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How far should we go?

> **"Our system for the delivery of justice is rightly admired across the world," said Lord Thomas and Sir Ernest Ryder in April 2017. "It is underpinned by an independent and impartial judiciary and a legal profession of the highest quality and integrity."**

But, the two senior judges continued, the justice system "is a product of evolution rather than design and is, in many ways, fragmented... Paper-based systems are no longer viable. The language and processes used need to be simpler and more streamlined to improve access to justice. The world-leading strengths of our system should not obscure its shortcomings. For many litigants involved in low-value or routine litigation, accessing justice is too slow and too expensive."

Sir Ernest Ryder compared the changes being planned to the Judicature Acts 1873-75, which reformed court structures that had been largely unchanged since medieval times. "In the 1870s," he said, "the Victorians swept away the idea that a litigant had to use a distinct form of procedure, unique to each type of claim, each in a different court, some of which had overlapping jurisdictions and different remedies. It is to time to complete their work and provide the user with the legal equivalent of a 'one-stop shop'."[1]

There were differing views on how far this should go. At present, the High Court is divided into several overlapping divisions. In his review of the civil courts, Lord Justice Briggs considered whether these divisions should be adjusted or abolished. He reached no final conclusions, pointing out that any proposals were beyond the scope of his inquiry because they involved criminal and family work. But he did recommend that the High Court, the County Court and the planned online court should remain separate, not least because the High Court was such a valuable international brand.

However, the senior tribunals judge had argued a few months earlier that "digitisation and the development of online courts and tribunals... should enable the creation of a single point of entry to the justice system".

Sir Ernest Ryder concluded: "Our vision is of one system of justice, supporting the needs of all our diverse users, without consigning any to a second-class service; one judiciary, with specialist expertise, deployable across jurisdictions, flexibly and responsively, as caseloads require – supporting service delivery as well as career progression; and better quality outcomes, facilitated through innovative problem-solving and inquisitorial dispute resolution."[2]

Lord Thomas of Cwmgiedd expanded on this vision when giving oral evidence to the Commons Justice committee in November 2016.[3] The Royal Courts of Justice in London had been running 17 different IT systems, he explained. And yet every case – including those in the criminal courts – shared a common basic structure. The way ahead was to build a single IT system, with core components and necessary variations.

An online court for resolving lower-value civil claims was the starting point. "But if the IT is developed properly, we should be able to use the same IT system across the whole of civil, family and the tribunal system," the lord chief justice said. "To make sure that works, we've agreed to have a single set of basic procedural rules that are common across the system."

That's easy to say, challenging to achieve. Combining three rule books and rewriting them in plain English would be a huge job for an online procedure rules committee. But what it could lead to is an entirely new jurisdiction — in effect, a new court, bringing together parts of the existing courts and tribunals.

The obvious place to start would be in the Rolls Building, where judges from the Chancery division work alongside judges from the Commercial Court, a sub-division of the Queen's Bench division. It sounds easy enough, since both divisions are part of the High Court and there is considerable overlap in the work they do. But, as one insider told me, it would mean the Rolls Building "exiting the White Book" — writing a new rule book for the different courts that sit there.

The judges thought it would be counterproductive to abolish the Chancery division and reduce the Queen's Bench division by merging chancery and commercial work into a new cross-jurisdictional platform. It would also risk diluting the reputation of the Commercial Court, which is a valuable international brand. Instead, senior judges decided to rebrand all the Rolls Building courts (including the Technology and Construction Court, which is part of the Queen's Bench division) as the Business and Property Courts.[4] That name is also used for satellite courts outside London.

Maybe there is scope for rationalisation elsewhere. The Family division of the High Court currently deals with private-law cases — divorce and its consequences — as well as public-law cases, for example taking children into care. But divorced parents often find they have other legal problems, such as debt. Why not let an all-purpose family judge decide not only how much child maintenance the earning parent should pay but also how to resolve that parent's threatened bankruptcy?

It could certainly be done. But a new rule book requires legislation.

References

1. https://www.judiciary.gov.uk/wp-content/uploads/2016/03/20160303-ryder-lecture2.pdf paragraph 32.

2. https://www.judiciary.gov.uk/wp-content/uploads/2016/03/20160303-ryder-lecture2.pdf paragraphs 34, 53.

3. http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/lord-chief-justice-annual-report-2016/oral/43679.pdf

4. Announced on 13 March 2017, to take effect from June 2017: https://www.judiciary.gov.uk/announcements/business-and-property-courts-media-release