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HMCTS reform

The HMCTS reform programme was launched in March 2014.¹ Chris Grayling, lord chancellor at the time, said the Treasury had agreed to fund it with a one-off investment averaging up to £75m per annum over the five years from 2015/16.²

This might have seemed a surprising development when ministers were under pressure to cut costs. But in terms of public spending £375m was pretty small – especially as the reforms were intended to generate annual savings of £100m by 2019/20. And the government accepted that without investment the courts would simply continue to decline.

By November 2015, the £375m had turned into “a £700 million investment in new technology”³ with expected savings now being doubled to more than £200m a year – partly generated by selling redundant court buildings. A couple of months later, the figure became £738m⁴ over five years. Towards the end of 2016, HMCTS and the Treasury agreed that the project would run for another six years, with the money being paid from 2016/17 to 2022/23. The programme had been extended to seven years and the estimated saving had increased to £250m a year.⁵

There was an additional investment of £270m for the criminal courts, taking the total over £1bn. But that compares favourably with the unsuccessful attempt to computerise the NHS patient records system, which was thought to have cost the taxpayer nearly £10bn by 2013.⁶

To the judges’ relief, Chris Grayling’s spending plans were endorsed by his successors Michael Gove,⁷ Elizabeth Truss,⁸ David Lidington,⁹ and David Gauke.¹⁰ A great deal of the credit for this must go to Lord Thomas of Cwmgiedd, the lord chief justice who found himself working with four lord chancellors between 2013 and 2017.

Figures disclosed by senior judges¹¹ in April 2018 indicated how the money was being spent:

- £270m developing a “common platform” with the Crown Prosecution Service.
- £230m modernising and reforming the court estate.
- £280m developing digital systems.
- £220m on other reform programme costs, including core programme costs, training and development.

In exchange for this investment the courts were expected to make long-term spending reductions. The aim is to reduce annual costs from £1.6bn per annum at the start of the reform process to £1.35bn by 2022. Savings will come from lower administrative and judicial staff costs, fewer physical hearings and running a smaller estate. HMCTS staff numbers would be reduced from 16,500 to just over 10,000. By April 2018, the court estate had been reduced from 460 buildings to 350, with more closures to come. But no salaried judge would (or could) be made redundant.

Crucially, the judges have a strong influence on the reforms through their representatives on the HMCTS board: currently Lady Justice Macur, Sir Ernest Ryder and District Judge Tim Jenkins. They cannot command a majority and they have only limited budgetary responsibility for the reforms. Even so, the board proceeds by consensus and the judges' views are treated with great respect.

The management consultants PwC were awarded a contract worth up to £30m over four years to provide expertise that HMCTS did not have in-house.¹² This included help, for example, in selling off court buildings that were surplus to requirements. HMCTS denied that they were outsourcing reform. They described PwC as a delivery partner whose knowledge and skills would be transferred to HMCTS over the course of the contract.

On a day-to-day basis, though, the reforms are directed by senior HMCTS officials. They employ their own team of programmers and designers, with more than 100 staff working from a large open-plan office in Croydon, south London.

"Gone are the days of single, large scale, beginning-to-end government IT projects handed to multinational IT consultancies," Kevin Gallagher, the HMCTS digital director, said in June 2016.¹³ Instead, each step in every process is tested separately. If one section does not work as intended, it can be redesigned without jeopardising the entire project.

This process is described as "agile development" or "fail fast and fix". The aim is to make each unit small enough to be changed cheaply and easily as necessary.

But piecemeal reform meant that some courts were further advanced than others. At the end of 2016, a lay magistrate told me how frustrating it was to watch her court's legal adviser laboriously typing every decision into the courtroom computer. Ancient systems and unreliable broadband slowed everything down to a snail's pace, the magistrate complained.

The central assumption behind the reform programme is that it is now possible to free the courts from the constraints of storing, transmitting and communicating information on paper. In itself, that doesn't sound very revolutionary. For some years, courts have been publishing their judgments online and emailing copies to everyone involved in the case.

But modern IT can do very much more. First, there is online case-tracking. At its simplest, this monitors the progress of a court's workload. If a party fails to meet a deadline, the software can set in train the appropriate sanction. Electronic diaries ensure much better use of a judge's time.

Another vital use of IT is the electronic case file. From the earliest days, every court has held a file of documents for each case it is dealing with. If that file or folder contains printed documents, the court must have a secure back-office, on-site or nearby, in which the papers can be stored and updated by court staff. If a case is active, a judge may need to see the case file regularly. That normally requires the judge to be at the court where the file is held. Alternatively, the papers will need to be brought to wherever the judge is sitting.

Once the case file is fully electronic, it will not be stored in a court building. It can be kept on a secure server and accessed by judges and lawyers from wherever they happen to be. The court will no longer need a secure back-office and staff to file paper documents. Indeed, it may not need a building at all. Some hearings may be conducted online, using telephone or video technology. Others may take place in temporary courts, set up in underused public buildings or commercial conference suites hired by the day. The electronic case-file makes it much easier for courts to sit whenever and wherever they are needed.

Traditional courtrooms will still be needed for criminal trials, of course. But with video links to prisons and custody suites it is now possible for hearings to be conducted without the defendant's physical presence. That may make it harder for defendants to talk to their lawyers and reduce the likelihood that a defendant will be persuaded to make an early plea of guilty. But it still saves the cost and delay of bringing the defendant to court. And many defendants prefer it: if you spend a day out of your cell, you may find it has been allocated to another prisoner in your absence.

Even installing something as old-fashioned as a telephone on the judge's bench can make a huge improvement in court efficiency. The judge sits in open court as usual and speaks to prosecuting and defence counsel from a speaker-phone on the bench. The conversation can be heard by everyone in court.

As we saw from Ingrid Eagly's research, though, there may be unexpected problems with video links. A paper circulated to judges in the criminal courts by Sir Brian Leveson¹⁴ said that risks had been identified. In a paragraph headed "research", the paper said: "Consideration should be given to any impact on judgecraft which may result from greater use of technology in hearings, including fully video hearings, such as the risks of unconscious bias and depersonalisation which have been identified in early testing."

And technology still has a long way to go. Sir James Munby, president of the High Court Family Division, complained in January 2017 about the lack of resources:

The video links in too many family courts are a disgrace – prone to the link failing and with desperately poor sound and picture quality. The Royal Courts of Justice in London – surely the flagship – is a case in point. My own court – Court 33, the court of the President of the Family Division – has no such facilities and no video link. When, recently, I needed a screen in my court, the only workable solution was found to be the careful placing in the jury box – relic of the days when divorce suits were tried before juries – of a vast and very heavy wooden screen which required a number of porters to install it...

The problem, of course, is one of resources, and responsibility lies, as I have said, with HMCTS and, ultimately with ministers.¹⁵

Far from making reform more difficult, the spending cuts introduced since the 2007-08 financial crisis have made it all the more necessary. As the senior tribunals judge Sir Ernest Ryder explained in March 2016, austerity "provides the spur to rethink our approach from first principles... [to] look at our systems, our procedures, our courts and tribunals, and ask whether they are the best they can be and, if not, how they can be improved". He was right to say that "we need a Victorian approach to innovation to move us beyond our Victorian legacy".¹⁶

Without "radical change", added the master of the rolls Sir Terence Etherton in June 2017, the only prospect was "the managed decline of the justice system".¹⁷

Viewed from the perspective of HMCTS, the reforms are aimed at “delivering a high-quality customer experience”, with “customer” defined broadly to include every type of court user. As a result of the reforms, says HMCTS, “justice will no longer be viewed as a slow process played out only in a physical courtroom. Instead, it will be a faster, easier to use service developed according to customer needs, delivered in the way that’s most appropriate and effective.”¹⁸

References

1. For the background, see Sir Terence Etherton <https://www.judiciary.gov.uk/wp-content/uploads/2017/06/slynn-lecture-mr-civil-court-of-the-future-20170615.pdf> from paragraph 12.

2. <https://www.gov.uk/government/news/chris-grayling-reform-of-the-courts-and-tribunals> At that stage, there was no mention of an online court: ambitions were limited to issuing claims online and managing cases electronically – as well as more comfortable chairs for court-users. Plans to close court buildings were not made explicit.

3. <https://hansard.parliament.uk/commons/2015-11-25/debates/15112551000003/SpendingReviewAndAutumnStatement>

4. See https://www.judiciary.gov.uk/wp-content/uploads/2016/01/lcj_report_2015-final.pdf

5. I can find no formal announcement of this.

6. <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/294/294.pdf> paragraph 5.

7. June 2015 <https://www.gov.uk/government/speeches/what-does-a-one-nation-justice-policy-look-like> “Not for the first time in our history, it is our judges who see most clearly what needs to be done to help the vulnerable, the overlooked and the victimised in our society.” See also Gove’s reference to courtroom bundles: “those snowdrifts of paper held in place by delicate pink ribbons, indeed thinking of the mounds of paper forming palisades around the hard-pressed staff who try to bring some sense and order to the administration of justice, it is impossible not to wonder what century our courts are in. Were Mr Tulkinghorn to step from the pages of Bleak House or Mr Jaggars to be transported from the chapters of Great Expectations into a Crown Court today, they would find little had changed since Dickens satirised the tortuously slow progress of justice in Victorian times.”

8. July 2016 <https://www.gov.uk/government/speeches/lord-chancellor-swearing-in-ceremony>

9. <https://www.gov.uk/government/speeches/lord-chancellor-swearing-in-speech-david-lidington>

10. <https://www.gov.uk/government/speeches/lord-chancellor-swearing-in-speech-david-gauke>

11. To their colleagues in an unpublished paper called Judicial Ways of Working – 2022 Civil, April 2018.

12. See <https://www.theguardian.com/law/2018/jan/02/moj-spending-huge-sums-on-consultants-to-deliver-digital-courts>

13. <https://www.gov.uk/government/speeches/modernisation-of-justice-through-technology-and-innovation>

14. Judicial Ways of Working – 2022 Criminal, April 2018, unpublished.

15. <https://www.judiciary.gov.uk/wp-content/uploads/2014/08/view-from-the-president-of-family-division-16-jan-17.pdf>

16. <https://www.judiciary.gov.uk/wp-content/uploads/2016/03/20160303-ryder-lecture2.pdf> paragraph 16.

17. <https://www.judiciary.gov.uk/wp-content/uploads/2017/06/slynn-lecture-mr-civil-court-of-the-future-20170615.pdf> paragraph 12: “managed decline” was a quotation.

18. Justice Matters, HMCTS, September 2016, page 1.

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