



MASTER OF
THE ROLLS

THE RIGHT HON. SIR GEOFFREY VOS

London International Disputes Week 2021: Keynote Speech **London – virtually** **Monday 10 May 2021**

Introduction

1. The theme of London International Disputes Week 2021 is “looking forward: challenge, change and opportunity”. This gives me the chance I have been looking for to explain the way I see the future of civil dispute resolution in England and Wales. My message is an optimistic one. I believe that we have all learned a lot from the terrible Covid pandemic. These lessons will provide a springboard for us to create a truly digital justice system, something that I have long advocated.
2. When I spoke at the first London International Disputes Week on 7 May 2019, I was Chancellor of the High Court and had responsibility for the Business and Property Courts. I spoke on the subject of “the effect of Brexit on Financial Services Disputes in London” – that was something everyone was talking about then. Now that the UK has left the EU, discussion has turned to post-Covid recovery and what justice systems will look like in the coming years and decades. That is specifically what I want to talk about today.
3. Two years ago, I said that there were three inter-connected developments going on then. First, I said that we were rapidly developing online courts for dispute resolution in a number of specific areas. Secondly, I said we were considering how our mainstream court-based business dispute resolution processes should be improved so as better to serve the national and international business litigants of the 21st century. Thirdly, I said we needed to produce a dedicated and expedited dispute resolution process for issues arising from smart legal contracts.

4. Since I became Head of Civil Justice in England and Wales at the start of this year, I have been concentrating particularly on the first of those three themes, namely online justice systems. But I remain deeply involved and interested in the other two themes and will come to them in detail a little later on.
5. Let me start with online justice.

Online justice

6. For many years, judges, arbitrators and commercial lawyers in London have wanted to do everything they can to make our dispute resolution systems as attractive as they can to the international business community. The UK's departure from the EU has not changed any of that. In my view, however, it has become increasingly important for the courts in England and Wales to bring its processes online. We have had electronic CE-filing in the Business and Property Courts for 5 years now, but the system itself is not an online one, and I think it needs to be. After all, everything else we do is online and there is every reason why in the age of digital transferrable documentation and on-chain smart contracts, dispute resolution should be undertaken online too.
7. Covid has played its part in persuading many lawyers and judges to litigate in a paper-free environment. I certainly no longer use any paper at all. But that is not by itself much more than reflecting our old paper-based practices in the digital environment. If all we do is to use PDF bundles and video conferencing facilities, we are not really changing the way we resolve disputes at all.
8. That is why I am now so committed to a wholly new online system for dispute resolution. And that is what we are trying to introduce in England & Wales for civil, family and tribunals disputes.
9. The online environment has many advantages – first it is what younger business people and consumers expect. Secondly, it is far easier to integrate and apply alternative dispute resolution processes in the online environment, using artificial intelligence and smart programming to suggest resolutions (not, of course, to determine outcomes). Thirdly, it enables us to create a single data set for each dispute that travels through

the entire lifetime of the case and does not need to be recreated time and time again in endless paper or Word documents.

10. We already have a number of online systems in England and Wales. I will not bore you with details. In brief outline, we already have 1.3 million small court claims brought online mainly by bulk utility or financial claimants through Money Claims Online. We have had 200,000 Online Civil Money Claims brought by litigants in person. Professionals already take some 690,000 small personal injury claims, pre-court, through the Personal Injury Claims Portal every year. The new Whiplash Claims Portal - launching this month – is likely to attract a further 6 figure number of claims from litigants in person. In addition, Possession Claims Online already deals with some 100,000 such cases per annum. The HMCTS reform project will launch its Damages Claims Online portal later this month.
11. In short, most of the court claims by SMEs and individuals will be brought substantially online by the end of the HMCTS Reform Project in 2023. This is all good news, but I think there needs to be an even more joined-up approach to realise fully the potential of moving online.
12. The integration I have been talking about in recent months is broader than the court system alone. It aims at achieving a harmonised online dispute resolution process for all kinds of civil (and hopefully family and tribunal) disputes, both pre-court and once court proceedings begin.
13. At the moment, someone with a complaint to resolve may be directed in a hugely varied range of ways to a variety of resolution processes, whether an ombudsman, an internal review mechanism, a mediation service, or occasionally a court. Taking Ombudsmen alone, if you have a banking issue, you might go to the Financial Ombudsmen Service's website, which deals with 300,000 complaints each year. For a housing dispute, you might go to the Housing Ombudsmen, which deals with some 15,000 cases annually. The communications ombudsman deals with another 20,000 cases every year, and the energy ombudsman deals with some 57,000 cases each year.
14. These pre-court processes, many of which are themselves online, resolve large numbers of disputes without court proceedings ever being issued. The personal injury portal, the whiplash portal, and the new proposed SME portal being promoted by Lawtech UK (of which I am a panel member) are all further examples.

15. The government actually only provides one or two of these front-end pre-court portals – like, for example, the personal injury portal. Most are actually provided by specific industries or utilities that have already seen the value in resolving disputes to everyone’s satisfaction without the need for court proceedings.
16. So my vision for the future builds on the existing market providing effective pre-court dispute resolution. This is already moving online with a range of portals (maybe 30, 40 or even more) all dedicated to resolving usually sectoral disputes without the need for court proceedings. All of them make sophisticated use of the benefits of technology. But more of these can usefully be created and operated by industry itself. As the ombudsmen have demonstrated already over many years, it benefits the energy industry, the telecoms industry, the pharmaceuticals industry, the health care sector, the financial services sector, and many others to provide mechanisms for pre-court dispute resolution.
17. As it seems to me, we should try to make the most of what is good about the existing systems, but provide what is lacking, which is cohesion and integration. As we move online, this can be achieved through regulation. There is no reason why pre-court portals cannot be regulated, even if in most cases they do not have to be operated by Government.
18. My idea would be for front-end portals to be accredited. Those wishing to be accredited would be required to operate to the highest standards. They would have to provide fair processes, and they would have to ensure that they allowed for integrated ADR interventions designed to bring about consensual resolution. Perhaps most important of all, each portal would produce a single data set using clearly defined data standards. That data set would be required to be in a form that could feed through an API directly into the online court system if, as will happen hopefully infrequently, the case was not settled in the front-end process.
19. I am calling the accreditation of these pre-court portals a kind of “blue-tick” that gives consumers and SMEs confidence to use them, knowing that they are properly regulated. If the claimant does not agree to a resolution, the portal will, as I say, enable the case to be transmitted directly into the online court system. Such a blue-tick could also facilitate what I envisage as the ultimate front end, a website to which anyone or any lawyer with any kind of dispute could go. That website would be able to direct the claimant to the appropriate accredited online dispute resolution process.

20. I can already hear the commercial lawyers in the audience asking: what has all this got to do with them? I imagine that some will be thinking that this does not sound good for lawyers at all, since it is likely to enable individuals and small business to resolve disputes without their help.
21. I can reassure you. The online dispute resolution system I envisage will have advantages for lawyers and litigants alike. First, it will hugely increase access to justice by allowing individuals to vindicate their legal rights at proportionate cost and without undue delay. That will promote public confidence in the justice system. Secondly, it will create a dispute resolution system that will give confidence to overseas investors; as we all know, a healthy and effective justice system in which citizens and business can have full confidence is one of the central tenets of the rule of the law. Inward investment depends on it. Thirdly, it will allow solicitors and barristers to concentrate on those cases that are not straightforward and cannot be easily resolved by the integrated ADR within the online space. Lawyers will continue to earn good fees wherever they add value.

Business dispute resolution

22. Let's assume for a moment that an integrated online justice system is created as I have described, where will it leave the type of dispute resolution for which London is most well-known, namely commercial arbitration and the Business and Property Courts? I do not think these areas will be untouched. The current system is grounded in the 19th century. Even with the availability of video hearings and electronic bundles the dispute resolution process itself remains cumbersome and expensive. There must be better, quicker and more economical ways to achieve a just resolution of business disputes.
23. In my view, that is where what we are learning from creating an online justice system for small claims becomes relevant. The online system is doing dispute resolution differently. First, it will not be dependent on pleadings and statements of case. Instead, it will use decision trees and mechanisms that aim to arrive more quickly at identifying the real issues that divide the parties. Secondly, it will be less dependent than we are at the moment on a staged trial event, and more focused on resolving issues as they are identified on an interim rolling basis. Thirdly, it will integrate a variety of approaches to alternative dispute resolution – whether that is judges proposing outcomes in a form of early neutral dispute resolution,

formal mediated interventions or on-screen algorithms suggesting solutions to points of dispute as and when they materialise. The integrated nature of this kind of ADR led me to suggest in a recent speech to the University of Hull's Law School that we should drop the "Alternative" from the name of "Alternative Dispute Resolution" as it is not really alternative at all. In the online space it is an integrated part of the dispute resolution process, which should be and will be, I hope, aimed more at the resolution than the dispute.

24. There is here an underlying cultural issue, which is about how people, whether individuals or commercial parties, resolve their disputes. For this purpose it does not matter whether we are talking about £50 or £500 million. The role of dispute resolution providers whether the state in providing courts, arbitrators, mediators or the providers of online portals is facilitation. It is all about how best to facilitate speedy cost-effective resolution.
25. The online space is where people now expect to be conducting business, and business dispute resolution is not exempt from that cultural change. It is important for the judiciary to set the standards and the principles by which online dispute resolution will be governed, because the confidence of users will depend on the fairness of the process. That is as important in small claims as it is in relation to the Business and Property Courts, and it is also as important in relation to the courts' oversight of the arbitral process as it is in courts.
26. I hope this gives you a taste of the commercial online dispute resolution that I envisage in the future. There is much work to be done, but there is another very important reason why change is needed. That is because of the fundamental alteration in the types of dispute that commercial and financial parties will need to be resolved in the new technological area.
27. That was what I was presaging in my third thought at the last London International Disputes Week, where I suggested that we needed to produce a dedicated and expedited dispute resolution process for issues arising from digitised commercial documentation and smart legal contracts. Let me turn to that now.

The types of dispute that will need to be resolved in the future

28. As I have been saying for some time, we are very much on the verge of a digital revolution in commercial life. Before too very long, almost all business will be undertaken by the use of electronic transferrable documentation, electronic signatures, smart legal contracts and on-chain records. Immutable digital records will abrogate the need for courts to resolve many of the factual disputes that now arise.
29. You will have seen that 10 days ago, Professor Sarah Green at the Law Commission published a ground-breaking consultation on *Digital assets: electronic trade documents*. It sets out proposals for law reform to allow electronic trade documents including bills of lading and bills of exchange to be “possessed” and therefore to have the same legal effect as their paper counterparts. The Consultation Paper is accompanied by a straightforward 6-clause draft Electronic Trade Documents Bill which would, if enacted, transform trade as we now know it.
30. This all comes at a time, of course, when the transfer of property at all levels is about to be liberated from its remaining documentary boundaries by further accessions to the UNCITRAL Model Law on Electronic Transferable Records which was concluded in 2017 but has so far only been enacted in Bahrain, Singapore and Abu Dhabi.
31. Four things have, thus far, impeded the inevitable ubiquitous use of on-chain smart contracts. First, the lack of a clear understanding of the legal status of cryptoassets and smart contracts, something that the UK Jurisdiction Taskforce (which I chair) took forward by the publication in 2019 in respect of English Law of its Legal Statement on the subject. Secondly, there has so far not been a dependable Central Bank Digital Currencies to allow smart contracts to execute automatically, but there are several trial CBDCs, and some mainstream wholesale (and perhaps retail) CBDCs may be launched soon. Thirdly, we have up to now lacked a universally accepted approach to the digitisation of commercial and legal documentation. This is something that is technically entirely feasible and there are many excellent projects in progress. The Law Commission’s proposals in this area are a big step forward.
32. Fourthly, we have until last month lacked a universal dispute resolution process for on-chain smart contracts and cryptoassets. The UK Jurisdiction Taskforce, however, on 22nd April 2021 published its Digital Dispute Resolution Rules, providing for arbitral or expert dispute resolution in very short periods, arbitrators or experts to implement decisions directly on-

chain using a private key, and optional anonymity of the parties. These Digital Dispute Resolution Rules have been very well received internationally and I am excited about the prospect of their being taken up enthusiastically.

33. All these four impediments are in the process of being overcome and, when they are, commercial courts and arbitral tribunals will be resolving an increasing volume of on-chain and electronic documentation disputes. Trading on the financial and insurance markets, trading in physical and intellectual property, and the documentation of transportation is all likely to be undertaken electronically. Lawyers, judges and arbitrators will need quickly to acquire a comprehensive understanding of how these technologies work.
34. A paper-based dispute resolution process will not be satisfactory in the new era. I know that my successor as Chancellor of the High Court, Sir Julian Flaux, who is speaking at LIDW tomorrow, is keen to promote improved and online digital dispute resolution in the Business and Property Courts in London and the regions of England and Wales.

Conclusions

35. So let me try to draw the threads together.
36. I have explained my vision for an online justice system. There will be a cohesive online funnel with a large number of cases starting online and being resolved by integrated ADR mechanisms leaving a few to enter the court system – also online – and ultimate judicial resolution where necessary. This will, I emphasise, be transformational in terms of access to justice. It will, of course, need to ensure that the digitally disadvantaged are protected. But that should not hold us back. The new generations will demand that justice, like everything else, is delivered at proportionate cost online.
37. For what one might call the “high-end” of the justice system, Covid has allowed us to see how much of what we used to do with paper and face-to-face hearings can in fact be equally well delivered online and digitally. In England and Wales, keeping our systems at the forefront of digital technology and able to deal with the types of dispute that are actually likely to arise in the future in the financial markets will make our courts attractive to international users. We will need to make sure that, here in England & Wales, we deliver effective, expeditious and economic dispute

resolution in respect of digital business documentation and the smart on-chain contracts of the future.

38. I have deliberately not mentioned, thus far, the judicial decision-making process itself, whether at trial or at interlocutory hearings. In my view, there is, in these discussions, far too much emphasis on that very small part of what is a very large structure. The judicial role is to create the culture and set standards and principles for the system, but that does not mean that there has to be a judicial decision in every case. There are, as I have sought to explain, literally millions of disputes that arise every year in England and Wales, and many millions more across Europe and the rest of the world. Of these only a small minority ever reach a judge. In the Business and Property Courts, for example, there are less than 20,000 cases issued every year, and in the Court of Appeal, over which I preside, less than 1,000 substantive appeals are resolved every year. We should not allow the tail, however waggy, to wag the huge dispute resolution dog.
39. I want to see an holistic online dispute resolution system that takes account of the needs and expectations of the new generation of consumers, SMEs, industry and financial institutions, here and abroad. We must keep a very firm eye, as I have said, on the types of dispute that will actually arise in the future, for surely they will not be the kind of disputes that arose in the past. They will be digitally based – disputes concerning on-chain transactions, purchases made on Apple and Amazon platforms, and disputes arising from digital rather than paper documentation. We must be ready for the changes that are round the corner. Lawyers and the justice system have a reputation for being slow to accept new ideas. I hope that, during the current digital revolution, the courts of England and Wales will be seen as leading the way by setting a good technological example internationally.
40. I hope also that, in this speech, I have been looking forward and addressing the opportunities, challenges and changes that appear in the title of London International Disputes Week this year.
41. Many thanks for your attention.