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A court without lawyers?

There was understandable concern within the legal profession at the prospect of a court without lawyers. But Lord Justice Briggs said that this was not what he had called for. “I am not looking at this as creating a lawyer-free zone: that is not any part of my conception,” he insisted in June 2016.¹

For one thing, a claim by a consumer against a business is likely to be handled by the defendant’s lawyers. Equally, bulk claims by utility companies against defaulting customers will probably be brought by the claimant’s legal department. In each case, the lawyers will be able to by-pass the “automated interactive triage” designed for litigants-in-person. They will upload standard answers to the basic questions instead of completing them one-by-one.

Secondly, Lord Justice Briggs recognised the advantage to litigants of taking early advice from qualified lawyers. Without an objective assessment of a claim or defence, parties with hopeless cases would not be deterred and individuals or small businesses would be at risk of under-settling their cases. His answer was to allow a fixed sum covering the cost of initial advice by qualified lawyer to be recoverable from the losing side.² A similar provision might fund the cost of legal representation at some trials.³ This is referred to as “unbundling” – separating the giving of advice from the handling of litigation.

There would also be support, perhaps from law students, for court users who are unable to use digital technology. But most claimants and defendants would be expected to navigate the new court without lawyers. How will they manage?

The lawyer’s role, above all, is to understand a client’s problems and put these into a form that can be resolved by the courts. At the most basic level, that may involve sifting through carrier-bags of correspondence or chains of emails to find out what the case is about. After that, the lawyer’s job is to outline the case in a way that others – including the judge – might reasonably understand. But, I shall explain in the next section of this paper, that is exactly what the software will be designed to do.

It can be difficult for people who’ve worked with traditional courts and tribunals throughout their lives to grasp that what’s now being conceived is an entirely new beast. If all goes according to plan, the online court will be used by people who’ve previously been excluded from justice on grounds of cost. It has huge potential.

A good way of understanding the difference between a traditional court and an online court is to compare a traditional course with an online course. In their book *The Future of the Professions*,⁴ Richard and Daniel Susskind note that in the early years of this decade Harvard was one of several universities that offered mass online courses to anyone with an internet connection. It was reported in 2013 that more people had signed up for Harvard's online lecture courses in a single year than had attended the university in what was then its entire 377-year history.⁵

References

1. <http://www.lawgazette.co.uk/law/briggs-online-courts-will-not-offer-second-class-legal-service/5055771.fullarticle>

2. Accepting that argument, the master of the rolls said in June 2017 that there might be scope for limited cost-shifting on a fixed-cost basis: <https://www.judiciary.gov.uk/wp-content/uploads/2017/06/slynn-lecture-mr-civil-court-of-the-future-20170615.pdf> paragraph 28.

3. <https://www.judiciary.gov.uk/publications/civil-courts-structure-review-final-report/> paragraphs 6.38. 6.39.

4. *The Future of the Professions*, OUP, 2015, page 58.

5. <http://www.bbc.co.uk/news/business-24166247>