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Will IT work?

An online court will be judged on the strength of its software. In particular, its success depends on being able to capture and define the issues in a dispute. And that depends on understanding the answers given by court users at the outset and then asking the correct follow-on questions.

A system in which each question depends on the answer just given is known as a decision tree. Lord Justice Briggs did not regard its creation as a major IT challenge. He saw it as “primarily an exercise in knowledge engineering”. Its designers need a detailed and accurate understanding of the underlying law relating to each type of case within the court’s jurisdiction. They then need to construct a series of questions in clear, simple English – and Welsh. Only then can the questions be coded into interactive digital form and kept up-to-date.

Professor Richard Susskind maintained that constructing this decision tree was “a more challenging exercise than most people allow”. Speaking as the person who co-developed the world’s first “expert system” in this context, he said it was “time-consuming and difficult if the system is to be genuinely helpful”.¹

In his final report published in July 2016, Lord Justice Briggs said he understood that the government had now agreed to implement the concept of the online court.² He continued:

Legislation is being prepared to provide for a new online procedure and for the development of a wholly new kind of simplified procedure rules for the online court. A new online rules committee will cover civil, family and tribunals; and will be separate from the existing rules committees. This is to my mind a very welcome early development pursuant to which, even in advance of the passing of the requisite legislation, the development of the online court can proceed in a way which maximises its prospects of increasing access to justice for litigants without lawyers.

It is essential that fees for using the court are set at a sensible level. That must be significantly lower than the courts currently charge, not only to attract users but to demonstrate that, once the capital costs have been met, an online service is cheaper to deliver. Even before fees were increased in August 2016, there were concerns that small businesses had been priced out of the claims market.³

The current fee⁴ for issuing a money claim in the County Court ranges from £35 to £10,000. For a claim worth £10,000 or more, the fee is now 5% of the amount claimed. So if you are trying to recover £20,000, you have to pay £1000 up front. There is also a hearing fee, which ranges from £25 to £1,090 according to the type of claim.

In raising fees to these level in 2016, the government argued that the costs of running the courts should be paid by the people who used them. But some court fees produce a hefty profit. For example, applying for a divorce now costs £550. Speaking in February 2016, Sir James Munby, president of the High Court family division, said “the cost of administering the divorce system was something of the order of £200 a case”. Pointing out that the courts had a monopoly in granting divorces, he told the Commons justice committee that there was “something rather unattractive – particularly if one is selling justice, which one should not be doing – in battenning on to the fact that there is a captive market and that, because there is no elasticity of demand, one can simply go on putting up the fees until it becomes another poll tax on wheels”.⁵

References

1. Speaking to me in August 2016. Professor Susskind explored knowledge engineering in his doctoral thesis and several of his books.

2. <https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf> paragraph 4.3.7.

3. See <http://www.lawgazette.co.uk/practice/money-claims-being-priced-out-of-court-says-bar/5057225.article>

4. All fees are listed here: <https://www.gov.uk/government/publications/fees-for-civil-and-family-courts/court-fees-for-the-high-court-county-court-and-family-court>

5. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/courts-and-tribunals-fees-and-charges/oral/28990.html> Q307.
