

i Opinions expressed in this report are those of the author and should not be taken to be those of The Legal Education Foundation.



The Briggs report

In July 2015, Lord Justice Briggs was commissioned by the lord chief justice and the master of the rolls to review the civil courts in England and Wales and make recommendations for structural change. An interim report¹ appeared at the end of 2015 and his final recommendations² were published in July 2016. In October 2017, Lord Justice Briggs joined the Supreme Court and became Lord Briggs. He no longer has responsibility for civil court reform in England and Wales.

Lord Justice Briggs, as he was in 2015, had been asked to review the Court of Appeal, the High Court and – lower down the judicial hierarchy – the county courts. There used to be about 170 of these local civil courts in England and Wales, each with its own geographical boundary, buildings and staff. In 2014, the county courts were merged. There is now a single County Court with a number of hearing centres. That number will be reduced as courtrooms are closed and buildings sold off.

The High Court is a single court, based in London, but with district registries around the country. Its workload is allocated to different divisions, some of which were named in the 19th century (though their origins are to be found several centuries earlier).

“The civil courts of England and Wales are among the most highly-regarded in the world,” Lord Justice Briggs said. “The integrity and incorruptibility of the judges is beyond question... [They] invariably write (or speak) their own judgments rather than leave their drafting to assistants... [Their ability] to deliver extempore judgments means that, to a much greater extent than in most of Europe, court users generally receive their decisions quickly.”

That was their greatest strength. But the “single, most pervasive and intractable weakness of our civil courts is that they simply do not provide reasonable access to justice for any but the most wealthy individuals, for that tiny minority still in receipt of legal aid, for those (mainly with personal injury claims) able to obtain no win no fee agreements with their lawyers (CFAs), for the few who obtain free advice and representation and for substantial business entities”.

The reason for this, he explained, is that they were designed by lawyers for use by lawyers. It was a “shocking state of affairs” that left litigants-in-person at a grave disadvantage. Taken together with the large-scale withdrawal of legal aid funding for civil litigation, a growing

proportion of unrepresented court users were being gravely hampered in vindicating their rights.³

But for the first time there was now an opportunity to “design from scratch and build from its foundations a wholly new court for the specific purpose of enabling individuals and small businesses to vindicate their civil rights in a range of small and moderate cases... without recourse to lawyers or with such minimal recourse that their services can sensibly be afforded”.

The opportunity had arisen, Lord Justice Briggs explained, because the government had accepted the business case for reform – that a digitised court would be cheaper to run than the current system – to an extent that justified substantial investment even during a time of austerity.⁴

“The limited, antiquated and inefficient IT systems currently in use is now on the point of radical improvement” because of government investment, he noted. “At the same time, advances in the sophistication of online services and the large increase in the proportion of court users for whom online communication is both easy and normal make an online court designed for litigants-in-person a practicable proposition for the first time”.⁵

That was its most radical aspect, said the master of the rolls, Sir Terence Etherton, in December 2016.⁶ But the online court would not exclude parties who were legally represented. Instead, everyone would benefit from “a simple, straightforward system and equally simple procedure and practices, designed for use by everyone whether they have a lawyer or not”. By scrapping complex rules that could be understood only by lawyers, the court would lift what was regarded as “a significant barrier to entry to the justice system”.

In January 2017, Sir Terence Etherton and Lord Thomas of Cwmgiedd issued a joint statement endorsing the Briggs report and supporting its recommendations.

They said: “The review covers important ground, and while the online court caught the headlines, there are 62 recommendations in the report which merit equal attention. The judiciary will continue to work with the government and HMCTS to develop further the conclusions Lord Justice Briggs reached, and bring them to fruition alongside wider court modernisation.

“The justice system is undergoing a long overdue improvement programme. The judiciary is involved and informing every aspect of this. Lord Justice Briggs’s major review will ensure that the overall system for civil justice is improved for its users in a coherent as well as comprehensive manner. A team of civil judges has been established to lead on this work within the judiciary.”

References

1. <https://www.judiciary.gov.uk/wp-content/uploads/2016/01/CCSR-interim-report-dec-15-final-31.pdf>

2. <https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf>

3. <https://www.judiciary.gov.uk/wp-content/uploads/2016/01/CCSR-interim-report-dec-15-final-31.pdf>, paragraph 1.18.

4. <https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf> paragraph 6.58.

5. <https://www.judiciary.gov.uk/wp-content/uploads/2016/01/ccsr-interim-report-dec-15-final1.pdf> paragraph 1.18.4.

6. <https://www.judiciary.gov.uk/wp-content/uploads/2016/12/law-works-lecture-mr-20161205.pdf>

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