ODR Advisory Group
Working Paper on Policy Issues
(July 2014)

1. Policy Issues

Policy is a broad term, which can be used to describe different understandings of the reasons for substantive rules and laws, and is a broad way of drawing together different ideas. [1] Policy sets a framework of processes within which different courses of action, outcomes or practices can be evaluated. Policy constrains our actions as it provides reasons for acting, and also reasons for not acting, as well as the parameters and risks. Therefore, policy sets an agenda, or makes a plan with the aim of influencing decisions and actions. Policy is about creating circumstances within which change can take place. Government itself, or individuals within government, interest or community groups, experts or public opinion can make policy.

The government have defined policy as 'the process by which governments translate their political vision into programmes and actions to deliver 'outcomes' – desired changes in the real world'.[2] The Magenta Book provides guidance as to how policy should be evaluated and reviewed.[3]

This paper provides information on different policy areas relating to ODR or ADR to inform the context and scope of future discussions.

1. Current Policy Considerations for ODR

The growth of the on-line market and cross-border consumer transactions create a new world for dispute resolution. In the courts there is a demand to enable current infrastructure to remain effective in light of developments in the use of technology and the use of the internet for business. The weight of cases going through the courts clash with increasingly difficult financial circumstances that prioritise efficiency and expediency. Initiatives and projects seem to be demanded which focus upon reducing costs. Projects and tasks meeting the goal of proportionality, speed and efficiency are therefore a priority.

In reflecting policy issues on ODR this paper will consider:

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[1] Stephen J Ball, 'What is Policy, Texts, Trajectories and Toolboxes from Stephen J Ball (ed) Education Policy and Social Class: The Selected Works of Stephen J Ball (Routledge, 2005)

[2] UK Cabinet Office. (1999) 'Modernising Government' Cm 4310, (HMSO, 1999),

[3] The Magenta Book, Government Chief Social Researcher's Office, (London, 2011)

- ODR and ADR and business;
- Data and statistics on the use of the courts for cases, especially with a value of £25,000 and below;
- Relevant government policy on the wider use of mediation in the civil justice system;
- Policy on the use of IT in the courts;
- Developments in regulation within the EU and worldwide on the use of ODR and their impact on government policy;
- Developments in the legal profession following the introduction of the Legal Services Act 2007.

2. ODR, Business and Policy

The Department of Business, Information and Skills have recently issued a consultation on transposing the provisions of the Directive on Alternative Dispute Resolution (ADR) (2013/11/EU) and Regulation on Online Dispute Resolution (ODR) (524/2013) into UK law.[4] The internet has created a new market for business which has grown exponentially since the mid-1990's but the pathways to redress are not always clear. The aim is to increase confidence, which will in turn drive competition and growth in the market.

The consultation aims to create a more focused approach to using ADR within this context in the UK, and potentially to rationalise the use of ADR more broadly. It doesn't do anything to prevent the development of existing systems or the creation of new ones. It intends to force businesses to think more about the use of ADR in resolving their disputes even if they are not forced to use ADR themselves. It is therefore its intention to try to change the culture of business disputes towards ADR and ODR.

The consultation is only concerned with those aspects of ADR impacting upon disputes a consumer has with business following the purchase of goods and services. It does not apply to those disputes initiated by businesses. The consultation closed at the beginning of June and BIS will report in September. It is intended that the work in this area will complement the Consumer Rights Bill currently going through Parliament.

[4] Department for Business, Innovation and Skills, 'Alternative Dispute Resolution for Consumers: Implementing the Alternative Dispute Resolution Directive and Online Dispute Resolution Directive' (March 2014)

2.1 The Directive on Alternative Dispute Resolution (ADR) (2013/11/EU)

The Directive requires that ADR is available, via a certified scheme, for any dispute between a consumer and business. Current access to ADR through specific schemes is piecemeal eg FOS or Trading Standards.

Under the Directive:

- The ADR procedure must be free of charge or available at a nominal fee for consumers.
- Disputes must be concluded within 90 days of receiving the complete complaint file. This timeframe can be extended in the case of highly complex disputes.
- ADR providers have three weeks from receiving a complaint file in which to inform the parties concerned if they are refusing to deal with a case.
- Individuals who oversee disputes must have the necessary expertise and be independent and impartial.
- ADR providers must make available specific information about their organisation, methods and cases they deal with, and provide annual activity reports.
- Consumers must have the option to submit a complaint (and supporting documentation) and to exchange information either online or offline.

The certification of providers also requires much thought as to its scope and how it should work in practice.

2.2 The Regulation on Online Dispute Resolution (ODR) (524/2013)

The Regulation requires the European Commission to set up an ODR platform. The platform will not resolve disputes itself but will channel disputes towards relevant ADR schemes.

The obligation upon the UK is to provide a contact point for cross-border disputes to be hosted by at least two ODR advisors, who will be able to offer help and information. Businesses who offer services online must provide a link to the ODR

platform. All businesses must provide information about appropriate ADR providers and advise whether they will use ADR to settle a dispute.

The platform (complaints helpdesk) will need to provide information on:

- consumer rights;
- the ODR platform;
- the relevant certified ADR provider that is engaged in the dispute; and
- (if necessary) alternative means of redress.

2.3 Implementation

The consultation considers whether ODR should be used only for cross-border disputes, or for domestic disputes, or even in-house ADR schemes, within the UK. It can determine how flexible the provision of ADR or ODR should be in this area: whether the Government should implement a residual scheme to fill in the gaps of current provision, or a more comprehensive scheme to offer several certified providers to create greater competition. There is no compulsion under the Directive for the use of ADR to be made mandatory.

The deadline for implementation of the Directive is 9th July 2015. The Regulation will come into force automatically on 9th January 2016.

3. Government Policy – civil justice and the courts

3.1 Civil Justice in England and Wales

Individuals use the civil courts to resolve problems and conflicts that arise in ordinary life. Claims can vary in cost, subject-matter, and the nature and type of those issuing the dispute; from individuals in dispute with plumbers or builders, personal injury cases, as well as large commercial business contractual clashes, injunctions or housing repossessions. Cases are divided by allocation to track each of which is governed by specific rules under the Civil Procedure Rules (CPR):

Small claims track – less complex cases and those usually up to a value of £10,000; Personal Injury claims up to a value of £1,000.[5]

[5] Part 27, CPR.

Fast-track – less complex cases and those with a value usually up to £25,000;[6]

Multi-track – reserved for more complex cases and those with a value of over £25,000.[7]

Mediation is generally encouraged in all civil justice tracks within the UK,[8] and also used as an adjunct to a number of specific court schemes.[9]

Data on the number of cases and their progression

Volume of claims[10] –

Civil cases: 2013		
Total number of claims	Total number of allocations to track	Total number of hearings / trials
1,445,344	149,637	43,087

Less than 30 per cent of claims are allocated to track and the numbers of claims proceeding to a trial or hearing number approximately 3 per cent of the total claims.

Over the last ten years there has been inconsistency in the total number of claims issued each year although the number of hearings has dropped markedly.

Claims and hearings 2003 - 2013		
Year	**Claims issued**	**Trials / hearings**
2003	1,718,883	65,026
2004	1,723,371	62,201
2005	1,968,894	63,367
2006	2,115,491	62,968
2007	1,944,812	69,248
2008	1,993,828	63,981
2009	1,803,221	64,078
2010	1,550,626	60,303
2011	1,504,243	52,660
2012	1,394,230	46,993
2013	1,445,344	43,087

[6] Part 28, CPR.
[7] Part 29, CPR.
[8] See further S Blake, J Browne and S Sime, 'The Jackson ADR Handbook', (Oxford: OUP, 2013).
[9] For example, the Court of Appeal's Mediation Scheme and the MoJ Small Claims Mediation Service.
[10] Information from MoJ and MoJ Quarterly Statistics (2013 – 2014)

Most cases allocated to track are settled or withdrawn before a hearing but the breakdown of cases as between small and fast / multi-track are as follows:

Civil cases - breakdown small claims and fast / multi-track: 2013					
Total number of hearings and trials	Total number of small claims	Time between issue of claim & hearing	Total number of fast track & multi track	Time between issue of claim & allocation	Time between allocation & hearing / trial
43,087	29,603	30 weeks	13,484	24 weeks	35 weeks

The number of small claims going to hearing has decreased over the past 10 years from 51,046 in 2003 to 29,603 in 2013. Small claims cases make up almost 70 per cent of the total number of hearings in the civil courts and there can be more than a seven month gap between the issue of the claim and the hearing. If the Small Claims Mediation Service is successful and results in the case not needing to proceed to trial this figure can be reduced to 20 weeks.[11]

This data gives a glimpse into one of the main criticisms of the civil justice process: the time taken between issue of proceedings and trial, which adds to the cost and complexity of the litigation. The average time taken from issue to trial in a fast / multi track case is 59 weeks.

Other criticisms of the civil justice system focus on the cost of proceedings, the complexity of the process and the amount of time taken to reach resolution.[12] Any policy considerations have over many years focused upon the desire to provide access to justice at a proportionate cost.

The policy of the British government is to deliver a quality justice system at a proportionate cost within a reasonable time. In the 2011 Consultation document, 'Solving disputes in the County Court',[13] the aim of the Government was stated as being to: "to deliver a [justice] system that prevents the unnecessary escalation of

[11] Figures supplied by the MoJ (Feb 2014).

[12] John Peysner, 'Impact of the Jackson Reforms – some emerging themes: a report prepared for the Civil Justice Council Cost ~Forum (Civil Justice Council, 2014): http://www.judiciary.gov.uk/wp-content/uploads/2014/05/impact-of-the-jackson-reforms.pdf.

[13] Ministry of Justice, 'Solving Disputes in the County Courts: creating s simpler, quicker and more proportionate system: A consultation on reforming civil justice in England and Wales – the Government response' (Cm 8274, Feb 2012).

disputes before cases reach the court room". The Minister for Justice, Lord Faulks, has recently confirmed this statement remains government policy.[14]

3.2 Policy on the use of mediation in the civil courts

In the 1990's Lord Woolf in the 'Access to Justice Reports', encouraged greater use of mediation as part of the litigation process.[15] Prior to this, mediation was mainly used for high value commercial cases. Following the reforms the use of ADR and mediation was included overtly within the Civil Procedure Rules enacted in 1998.[16] The 2013 reforms introduced an increased focus and emphasis on the need for settlement and refocused the emphasis for civil justice on using the costs regime and judicial directions and case management to encourage the greater use of mediation.[17] However, Lord Justice Jackson explicitly rejected the possibility of requiring mediation by specific rule changes. The Jackson Reforms introduced an increased focus and emphasis for the need for settlement and refocused the emphasis for civil justice on using the costs regime and judicial directions and case management to encourage the greater use of mediation.[18] The intention is to make civil justice more efficient but to try and change the culture towards settlement quite gently. We are not aware of any assessment as to whether this approach is operating effectively as there is little published research.

Lord Faulks stated that in 2014, mediation is a "key cornerstone of an efficient and cost effective justice system". [19]

The government acknowledges the effectiveness of mediation through, for example, the success of the Small Claims Mediation Service, which was formally introduced in 2007. The Service has over 10,000 referrals per year and a declared settlement rate of approximately 64 per cent. Cases with a value of up to £10,000 per year are now automatically referred to mediation where both parties indicate it is acceptable on the Directions Questionnaire sent to the parties prior to the case being allocated to track.

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[14] Lord Faulks, 'Keynote Speech at the Civil Mediation Conference 2014': https://www.gov.uk/government/speeches/mediation-and-government.

[15] Lord Woolf, Access to Justice – Interim Report (London: HMSO, June 1995) and Lord Woolf, Access to Justice – Final Report (London: HMSO, July 1996).

[16] Amended following the Jackson reforms in 2010 through the Civil Procedure (Amendment) Rules 2013 and the Legal Aid, Sentencing and Punishment of Offenders Act 2013.

[17] Lord Justice Jackson, Review of Civil Litigation Costs: Final Report (TSO, London, 2009).

[18] Lord Justice Jackson, Review of Civil Litigation Costs: Final Report (TSO, London, 2009).

[19] Lord Faulks, 'Keynote Speech at the Civil Mediation Conference 2014'.

The government has indicated that the Small Claims Mediation Service has so far saved over 9,400 hours of judicial time.

3.3 Signposting and informing potential users about mediation

Signposting to mediation providers is considered to be important. The National Mediation Helpline: a telephone and web-based listing of mediators ran for a number of years until 2011 and cost £90,000 a year to operate. The Helpline provided a central resource to both promote and educate about the use of mediation. It has now been replaced by the Find a Civil Mediation Provider service which is located on the MoJ website: http://www.civilmediation.justice.gov.uk.

Government promotion to the public of mediation is based upon leaflets which are available in courts or on the gov.uk website, via judicial promotion to parties themselves, or through wording on the directions questionnaire. Money Claim Online provides a link to information on mediation.

The use of MIAMs (Mediation Information and Assessment Meetings) offered in family cases and which carry statutory force through s10 of the Child And Families Act 2014 are being considered by the MoJ for use on civil cases. Under the Child and Families Act court proceedings cannot be commenced until a MIAM has taken place. There are some concerns that this formal stage might cause additional cost and delay and might also compromise the requirements of the existing pre-action protocols.

The commitment of the government to mediation is matched by a concern to develop and incorporate consistent standards for the delivery of all mediation services. This raises the question of regulation of mediators and providers of broader mediation services. This is a current focus of the Civil Mediation Council who are currently reviewing their accreditation processes.[20]

3.4 Vision and policy for ADR as part of the civil justice system

The vision is for a civil justice system that delivers:[21]

- Disputes resolved in the most appropriate forum, with processes and costs being commensurate with the complexity of the issues involved;

[20] Civil Mediation Council current guidance on accreditation: http://www.civilmediation.org/downloads.php?f=50.

[21] Vision taken from Ministry of Justice, 'Solving Disputes in the County Courts: creating s simpler, quicker and more proportionate system: A consultation on reforming civil justice in England and Wales – the Government response' (Cm 8274, Feb 2012)

- Where citizens take responsibility for resolving their own disputes as much as possible whilst the courts focus on adjudicating particularly complex or legal issues;
- Procedures which are citizen and business friendly, with services focused upon the provision of timely justice; and
- Citizens who are aware of the services open to them so that, where possible, they can take action early, make informed decisions and more readily access the most appropriate services.

Early intervention provided through more and better information, the use of pre-action protocols and formal methods such as automatic referral of cases, telephone and paper hearings are suggested to try to prevent unnecessary escalation of disputes. There is consequently a clear policy to encourage the greater use of mediation and to try to divert lower value claims away from the courts.

Mediation provides these benefits for the courts:

- Reduction in court personnel resource generally;
- Less need for formal court hearings if cases are successful;
- More flexible and creative solutions available than those in court;
- More work for civil mediators;
- Mediation costs less than going to a formal court hearing;

3.5 Policy risks in diverting cases from traditional justice towards ADR

Critics have expressed apprehensions about the fairness of any alternative processes and how people who have paid for judicial time can be sure to obtain a fair outcome.[22]

An example as to how the government balances the benefits of a change in policy against the risks of making changes to the existing system can be demonstrated by looking at the concerns raised in relation to increasing the small claims limit. Here it is acknowledged that many assumptions have to be made in relation to the impact of an increase in the specified limit.[23] The government concern is articulated as follows:

"The optimal small claims track limit is unknown. It is assumed that the court and

[22] For example, see Hazel Genn, 'Judging Civil Justice' (Cambridge University Press, 2010)
[23] Ministry of Justice, ADR Proposals for Civil Cases: Impact Assessment (March 2011): https://consult.justice.gov.uk/digital-communications/county_court_disputes/supporting_documents/iaalternativedisputeresolution.pdf. Appendix to Ministry of Justice, '
Transforming Civil Justice in England and Wales: A flexible, simple and proportionate approach'

judicial resources allocated to a case are primarily driven by the track in which the case proceeds. It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall.

In weighing up the costs and benefits there is an acknowledgement that removing court, judicial and legal resources from cases could lead to less efficient case management and hearings."[24]

This is important because similar risks are inherent in the introduction of ODR to replace or act as an addition to current legal services. Sufficient protection and regulation would need to be in place to guard against these concerns. Issues are around –

- the quality of the mediation service provided;
- additional cost and time if mediation fails and the case has to go to court;
- Impact on legal service providers if changes are made to the legal system.
- How to direct court users towards ODR: and
- How to monitor the provision of services if they are provided externally to the MoJ.

4. IT and the Courts

4.1 Historical and recent developments

Much of the discussion in this section is taken from the speech made by the Lord Chief Justice at the Society for Computers and Law Annual Lecture.[25]

The Lord Chief Justice has identified eight reasons for improving IT in courts and tribunals:

1. Current system makes the administration inefficient and ineffective;
2. Moving court processes online increases administration of justice and makes processes simpler and cheaper;
3. Manual filing systems, especially across such a wide jurisdiction, are less efficient than electronic filing systems;

[24] Ministry of Justice, ADR Proposals for Civil Cases: Impact Assessment (March 2011): https://consult.justice.gov.uk/digital-communications/county_court_disputes/supporting_documents/iaalternativedisputeresolution.pdf. Appendix to Ministry of Justice, '
Transforming Civil Justice in England and Wales: A flexible, simple and proportionate approach'

[25] Lord Thomas, 'IT for the Courts: Creating a Digital Future', Society for Computers and Law Annual Lecture (June 2014).

4. The heart of case management should include an electronic caseflow and diary system;
5. Poor IT systems result in an inability to collect reliable data;
6. Judges require electronic filing for their own administration which would by consequence improve administration of justice systems for court users;
7. The current County Court operating system, Caseman, which was developed in 1995, is extremely outdated;
8. Increasingly English court systems are falling behind the rest of the world.

The aim is to use IT as a base to create a more efficient, effective and high-forming court and tribunal service.

4. 2 Lack of investment in IT

In the past members of the judiciary have asked for a more comprehensive approach to technology in the courts.[26] Historically, there have been a number of initiatives that have tried to address and encourage investment in IT in the courts but these have all failed:

- **Access to Justice Reforms**: Lord Woolf advocated improved use of IT as part of the 'Access to Justice reforms' in the mid-1990's.[27] especially to support judicial case management. However, despite assurances that relevant IT would be introduced the reforms were introduced without the necessary technology and there was misunderstanding between the Court Service and the judiciary as to what was required.
- **Moderninsing the Civil Courts Reforms**: in 1999 / 2000 proposals were considered to modernise enforcement, case management and listings IT systems but deadlines slipped
- **Modernisation Programme Board**: in 2001 plans for modernising civil justice and criminal justice were merged. Proposals were published in the Auld Report, for a review of criminal justice and Lord Justice Auld stated that procedural reforms should be developed alongside the necessary IT systems.[28]

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[26] Lord Justice Brooke, 'The Use of Technology in the Courts' Judicial Studies Institute Journal [2004] 169. : http://www.jsijournal.ie/html/Volume%204%20No.%201/4%5B1%5D_Brooke_The%20Use%20of%20Technology%20in%20the%20Courts.pdf.

[27] Lord Woolf, Access to Justice – Interim Report (London: HMSO, June 1995), Chapter 13, and Lord Woolf, Access to Justice – Final Report (London: HMSO, July 1996), Chapter 21.

[28] Sir Robin Auld, 'Review of the Criminal Courts of England and Wales' London , United Kingdom: Royal Courts of Justice. (2001), Chapters 7 & 8.

- **Legatt Review of Tribunals**: in 2001 Sir Andrew Legatt also reconsidered the framework for the tribunal system.[29] Leggatt argued for a common technological infrastructure underpinning all elements of the justice system.
- **Courts and Tribunals Modernisation Programme**: in 2001 there were plans for a five year rollout of a programme to roll out IT infrastructure and create electronic case management system to be initially delivered by April 2004. In 2002 the Treasury announced that no money would be forthcoming for this project. Further Spending Reviews also failed to secure necessary investment.
- **Modernising the Civil and Family Courts**: this was a report introduced in 2002 with a vision to create national system of electronic files, records and diaries with an aim to introduce these in 2004.[30] The Spending Review cuts mentioned above also affected this project.

4.3 Current Plans for Court and Tribunal Modernisation 2014

Yet despite the above there is currently a real opportunity for the development of ODR as part of a move towards technological investment in the courts. In March 2014, the Lord Chancellor announced that reforms would be made to the delivery of technology in the courts in England and Wales.[31] In the announcement the Lord Chancellor acknowledged the current system causes delays and inefficiencies and much of the justice system is operated manually. An investment is to be made of £75M per annum from 2015 /16 over the next five years until 2019/20, with a view to improving the whole court and tribunal estate, and improving the service and access for all users.

The plans for this development are currently in process.

4.4 Other MoJ initiatives which could inform ODR policy development

Money Claim Online

Potential for use of technology in supporting or replacing court services is demonstrated through MoneyClaim Online. This is an on-line system set up in 2001 that allows uncomplicated money claims to be started in an online environment. It allows county court claims to be issued for fixed sums up to £100,000. It has been described as the first example of a 'cyber court'. MCOL is now issuing more claims than any local county court – 133,546 in 2010/11.

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[29] Andrew Legatt, 'Tribunals for Users: One System, One Service: Report of the Review of Tribunals', (HMSO, 2001), Chapter 10.

[30] Court Service, 'Modernising the Civil and Family Courts: Courts and Tribunals Modernisation Programme' (Court Service, 2002).

[31] Ministry of Justice Press Release (March 2014): https://www.gov.uk/government/news/chris-grayling-reform-of-the-courts-and-tribunals.

Small Claims Mediation Service

The Small Claims Mediation Service offers referral to their in-house free mediation services for defended cases allocated to the small claims track. Mediations can take up to one hour. Civil servants who receive commercial mediation training conduct mediations by telephone. The parties do not speak to each other during the mediation but the mediators shuttle between telephone calls to each of the parties.

Small claims mediation –April to October 2013 [32]		
Total number of referrals to mediation	Number of mediations	Percentage of settlements at mediation
26, 670	5,792	65%

The table above demonstrates some success using this process for mediation. However, there has to date been no research conducted or an evaluation as to the types of cases which might find mediation more appealing or useful; whether settlement is achieved for lower value cases or those with certain characteristics. There is no data as to whether those cases that do not settle at the mediation settle before the hearing. There are a large number of cases where mediation is not selected or is refused by one of the parties. There are also cases where both parties select ADR but timing does not allow for the mediation to take place before the hearing.

Telephone Hearings for Small Claims

Policy in relation to telephone hearings for small claims cases might provide some insight into policy considerations for an ODR platform as the issues discussed relate to the use of a technology platform compared to a traditional hearing.

Issues cited are:

- Fewer judicial and court resources are required to support telephone hearings;
- Parties benefit from reduced travel time and costs as well as financial costs including hearing fees;
- Resource-intensive pathway would need to be used if parties were given a choice between telephone mediation and other options;
- Hearing fees could be differentiated between telephone hearings and paper or face-to-face options.

Other more recent projects with potential to impact on ODR include:

[32] Figures provided to author by Ministry of Justice (February 2014).

- Proposal for the centralisation of Multi-track claims issued through the Bulk centre to be dealt with at Central London County Court
- Magistrates to potentially be used to deal with small claims cases in County Courts.

5. Policy and developments in the legal profession: what will the future be?

Policy should be operationally specific and easily understood and be able to react to what will happen in the future both within the areas we are aware will continue to exist, change or develop and those fundamental changes that will arise in the future. One example is the increasing liberalization of legal services following the introduction of the Legal Services Act 2007. The current system is very focused on the courts and prioritises judge-made law.[33] The growing impact of Legal Services Act 2007 on policy making by government eg in terms of public legal education and the supply of information and services and what can be provided elsewhere. There is potential for innovation and growth in the development of those services, once provided by government, to be provided by the private sector ie the provision of various forms of advice and information.[34] Also the government looking to the private sector for ideas to develop and change current methods eg streamlining insurance claims to better meet need.

6. Conclusion

There are many opportunities for the use of ADR but these tend to be promoted in a piecemeal way, through particular schemes, for example, those that focus on specific disputes, ie those emanating from specific courts, or through bodies such as ombudsman like FOS.

One of the issues raised by Lord Thomas in his speech to the Society of Computers and Law is that it is not enough to consider what is required now but we need to know what is happening next and to try to anticipate future needs.[35]

The following are relevant issues:

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[33] David Howarth, 'Law as Engineering' (Edward Elgar, 2014)

[34] For example, Small Claims Mediation: http://www.small-claims-mediation.co.uk.

[35] Lord Thomas, 'IT for the Courts: Creating a Digital Future', Society for Computers and Law Annual Lecture (June 2014).

- Principles of justice should always be incorporated into the development of new technologies and allowance made for the necessity of the rule of law, access to justice and open justice;

- The aspects of current practice that can be captured in an ODR policy and the future policy considerations. Sir Robin Auld highlighted the difference between using technology to build upon what we do at present and also to innovate. He said,

  "Information technology is not just a way of doing more quickly and otherwise more efficiently what we do now; it is also a way of changing to advantage what we do."

- Funding the creation of a platform and the need to maintain its ability to keep up with future technological developments. New technologies need to be anticipated such as the use of video communications so that lawyers can appear in court from their offices;

- Establishing fees / fee limits and parameters for its use;

- Consistency with other existing and new systems developed within the UK and abroad;

- The need to anticipate demands for the legal system and changes in courts and the use of on-line services versus in-court services;

- ODR system should be cheaper and more effective than existing measures and should be able to deal with the number of disputes that currently go unresolved through greater confidence;

- How ADR can be best encouraged through the use of an ODR platform. Current use of ADR is extremely piecemeal;

- Determining whether an ODR platform, or any aspect of its use (ie information or advice) should be mandatory or voluntary;

- How do you measure success? Cost-benefit and reduction (or increase) in case numbers or awareness and access to justice through use or buy-in, for example.

- Different models and different terminologies can lead to confusion. How should ODR be regulated and ADR / ODR providers be regulated especially in light of the current and potential growth of many private and different forms of ODR. How can the provision of ODR be simplified for the future use of consumers, businesses and other court users? This will also enable the

highlighting of poor practice.

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