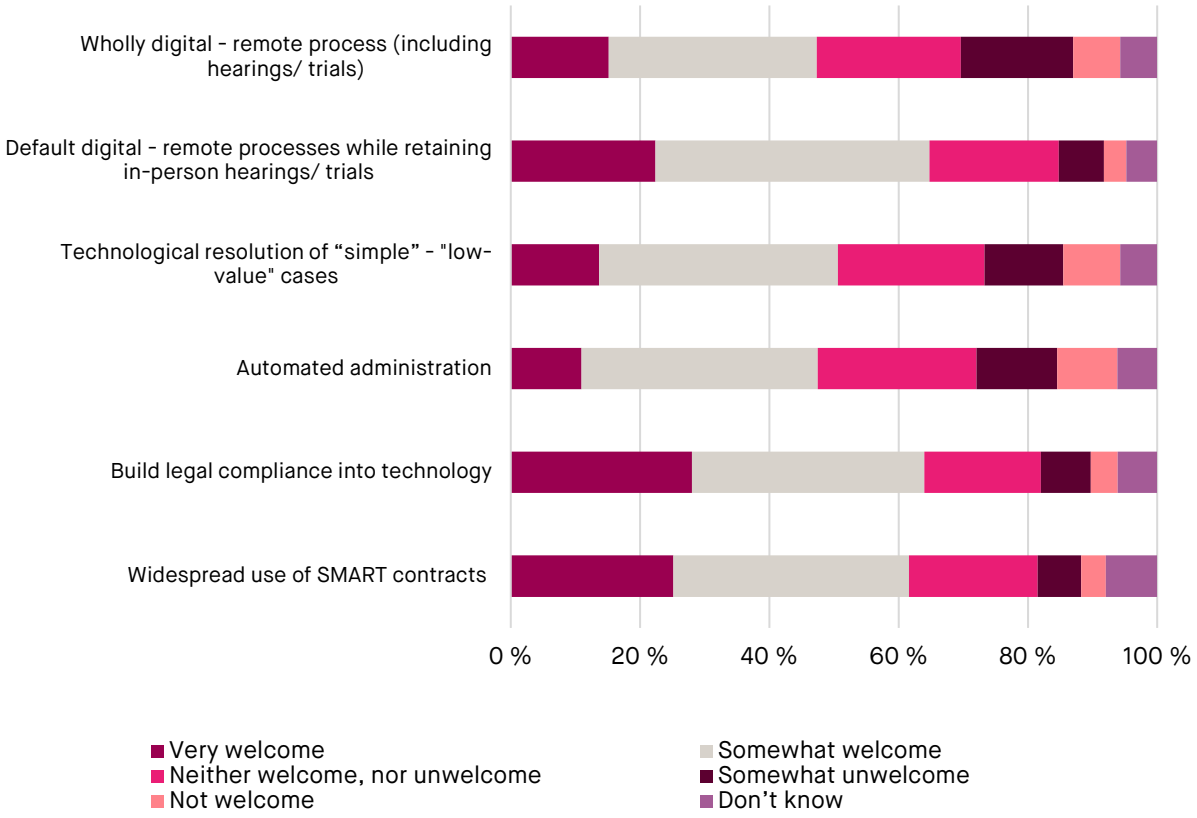
- 19% of the public actively support the use of AI decision-making in "most criminal cases" and a further 16% are "sceptical but think they should be allowed to happen", while more than half (52%) of the public outright oppose the use of AI systems making decisions in "most criminal cases".
- 23% support (to varying degrees) the deployment of AI judges in criminal cases before the Magistrates Courts. A further one in five said they were "sceptical" but agreed that they "should be allowed to be used" in such circumstances. More than four in ten (46%) of the public opposed the use of AI playing a role.
- 20% of respondents said that they would be happy with the use of AI tools to manage criminal proceedings. With 49% explicitly opposing such measures.
- 24% of the public supported the use of AI in decision-making in the civil courts, to some degree, while 43% were explicitly opposed to such developments.
- 28% agreed that automating resolution of "simple", "low-value" civil disputes was desirable, with 32% opposed outright to the introduction of such changes.

Opposition to the automation of administration and the digitization-remote access to the courts was considerably lower among the public, with 29% and 27% (respectively) opposing such changes outright. Concomitantly, explicit support for such reforms was much higher than for the deployment of AI tools: 32% for automated administration, and 33% for digitised-remotely accessible proceedings.

The business perspective

Among the business community, there was – overall – greater levels of support for applying different types of technology to the civil courts than among the wider public, as shown in Figure 5.

Figure 5: the extent to which businesses welcome developments in the application of technology to the civil courts and areas where civil (private) law primarily governs business activity



Source: Opinium survey of businesses

Figure 5 shows that:

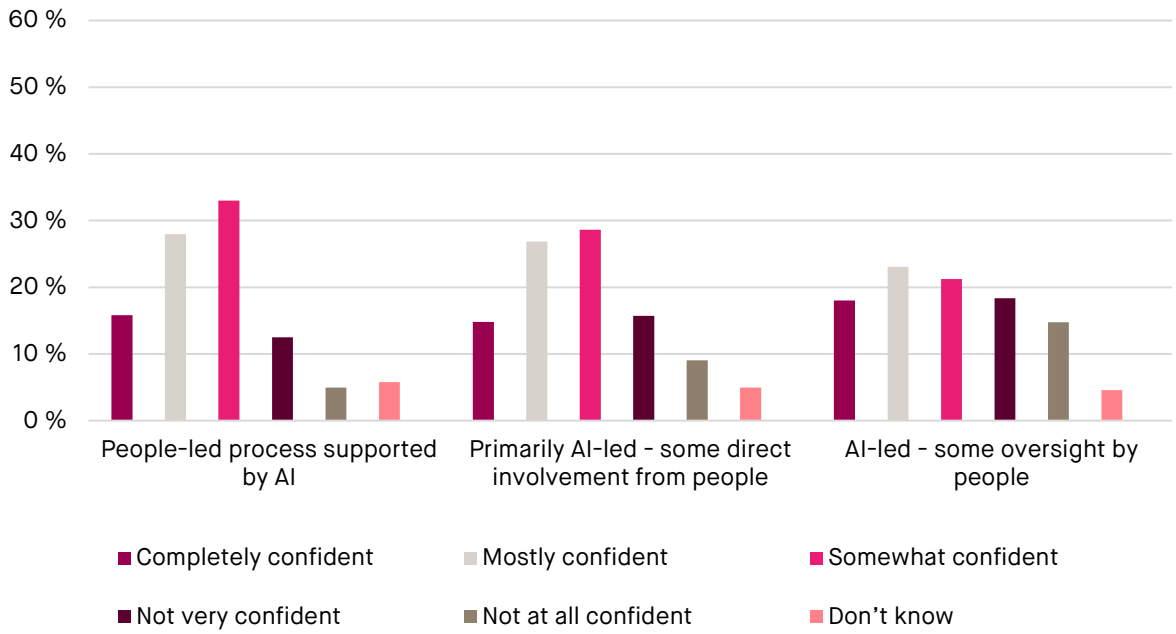
- 64% of businesses supported making courts digital by default with remote access to the court process, while retaining the opportunity for in-person hearings/trials.
- Just over half (51%) welcomed the idea of using technology to resolve “simple” and “low value” civil disputes.
- 48% approved of automating administration across the civil courts, where possible.

Businesses were also asked about the application of new technology to two areas of business activity that are governed (largely) by civil law:

- 64% supported building legal compliance (e.g. IP protections and online safety) into technologies they use.
- 61% wanted to see the “widespread use” of SMART contracts.

Figure 6 highlights how confident (or not) businesses are about the application of AI technologies specifically, to the operation of the civil courts. Overall, the results suggest that the higher the level of human involvement, the more businesses will have confidence in the fairness and efficacy of the process.

Figure 6: the degree of confidence businesses would have in the civil courts being fair and efficacious, when resolving a commercial dispute, with differing levels of AI involvement in the process?



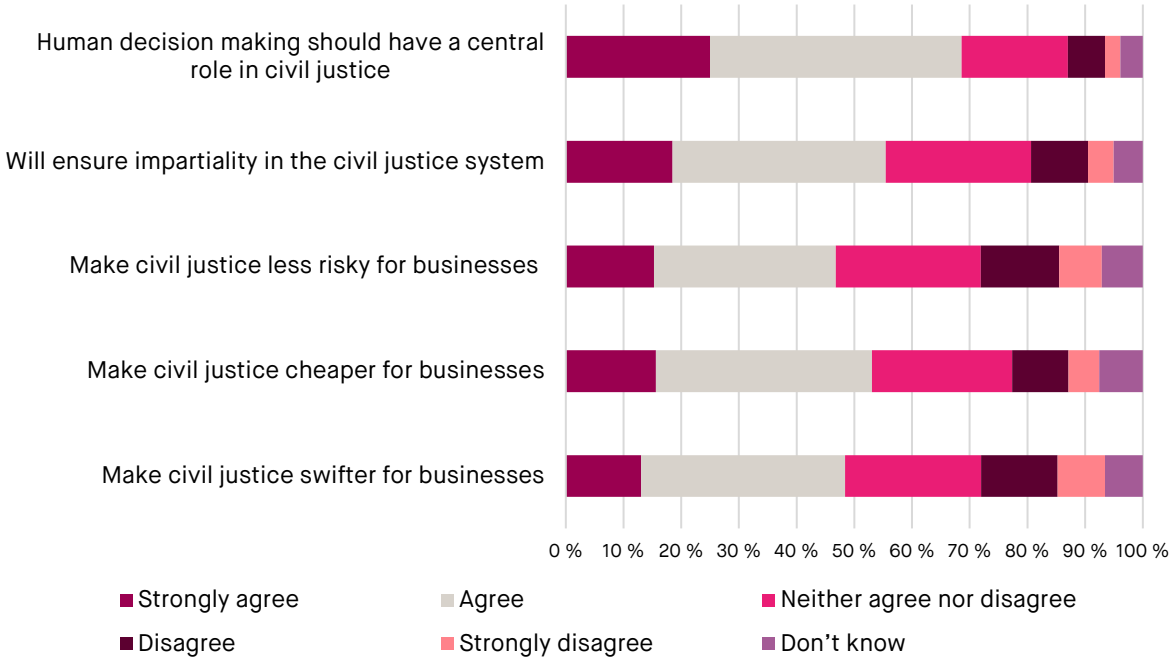
Source: Opinium survey of businesses

Figure 6 shows that:

- 77% of businesses had "some degree of confidence" in civil courts where humans continued to "lead the process" and AI's role was confined to supporting the activities of the judges.
- Confidence declined to 71% of businesses, where the civil courts were primarily AI-led, constrained by some direct human involvement e.g. through a final approval role over decisions made by the AI systems.
- A comparatively low portion (62%) professed "some degree of confidence" in a civil court system that was almost wholly AI-run, with some oversight from humans.

Figure 7 outlines the kinds of outcomes businesses expect to occur if AI technologies were integrated into the civil courts, and the extent to which they consider that people should have a central role in a more technology driven system.

Figure 7: the proportion of businesses that "agree" the deployment of AI in a "reformed civil court system" is likely to bring with it gains for the business community



Source: Opinium survey of businesses

The data presented in Figure 7 shows that:

- 69% of businesses consider that people should have a "central role" in a reformed civil justice system.
- 55% of business respondents felt that the use of AI would be likely to make processes "fairer" and "less subject to biases", compared to currently.
- 53% expected the application of AI to the civil courts to make it "cheaper" for businesses to access them, compared to now.
- 48% of firms that responded believed that use of AI in the civil courts would make the court system "quicker" for businesses to use.

CHAPTER SEVEN – CHALLENGES TO SUCCESSFUL REFORM

In addition to any concerns emanating from the wider public, who ultimately fund the court systems, reform of any kind faces a number of obstacles. Change, where complex systems and technology are involved is particularly difficult to deliver successfully. The record of the public sector in this regard is poor, as highlighted recently by the PAC.[108] The mixed record of success for the court modernisation programme is also an example of such difficulties.[109]

Therefore, the biggest challenges that are likely to face a further transformative court reform effort in the future aimed at making the civil and criminal courts world-leading by 2030, need to be identified in advance. Further, strategies for dealing with them need to be developed. The discussion at the roundtable identified numerous likely problems that reformers will need to ameliorate or overcome.

Ineffective leadership and governance

A key ingredient in successful reform is having the right leadership in place, appropriate governance structures to oversee the reform and govern the new system and high-quality management of the change process. If there is opaqueness for example, over who has ownership of any reforms, efforts are likely to fail.

It was suggested by one participant in the roundtable that a key problem with the civil and criminal justice systems in general (and the court elements of those systems in particular) is the diffuse ownership of the various parts of the two systems, the diffusion of leadership across a multiplicity of roles and the limited ability of individual leaders to plan and manage reforms:

> *"The curious thing about our governance system is that it's not entirely in the hands of Ministers…you've got the Courts and Tribunals Service and the Lord Chief Justice…there are a number of constraints".*

The problem of governance and clear accountable leadership of the criminal courts system has been echoed by the PAC, which described the position in the following way: [110]

> *"The system is administered by different parts of government with different budgets and pressures and decisions taken by one part can create inefficiency and increase costs in other parts"*

Successful court reform requires:

- Firstly, a clear understanding of the intricacies of the governance structures, the complexities of the leadership and management structures and how they work (or fail to work) together.
- Secondly, a better vision of what more functional governance and leadership looks like. Failing to do this means ineffective reforms that will fall short of their objectives.[111]

Laws and regulations

The governance, leadership and management problems are often closely bound up with legal complexities, as one roundtable participant noted. In particular, getting Parliamentary Bills (that are required to enact institutional design and alter modes of operating) drafted appropriately, timetabled and passed can be difficult. They argued that one problem that the current modernisation programme had fallen foul of, was an inability to pass necessary legislation:

> *"Getting legislation through the House of Commons, just finding the Parliamentary time has been difficult…there was legislation that was supposed to go through that was abandoned because of the 2017 general election then there was a fight to find time. So, there is that practical issue".*

Structures, culture and interests

A myriad of component parts, interests, and stakeholders complicate change.

Institutions such as the civil and criminal justice systems are made up of a number of components and are linked into a web of stakeholders that have an effect on the operation of (at least parts of) the system, each with their own interests and constraints (that influence how they act).

The organisational complexity and range of interests with a bearing on the functioning of the courts

The organisational complexity of the civil courts, for example, is evident in the way they are structured. At the lowest level are the County Courts. Above those is the High Court. Further, cases are sorted through the track system which allocates cases according to value and complexity (the Small Claims track, and the Fast and Multi tracks). This complexity is likely to be added to with the proposed online court for low-value claims. Further, the High Court is divided between the Queen's Bench Division, Chancery (although the latter and some of the former have been merged into the Business and Property Court – which has its own internal division of activities into specialist courts) and the Family Division.[112] [113] Beyond the structure of the courts are "key actors" such as the judiciary and the court staff, the wider legal profession (advising and representing court users), claimants and defendants (many of which are LiPs), bodies like the Civil Procedure Rule Committee, the Civil Justice Council, alternative dispute resolution providers, witnesses, enforcement agents, the system of legal aid provision, other entities with interests such as insurance companies who can be financially liable in road traffic accident claims in road traffic accident claims or charities and interest groups promoting causes.[114]

The organisation of the criminal courts and their intertwining with various stakeholder interests is equally complex. This was recognised by the NAO, who noted that the misalignment of incentives among the various component parts and stakeholders that work in and around the criminal justice system, is a central reason why the efficiency and efficacy of the criminal courts are hard to improve.[115]

Those looking to reform the courts have to understand this constellation of factors across both systems and how they interact. Ultimately, the most successful reforms will involve ways that better reduce the complexities, contradictions and antagonisms, and align the interests of all the entities, groups and individuals involved to the greater good of more effective and efficient court systems.

The potentially useful role of regulation

One attendee at the roundtable highlighted how regulatory reform in the financial services sector helped bring about change. They indicated that a similar approach might be useful for pushing forward court reform. They argued:

> *"There's piece here around the regulator and the culture. What we saw in fintech was a real shift in the financial services regulator when their mandate became about competition in the market. Legal regulators are focussed on the public interest…but what is the nuance that can support a shift here, if we were focussed on that unmet need and this therefore is about that competition in that market, what would the role of the regulator be?".*

Risks to established principles of justice

It was also observed in the discussion that both the civil and criminal legal systems have deeply entrenched norms, which are often based around long-established principles. It was contended that one risk of transformational reform – on the scale envisaged by many at the roundtable – was that it could undermine some of those norms and in-turn the principles associated with them.

This risk has been acknowledged by some in the senior judiciary but also accepted as a necessary one to take in some circumstances, because change will ultimately deliver more justice for many more people. For example, Sir James Munby, in 2016, stated that:[116]

> *"The…court of the future…will demand…radical changes to what at present seems so important and so deeply entrenched in our professional cultures".*

However, one roundtable attendee noted that where such risks were perceived (and depending on specific proposals perhaps real) it could turn key interest groups/bodies in the two systems against change, and that this possibility suggests that the change process needs – as much as possible – to be managed carefully and consensually:

> *"…the bigger issue is perhaps engaging with the profession and making sure the advantages available are being taken advantage of…whilst not over-frightening the horses. Very quickly some…might fear some basic principles are being infringed…".*

Equality of arms

One of the long-established principles of justice in England and Wales, alluded to above, is that of the fair trial. The latter has a number of components, including a broad "equality of arms" between the parties involved, whether they be prosecutors and an accused or participants in a civil dispute.

"...one of the things I would point to is the 'equality of arms'....this is a human interaction as much as it's a process...and equality of arms is about: people are frightened, they don't know their rights, they don't know what a good...settlement to a dispute might look like, they don't know a lot of things...they're worried, and they're anxious and they're concerned. Whilst technology can do things, and open up access to justice, in itself it's not enough to deal with very human elements of this and the very real imbalance of arms for those who are vulnerable and in most need of support".

Impartiality

Also central to a fair trial is the impartiality of the civil or criminal judicial process. However, fears were raised by more than one roundtable participant about emergent biases in some AI technologies.[117] [118] Specifically, they were worried that if such systems were introduced and used extensively, they might undermine the impartiality of the civil and criminal courts, and impede and undermine the delivery of justice:

"As we move towards the use of AI, I think we've got to be conscious of the bias within the AI...they're trained on specific data and there's lots of issues on what data they're trained on and what the systems are programmed to do".

Transparency

Fair judicial procedures (including trials) require transparency. Another participant issued additional warnings that the use of technology such as automation and AI could undermine transparency. The risk, they highlighted, could be particularly significant around transparency of the reasoning behind court decisions, whether they be decisions about process or judgments:

"There needs to be caution...are our courts and tribunal systems prepared for AI?...AI often operates in a 'black box...'.

Previous experiences of failure

It was noted by a roundtable participant that previous institutional experience of reforms that fell short (or perhaps failed completely) can also be an obstacle to further attempts at reform. Consequently, those who have to implement a set of newly proposed changes, or are subject to those changes, might only see disruption for little likely benefit. For example, one roundtable contributor noted that:

"There are challenges around culture...it's difficult for people to embrace change when what they see on the ground is not working for them...a survey of the impact of remote hearings on civil and tribunals...one of the big challenges was that the judges didn't have the equipment to service hearings effectively...".

It seems possible, therefore, that some of the difficulties being experienced by the current court modernisation programme could turn those directly and indirectly impacted by any proposed new reform agenda into sceptics, and obstacles to its development and implementation. Overcoming such a hurdle, will require politicians and policymakers to make any future reform an inclusive process.

Technological exclusion

Too much emphasis on digital channels risks excluding swathes of the most vulnerable

A reformed court system that relies heavily on technology and, for example, is focussed around remote access, is likely to mean that those who cannot utilise the relevant technology – because they don't have access to suitable digital infrastructure, the relevant hardware or the skills – will be excluded from the benefits. As one contributor argued:

> *"…we need to be conscious…[of]…not leaving behind swathes of the population that are…digitally excluded. I'm not talking just about people who don't have access to the internet, the internet connection across this country is not good for many people…but I'm also thinking about people who don't have access to money to buy the information they need, don't have access to devices and also people who might ordinarily be able to engage with digital systems but because they're at a point of crisis when they're coming to court aren't able to in that moment, and need help and assistance to do so".*

Digital exclusion should not be an excuse for inertia

A different expert around the table was concerned that, while such challenges exist and efforts to negate them need to be undertaken, they should not be a brake on needed reforms that could be a substantial net benefit to society:

> *"Digital exclusion is an issue…but it's often used as an excuse to do nothing…the tail should not wag the dog…".*

The same attendee also noted that there was a "flip side" to digital exclusion. The deployment of digital technology could help, for example, those currently excluded from access to physical premises and processes to be included. Especially where reformed systems are designed from the ground up, to be people-centric:

> *"…[a significant minority]…of working adults have some form of work limiting ability and are physically excluded from our court rooms. We have to look at the user base more generally. If, increasingly, it will be self-represented litigants, we're going to have bring to bear the discipline of design thinking. And design our processes and systems in the light of the actual needs of people…".*

Learning from recent and history and not compounding existing problems

Ambitious change often ends up as incremental improvement

A number of roundtable attendees emphasised how court reform needs to learn from past mistakes and, crucially, avoid compounding existing problems with the civil and criminal courts by replicating current failing structures and processes technologically. One participant highlighted how the experience in England and Wales to date has been that:

> *"All transformation projects end up as efficiency projects". So, it has been with the reform programme. It started off admirably, with fantastic transformation aspirations…the reality is, the finances available, the timescale and so forth…when we emerge from the other end of it…[there won't be]…fundamental transformation".*

The futility of replicating existing processes and practices with technology

A contributor to the discussion highlighted a recently implemented change to the process for whiplash claims. They suggested that the early indications were that it would fail to deliver on the aims, which were to create a user-friendly process for a specific category of personal injury claims because they had not used technology to create a simpler, LiP-focused process:

> *"There's an extremely interesting experiment going on at the moment, which is the new Whiplash Portal…which the MoJ introduced in April [2021]…with the aim of helping people bring their own whiplash claims without needing lawyers. The initial figures that came out showed that over 90% of people using it so far are using lawyers….if you tried reading the 64-page user guide for litigants-in-person, they are supposed be helped to navigate the system, you wouldn't want to do it either without the help of a lawyer".*

Another event attendee argued that the Whiplash Portal example was one of a wider risk associated with court modernisation and, indeed, all "improvement programmes" based upon technology i.e. the supposed technological solution replicates the structural and process shortcomings of the existing systems, and is more likely to fail to bring about the desired step-change in efficacy:

> *"…some of the law-tech is going after the wrong problem. It's going after problems that are problems because the system works in a certain way. What is it we can do to interrogate our system to find out where it's not working? Because what we don't want is our tech community essentially entrenching the current system with tools that consumers can then access the system through, but actually, it's the system itself that needs to change underneath".*

External drivers of change

The importance of external factors and their influence on possible reform ambitions was raised by one participant at the roundtable. Specifically, they argued that trends in international commerce and demands from the business community more broadly, may foist some changes upon politicians and policymakers with interests in and responsibilities for the courts. They said:

> *"…it may well be that these discussions that we're having are going to be shaped by the international context…there may not be the time to work out what it is we want in the UK and what may be best for the justice system because there may be a pull, externally".*

The contributor continued by highlighting specific examples of trends in international legal frameworks and business practices and customer expectations that might be expected to influence the nature of any further reforms, especially of the civil courts:

> *"The UK's new trade agreements have legal services chapters in them to do with the cross-border supply of legal services, so that's changing now. The second thing is, in the World Trade Organization there are discussions on e-commerce and digital principles all happening now…they will certainly have an impact on the way companies trade across borders. And there may be a pull domestically, from companies trading here needing legal frameworks for compliance. Things like blockchain are being used by companies for things like compliance with safety of goods…so legal frameworks will have to be put into place that allow companies to say we have blockchain technology, we need access, we need cross-border data flow and we need to be able to litigate that as well, in the UK".*

External drivers are not just issues for the civil courts, but for the criminal courts, too. For example, recent decades have seen a shift in the nature of criminality with the growth in more complex crimes and the use of technology to commit criminal acts, often at unprecedented scale.[119] [120] [121] These trends demand a response from the law enforcement agencies and in-turn the criminal courts system, which will see all of them adapt effectively to these threats.

CHAPTER EIGHT – PUTTING THE FOUNDATIONS FOR REFORM IN PLACE

As Chapter Seven outlined, the expert roundtable identified a range of challenges to transformative change of the civil and criminal court systems. These include leadership and governance deficiencies, legislative hurdles (e.g. inappropriately designed or gaps in the existing law), the complexity of the two organisations, ensuring a reformed system adheres to long-established principles of justice, making sure that key interests are "bought into" the change, the digitally excluded and vulnerable are not left out, that reform at least keeps up with and ideally stays ahead of important external trends that have implications for the effectiveness of the courts to deliver for society, learns lessons from history, and avoids merely replicating existing failed processes technologically. These will have to faced-up-to if transformative

The expert roundtable also highlighted that successful reform of the courts requires a number of factors to be in-place. Chapter 5 described what these are and include making sure reform plans are focussed upon the right kinds of outcomes, that the aims of reform are long-term in its aims and the planning behind it matches the ambition. At the heart of transformational court reform must be process re-design, which can offer those who will use the courts multiple routes to accessing effective and efficient justice. Utilising the right kinds of technology is equally vital. Chapter 6 highlights the public's views on the use of technology in the courts. As the funders and users of the courts such insights should inform policy developments and operational decision-making.

Tackling the challenges and organising reform in the right way to that it succeeds require a robust evidence base to fully understand the problems and highlight what works and what does not. Consequently, there was a broad consensus about the kinds of foundations needed for the politicians, policymakers and key stakeholders (e.g. HMCTS, the judiciary, legal profession, etc) to bring about a transformation in the efficiency and efficacy of the civil and criminal court systems and that would make them both world-leading by 2030. These were:

- The development of a more robust evidence base through a more extensive and rigorous research effort on justice policy issues in general, and court organisation, access, management, process, practice, and outcomes in particular.
- A more determined effort to more directly learn the lessons from other successful examples of court reform from other (common law) countries and dispute resolution models (whether from the UK or abroad) and apply them to the civil and criminal court systems.

Building an evidence base

The evidence base underpinning ideas for court reform is currently inadequate

The inadequacy of the current evidence base about the functioning of the courts and access to justice (by individuals and businesses) was highlighted by more than one

attendee at the discussion. Specifically, the problem – it was suggested – was twofold. Firstly, there was insufficient research undertaken on justice-related topics.

Secondly, its quality and usefulness for policymaking was sometimes questionable. With one attendee arguing that:

> *"We need to take a step back and ask…what does evidence-based policymaking look like in this field?….We are, in the legal community…where medicine was 50 years ago in terms of the way we approach the study of law. When you look at the services that have been able to leverage technology to deliver them in new ways, that's a consequence of developing knowledge in those ways i.e. the ability to robustly test and evaluate and learn on that basis".*

Others concurred. Specifically, it was suggested that too much emphasis – in justice policy – was placed upon the views of (albeit) senior practitioners and therefore personal experiences, rather than on more objective empirical work:

> *"Policymaking should be evidence-based, but justice policy just isn't. Partly because of the power of the anecdote and the power of the individual. So, when a senior judge, or a senior partner or senior silk, who have got massive experience and makes interesting comments, they somehow come down with an authority that you would have in another field as peer review and assessment".*

> *"We tend to defer to senior people but policy…even by excellent anecdote is insufficient…we need to gather evidence. How on earth can we make decisions about the future of our justice system…unless we have the data to support it?"*

Insufficient and poor-quality data

The data currently collected about the day-to-day operation of the civil and criminal courts, the outcomes the courts produce, and the effectiveness of the management and leadership, it was argued by roundtable attendees, is poor. Consequently, it is often of little value to policymakers contemplating how efficacy can be improved. As a participant noted:

> *"…really low quality of data about what happens to people…[and]…legal processes in the system is really holding us back…That is a real problem and unless more is done at a foundational level to understand who is in the system already and what happens to them it's almost impossible to design effective solutions".*

A different contributor argued that the recent failures in collecting robust data about the effectiveness (or otherwise) of the (COVID-19 driven) expansion in the use of remote hearings, was a good example of inadequate research efforts. They suggested there had been an opportunity to gather good quality evidence about this innovation and how it worked, but the opportunity was largely missed:

> *"…and because of our failure to get good data, do remote hearings for example speed up court processes, do they result in court processes that are cheaper?*

> *We didn't collect any data through the pandemic to be able to evidence those claims".*

Consequently, there was broad agreement among those at the roundtable that the "evidence gap" in justice policy is a substantial obstacle to effective reform. As one participant stated:

> *"You can't design good processes to fix problems if you don't understand what those problems are…[and]…we have systematically failed to collect data on what happens to people in the legal system…[only]…when we do have better data…can…[we]…think through some of the systemic problems".*

Ineffective transmission mechanisms between evidence gathering and policymaking

As important as the collection of evidence, is the transmission of the evidence to politicians, policymakers and practitioners – and their subsequent use of that evidence in policy design and operationally. However, as one attendee argued, that process in the justice policy area is also inadequate. They suggested that the dissemination of research findings is:

> *"…a bit haphazard…the research that finds its way into policymakers' thinking…you need to embed the researchers with the policymakers, and you need to have multiple channels to make sure that's high quality…research, that it's being constantly talked about with the officials and it's reaching the Ministers. And that seems to me to be one of the massive gaps in the landscape as far as justice policy is concerned. How can we create that research infrastructure to make the policy influencing research?"*

The improvements in evidence collection that are needed

A clear message from the roundtable debate was that reform, especially reform that aims to be transformative, can only be effective if it is rooted in robust evidence about the kinds of changes in organisation, processes, practices and human capital that will deliver improvements on the desired scale and scope. Three specific suggestions about how politicians, policymakers, researchers and other stakeholders (e.g. the judiciary and legal profession), could go about building up a robust base of evidence emerged from the discussion:

> *"…we have to give ourselves the space to pilot and experiment. Otherwise, we[ll] never evolve…and…judge the efficacy of that".*

There needs to be:

> *"Proper evaluation of the use of technology…both on the outcomes and user experience".*

Academia, expert individuals, policy and research organisations, and relevant specialist institutes, and foundations such as the proposed NILI[122] (an idea supported by legal advocacy groups such as Legal UK)[vi] [123] could all play a role in building up the evidence base. However, such research will require funding, which will ensure the right problems and questions are examined and that the results that emerge are practical findings relevant for policymaking and operational success. Ultimately, it was argued, if the research community can rise to the challenge, it would enable policymakers and practitioners to:

> *"...build and iterate towards a justice system that works better for everyone".*

Learning from other countries and models of delivering justice

Adopting relevant lessons from around the world for court reform

A key part of building a robust evidence base is identifying and learning lessons from other relevant examples of success. The debate at the roundtable revealed that there are examples both in the UK and from other common law countries – in addition to the evidence on best civil justice practice compiled by the OECD[124] – of successful reform programmes and models for delivering justice.

The successful example of court reform in Singapore

Singapore provides one example of how a successful transformation of courts can be engineered. As one analysis noted:[125]

> *"...at the outset of the 1990s...[Singapore's]...judiciary was inefficient and inaccessible...It['s courts were]...marked by the...problems of delays, high costs, and antiquated methods".*

The successful court reforms implemented in Singapore began at the top with an overarching national goal and a strategy to achieve that goal, underpinned by specific plans that would deliver the strategy:[126]

> *"...[in the early 1990s Singapore's]...leaders became...convinced that the courts' shortcomings constituted a threat to the country's future development and needed to be corrected. The authorities responded by promulgating the far-sighted plan 'Towards a Developed Nation', which set the goal of making Singapore a first-rank country...Among other priorities, the plan stressed the importance of a modernized judiciary for both economic growth and social stability".*

The transformation began by laying robust foundations for change, these included:[127] [128]

- Appointing the right leaders, with a Chief Justice experienced in both the legal process and organisational management, and reorganising the senior leadership

[vi] Legal UK is an advocacy group established the then Lord Chief Justice in 2017. It brings together a range of stakeholders from the legal word to advocate for and promote the value of English law, as platform for facilitating commerce. Source: About us - LegalUK

- Making reform about a broader ambition of overcoming obstacles to much higher productivity across the courts as-a-whole rather than incremental improvements to case management or reductions in the volume of paperwork (important though these can be).
- Instituting a process of broad cultural – as well as organisational and process – change, across the courts based upon business management principles, starting with identifying the court users and their needs (i.e. local people and international businesses) and – based on those needs – setting out a series of goals and values for the court system.
- A data-driven systematic analysis of the failures of the courts, specifically examining their organisation, human resources endowment and other aspects, alongside "futures planning" activities to identify likely developments that the courts would need to adapt to.

The reform programme focussed upon eight domains, across which changes were made (these are set out in Box 8). The combined effect of these changes was transformational for the Singaporean courts.

Box 8: the eight domains across which the reforms to Singapore's courts took place

The areas in which reforms were identified, developed and implemented – and led to the transformation of Singapore's courts in the 1990s - were:

- Leadership – senior judges led the lower courts by adopting high standards of efficiency and new procedures for case management, including implementing disincentives for failing to meet these new benchmarks and learning and incorporating good practice from other countries.
- Changes to "models of justice" – streamlining the organisational structure of the courts, with the introduction of new approaches for pursuing different kinds of cases, the establishment of more specialist tracks and courts to deal with specific categories of dispute or offence, a scheme for "separating methods of resolution by type and complexity of cases"[129] and additional training for judges in the lower courts.
- Increasing access – barriers to access such as litigation costs and the physical distance to court buildings were reduced, while flexibility (e.g. "night courts") was increased. In addition, services such as free mediation, translation, and automated machines for dealing with straight-forward issues e.g. paying fines, were brought in.
- Improving capacity – more judges were hired, physical facilities were upgraded as well as new technologies were introduced; administration, management and financial management was improved with the use of "autonomous agency concepts" and "budgeting for results".
- Improving human resources – the competencies of staff working in the courts was invested in, with an emphasis on widening experiences and skills sets; the salaries of judges and staff were raised to reflect those of the private sector, and recruitment and retention of the best "talent" was made a key concern. Further, action was taken against those who were underperforming.
- Measuring performance and results – performance reviews of different parts of the courts became routine and measured against clear benchmarks. Processes for monitoring and evaluating performance were institutionalised and data collection automated where possible.
- Leveraging technology – better technology was introduced to help improve activities such as case assignment and management, and judges were trained in how to use the new technology, so the benefits could be maximised.
- Fostering strategic partnerships – the judiciary took steps to build "bridges" and "knowledge share" with key domestic stakeholders such as the Singapore Bar Association and Singapore's law schools, along with relevant non-governmental organisations as well as the Singaporean parliament and executive. In addition, international networks were bolstered to improve collaboration and cross-jurisdiction learning.

Sources: Haider Malik, W (2007), Sheau Peng, H (2009) and Whalen-Bridge, H (2017)

The proposed online court for low-value civil claims must learn from failures elsewhere

The proposal for an online court lay at the heart of Lord Briggs' suggestions for reforming the structure of the civil courts.[130] Briggs followed the report of the Civil Justice Council's Online Dispute Resolution (ODR) Working Group in 2015, which similarly proposed moving towards a comprehensive system for ODR for low-value civil claims.[131] The current Government is moving forward with Lord Briggs' proposal. The Judicial Review and Courts Act 2022 brought in the necessary laws to enable the establishment of the online court e.g. the authority to set-up a new procedure rules committee to set the "ground rules" for its operation.[132]

Examples of success in reforming civil dispute resolution

There are numerous examples of successful models of civil dispute resolution in various common law countries, which, experts at the roundtable suggested, should inform domestic reforms to the civil courts.

The OECD analysis of civil justice best practice

In an analysis of the member civil justice systems, the OECD identified a number of common factors associated with high performance.[133] [134] [135] They observed that technology alone fails to bring about a world-leading civil justice system. Organisational, leadership and management, and human capital improvements are needed too.[136] The incentive structure has to be effectively calibrated so that the many different elements of the civil court system and those who work in and around it, are working well together towards a common goal of a high-performing civil justice system.

A US example of effective ODR

An attendee of the roundtable suggested that an ODR system used to resolve medical insurance debt disputes in Tennessee in the US, offered positive lessons for future civil court redesign in England and Wales in general, and for the development of ODR solutions in particular:

> *"...one of most interesting examples of ODR is in medical debt in Tennessee, where – essentially – they designed a programme where you had the major companies clogging up the courts bringing cases against people to enforce medical debt. They used the technology to bring them to the table but what's revolutionary about that is they stopped people from defaulting, by offering the opportunity that if they engage early it doesn't appear on their credit record and they brought the enforcer to the table and won the argument with them that it was in their economic interest not to pursue people through the courts, where they were likely to get less but engage people earlier in a more fundamental way. The more we can think about technology as an enabling tool to bring different actors to the table in different ways and focus on the positive outcomes, that's the real opportunity..."*.

Another online model of civil dispute resolution that is widely considered to be successful is that of the Civil Resolution Tribunal (CRT) in British Columbia, Canada. For reformers looking to identify models upon which they can base domestic civil court transformation, the CRT might be considered an example to learn from. A brief description of the CRT is provided in Box 9.

Box 9: British Columbia's Civil Resolution Tribunal

British Columbia's Civil Resolution Tribunal (CRT) was established in 2012 as a voluntary dispute resolution mechanism for small claims and disputes involving condominium property. However, in 2015 it was made the mandatory forum for resolving such disputes.

A key driver behind the CRT being set up was the inefficiency of the civil justice system in British Columbia at the time. One analysis summarised the problems with the small claims process in the following way:[137] [138]

> *"…court processes have become increasingly onerous…[the]…Small Claims Court, can be stressful and overwhelming, and there is little support available to help with the process…This stress is compounded by increasing delay in the system. Small claims cases in British Columbia can take up to twelve months to be heard…These delays are costly, not just in terms of time and money, but also in terms of their effects on the health and emotional wellbeing of participants and on the public's confidence in the administration of justice…90 percent of parties in British Columbia's Small Claims Court are self-represented….the high cost of accessing civil justice services is not proportionate to their outcome…while some cases settle, many are abandoned because people run out of time, money, or energy without resolving the underlying dispute. When trials do occur, they tend to follow one-size-fits-all processes, with little mediation or case management applied to resolve disputes early…".*

The CRT is an online dispute resolution platform. The CRT is made up of several steps, all accessible remotely:[139] [140]

- Prior to submitting a claim, a claimant can use the Solutions Explorer, which uses "guided pathways" to help someone make informed choices about how to resolve their "civil legal problem".
- Once a claim is filed, all parties are given an opportunity to negotiate directly with one another. If the negotiation fails, the next step is the "facilitation phase".
- The "facilitation phase" is undertaken by an expert facilitator who aims to find a mutually satisfactory resolution to as many of the issues under dispute as possible. Where it succeeds, tribunal adjudicators can ensure the agreement is legally binding.
- If the facilitation fails, the final stage is adjudication. The expert facilitator helps prepare the parties for adjudication, supporting the parties to organise their respective cases. Tribunal adjudicators are qualified lawyers experienced in small claims (and condominium) disputes. Each party's case is presented in written form. Any required hearings are conducted remotely, using video or telephone conferencing. A binding decision is issued by the tribunal adjudicator after due consideration.

Sources: British Columbia Ministry of Justice (2020); Salter, S (2017).

The ombudsman model

The ombudsman model was also highlighted as having important lessons for possible future civil court reform. The ombudsman model was considered by several contributors at the event to have proven itself as an efficient and effective dispute resolution model, with lessons for the courts:

> *"The financial ombudsman…the model is extremely compelling…the manner in which some of the ombudsman services deal with…claims actually meets the human needs…better than the delay of the traditional courts. So, FOS shows there are other ways out there".*

One participant described how "user friendly" (especially for those with no representation[vii]), low-cost, and efficient the best ombudsman services can be:

> *"…everyone is self-represented, none of its done face-to-face, about 90% is done digitally, although…some are still done by mail…but predominantly it's done through…portal(s)…unit costs have halved and are about £250 a case. The speed of resolution…is dealing with about 95% of cases inside of twelve weeks".*

It was also noted by the same contributor, that an important part of the overall success of many ombudsmen services had been their willingness to continuously develop their offerings:

> *"…There are a lot of things that could be done around the consumer end, around self-service…there are some things you can do to make the system better, whether that be using the data to improve capability and execution in systems, how do you form a risk and intelligence base that can be used…And what is it that can be done around education, signposting and access?".*

Possible features of a transformed civil court process

One participant brought together some of the discussion at the roundtable of different models of dispute resolution, such as that of the ombudsman and lessons from what had been successfully implemented in other countries like the US, British Columbia in Canada, the OECD's best practice observations, and they offered a brief overview of some of the potential features of a transformed civil courts system:

> *"Online judging…a-synchronous hearings, where evidence and arguments are submitted in electronic form, the judges review this, perhaps there is an online discussion too, then the judges deliver their decisions and judgments in the same form. No assembling in courts. For large volumes of low-value civil claims for example…[this]…would be very beneficial".*

ODR has not worked everywhere

However, as was noted by one contributor to the roundtable discussion, ODR has not proven to be a success everywhere it has been tried:

[vii] Ombudsman services are designed to be used by people without legal advice and representation.

> *"It's important we reflect on the experience of other jurisdictions…the National Centre for State Courts in the US…they've done a huge amount of work investing in online dispute resolution and they've actually started pulling back from that. The reason why is because every time they've tried to implement it at scale, into a court process that isn't something really simple like traffic claims, it has failed. The areas where it's worked seem to be volume issues like traffic claims and that has resonated with our experiences here…When they did try, for example, to implement an online dispute resolution system between plaintiffs and landlords, in one jurisdiction, all they did was sped up tenants entering into bad agreements that they could not service".*

A different contributor retorted that:

> *"…some of the ODR projects that do fail internationally…do so because they are a different interface to fundamentally the old system".*

Therefore, if and where ODR is developed as one element of civil court reform, the lessons from both its successes and failures need to be heeded by those developing the policy, so that it stands a good chance of succeeding.

Criminal court reform lessons from around the world

International research suggests there are a range of lessons that can be learnt by politicians, policymakers, and other key stakeholders with an interest in transformational reform, about both the process of reform as well as specific changes that can deliver improvements in efficacy and efficiency of the criminal courts.[141]

The NAO identified mis-aligned incentives as one of the key underlying causes of the inefficiency problems with the criminal courts in England and Wales. This observation is supported by research from other countries, which similarly suggest that to overcome the incentives challenge, successful reform requires "systems thinking" that understands all the ways that the different parts of the criminal justice process interact i.e. what the disparate functions, interests and behaviours of those involved in the system are and how they impact each other.[142]

Alongside adequate resourcing, well-designed court procedures, the deployment of appropriate technology, competent criminal investigation, and effective collaboration between the police and prosecutorial authorities,[143] the cross-country evidence indicates a number of key ingredients that are associated with successful reform of criminal courts. These include:[144]

- Clear goals and a set of objectives that will deliver those goals.
- Strong governance, firm and committed leadership and clarity over roles and expectations.
- Accountability, built-in through performance management.
- Transparency based upon the collection and timely use of good-quality data which should be published, and should drive decision-making.
- Effective mechanisms in-place for close collaboration and coordination between different parts of the system.

CHAPTER NINE – RECOMMENDATIONS

Delivering world-leading civil and criminal courts by 2030

The expert discussion at the roundtable and the other evidential sources that this report draws upon show that:

- Both the English and Welsh civil and criminal court systems are not fulfilling their respective purposes sufficiently well and consequently they are falling short of serving the public adequately.
- The current modernisation effort is – at best – likely to fall short of the kind of transformation needed to bring about a significant improvement in the performance of the civil and criminal courts.
- There was a broad consensus among the experts at the event was that – if the two systems were to be world-leading by 2030 – a more ambitious transformation effort of the English and Welsh civil and criminal court systems is needed.
- The history of failing to deliver successful transformational change, to date, has been in-part because of the underdeveloped state of civil and criminal justice policy research, which has meant reforms have not always been rigorously evidence-based. Further attempts at reform will fall short too, if this "knowledge gap" is not filled with an extensive and robust evidence base about what works and what does not.
- There are significant challenges to the transformative change of the two court systems. These include: leadership and governance deficiencies, legislative hurdles (e.g. inappropriately designed or gaps in the existing law), the complexity of the two organisations, ensuring a reformed system adheres to long-established principles of justice, making sure that key interests are "bought into" the change, the digitally excluded and vulnerable are not left out, that reform at least keeps up with and ideally stays ahead of important external trends that have implications for the effectiveness of the courts to deliver for society, and change avoids merely replicating existing failed processes technologically.
- Successful reform of the courts involves a number of ingredients. For example, it must focus upon the right kinds of outcomes, be long-term in its aims and the planning behind it, have process re-design at its heart, look to provide those who will use the courts multiple routes to accessing effective and efficient justice and utilise the right kinds of technology, which should be developed and selected in light of the preferences of the public as the funders and users of the courts (see Chapter 6).
- Reform (especially of fundamentally important institutions such as the civil and criminal courts) has to be delivered with the support of the public, who fund them and rely on their effectiveness to underpin a safe and prosperous society. The polling evidence presented in this report shows that both the public and the business community support more extensive use of technology in the civil and criminal court systems to improve efficiency and effectiveness. Nonetheless, on balance, they appear sceptical of too much reliance on

technologies such as AI and reducing the role for humans, beyond a particular point.

- There are ample lessons for domestic politicians and policymakers from other jurisdictions such as Singapore and British Columbia in Canada and others, as well as examples of successful models of efficient and effective dispute resolution in the UK (in the form of the most successful ombudsman services) that should directly influence future court reform efforts.

The evidence marshalled in this report leads us to make seven recommendations to politicians and policymakers, that will put in place the right foundations for a more far-reaching transformation of the courts, which will widen substantially access to justice, deliver greater efficiency and efficacy and propel the civil and criminal courts to the top of the international rankings by 2030.

Recommendation 1: Develop a longer-term and more coherent and strategic approach – at the highest policymaking levels – towards the civil and criminal court systems in England and Wales

An absence of strategic thinking about the civil and criminal court systems i.e. the failure to see them as key national assets that need to be nurtured with concomitant resourcing and prioritisation, disjointed and opaque leadership, and governance and "fits and starts" in policy development by successive governments towards the courts are key reasons why:

- The two systems have fallen so far behind the best in the world.
- The current modernisation programme is unlikely to deliver the transformation many had hoped to see.

To change this situation, politicians and policymakers need to more explicitly recognise that the civil and criminal courts are vital "social infrastructure", which play an essential role in the maintenance of a peaceable and prosperous society, that need to be cultivated and sustained. That means developing a more thorough understanding of their contribution to society and the economy and utilising that insight for policy. Specifically:

- The quality of both civil and criminal courts needs to become a cross-departmental concern. The Prime Minister, the Home Office, the Ministry of Justice, HMCTS and other interested departments such as BEIS – with input from relevant parties like the police and prosecutors, the legal profession, consumer and business groups, etc – should collaborate to develop a more strategic "systems" approach to these two areas and future proposals for improvement.
- Government should commission work to identify a clearer picture of the importance of the civil and criminal legal systems to society in general and to the economy in particular. This research should include efforts to identify more precisely the broad range of "societal benefits" that accrue from having both systems operating effectively. Such work would help bolster the existing evidential basis for prioritising these areas.
- Investment in both court systems, should be recognised by government as "social investment" that generates a "societal return" (encompassing a large economic component). Estimates of the "societal return" should be used as the basis on which decisions about what constitute adequate levels of funding for the civil and criminal courts.

Recommendation 2: By mid-2023 the MoJ should establish a "Justice Research Council" with a ring-fenced endowment from the Government, to institutionalise the arms-length commissioning, funding and publication of high-quality, in-depth policy-focussed research into civil and criminal justice issues

As the roundtable discussion highlighted, one of the most notable deficiencies in current civil and criminal justice system policy development is a lack of consistent, systematic research about the justice landscape. The additional data that the modernisation programme is expected to generate will help "fill" some of the "knowledge deficit", if utilised appropriately. However, the existence of data does not guarantee its productive use.

Further, there are many aspects of justice policy that the modernisation programme will not deliver better data on. While the efforts of the Legal Services Board (LSB), the MoJ's in-house work, some academics and others make important contributions to the evidence base around legal need for example, considerable gaps remain which results in only a partial understanding of all the challenges, successes and failures of justice policy and practice. Therefore, the existing research efforts need to be bolstered to improve the basis on which justice policy is made.

New policy-focussed research capacity should be created by the Ministry of Justice, through the establishment of an independent "Justice Research Council" (JRC). The council should be funded through an endowment and tasked with sponsoring civil and criminal justice-based research that will be strategically and operationally useful to policymakers, HMCTS and other directly involved parties. The remit of the JRC should have a particular focus on:

- Understanding more clearly the societal utility of the civil and criminal justice systems.
- Measuring the performance of the civil and criminal courts and identifying the reasons for success and failure.
- Improving insight into the legal needs of the public and business community and the experiences of those who are directly involved (e.g. claimants, defendants, victims, prosecutors, advisors, witnesses, representatives, judges, etc) with the two systems.
- Mapping the wider justice landscape and its quality.
- The societal and economic benefit of increasing community legal education?

The JRC should look to maximise the research capacity focussed on relevant civil and criminal justice policy issues and work with and commission research not just by academics but other relevant policy and research institutes and bodies where it is considered appropriate, such as the Legal Education Foundation or the nascent NILI.

In the longer-term the new JRC might move to operate under the auspices of UK Research and Innovation (UKRI), as other funding organisations have done.

Recommendation 3: By the end of 2023 implement as much as possible of the current modernisation programme followed by a full (time-limited) and independent evaluation of its successes and failures and the reasons behind the former and latter

The current modernisation programme is due to be completed by the end of 2023.[145] As much of it as possible should be seen through by that date. However, aspects of the programme that run over that date, or have failed to meet their expected objectives, should be written off.

To help politicians and policymakers understand the lessons from the successes and failures of the modernisation programme, there should be an independent time-limited evaluation exercise undertaken at the end of 2023. It should examine:

- What elements worked well, achieved their objectives, and why
- What aspects of the modernisation fell short and why
- Which others failed completely and why

All aspects should be examined, including the governance and leadership of the programme, the detailed management of the various projects that were undertaken as part of the programme, the technological choices made, and the efficacy of the procedures used to acquire the technologies. The results of the evaluation should be made public soon after completion.

Recommendation 4: Those in policymaking and leadership positions in the courts must effectively utilise the data expected to be produced by the systems in place after the modernisation programme is completed. If this requires specific training, for example, it should be provided.

One of the expected outcomes of the modernisation programme is the ability to collect granular data – often in real-time – about how the courts are operating.[146] The opportunities offered by the collection of better data must be maximised. This will require the collation, analysis, and pro-active utilisation of the data by policymakers, HMCTS and the judiciary, in order to:

- Institute a culture of continuous operational improvement in the civil and criminal court systems.
- Inform thinking about and the development of future reform.

Successful use of such data will require those in the most senior positions in policymaking and the courts to understand the potential for it to improve decision-making and operations, and how to act effectively on that evidence. Adequate training must be provided to key people to ensure this happens.

Further, accountability must be ensured, not least through making the data that is collected available to the public and accessible to researchers for use.

Recommendation 5: By the end of 2023 implement the Briggs recommendations for reforming the structure of the civil courts and ensure that the changes reflect international and domestic lessons about the most effective models of civil dispute resolution

Policymakers should take forward all the Briggs recommendations for reforming the civil courts and plan to implement them by the end of 2023. However, the implementation of the key structural changes envisaged by Briggs (e.g. the online court for low value civil claims) should reflect relevant best practice lessons from elsewhere:

- The OECD has identified a set of factors associated with the best civil justice systems in the world.[147] [148] These include, among others, having in place effective oversight and management of court processes with clear accountability structures for performance and greater use of specialisation in the system.[149] [150]
- The success of the ombudsman model as a dispute resolution mechanism and the CRT in British Columbia offer clear lessons for the future design of the civil courts in England and Wales. These include:
  - How to develop and manage efficient and user-friendly dispute resolution mechanisms
  - Which technologies are appropriate for delivering a more efficacious system of civil courts and how best to utilise such tools
- Progress on implementation should be closely monitored and regularly and publicly reported on, with an independent post-implementation evaluation undertaken a reasonable period after the end of the process, to understand what worked well, what did not and why.

Recommendation 6: By the end of 2023 the MoJ should implement all of Sir Brian Leveson's proposed efficiency reforms from his 2015 report, including taking forward changes based upon the "out of scope" observations made in chapter ten of his report

In 2015, Sir Brian Leveson made a set of wide-ranging set of recommendations for improving efficiency in criminal procedure. Not only should the MoJ implement all the suggestions made in the report by the end of 2023 but it should take forward those ideas Sir Brian touched upon in chapter ten of his report, which were technically "out of scope" of his remit, but which he felt were additionally important steps needed to bring about further improvements to the criminal process.[viii]

Progress on implementation should be subject to close oversight and publicly reported on regularly, with an independent post-implementation evaluation undertaken a reasonable period after the end of the process, to understand what worked well and what did not and why.

In addition, some of the key measures recommended by Sir Robin Auld in 2001 have never been implemented.[ix] These include codifying the criminal law and criminal procedure.[x] The Government should instigate the work necessary to implement the outstanding reforms first proposed by Sir Robin as part of the development of a new strategy (and plan to deliver it) for making the civil and criminal courts the best in the world by 2030, as proposed in Recommendation 7.

[viii] One such measure was the unification of the criminal courts, to help improve oversight and management.

[ix] In January 2021 the Government announced that it would, finally, implement one of Sir Robin Auld's original recommendations, that of widening the scope of the powers of in the Magistrates Court. Source: Magistrates to get power to jail offenders for a year - BBC News

[x] Codifying the criminal law in England and Wales was first proposed in the 1830s. In 1985, the Law Commission published an extensive report outlining plans for codification. Source: Criminal law HC 270 (publishing.service.gov.uk)

Recommendation 7: In 2024 ministers and policymakers in government and other key stakeholders should begin the process of developing a new comprehensive strategy to make the English and Welsh courts the best in the world by 2030

The current modernisation programme is unlikely to deliver the transformation in the civil and criminal court systems that would push them to the top of the global rankings for efficiency and effectiveness. In broad terms, as was observed by many at the roundtable, the modernisation programme has (largely) become an efficiency effort through the application of technology to existing structures, processes and people. Further, there are question marks over whether the efficiencies will be as great as hoped. The transformational initiative that many originally hoped for, has faded.

Therefore, after the modernisation programme has ended in 2023, the Briggs and Leveson reforms are implemented by the end of the same year – see Recommendations 5 and 6), the new strategic policymaking structures suggested in Recommendation 1 have been put in-place and the JRC established, ministers, relevant senior policymakers and other key stakeholders (such as the legal profession, academics, the business community, prosecutors, etc) should begin the process of developing a new comprehensive strategy (and plan to deliver the strategy) to make the English and Welsh courts the best in the world by 2030, with a second round of more transformational court reform at its heart.

Politicians and policymakers must be cognisant of the lessons discussed at the expert roundtable this report describes i.e. reform must focus upon the right outcomes, be long-term, have process re-design at its heart, provide users with multiple routes to accessing effective and efficient justice and utilise the right kinds of technology, which should be developed and selected in light of the preferences of the public as the funders and users of the courts (see Chapter 6). Transformational reform will mean tackling a range of challenges identified at the roundtable, e.g. leadership and governance deficiencies, legislative hurdles, the complexity of the organisation of the two court systems, ensuring adherence to long-established principles of justice, that key interests buy into change, the digitally excluded and vulnerable are not left out, reform at least keeps up with if not stays ahead of important and relevant external trends and avoid merely replicating existing failed processes technologically.

This time, lessons from best practice around the world and the UK should more closely inform the reforms. For example, Singapore's experience of extensive court modernisation should be influential on future developments. Particularly significant for further civil court reform should be the lessons evident in the OECD's analysis of best civil justice practice, the most successful domestic ombudsman services as well as British Columbia's experiences. as in Canada. as well as new insights from research funded by the JRC. Informing further criminal court reform should be the NAO's work on the criminal justice system and the current modernisation programme, the cross-country evidence on the key ingredients that are associated with successful reform of criminal court systems and specific work commissioned by the JRC to feed into the new reform effort.

ENDNOTES

[1] Yarrow, G and Decker, C. (2012). Assessing the economic significance of the professional legal services sector in the European Union.

[2] Genn, H. (2010). Judging Civil Justice.

[3] HPUIL_report.pdf (thelegaleducationfoundation.org)

[4] Litigants in person: the rise of the self-represented litigant in civil and family cases (parliament.uk)

[5] viewcontent.cgi (uwindsor.ca)

[6] litigant-persons-tale.pdf (open.ac.uk)

[7] viewcontent.cgi (uwindsor.ca)

[8] UK Small Business Statistics | FSB, The Federation of Small Businesses

[9] The legal needs of small businesses - Final - 12 October 2015 (legalservicesboard.org.uk)

[10] The legal needs of small businesses - Final - 12 October 2015 (legalservicesboard.org.uk)

[11] The legal needs of small businesses - Final - 12 October 2015 (legalservicesboard.org.uk)

[12] In-Need-of-Advice-report.pdf (legalservicesboard.org.uk)

[13] 1347_ Small business legal needs FINAL 2 (legalservicesboard.org.uk)

[14] Sir Geoffrey Vos' speech at the launch of TheCityUK's Legal Services Report 2020 | The Law Society

[15] Sir Geoffrey Vos' speech at the launch of TheCityUK's Legal Services Report 2020 | The Law Society

[16] Sir Geoffrey Vos' speech at the launch of TheCityUK's Legal Services Report 2020 | The Law Society

[17] civil-courts-structure-review-final-report-jul-16-final-1.pdf (judiciary.uk)

[18] [ARCHIVED CONTENT] Department for Constitutional Affairs Website (nationalarchives.gov.uk)

[19] 860_00_Cover_35mm.indd (judiciary.uk)

[20] Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legislation.gov.uk)

[21] civil-courts-structure-review-final-report-jul-16-final-1.pdf (judiciary.uk)

[22] fixed-recoverable-costs-supplemental-report-online-2-1.pdf (judiciary.uk)

[23] Spending review and autumn statement 2015 - GOV.UK (www.gov.uk)

[24] HMCTS reform programme projects explained - GOV.UK (www.gov.uk)

[25] Transforming Our Justice System By the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals (publishing.service.gov.uk)

[26] Legal-excellence-internationally-renowned-UK-legal-services-2021.pdf (thecityuk.com)

[27] SMF. (2021). Law and economy.

[28] The Business and Property Courts - GOV.UK (www.gov.uk)

[29] E Filing | Courts and Tribunals Judiciary

[30] The Rolls Building | Courts and Tribunals Judiciary

[31] Facilities | Courts and Tribunals Judiciary

[32] Law-and-the-open-economy-Nov-2021.pdf (smf.co.uk)

[33] Doing Business 2020 (worldbank.org)

[34] (PDF) Criminal Justice Reform and the System's Efficiency (researchgate.net)

[35] (PDF) Criminal Justice Reform and the System's Efficiency (researchgate.net)

[36] (PDF) Criminal Justice Reform and the System's Efficiency (researchgate.net)

[37] The economic and social costs of crime (publishing.service.gov.uk)

[38] Fraud - National Crime Agency

[39] 0031_Financial_Cost_of_Fraud_2021_v5.pdf (datasrvr.com)

[40] file (nationalcrimeagency.gov.uk)

[41] Crime in England and Wales: year ending March 2021 - Office for National Statistics (ons.gov.uk)

[42] Crime outcomes in England and Wales 2020 to 2021 - GOV.UK (www.gov.uk)

[43] https://www.gov.scot/publications/works-reduce-crime-summary-evidence/

[44] Ministry of Justice Outcome Delivery Plan: 2021-22 - GOV.UK (www.gov.uk)

[45] Review of Efficiency in Criminal Proceedings by The Rt Hon Sir Brian Leveson (January 2015) (judiciary.uk)

[46] Efficiency in the criminal justice system (parliament.uk)

[47] (PDF) Criminal Justice Reform and the System's Efficiency (researchgate.net)

[48] Criminal court statistics quarterly: January to March 2021 - GOV.UK (www.gov.uk)

[49] Criminal court statistics quarterly: January to March 2021 - GOV.UK (www.gov.uk)

[50] Microsoft Word - CBA - C-21 Report - Final.docx (criminalbar.com)

[51] WJP Rule of Law Index (worldjusticeproject.org)

[52] Criminal Courts Review - Contents - pdf version (criminal-courts-review.org.uk)

[53] Criminal Courts Review - Contents - pdf version (criminal-courts-review.org.uk)

[54] Criminal Justice Board - GOV.UK (www.gov.uk)

[55] Criminal Courts Review - Contents - pdf version (criminal-courts-review.org.uk)

[56] Review of Efficiency in Criminal Proceedings by The Rt Hon Sir Brian Leveson (January 2015) (judiciary.uk)

[57] Modernisation of justice through technology and innovation - GOV.UK (www.gov.uk)

[58] Vos unveils group to help steer civil justice system into the future - Legal Futures

[59] Futures | Courts and Tribunals Judiciary

[60] Transforming courts and tribunals – a progress update (nao.org.uk)

[61] Public_Accounts_Committee_Recommendation_4_31_Jan_2019pdf.pdf (publishing.service.gov.uk)

[62] Transforming courts and tribunals – a progress update (nao.org.uk)

[63] Transforming courts and tribunals – a progress update (nao.org.uk)

[64] Judicial Review and Courts Act 2022 - Parliamentary Bills - UK Parliament

[65] Transforming courts and tribunals – a progress update (nao.org.uk)

[66] MPs cast severe doubt on court modernisation - Legal Futures

[67] HMCTS Court and Tribunal reforms (parliament.uk)

[68] Microsoft Word - Developing the Detail- Evaluating the Impact of Court Reform in England and Wales on Access to Justice FINAL.docx (thelegaleducationfoundation.org)

[69] PAC_Jul19.pdf (publishing.service.gov.uk)

[70] Public_Accounts_Committee_Recommendation_1_July19_FINAL.pdf (publishing.service.gov.uk)

[71] Public_Accounts_Committee_Recommendation_2_31_Jan_2019.pdf (publishing.service.gov.uk)

[72] Public_Accounts_Committee_Recommendation_4_31_Jan_2019pdf.pdf (publishing.service.gov.uk)

[73] Making the most of HMCTS data (publishing.service.gov.uk)

[74] PAC_Jul19.pdf (publishing.service.gov.uk)

[75] Safeguarding Access to Justice in the Age of the Online Court (wiley.com)

[76] PAC_Jul19.pdf (publishing.service.gov.uk)

[77] Justice Select Committee. (2020). Coronavirus (COVID-19): The impact on courts.

[78] Justice Select Committee. (2020). Coronavirus (COVID-19): The impact on courts.

[79] HMCTS services: Online Civil Money Claims - GOV.UK (www.gov.uk)

[80] Introduction - The Online Court: will IT work? - Joshua Rozenberg (thelegaleducationfoundation.org)

[81] HMCTS Common Platform: participating criminal courts - GOV.UK (www.gov.uk)

[82] HMCTS Common Platform: participating criminal courts - GOV.UK (www.gov.uk)

[83] Overcoming delivery challenges with Common Platform - Inside HMCTS (blog.gov.uk)

[84] Explaining the Single Justice Procedure in the magistrates' court - Inside HMCTS (blog.gov.uk)

[85] HMCTS spends £236m on troubled case management system | News | Law Gazette

[86] The Common Platform – CBA Update 21.02.22 – Criminal Bar Association

[87] HMCTS spends £236m on troubled case management system | News | Law Gazette

[88] The Common Platform – CBA Update 21.02.22 – Criminal Bar Association

[89] The Common Platform – CBA Update 21.02.22 – Criminal Bar Association

[90] [Evaluation of remote hearings during the COVID-19 pandemic] (publishing.service.gov.uk)

[91] Justice Select Committee. (2020). Coronavirus (COVID-19): The impact on courts.

[92] Justice Select Committee. (2020). Coronavirus (COVID-19): The impact on courts.

[93] Justice Select Committee. (2020). Coronavirus (COVID-19): The impact on courts.

[94] [Evaluation of remote hearings during the Covid-19 pandemic] (publishing.service.gov.uk)

[95] Police, Crime, Sentencing and Courts Act 2022 (legislation.gov.uk)

[96] nfjo_remote_hearings_vulnerable-groups_rapid-review_20200506.pdf (nuffieldfjo.org.uk)

[97] Justice Select Committee (2020). Coronavirus (COVID-19): The impact on courts.

[98] Remote hearings | The Law Society

[99] Remote hearings | The Law Society

[100] Law under lockdown: the impact of COVID-19 measures on access to justice and vulnerable people | The Law Society

[101] Efficiency in the criminal justice system (nao.org.uk)

[102] Efficiency in the criminal justice system (nao.org.uk)

[103] Microsoft Word - pfd-speech-family-law-bar-assoc-2016.doc (judiciary.uk)

[104] Kingston, J. (1987). Rule-based expert systems and beyond: an overview.

[105] What Are Rule-Based Expert Systems? (easytechjunkie.com)

[106] Rule-Based System - an overview | ScienceDirect Topics

[107] What Are Rule-Based Expert Systems? (easytechjunkie.com)

[108] Challenges in implementing digital change (parliament.uk)

[109] Transforming courts and tribunals – a progress update (nao.org.uk)

[110] Efficiency in the criminal justice system (statewatch.org)

[111] (PDF) Criminal Justice Reform and the System's Efficiency (researchgate.net)

[112] Slapper G and Kelly, D. (2006). The English Legal System: 8th edition.

[113] High Court | Courts and Tribunals Judiciary

[114] Slapper G and Kelly, D. (2006). The English Legal System: 8th edition.

[115] Efficiency in the criminal justice system (nao.org.uk)

[116] Microsoft Word - pfd-speech-family-law-bar-assoc-2016.doc (judiciary.uk)

[117] The Human Bias in the AI Machine | Psychology Today

[118] Bias in AI is a real problem. Here's what we should do about it | World Economic Forum (weforum.org)

[119] https://nationalcrimeagency.gov.uk/who-we-are/publications/297-national-strategic-assessment-director-general-lynne-owens-speech/file

[120] 2019 Cressida Dick CBE QPM, Commissioner of the Metropolitan Police - The Police Foundation (police-foundation.org.uk)

[121] Police Foundation Police Effectiveness Report.qxd (police-foundation.org.uk)

[122] English legal system must keep pace with crypto and AI, say lawyers | Financial Times (ft.com)

[123] LegalUK the enormous economic value of English law

[124] What makes civil justice effective? (oecd.org)

[125] World Bank Document

[126] World Bank Document

[127] World Bank Document

[128] Court Backlogs: Balancing Efficiency and Justice in Singapore by Helena Whalen-Bridge :: SSRN

[129] World Bank Document

[130] civil-courts-structure-review-final-report-jul-16-final-1.pdf (judiciary.uk)

[131] (PDF) Criminal Justice Reform and the System's Efficiency (researchgate.net)

[132] Judicial Review and Courts Act 2022 (legislation.gov.uk)

[133] 5k44x00md5g8-en.pdf (oecd-ilibrary.org)

[134] 5k41w04ds6kf-en.pdf (oecd-ilibrary.org)

[135] What makes civil justice effective? (oecd.org)

[136] 5k41w04ds6kf-en.pdf (oecd-ilibrary.org)

[137] Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal by Shannon Salter :: SSRN

[138] viewcontent.cgi (uwindsor.ca)

[139] CRT-Annual-Report-2020-2021.pdf (civilresolutionbc.ca)

[140] Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal by Shannon Salter :: SSRN

[141] (PDF) Criminal Justice Reform and the System's Efficiency (researchgate.net)

[142] (PDF) Criminal Justice Reform and the System's Efficiency (researchgate.net)

[143] (PDF) Criminal Justice Reform and the System's Efficiency (researchgate.net)

[144] (PDF) Criminal Justice Reform and the System's Efficiency (researchgate.net)

[145] Transforming courts and tribunals – a progress update (nao.org.uk)

[146] HMCTS Data Strategy (publishing.service.gov.uk)

[147] What makes civil justice effective? (oecd.org)

[148] Executive summary | OECD Framework and Good Practice Principles for People-Centred Justice | OECD iLibrary (oecd-ilibrary.org)

[149] What makes civil justice effective? (oecd.org)

[150] 5k41w04ds6kf-en.pdf (oecd-ilibrary.org)