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LITIGATION FUNDING

On the cusp of a civil revolution

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On the cusp of a civil revolution

“The first great revolution to transform our civil courts, of which anyone now speaks, was the amalgamation of the old courts of Common Law and Equity to produce what was then called the Supreme Court of Judicature, in 1875, followed shortly thereafter by the promulgation of the Rules of the Supreme Court. That reform stood the test of time, still fully functional (alongside the even older County Courts) when I started practice in the late 1970s, over a century later, before being apparently transformed by the Woolf reforms and the new ‘plain language’ CPR in the late nineties, all serving a supposedly new (and certainly newly expressly stated) overriding objective, namely dealing with cases justly, and at proportionate cost.

This second revolution certainly didn’t stand the test of time, being followed only a decade later by what we call the Jackson reforms, mainly about bringing proportionality to the expenditure and recovery of costs, but also about introducing compliance with the rules as an aspect of the overriding objective. Meanwhile the CPR had far outgrown both the old RSC in length, and even the King James Bible, by a very large margin, if all the Practice Directions, court guides and accompanying explanations in the White Book are included. And even the White Book doesn’t include the Insolvency Rules.

Rather more quietly, and in response to a recommendation in Sir Henry Brooke’s report on whether to unify the civil courts, the 145 odd County Courts were themselves unified, greatly facilitating their reorganisation into national Business and call centres, and local hearing centres.

How is it that, much less than a decade later, another revolution is at the door which, if fully implemented, will bring about greater change to civil litigation than ever before? Has something gone so badly wrong with our civil courts that only revolutionary change can put it right? Has the world changed so fast that only a revolution can bring the civil courts up to date and to relevancy? Has the drying–up of traditional sources of funding, for the parties and for the court service, in an age of austerity, dictated revolutionary change, so that the civil courts and the participants can live and litigate within their means?

Is there something wrong with my predicate, namely that a further, larger, revolution really is happening?

Let me address the last question first. I do so by starting with the as yet untested assumption (about which I make no general prediction) that all, or at least the bulk of, the recommendations in my Civil Courts Structure Review Final Report are eventually approved for implementation. What is actually being proposed? The changes can be summarised under the following headings: Digitisation, Online Court, Fixed Recoverable Costs, Case Officers, Hearings, Regional Civil Justice and Enforcement.

Digitisation is the label for an ambition that, by the end of the Reform Programme in about 2022) all the processes for issue of civil proceedings, non-oral communication with the civil court, case handling, progression, management and trial of civil proceedings will be digital (and mainly online) rather than paper-based. All civil cases will begin with online issue through a single portal, and end with a paperless trial and (if necessary) mainly online processes for enforcement of the judgment. The same will apply to appeals. Bearing in mind how heavily paper-based civil proceedings currently are, no-one could describe the fulfilment of that ambition as less than revolutionary in its ambition and intended effect. The tyranny of paper with all its inflexibility, cost, delay and sheer waste will be broken, reversing a trend that started with typewriters and went mad with photocopiers. As the recent report by Justice has acutely recognised, the very concept of a court will be radically changed, from meaning the building where the case file is stored and worked upon, and the case managed and tried, to a virtual concept with no single geographical location, under which the file lives on a cloud, accessible anywhere, and different human activities related to the case can occur in widely dispersed places, simultaneously or sequentially.

I call that an ambition advisedly. Real strides have already been made, with online issue, filing and document storage in the Rolls Building using the new CE File software platform. The Crown Court is well on the way to paperless trials, using DCS software and Clickshare. I am told that piles of paper the height of the Shard are being uploaded onto the DCS database every week. Well-heeled parties can have paperless civil trials, at least in the Rolls Building, using Magnum at their own considerable expense. Utilities and private litigants can issue County Court money and possession claims online, but everything is still turned into paper on receipt, and entirely paper-based thereafter if the case is contested. There is even a digital option in the Supreme Court. But civil litigation is otherwise still mainly paper-based, and entirely so both in the High Court outside the Rolls Building, and in the Court of Appeal. A common software platform, combining the separate virtues of CE Files and DCS (the former for issue, filing and storage and the latter for paperless trials for all) has yet to be designed, but work has started. I do not believe that there is any technological impediment to getting there, but the reform budget is fixed. It may or may not pay for everything needed to get 100% of the way.

Sceptics say that I am ignoring the risk, inherent in any government sponsored IT programme, that it will crash and burn. I am not, but the recent precedents, in the form of CE Files, DCS, eJudiciary and the Traffic Penalty Tribunal are very encouraging. It is a risk which needs to be recognised, planned and guarded against, but not a reason for not going ahead with digitisation.

The Online Court is fast becoming the flagship part of the civil element of the Reform Programme. The latest MoJ ministerial statement, from the new ministerial team, and the joint vision statement agreed with the Lord Chief Justice, commits to its development. It will be a new court, accessed by online issue and filing, but that is not its distinguishing feature, since the ambition is that all civil proceedings will share that attribute. Its characteristics or

leitmotivs are that it is aimed and designed at and for the ordinary person or small business with no, or minimum and affordable, access to legal assistance, and that it brings resolution (i.e. settlement of the dispute by the parties with assistance) within the mainstream of the process, taking the A out of ADR. I would call it a Civil Solutions Court, Solutions being short for, and less lawyerly than, Resolution. Its first steady state ambition is to handle straightforward money claims up to £25,000 value at risk, with exceptions (such as for personal injuries) where there is already satisfactory access to justice. It will have very simple, short rules made by a new type of rule committee with large input from LIP-facing people from the voluntary sector, who know what plain language really means to ordinary people, rather than what judges and lawyers think it means.

Again, it is right to characterise this project, as many commentators have, as ambitious. Many aspects of it are already in limited use, such as small claims telephone mediation and judicial ENE, video and telephone hearings and online issue. But others are novel, such as the automated stage 1 triage process designed to enable the litigants to articulate their grievance in a form (but not jargon) which will enable the court to get to grips with it, and to upload their key documents and supporting evidence. That requires painstaking design and iterative testing of the content of successive online screens, tailored to different types of typical dispute. The Canadians are ahead of us, with their recently launched Civil Resolution Tribunal in British Columbia, which uses the same triage process, the design of which they accurately call knowledge engineering. But we will be the first to incorporate it into a fully-fledged court, with binding judicial determination of cases which can't be resolved.

If this project bears fruit, and it will fail over my dead body, it will plainly be revolutionary. It will be no less than a wholly new way of litigating civil disputes. It will be much more investigatory than adversarial. Judges will have to be their own lawyers. Resolution will lie at its heart rather than being, as at present, part of Alternative Dispute Resolution. The less pervasive but still welcome involvement of lawyers will be characterised by the affordable provision of early bespoke advice on the merits by a qualified lawyer, and specialist services, such as cross examination, only where really needed. This will require a new emphasis on unbundling for solicitors and direct access for the bar. Neither are without their real difficulties, but the continued use of a full retainer for disputes with value at risk up to £25,000 (and many would say much higher) involves costs and costs risk which is just not proportionate. There will be nothing to stop parties using lawyers as much as they wish, but a fixed costs regime will limit the other party's costs risk to those items which I have described.

There is by contrast nothing of itself revolutionary in the newly announced commitment of the MoJ to an expansion of the scope of fixed recoverable costs from the relatively modest base already established by (in this respect) the slightly half-hearted implementation of Sir Rupert Jackson's recommendations. Indeed, he is champing at the bit to get back into the fray, and not just by the delivery of distinguished lectures and a welcome recent book on the subject. This proposed expansion fulfils a long-held wish of the last MR.

Critically, it will deal more economically with disproportionate costs recovery in areas where judicial costs management is itself arguably disproportionate in terms of the satellite litigation which it can engender. But if the combined effect of the Online Court, more fixed recoverable costs and continued costs management for larger cases is for the first time in ages comprehensively to address the disproportionality of costs and costs risk in civil litigation, then an elusive and priceless objective will have been achieved, well worth a revolution to bring about.

Although the name is new, there is again nothing revolutionary, viewed on its own, about the concept of Case Officers. They have been around in most parts of the court system, civil and criminal, for many years. The excellent team of lawyers who handle, organise and prepare papers for the judges of the Court of Appeal are a good example. Case Officers are an important element in the Reform Programme because of a perception that too much of the working week of a typical judge (and junior judges in particular) consists of dealing on paper (or dare I say documents) with routine, often uncontested matters, which do not justify the six figure remuneration paid to judges, and which therefore could be done by civil servants on a fraction of the salary, leaving judges to do the real judicial work of deciding contested cases, finding the facts and exercising case management and other discretion.

What is new about Case Officers is, first, the developing thinking about finding some common parameters which describe and regulate their training, work and supervision, and secondly, finding ways of engaging them more in the resolution of civil disputes, short of determining issues about the parties' legal rights and obligations. Taking those in turn, a clear decision has been made that Case Officers are not to be a new junior class of judge, or even to morph quietly into one, as has tended to happen in the past. There will be, and remain, clear blue water between judges and Case Officers. But important safeguards are being proposed to satisfy the public that some activities currently carried out by judges (and which remain within the area of judicial responsibility within the court system) can safely, properly, more economically and I would say often better be carried out by Case Officers. First, they are to be ultimately answerable to the Lord Chief Justice, and independent in their work from governmental control or influence, even though in HR terms they will be civil servants, managed as such. Secondly they will be trained by, or under the close supervision of, judges. Thirdly they will be actively and closely supervised by judges in the carrying out of their relevant work. Finally, at least in my model for the Online Court, case management decisions taken by them will be subject to a party's right to have them re-considered by a judge.

The second new feature builds on the still quite recent establishment of the small claims telephone mediation service (for cases within the small claims track in the County Court). The plan is to put the Online Court Case Officer in charge of the resolution process at stage 2: that is, being the first independent legal mind looking at the online case file, identifying the best means of seeking its resolution by the parties (whether telephone or face to face mediation, judicial ENE, ODR for example), guiding the parties into that process and then case managing for judicial determination those (hopefully few) cases which the parties cannot resolve themselves with assistance.

Viewed overall, the Case Officer part of the Reform Programme responds to an underlying revolutionary change, which is to make every part of the machinery of the legal process proportionate in terms of effort and cost to the task which it is carrying out, and to the importance (to the parties and to the public) of its consequences. The perhaps unthinking assumption that every activity which is part of the judicial sphere of the court process must be actually done by a judge is not to prevail. That has never been an invariable rule. For example, listing of cases has traditionally been (and will remain) within overall judicial responsibility. But the actual work of listing, which many would say is an art rather than a science, has always been delegated to listing officers, who do it, on the whole, much better than judges ever could.

This new and I think revolutionary focus on proportionality in the deployment of resources is emerging much more clearly in the approach now being taken to the question what matters actually need a face to face hearing, in a courtroom. Until now, at least in the civil sphere

with which I am familiar, the basic assumption has been that cases must be finally determined at face to face trials, and interim matters (including but not limited to case management) at face to face hearings. For many years departures from that starting assumption have grown in importance. Summary judgment is the preferred method of determination where the outcome is so clear that a trial is unnecessary. Evidence is increasingly taken via video where delay, expense or other inconvenience militates against it being taken at the trial. Case management by Masters and District Judges is with increasing frequency done on the telephone rather than face to face.

But all these slow developments have been regarded as departures from the face to face norm, needing specific justification. The new approach being proposed within the Reform Programme is to abandon the very concept of a norm, let alone a face to face norm, and to address the issue in a completely open way, asking which of the processes available is best suited to achieving the desired outcome, with modes which are the more expensive having to be justified on proportionality grounds. The options range from online, on the documents (not the papers), on the telephone, by video and face to face. The last three all amount to hearings, and some versions of the first (where simultaneous or sequential verbal communication takes place online) may also do so.

I would like to see a revolution in regional civil justice, although this does not, yet at least, form part of either the Reform Programme, or MoJ policy. For very many years civil justice in the regions has, at best, struggled to maintain its profile against ever increasing odds, and at worst, been progressively hollowed out from inside, being now in a state which, in important respects, would have been unrecognisable to practitioners in the late 1970s, when I started out as a humble knock-about advocate in the county courts. Let me give some examples.

The first, and most glaring, has been the constant whittling down of civil Circuit Judge resources in the County Court outside London. When I started practice, if you went to a County Court, you got a county court judge, (i.e., what we now call a Circuit Judge or a Recorder) to hear most of your trials or applications. Now 86% of the workload of the County Court (including London) in terms of time taken, is done by District Judges and their deputies. The contrast with judicial allocation to family work is stark. In the last full year, Circuit Judges sat 8,136 days in the County Court, but 25,520 days in the Family Court. District Judge sitting days were roughly even, but deputy District Judges were used almost four times as much in the County Court as in the Family Court. Of the 23 DCJ territories, no fewer than five lacked a single CJ who devoted 50% or more of their time to civil County Court work. Eleven areas had only one CJ in that category. Three areas had two, two areas had three, one had four or more. Only London had a substantial contingent.

Secondly, The regional specialist civil court service in the main regional trial centres is struggling (in the eyes of professional stakeholders) to maintain its position in the light of the very large investment of money and effort at the Rolls Building, and three of them (Bristol, Liverpool and Newcastle) struggle to provide a self-sufficient service at all, lacking what I and many regard as the minimum contingent of 3 specialist Circuit Judges, so as to be able to provide effective shared lists and cover for urgent interim applications. Bristol has only two, while Liverpool and Newcastle are entirely dependent, respectively, upon Manchester and Leeds for any specialist cover at all above District Judge level.

Thirdly, but leaving aside chancery work, there is no adequate listing arrangement to ensure that category A cases can get the required High Court Judge for a regional trial. The result of these deficiencies is (and has for long been) that cases which ought to be issued, case managed and tried in the regions get issued in London, and too many cases which are

issued in the regions get transferred to London due to lack of local expertise. This is bad for London, where the RCJ and the Rolls Building are overloaded with cases that shouldn't be there, and bad for the regional centres, where thriving local legal firms (including barristers' chambers) need to be able to offer a full local litigation service if they are to survive.

My proposed reform for building up regional civil justice is set out in full in Chapter 8 of my Final Report. In outline, it involves making good the principle that no civil case should be too big to be managed and tried in the appropriate region (i.e. appropriate to the location of the parties, the professionals and the witnesses), and setting out to ensure that a sufficient cadre of judges (at Circuit Judge level in particular) are civil specialists, by which I mean devoting at least 40% of their working time to civil cases, rather than less than 20% as is prevalent at present.

Finally, always last but please not least, comes enforcement. There can be no real rule of law in the civil context if final judgments, once obtained, cannot be enforced with reasonable speed, efficiency and effectiveness, albeit with appropriate elements of mercy and social awareness in terms of the effect on judgment debtors. Yet I have in my review described enforcement as the Cinderella of the civil courts without contradiction thus far. There are haphazard differences between the High Court and the County Court in the availability, procedure, effectiveness and cost of enforcement measures, all of mainly historical rather than rational origin. Too many of them involve inefficient filling in and processing of paper forms, grossly excessive judicial involvement where there is no dispute to resolve, with grave delay and attendant expense.

I have, again, proposed what may fairly be described as a revolutionary reform. Although firmly opposed to a general unification of the civil courts, I do favour the unification of all processes of enforcement, or at least those with no foreign involvement, or arbitration element. The reason is simple: while a host of different issues may attend the obtaining and making final of a judgment, the enforcement of money judgments at least, leaves them all behind. The only remaining issues, generally speaking, relate to the assets and resources of the judgment debtor.

A unified court for enforcement (and I do mean court, not office, because judicial oversight must remain at its heart) would apply only those best of the disparate remedies and procedures separately available now in the High Court and County Court, and we would discard the worst. Modern IT will work wonders in the simplification and speeding up of the processes of application and checking. I have suggested that the enforcement court should be the County Court, because of its better regional distribution and already established business centres, and that it should enforce both High Court and Online Court judgments, save where specialist expertise is required, as for cross-border enforcement and enforcement of arbitration awards.

Although novel, my unification proposal met with not a single objection during consultation, and a lot of support, from both the judgment creditor and debtor sides of the argument. But unwinding the legislative tangle which regulates enforcement currently would be no easy task. That appears to be the only reason why this proposed bit of the larger revolution may not be pursued, at least in the short term (although I have not given up hope), while the MoJ remains very heavily engaged with the other legislative aspects of court reform. In any event the not quite so revolutionary processes of digitisation and rationalisation look set fair for implementation.

So, to sum up on this first question: is there a revolution starting to happen? Digitisation and the Online Court: yes and yes. Fixed recoverable costs and Case Officers: perhaps not if

viewed separately, but major contributors to an undoubted proportionality revolution, viewed in the aggregate. Hearings definitely. Regional justice and Enforcement: yes if it happens, but some further pushing may be required, beyond that contained in my report.

So why is it that the traditional pattern of slow, piecemeal reform by building on a tried and tested model is now being replaced by a series of revolutionary changes, coming in ever quicker succession, and each more far-reaching than the last? Let us start by looking at the obvious first candidate as the primary cause, what Harold Wilson once called "the white heat of the technological revolution". Professor Richard Susskind, that voice crying about IT in the wilderness, speaks and writes eloquently about the ever-increasing pace of technological development in IT which will, he prophesies, make lawyers, and I suppose judges, redundant in only a few more years. I think I'm reasonably safe, but many of you out there may need to worry!

There can be no doubt that the courts, and the civil courts in particular, have been left behind in the digital revolution, even though there are computer systems in use in the court service of considerable age and therefore, now, total obsolescence. There are I think good and bad reasons for this. The bad reasons include serious under-investment. Since civil court processes broadly pay their way, and currently make a handsome surplus (£95 million last year) with which to subsidise crime and family, it cannot be said that this lack of investment has been designed to avoid putting undue pressure on the taxpayer. On the contrary, it is now belatedly recognised that capital investment in the courts will eventually pay dividends, in terms of greatly reduced running costs. A more serious bad reason is the unfortunate trail of failed IT projects which preceded the recent encouraging success of CE File, DCS and Ejudiciary. We were trying to modernise, but simply failing.

A potentially good reason why the courts might choose to lag behind, put forward by many during consultation during my review, is that access to justice means that the court must use means of communication which all its customers can use, rather than means available only to the most advanced, IT literate and computer equipped. This is a very serious argument, which starts by identifying a correct principle. National statistics suggest that about 10% (and falling) of the population is challenged in the use of the internet, either because they have no connection, no computer, or lack the requisite skills. Mainly anecdotal (but nonetheless persuasive) evidence from the voluntary and pro bono sector suggests that the digitally challenged proportion of the courts' current users is much higher, perhaps approaching 50% of current LiPs.

This point is put forward more as a justification than an explanation for the courts lagging behind the rest of the world in going digital. No one suggests that it has actually played any part in the formulation, or non-formulation, of policy. But there must come a point when going digital, with full support for those challenged by the change, is a better solution than staying on paper until everyone is, without needing help, ready for the change. I think that this point in time has now been reached. First, there are many impediments to access to justice other than having to use a digital means of communication, and some of them would be positively eased by the use of digital techniques. Some court users are challenged by having to use English, but digital communication greatly increases the scope for simultaneous translation. Some have difficulties with articulating their grievances which may be alleviated by online investigatory methods, such as the stage 1 triage process being developed for the Online Court, and already in use in British Columbia for their Civil Resolution Tribunal. Some have difficulties regardless of the medium of communication used.

Secondly there is a fast growing younger generation which now finds communication easier and more natural digitally than on paper. Mobile phones and other smart devices have opened up the internet to a multitude who do not own or use computers, and the new court-based IT is all being designed with those devices primarily in mind. Thirdly, an increasing number of civil disputes will arise out of transactions initiated online or by some other digital means, making it much easier to present evidence digitally than on paper.

But most importantly, the savings which may now be generated from going fully digital, rather than twin-track with a parallel paper-based optional alternative, are likely to amount to much more than the additional cost of providing support to the digitally challenged. There is no doubt that the necessary support has to be provided, and rigorously tested before paper is abandoned as an option. HMCTS accepts that, and has (at my request) set up what is called a LiPEG (Litigant in Person Engagement Group) peopled by representatives of the voluntary and pro bono sector to provide expert consultative assistance to that end. The response to my consultation during the CCSR suggests that the wise and dedicated pro bono community is a cautious supporter of the move to digitisation, provided that properly funded assistance for the digitally challenged is made available.

Finally, the current LiP community may not be the correct comparator. The Online Court, which could not function otherwise than digitally, is aimed at providing access to justice not merely to the current LiPs, but to that large silent class of ordinary (and ordinarily computer literate) people and small businesses for whom litigating in the civil courts about a dispute worth £25,000 or less is simply not proportionate or practicable, due to the cost and costs risk, and the grave disadvantages of litigating without lawyers. That said, whether the digitally challenged community is large or small, proper assistance for them remains a sine qua non.

IT apart, the main reason why I think we need a revolution now is that the laudable efforts to bring proportionality to bear down upon the cost of civil proceedings have, at best, only partially succeeded. Some would say that they have failed. The main weakness identified by my review is the lack of access to civil justice caused by the combination of disproportionate cost, coupled with the impracticability of litigating in person caused by our lawyerish legal culture and procedure. That is the main driver for the creation of the Online Court, in all the reports which have advocated it, of which mine is only the third. This is the principal respect in which I do think that our civil courts have gone badly wrong, notwithstanding the Woolf reforms and the re-writing of the civil procedure rules in an attempt to simplify, and the Jackson reforms in seeking to bring proportionality to the expenditure and in particular recovery of costs. It is not that the courts have, in either of those great processes of reform, necessarily taken wrong turnings. It is more because they have been insufficient to counter the effects upon the accessibility to civil justice of the ever-increasing complexity of our law, the relentless tendency of legal professionals and, sometimes, even judges to complicate that which ought to be made more simple, and the disinclination of those representing the taxpayer to pay for it all through Legal Aid or endlessly expanding court facilities.

The final question is whether the revolutionaries are going to win, in whole or in part. The challenges may be grouped under the four headings; technical, financial, organisational, and stakeholder engagement. The present context is that the essentials of the HMCTS reform programme are firmly supported by both the judiciary and the MoJ, as reflected in the recent vision statement by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, but at a mixed and in some respects inevitably high level of generality. The recommendations in my Final Report have yet to be considered (in terms of

decision making on implementation) although the processes for doing that are being put in place.

I am no IT expert, and only a two finger typist, but my best estimate is that the coming revolution need not, and will not, run into insuperable technical difficulty. The huge improvement in the judicial working environment brought about by e-judiciary is based on a very simple, almost off the shelf, software platform. It enables judges to work on their e-files almost anywhere, even in the bath if, like me, they have a waterproof iPad. I bought my iPad to navigate my boat, not for working in the bath. But alas case files for civil cases remain largely on paper. CEFile in the Rolls Building is showing real promise as the way forward for the online issue of proceedings and the filing, storage and distribution of the contents of court files. The relatively slow take up while it remains voluntary has nothing to do with technical problems. Video hearings are already part of the architecture. While some of the video equipment is clunky and unreliable, modern advances make you think you can almost pass round the coffee at video meetings, so vividly are the widely dispersed participants brought together. And finally, paperless trials are a reality in the Crown Court. True it is that most civil trials are much more heavily documented, but coping with them is only a question of capacity and scale, rather than re-inventing the technological wheel, as the Magnum system has demonstrated in some of the largest commercial trials. The Canadians say, and have now started to demonstrate, that the creation of effective stage 1 triage in an Online Court is not limited by technical constraints. The big challenges lie in the knowledge engineering which precedes the encoding into software.

Now that government (both in the MoJ and the Treasury) have firmly got the point that capital investment pays financial dividends, I do not see running out of money as a potential deal-breaker for court reform generally, unless of course we are plunged into a new economic crisis which means that all government investment bets are off. But there do continue to be risks that the civil courts will be under-prioritised, as against family and crime, being, as I have said in my interim report, the Cinderella that lays the golden eggs. I emphasise that this is not happening at the moment, within the Reform Programme, where progress for example on the civil Online Court is proceeding apace. Nor will it happen where UK plc is at stake, at it is in the increasingly competitive market for international business litigation. There, again, recent ministerial announcements show an encouraging commitment to keeping our Rolls Building well out in front as by far the largest (and I would say best) business and property court in the world, and a magnet for the choice of English law and English jurisdiction in international commercial transactions.

My concern lies more about the more humble parts of our civil courts, regional civil justice and enforcement in particular. That is where governmental support is yet to be demonstrated (for improving regional civil justice) or given sufficient emphasis, (in relation to enforcement). That is where digitisation has yet really to gain momentum, by comparison with the Rolls Building and the Crown Court, but at least the commitment to digitise is there, and has been funded.

Another area where the battle has yet finally to be declared won is stakeholder engagement, by which I mean not just approval, but stakeholders taking an active part in, and responsibility for, success. There is a great deal of engagement going on, and a clearly demonstrated and I think unprecedented commitment to it by HMCTS, in setting up engagement groups with the judiciary, the pro bono community, and now the legal professions. The extent to which that is reciprocated by stakeholders is variable, and changes over time and subject matter. Let me give some examples, starting with judicial engagement. First, there was an early stage when many District Judges thought that for

them to give active support to the expansion of the Case Officer role or the introduction of an Online Court would be like turkeys voting for Christmas. But that perfectly understandable concern has now passed. There will be plenty of real judging for them to do after mindless box-work has been taken off their hands, both in the Online Court and the County Court. Furthermore, the stage 1 triage process in the Online Court is now recognised by District Judges, familiar with the frequently chaotic preparation of cases in the Small Claims Track, as offering a real improvement in the process of getting to grips with the issues, and exchanging documentary evidence.

Secondly, the often painfully slow roll-out of good wi fi connectivity in court buildings has caused many judges, even in the brand new shiny Rolls Building, to wonder whether digitisation will ever really work. But that is, I fervently hope, about to be a passing phase, as the big money starts to roll to fund digitisation. Good wi fi saves buckets of time once installed, but its installation in existing buildings continues to be a slow and painstaking process, and probably always will be.

Engagement in digitisation by the pro bono community is something which started slowly, again for perfectly understandable reasons about their digitally challenged LIP clients. But it has grown quietly and steadily, as I have described, and their engagement is now a major plank in the growing confidence that it can be made to work for all, with appropriate assistance.

Perhaps the most uncertain area is professional engagement. A substantial part of my wide ranging 3 stage process of consultation was taken up with detailed, frank and often anxious discussion about the implications of some aspects of the reform revolution for barristers and solicitors. In this context the phrase (in my title) 'civil revolution' takes on a second meaning. The debate has at all times been polite and respectful of different views, rather than a shouting match, and we have all, I think, listened to each other. Consultation has produced real changes of position, by all concerned. There has also been valuable practical engagement. For example, one City firm has made available its expertise in process mapping free of charge, to assist with digitisation and the development of online systems capable of use across the range of different courts and tribunals. Many individuals have offered the benefit of their experience and expertise, and I expect that their offers will be taken up. The law Society and the bar Council have stated their commitment to engage.

By no means all elements of the coming revolution are contentious with professional stakeholders. Digitisation of existing paper based procedures is plainly of benefit to lawyers, even though a natural tendency to follow time-honoured practices (to avoid negligence risk) has slowed the voluntary take-up of online issue and filing in the Rolls Building. I have encountered no resistance to my proposals to reinforce regional justice, and unanimous support for the unification, rationalisation and digitisation of enforcement. The contentious areas are, again understandably, the Online Court, Fixed Recoverable Costs and, to a lesser extent, Case Officers.

I will, at least for the moment, leave the fixed costs debate to others better versed in the pros and cons than I am. I will be speaking next week in some detail about the merits of the continuing Online Court debate, the detail of which is beyond the scope of this already long address. But the concerns about the Online Court, the increased use of Case Officers and the reduced use of face to face hearings have this underlying theme in common, namely that they are said by some to involve, or at least threaten, a dumbing down of our civil justice system, and the creation of a second class service on purely cost-driven grounds.

I acknowledge at once that saving cost is an important element in the drivers of all these reforms. The government's commitment to the Reform Programme, in an age of austerity, is of course heavily dependent upon a perception that the large investment will eventually pay dividends in reduced running costs, thereby alleviating, or at least containing, the burden upon the taxpayer of paying for our justice system. But I do not accept that the outcome will be a second class service, either generally or in the Online Court. The second class service argument is in my view based upon a false comparison, between what is proposed and a supposed ideal world in which all civil litigants enjoy the benefits of a Rolls Royce service from lawyers and from the court, at ever increasingly disproportionate cost, both to the participants and to the taxpayer. It is no answer to hanker for the return of widely available Legal Aid when the main problem is not that litigants cannot pay, but rather that the costs and costs risk of litigating about small or moderate claims is plainly a foolhardy investment by any rational standards, even for those who can afford it.

In my view the reality is that the current system is one which altogether excludes a silent but growing class of ordinary people and small businesses from any real access to civil justice (save in particular areas such as personal injuries). The true comparison lies between their continuing exclusion and the creation of an affordable civil justice system, using every aspect of modern technology which may be brought to bear for that purpose. Enabling litigants to do more of the work themselves, and empowering more of them to resolve their disputes without recourse to expensive judicial determination should be the hallmarks of accessible civil justice in the future. It may mean that, in some areas, lawyers will have less to earn from each case. But if the result is to enable many more people to use the courts, and for that purpose avail themselves of affordable, unbundled, professional legal services, where really needed for the vindication of their civil rights, then lawyers should in my view have nothing to fear from this revolution. ”