A primer on the digitisation of administrative tribunals

Joe Tomlinson
About this primer

Tribunals are a major feature of the administrative justice landscape in the UK. Recently, the government proposed and began to implement a revolutionary digitisation agenda across the justice system. The digitisation of administrative tribunals is a key part of that agenda.

The proposed changes promise a paradigm shift in the way that public law litigation is carried out and, more broadly, how fairness in the administrative state is policed. Not much is, however, known as to the detail of what is to come, with the current policy documents offering only a broad vision.

At this point of ‘known unknowns’, this short and accessible primer seeks to set out a framework in which the emergence of digital tribunals can be understood and assessed. It outlines four important contexts:

- reforms to administrative justice and changes to tribunals;
- advances in e-government;
- developments in online dispute resolution; and
- the development of the Transforming Our Justice System proposals.

Acknowledgments

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Author information

Lecturer in Public Law, School of Law, University of Sheffield
Associate Fellow, Sir Bernard Crick Centre for the Public Understanding of Politics

E-mail: j.p.tomlinson@sheffield.ac.uk

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Introduction

The background for this primer

1. A short and anodyne-looking policy document published in late 2016, Transforming Our Justice System, announced a £700 million-plus investment in the justice system. One part of the document sets out a revolutionary vision for administrative tribunals to ‘go digital’. In global terms, these reforms are pioneering. They are on a scale never seen before.

2. While there is clear ambition on display in Transforming Our Justice System, we know little detail of what is to come (this should be no great surprise and it could be said that it is difficult to criticise this: the document is meant as a starting point and ought to be read in that light). What we do know is that the digitisation work on tribunals will be initially developed and piloted in the Social Security and Child Support Tribunal, and work has already begun in that respect. There has also been a recent announcement that there are plans to start testing virtual hearings in October 2017, and that these will be used first for case management in the Immigration and Asylum Chamber.

The aim and structure of this primer

3. At this point of ‘known unknowns’, this primer sets out a framework within which the development of digital tribunals can be understood and assessed.

4. Putting any system in its ‘proper context’ entails the task of determining what its ‘proper context’ actually is. Any such determination is a somewhat artificial task—the meaning of ‘proper context’ tends to simply be the most relevant, or most obvious, set of background factors. As regards digitisation of tribunals, it is helpful to understand that the reforms arise at the point of convergence of multiple developments. Four important contexts considered here are:

   - reforms to administrative justice and changes to tribunals;
   - advances in e-government;
   - developments in online dispute resolution; and
   - the development of the Transforming Our Justice System proposals.

5. The primer concludes by suggesting that there is a need to devise and pursue a research agenda around digital tribunals. It also offers some comments on the nature and scale of this challenge.
The administrative justice context

Reforms to administrative justice

6. The administrative justice landscape is constantly changing. There have been multiple major reforms since the 2010 general election. Notable changes include: the restriction of legal aid; the withdrawal of traditional tribunal appeal rights in some contexts; attempts to restrict judicial review; and expansion of internal review systems (either as a replacement for tribunals or as an additional pre-appeal stage).

7. These changes can be understood by reference to the models of administrative justice, as developed by Mashaw and Adler (see table 1). Before the crash of 2008, the system-wide movement seemed to be towards emphasising the legal model. This was seen in, e.g., the increasing judicialisation of tribunals and the Human Rights Act 1998. Since 2010, it could be said that the pendulum has swung away from the legal model and towards the bureaucratic rationality model. This is evident in, e.g., the withdrawal of traditional tribunal appeal rights and expansion of internal review systems.

8. The models of administrative justice rely on ideal types. The promise of the bureaucratic rationality model is accurate and efficient policy implementation. The reality is some distance from the ideal: much of the available evidence concerning the practical operation of newly-established bureaucratic-rationality-based systems (such as the DWP’s mandatory reconsideration system) reveals, among other problems, concerns about accuracy.

Table 1: Models of Administrative Justice (Mashaw/Adler)

<table>
<thead>
<tr>
<th>Model</th>
<th>Mode of Decision Making</th>
<th>Legitimating Goal</th>
<th>Mode of Accountability</th>
<th>Mode of Redress</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bureaucratic Rationality</td>
<td>Applying rules</td>
<td>Accuracy</td>
<td>Hierarchical</td>
<td>Administrative review</td>
</tr>
<tr>
<td>Professional</td>
<td>Applying knowledge</td>
<td>Public service</td>
<td>Interpersonal</td>
<td>Second opinion or complaint to a professional body</td>
</tr>
<tr>
<td>Legal</td>
<td>Asserting rights</td>
<td>Legality</td>
<td>Independent</td>
<td>Appeal to a court or tribunal (public law)</td>
</tr>
<tr>
<td>Managerial</td>
<td>Managerial autonomy</td>
<td>Improved performance</td>
<td>Performance indicators and audit</td>
<td>None, except adverse publicity or complaints that result in sanctions</td>
</tr>
<tr>
<td>Consumerist</td>
<td>Consumer participation</td>
<td>Consumer satisfaction</td>
<td>Consumer charters</td>
<td>“Voice” and/or compensation through consumer charters</td>
</tr>
<tr>
<td>Market</td>
<td>Matching supply and demand</td>
<td>Economic efficiency</td>
<td>Competition</td>
<td>Citizen “exit” and/or court action</td>
</tr>
</tbody>
</table>
The ‘old’ and ‘new’ models of tribunals

9. Within the administrative justice context, there is also the particular context of tribunals. Tribunals have changed significantly over the course of their history. For a long time, however, tribunals have offered a relatively cheap, quick, and accessible alternative to the courts as a venue for challenging administrative decisions. Tribunals have also provided a more effective route of challenge than the courts, offering a full reconsideration of the administrative decision instead of a bare legality review. The tribunals caseload far outsizes that of the ordinary courts.

10. As Thomas points out in his recent account of developments in the tribunals world, tribunals are the ‘core institutions of administrative justice and will remain so, but they are also changing’. Pointing to various developments which have affected tribunals in recent years (including legal aid restrictions, the abolition of the Administrative Justice and Tribunals Council, the marginalisation of tribunals following the introduction of internal review mechanisms, and the erosion and abolition of appeal rights), Thomas argues that the effect of these changes, taken together, is that ‘a new model of tribunals is gradually coming into being’.

11. Table 2 outlines the main features of the ‘old’ and ‘new’ models, as Thomas describes them. These models provide a good overview of the changing tribunals landscape—a landscape that digitisation forms just one aspect of.

Table 2: The Old and New Models of Tribunals (Thomas)

<table>
<thead>
<tr>
<th>Old model tribunals</th>
<th>New model tribunals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dispute resolution</td>
<td>Dispute avoidance and containment – as well as dispute resolution</td>
</tr>
<tr>
<td>Initial decisions appealed directly to tribunals</td>
<td>Internal review increasingly inserted either before or instead of going to a tribunal</td>
</tr>
<tr>
<td>Paper-based systems for assembling a case-file</td>
<td>Greater use of ICT and online systems for processing appeals</td>
</tr>
<tr>
<td>Oral and paper appeals</td>
<td>Oral, paper, and online appeals</td>
</tr>
<tr>
<td>Some legal aid available</td>
<td>Legal aid extremely limited</td>
</tr>
<tr>
<td>High caseloads for social security and immigration tribunals</td>
<td>Reduced caseloads</td>
</tr>
<tr>
<td>The higher courts oversee ‘inferior’ tribunals</td>
<td>The higher courts recognise the expertise of the Upper Tribunal, a superior court of record</td>
</tr>
<tr>
<td>Tribunals subject to judicial review by the Administrative Court</td>
<td>Some categories of judicial reviews transferred to the Upper Tribunal</td>
</tr>
<tr>
<td>Little or no effort by government to learn from tribunal decisions</td>
<td>Right first time: departments taking responsibility to analyse tribunal feedback</td>
</tr>
</tbody>
</table>
The ‘e-government’ context

Government and IT: a history of failures

12. A second context in which the digitisation of tribunals must be understood is advances in e-government and the rise of digital government units (GDUs).

13. The public sector is often perceived as a disaster zone for IT projects, with much talk of over-expensive, under-used services. This was a problem in many jurisdictions, even if there were some less disastrous government efforts (for instance, Canada was an early pack-leader in e-government). As for the UK, it has been described in such terms as ‘ground zero for IT management failures’ and ‘a world leader in ineffective IT schemes for government’. Failures took a variety of forms, including spiraling costs, delays, and straightforward failures. Some of the UK’s less successful IT projects include those related to the: Child Support Agency; an attempted National ID Card; the Defence Information Infrastructure Programme; the Single Payment Scheme by the Rural Payments Agency; the National Offender Management System; a National Health Service electronic patient record system; the Universal Credit programme; and the rollout of the UK’s first attempt at Directgov.

14. Why did these failings occur? The reasons were multi-layered and complex (and specific to particular cases) but some generally problematic trends have been identified. After being IT leaders in the middle parts of the 20th Century, governments lost talent and the ability to attract talent. Governments—as part of the New Public Management reforms—also sought to increasingly outsource IT functions, neglecting further their own built-in capacity. Added to this, there were procurement failures. Without developed in-house expertise, there was an inability to properly assess both what was needed in government and the value of private sector offerings (this also gave rise to contract mismanagement). On top of all this, the notion of the government tapping into the ‘free market of IT services’ was not too easy in practice. The market was not transparent or easy to navigate, and some have suggested the IT markets where effectively oligopolistic, where small and medium-sized enterprises could not effectively compete for government work. The procurement process was also fragmented across government. Different parts of administration ‘sliced and diced’ their machinery into competing units operating largely independently from each other without central coordination’. This meant the government did not capitalize fully on its leverage as large buyer often. It also meant a range of very different systems—often incompatible and unable to ‘speak’ to with each other—grew up in different areas.

The rise of the government digital unit

15. Failure is not, however, the present tone of UK government IT operations. In the context of wide-spread condemnation of IT projects, growing expense (£16 million
annually as of 2009), and a global financial, the Public Administration Select Committee investigated this area in 2010. This led to their 2011 report, *Government and IT—a Recipe for Rip Offs: Time for a New Approach*. The report highlighted a series of problems, including: lack of IT expertise in government; a lack of integrated work; over-reliance on high-value, long term contracts.

16. Martha Lane Fox, then ‘Digital Champion’ for the UK, also published, in October 2010, an analysis of Direct.gov: *Revolution not Evolution*. It set out four recommendations:

- adopt a ‘digital by default’ strategy that places all transactional services on the government’s central web presence;
- mandate the release of Application Program Interfaces (APIs) to third parties to ‘Make Directgov a wholesaler as well as the retail shop front for government services and content’;
- create a central department to exercise supreme control over all government web content, commissioning contributions from departments; and
- create a CEO for Digital with authority over all online user experiences and online spending.

The response to all of this was the Government Digital Service (GDS).

17. Introduced in 2011 as ‘Alphagov’, GDS started work on rebuilding Directgov. GDS then developed into a unit of the Cabinet Office, with a mandate across the whole of government concerning: digital strategy; services; hiring; and procurement. It was headed by a group of digital experts taken both with and without civil service experience.

18. Within a very short period of time, GDS was widely seen as the global leader. It topped the United Nations’ e-government rankings. It also co-founded the ‘D5’—a group of the five most digitally advanced governments in the world.

**The impact of government digital units on the style of government**

19. The GDS is seen as the first of a new breed of e-government organisation which have now spread across the world: government digital services (DGUs). Their success prompts a question: what is different about GDUs?

20. GDUs have certain distinctive features: they operate at the centre of the administration; they adopt a unified approach across government; they borrow heavily from the tech sector in terms of their operational style; they introduce ‘startup’ cultures associated with tech companies; they prioritise user-centred design (adopting ‘design thinking’ approaches); they exhibit preference for data-driven decision making; they use open source technologies; and they combine in-house talent with contracted-in talent to pursue government-led projects. GDUs typically also set down criteria that all government digital services must comply with before they are put into action.

21. GDUs are a growing trend internationally. They are, however, still in their early days.
There is not much literature exploring their effectiveness but their set-up clearly seeks to combat causes of earlier government IT failures.

22. The rise of GDUs has effectively created a new ‘government-IT orthodoxy’. This shift is defined by a series of features, including:

• Preference for ‘agile’ user-centric development, with heavy use of prototyping;
• Changes in procurement methods, including more reliance on in-house talent and more engagement (when outsourcing is used) with small and medium-sized enterprises;
• Use of ‘open’ standards which allow solutions to be shared and reused across government (GDS describes this approach as one which aggregates demand across government for common services but disaggregates the supply of these services);
• The creation of government-wide policies on digital initiatives; and
• The building of a new culture around digital service.

These changes are set out in in table 3, which was devised by Amanda Clarke. This new world of government IT—and GDUs—is a key context in which the digitisation of tribunals must be understood against.

Problems with government digital units

23. It must be noted at this point that GDUs are not necessarily an all-conquering solution. As mentioned above, they are a new innovation and there is not much research on them. GDUs have also, quite naturally, sought to take on the ‘low hanging fruit’ first. This would, of course, make it easier to build a successful portfolio and make claims for further investment etc. More complex tasks—concerning e.g. large-scale organisational reforms—may prove more difficult. The National Audit Office has noted that ‘while many government services are now available online... departments and GDS have struggled to manage more complicated programmes and to improve the complex systems and processes that support public services.’ GDS has, however, reported that 12 of the 25 projects on its initial work programme will see benefits outweigh the costs of development within 10 years. It is also the case that changing government systems and cultures is simply a difficult task which takes many years.

24. It has also been observed that there is a real possibility of resistance to GDUs from within administration itself. There are many reports of UK civil servants disliking the invasion of GDS. The following two quotes—the first from a digital communications manager in 2013 and the second from a former Cabinet Office employee in 2012—demonstrate this reported view:

‘They’re not troubled by the twin demons of modesty and humility, let’s put it that way... They think they’re doing God’s work, and the atmosphere around it is a bit up itself. I think the difficulty is that for people who are still doing digital in the departments, who aren’t in this sort of golden team, those people who are doing very difficult jobs and are very good at what they do, and in lots of cases much better than some of these people doing jobs centrally, they are being told that they’re rubbish and that they’ve been doing it wrong all these years. And they’re [GDS is] sort of “it’s okay, we’re here now, we’re here now” and you know it’s very irritating, it’s extremely irritating to have someone come ‘round and say: “Oh, oh, yeah, yeah, you did fine with your funny little website, but now we’re going to do it properly”.’
‘I think the interesting thing is if you talk to civil servants who aren’t kind of “GDSonites” then they say “oh GDS is such arrogant wankers coming in and telling us how to do our jobs”. I mean I’m sure you’ve come across—I’m sure you’ve experienced the reputation of GDS within Whitehall, as you know not entirely positive. You know they are seen to be arrogant.’

Such internal dynamics can lead to difficulties, and the possibility of resistance to digitisation. GDS is actively seeking to combat this perception by, e.g., explaining its role to civil servants through a Digital Academy.

25. GDUs also raise serious accountability questions. As the technology revolution continues to take hold, provision and control of government digital services and infrastructure will become increasingly important. With the GDU model, it has been stated that ‘the lines of accountability linking political decision-makers to government programming and spending [have] become blurred’ and that this challenge is ‘particularly acute in Westminster systems, with their vertical lines of individual ministerial accountability’.

26. On top of all of this, GDUs require political support. They are also very expensive. In this context, GDUs have to continually justify themselves.

Table 3: Traditional Approaches to Government IT and Current Digital Government Orthodoxy (Clarke)

<table>
<thead>
<tr>
<th>Traditional Approaches to Government IT</th>
<th>Current Digital Government Orthodoxy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waterfall design, the long release cycle</td>
<td>Agile, iterative design</td>
</tr>
<tr>
<td>Government-centric (focused on adhering to internal government standards, processes and needs)</td>
<td>User-centric (focused on identifying user needs, and tailoring government standards and processes around these needs)</td>
</tr>
<tr>
<td>Limited reliance on data in decision making and design</td>
<td>Heavy reliance on data-driven decision making and design</td>
</tr>
<tr>
<td>Managing legacy contracts with a small number of big IT providers</td>
<td>Building in house and procuring with a competitive, pluralistic marketplace</td>
</tr>
<tr>
<td>Favours proprietary solutions</td>
<td>Favours open source solutions</td>
</tr>
<tr>
<td>Siloed (‘one use’, department/initiative specific project development and IT management)</td>
<td>Horizontal, platform models (‘multiple use’, whole of government project development and IT management)</td>
</tr>
<tr>
<td>Risk-averse, process-first, hierarchical organizational culture</td>
<td>Hacker, delivery-first, ‘flatter’ organizational culture</td>
</tr>
</tbody>
</table>
A primer on the digitisation of administrative tribunals

Developments in online dispute resolution

Online dispute resolution goes mainstream

27. A third key context for the proposed digitisation of tribunals is the general course of developments in ODR. Expanding from a niche corner of legal scholarship, ODR is now—thanks to its increased use and popularizers such as Richard Susskind—a mainstream debate in law. The principal forces behind its rise seem to relate to the lower costs and convenience it promises. Tempted by such promises, companies and governments are now developing ODR systems rapidly. ODR has recently been described as ‘one of the principal forces redefining the traditional practice of law’.

Models of online dispute resolution

28. Early ODR system were made for small-stakes, high-volume, standardised, commercial transactions. Good examples are Smartsettle and Cybersettle. These are ‘blind-bidding’ systems. In these systems, parties submit offers for settlement to the system and do not reveal the offers to each other. The computer then attempts to split the difference, within stipulated parameters.

29. More sophisticated ODR models developed quickly. Square Trade is a good example of the next generation of ODR. It offered a system for resolving delivery, warranty, billing, and misrepresentation disputes between low-level actors in online, commercial transactions. It worked by a user filing a claim by choosing from menus, filling in a few text boxes, and ranking outcomes from a range of choices. The software would exchange documents and see if an automatic solution was possible. If it was not possible, an online mediator would be activated, emailing both sides to seek compromise.

30. eBay launched a more advanced system, to resolve disputes on its site. It relied on a mediator model. A dispute was started by a user clicking a link and filling out a complaint form. The mediator would then take over the process, emailing both sides to request participation in the mediation process. If users agreed, they would be able to give their account of the dispute via email. The mediator would then: identify the issues in dispute; create a synopsis of the problem; set out what needed to be determined; seek views on the issues; and ask parties to agree a resolution. If no agreement was reached, the process would be stopped.

31. Modria, taking a lead from the eBay system, tried to go one step further. They sought a system that could resolve a range of more high-value, complicated disputes, as well as more simple claims. This system worked on a ‘fairness engine’. This ‘engine’ was constituted of processes that: gathered information; identified the key issues in dispute; made suggestions for settlement; and directed parties to mediation or arbitration.
32. Some other recent attempts are very sophisticated. In Canada, there is the BC Civil Resolution Tribunal. The Tribunal was announced in July 2016 by BC Attorney General Suzanne Anton. It helps BC residents resolve strata title (apartment). In February 2017, it extended its work to small claims (less than $5,000). Recently, Chinese state media announced the Hangzhou Internet Court opened and heard its first case, a copyright infringement dispute between an online writer and a web company. Legal agents in Hangzhou and Beijing accessed the court via their computers and the trial lasted 20 minutes. The court's focus will be civil cases, including online shopping disputes.

33. Closer to home for UK administrative justice researchers, online methods have been used for some time by the Traffic Penalty Tribunal. With the system, all the parties can consider the evidence put online and comment upon it. The online messaging system enables adjudicators to adopt an online inquisitorial approach. Some cases can be resolved very quickly – within days or even hours or minutes. There is also a facility for people who are not online.

The future of online dispute resolution

34. Many foresee the long-term future of justice systems including video-based systems using teleconferencing, intelligent robots, etc. This all promises potentially revolutionary change. However, there is little robust research underpinning this. One commentator recently concluded that 'most descriptions of the various programs are general and conclusory, and lack the transcript-based evidence needed to test their accuracy... detailed illustrations are hard to come by. The scholarly literature is devoid of transcripts and richly detailed ethnographies, and full of self-serving generalities and self-sealing conclusions'.

Figure 1: ODR Model Interface (BC Civil Resolution Tribunal)
The Transforming Our Justice System reforms

The scope and aims of the reform agenda

35. A fourth important context for the digitisation of tribunals is the wider reform programme in which it is occurring, outlined in Transforming Our Justice System. This is a huge programme of reform. The big idea is that, by the year 2022, most civil disputes in England and Wales will be resolved through an online court. This is pioneering on a global level.

36. There are three main elements to the general reform agenda:

- digitisation and the use of IT for all procedures and hearings;
- simplification of processes and procedures; and
- modernisation of the estate.

37. The Senior President of Tribunals, Sir Ernest Ryder, stated the ‘aim that the Lord chief Justice and I have agreed with the Lord Chancellor is, quite simply, to strengthen the rule of law’. It has also been claimed that the reforms will enhance access to justice and allow disputes to be resolved effectively, speedily and, justly.

38. It is important to note that this is not reform that just puts the existing system on a digital footing. The reforms are also trying to explore what digital can add. As Sir James Munby put it, ‘we must embrace the use of IT to do things that only IT can do’.

The HMCTS reform programme and the growing investment

39. The HMCTS reform programme started in March 2014 when Chris Grayling, the then Lord Chancellor, announced a one-off investment of up to £75m per annum over the five years from 2015. The figure grew until, in November 2015, there was to be a £700 million investment in new technology. The figure then became, a short while later, £738m over five years. HMCTS and the Treasury agreed, in late 2016, a seven-year project from 2016 with a £1bn+ budget. These plans were approved by each of Chris Grayling’s successors (Michael Gove, Elizabeth Truss, and David Lidington).

40. Austerity is the both backdrop to and part of the motivation for the reforms. As 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’.
The launch of *Transforming Our Justice System*

41. In September 2016, the Ministry of Justice published its vision for the reforms, following a series of reports (including by Lord Justice Briggs). Its main paper, *Transforming our Justice System*, was issued jointly by Elizabeth Truss, who was then Lord Chancellor, Lord Thomas (the Lord Chief Justice), and Sir Ernest Ryder. This was a short document with a broad vision.

42. More detail came in a consultation paper launched by Sir Oliver Heald, the then Justice Minister. This sought views on, among other things, ‘assisted digital’—how to help those who may not have access to or capability with online systems. In its response, the government promised support will be provided: ‘we will ensure that our assisted digital support takes into account the needs of those who are elderly or have disabilities, those with poor literacy or English skills, and those who lack access to technology because of cost or geography’. The government also sought views on a possible reduction in the use of non-legal members in tribunals. The proposal was that a tribunal would consist of a single member—a judge—unless the Senior President decided otherwise. It was argued by many organisations that this undermined a key purpose of tribunals. The Ministry of Justice dropped its idea in early 2017 but there seems to still be broad discussion about how the role of tribunal judges may change as part of these reforms.

43. Reporter Joshua Rozenberg has expressed concern that ‘most of this’ is ‘happening away from the public gaze. Because Dominic Raab, the new justice minister, had ordered HMCTS staff not to brief journalists’.

The role of the judiciary and HMCTS

44. Much of the direction for the reforms is being set by members of the judiciary. This is, largely, only possible because of the changes enacted by the Constitutional Reform Act 2005. Some judges now have powerful leadership roles. Judges also exert influence via the HMCTS board. With the Constitutional Reform Act 2005, a Judicial Office was set up in April 2006. This Office is staffed with ‘civil servants who bring their expertise to bear to help judges in their efforts to manoeuvre through the thicket of administrative challenges in exactly the same way that their colleagues in Whitehall advise and assist their ministers’. Some have warned that the leadership role of judges has various risks. It could, for instance, raise questions about independence. In the context of any possible failure in the reforms, there are also questions being asked about accountability.

45. On an operational level, HMCTS officials direct the reforms. HMCTS was created in 2011, and is an executive agency of the Ministry of Justice. It ‘operates on the basis of a partnership between the Lord Chancellor and the Lord Chief Justice’. In 2016, HMCTS had approximately 17,000 staff (though cuts are expected). The staff includes designers, IT experts, and user-experience researchers.

46. The design process is an ‘agile’ one, in the spirit of the new e-government orthodoxy discussed in section 2 (this is built on what has been described as a ‘design thinking’ approach). Different parts of the reforms are designed and prototyped separately.
Mapping the HMCTS reforms

47. The reforms are being delivered through a wide variety of projects, some of which pre-date the formal HMCTS reform announcement in March 2014. Joshua Rozenberg has helpfully attempted to collate and summarise them. This summary has been placed in table form (see table 4).

<table>
<thead>
<tr>
<th>Feature of reform</th>
<th>Outline</th>
</tr>
</thead>
<tbody>
<tr>
<td>The online court</td>
<td>A new, more investigative, court designed to be used by non-lawyers.</td>
</tr>
<tr>
<td>The CJS (criminal justice system) Common Platform programme</td>
<td>In partnership with the Crown Prosecution Service, HMCTS is working to develop a unified case management system based on a digital case-file. It will replace the existing HMCTS and CPS case management systems with a single system providing access to all the information needed to deal with individual cases. The Common Platform programme preceded HMCTS reform and was initially funded separately. It’s the fourth attempt since the early 1990s to improve the flow of information between police, prosecutors and the courts.</td>
</tr>
<tr>
<td>The Crown Court Digital Case System (DCS)</td>
<td>This allows all professionals involved in a criminal case to share documents online and read whatever material they are entitled to see. Judges can use it annotate evidence and write judgments — although they are not allowed to view areas that are restricted to prosecution or defence teams. The system is now available in all Crown Courts and can be accessed from any location on any device. By June 2016, six million pages of evidence had been stored on the DCS. When it is fully implemented, there will be no paper files (although special provision may be needed for unrepresented parties and jurors).</td>
</tr>
<tr>
<td>The Criminal Justice System Efficiency Programme</td>
<td>Set up by the Ministry of Justice during the coalition government of 2010-15. This led to the DCS and also preceded HMCTS reform. However, the National Audit Office reported in March 2016 that the criminal justice system was not delivering value for money and there were ‘many areas where improvements must be made’.</td>
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<tr>
<td>The Better Case Management initiative</td>
<td>The Better Case Management (BCM) initiative. This gave effect to Sir Brian Leveson’s Review of Efficiency in Criminal Proceedings published in January 2015. BCM’s aims include robust case management, fewer hearings, maximum engagement from every part of the criminal justice system and efficient compliance with the rules. Launched in October 2015, it introduced a uniform national Early Guilty Plea scheme and Crown Court Disclosure in document-heavy cases. BCM builds on Transforming Summary Justice, a joint criminal justice system initiative which was aimed at simplifying the process for dealing with cases in the magistrates’ courts. These reforms were introduced by Lord Justice Gross when he served as senior presiding judge from the beginning of 2013 to the end of 2015.</td>
</tr>
<tr>
<td>Video links</td>
<td>Improved video links from courts to police stations, prisons and other locations at which vulnerable witnesses may give evidence. These 3G/4G mobile links were introduced as part of the CJEP and avoid the need for witnesses to attend court. They are available from non-court buildings and now from vehicles that can be parked at locations convenient for witnesses.</td>
</tr>
<tr>
<td>Wi-Fi</td>
<td>Professional Court User Wi-Fi for authorised users, including lawyers. One password covers all courts.</td>
</tr>
<tr>
<td>Service</td>
<td>Description</td>
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<tr>
<td>ClickShare</td>
<td>The ClickShare dongle, which allows advocates to display evidence stored on, or accessible from, their laptop computers on large television screens installed in courts. Until that was introduced, video recordings were often found to be incompatible with the hardware and displays available in court.</td>
</tr>
<tr>
<td>The online make-a-plea service</td>
<td>This is now available for people charged with traffic offences. Users must have an internet-enabled device — such as a computer or smart phone — but a call centre is available to help users complete the online forms. Welsh-speakers are assisted by staff in Caernarfon. The system is linked to drivers’ licensing records at the DVLA. There have been more than 46,000 plea submissions since June 2015.</td>
</tr>
<tr>
<td>The eJudiciary service</td>
<td>An email and document management system that provides information and advice direct to decision-makers in the courtroom. Judges and magistrates can access this service from any device — unlike DOM1, the antiquated system it replaced, which ran only on court-issued computers and could take as long as 20 minutes to boot up. The eJudiciary system was developed by John Tanzer, a circuit judge who retired in 2016. He worked with Andrew Wright of HMCTS and two specialists from Microsoft, whose software the system uses. Senior judges said it was ‘successfully transforming the ability of the judiciary to carry out research and legal work online’.</td>
</tr>
<tr>
<td>eLIS</td>
<td>The courts’ electronic library and information service. This provides judges and others with access to legal databases and other library services.</td>
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<tr>
<td>The CE File electronic filing and diary system</td>
<td>Introduced at the end of 2015 in all courts in the Rolls Building. Limited public access to this was provided from computer terminals in the court lobby. Like eJudiciary, this pre-dated HMCTS reform.</td>
</tr>
<tr>
<td>Assisted Digital</td>
<td>Designed to help court users who are ‘challenged in the use of online services’.</td>
</tr>
<tr>
<td>The Help with Fees online service</td>
<td>Enabling court users to apply online for reductions in court fees. This service became fully operational in July 2016.</td>
</tr>
<tr>
<td>Data Store</td>
<td>In the magistrates’ courts. This allows automated receipt of case files from the CPS and improved archiving.</td>
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<tr>
<td>The Civil Money Claims project</td>
<td>Covers the online court and the digitisation of the other civil courts. Pilots began in 2017.</td>
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<tr>
<td>The RCJ project</td>
<td>To update IT systems in the Royal Courts of Justice in London and the nearby Rolls Building.</td>
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<tr>
<td>The Divorce project</td>
<td>A project under which more than 99% of divorces will be granted online by a ‘suitably trained and legally qualified professional judge’. This was launched in January 2017 when the East Midlands regional divorce centre began requiring divorce petitions to be completed online.</td>
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<tr>
<td>The Probate project</td>
<td>To allow the personal representatives of a person who has died to deal with the deceased’s property. Like the Divorce project, this will need to develop ways of authenticating documents such as birth certificates and marriage certificates submitted online. This too was launched in 2017.</td>
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<tr>
<td>The jury summoning service under Section 8 of the 1981 Act</td>
<td>When completed, this will allow people summoned for jury service to respond directly, confirming their availability or asking to be excused.</td>
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<tr>
<td>An online tribunals service</td>
<td>As discussed in this primer.</td>
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Conclusion

The need for research

48. There are many questions that will arise in the context of tribunals digitisation. This primer has provided an account of the context for those questions.

49. The key question now is: how should digital tribunals work? Answering this question is no easy task. It will inevitably involve difficult judgments. And if this reform project is to be a success, it is sure not to be a failure-free journey. However, it is important that—to both support and assess these reforms—a research agenda on the digitisation of tribunals is devised and pursued.

50. Ensuring that research keeps pace with quickly-unfolding developments and their implications presents an immense challenge. But this is a major issue—with potentially huge social effects—worthy of detailed inquiry. It is also important that this agenda is distinct from research concerning online courts generally. In administrative justice, the fundamental question of the relationship between the state and the citizen is in play. There are particular values and concerns in this context that may not be—and often have not been—touched upon by general research on online dispute resolution.

51. There are a range of research methods which can be deployed to produce a reliable evidence base. Many administrative justice researchers are well-equipped to tackle complex methodological issues but tackling technology-connected issues may present a relatively new challenge. There is space for multidisciplinary work in this respect. Technology is also affecting many jurisdictions and many different aspects of the justice system—this means there is a growing international literature with models and methodologies that may provide useful templates. Furthermore, the introduction of digital tribunals brings new possibilities for research and data collection, which ought to be explored—though the extent to which these possibilities can be explored is, in many instances, contingent upon access being permitted by relevant parties.

52. Though it might seem trite to say it, the key aim of tribunals digitisation has to be that the end point is a better overall administrative justice system, not just a more efficient one. Efficiency in administrative justice is not a value to be scoffed at. For instance, lowering system-costs etc. can in some cases also bring various benefits to both system-users and the wider community. However, there is a risk here—given the political context of these reforms—that the government may steer too much towards ‘more digitisation’ of tribunals, even where the balance of evidence and argument points in an opposite direction. The development of a policy-relevant evidence base can, among other things, provide robust caution against such missteps.

53. To this end, there is a need for a research agenda in this area to be developed and pursued.