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Reform in England and Wales

When Lord Woolf was lord chief justice, from 2000 to 2005, he wanted court officials to install information technology in the civil courts as part of his civil justice reforms.¹ “They set about wiring the Royal Courts of Justice and other courts at enormous expense,” his successor recalled in 2016. “They did not have the money to complete it and the wiring is now completely redundant – as everything is Wi-Fi.”²

One reason why attempts to introduce IT in the courts failed so badly around the turn of the century was that the judges had no effective voice in running the courts in which they sat. That, in turn, led to misunderstandings over such fundamental issues as whether the IT being installed for the judges would provide them with the case management functions they wanted.³ It’s now accepted that computerisation projects fail when designers and programmers are too remote from their customers. For such systems to succeed, the people who build them must understand the needs of the people who will use them. Users must approve every stage of development.

This paper is about reforming the courts and tribunals of England and Wales for the digital age. That’s not simply a question of using IT to support or replace existing paper-based systems. As one leading judge has observed, “a word processor is really little more than an electronic version of the printing press invented all those centuries ago in Renaissance Italy... We must embrace the use of IT to do things that only IT can do.”⁴

But, as another judge discovered to his cost, some lawyers had failed to grasp that simple message. Mr Justice Popplewell, the judge in charge of the Commercial Court, issued a heart-felt practice direction⁵ in February 2018. It related to the court’s electronic filing and case-management system, known as CE-File.

“The practice in relation to filing applications on CE-File which are intended to be dealt with without a hearing is causing a huge waste of time for the judges dealing with them and for the staff supporting them,” he said. People were regularly ignoring the instructions in the court guide. “Judges and staff will no longer root around in the event log trying to find the relevant material, as they do at present. Non-compliant applications will simply be rejected.”

What seemed to have gone wrong was that lawyers were filing vast numbers of electronic documents in much the same way as they used to lodge huge piles of paper. No doubt that was much easier for them. But it missed the point of an electronic case-management system, which is that documents can be linked and indexed in the same way as web pages.

If digitisation is going to be effective, it must be deployed to change the way the justice system operates – to find better ways of delivering justice.

Although new systems will be built round the needs of court users, the judges are going to have to make them work. It follows that the people who direct the reforms must be members of the judiciary.

References

1. These date back to the late 1980s: see Sir Terence Etherton, <https://www.judiciary.gov.uk/wp-content/uploads/2017/06/slynn-lecture-mr-civil-court-of-the-future-20170615.pdf>, paragraph 5 onwards.

2. <http://www.parliament.uk/documents/lords-committees/constitution/Scrutiny/ucCC270416lcj.pdf> Q8 Apparently, the Treasury provided about a third of the sum requested and the Lord Chancellor's Department spent it all on infrastructure. "It was like paying for a road system but not investing in cars," one insider said.

3. Lord Thomas of Cwmgiedd, lord chief justice, summarised a saga of past failures in a speech delivered in May 2014: <https://www.judiciary.gov.uk/wp-content/uploads/2014/05/lcj-speech-it-for-the-courts.pdf>

4. Sir James Munby, http://www.familylaw.co.uk/system/froala_assets/documents/471/munby-president-speech-family-law-bar-association-flba-2016.pdf

5. <https://www.judiciary.gov.uk/publications/electronic-filing-of-applications-to-be-dealt-with-without-a-hearing>