



Quarterly Update Summer 2015

# Digital Delivery of Legal Services to People on Low Incomes

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Roger Smith OBE

The  
Legal  
Education  
Foundation

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# 1. Issues for Discussion

## Roger Smith

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The Legal Education Foundation (TLEF) will publish a thematic review of developments in the digital delivery of legal services at the end of the year. This will take forward the analysis in *Digital Delivery of Legal Services to People on Low Incomes* released in January 2015, incorporating material from updates during the year and new analysis around a series of themes. It would be extremely useful to have the maximum level of feedback into the writing of this report. To this end, TLEF is holding a seminar on 21st September, for which the thoughts below will provide a briefing.

The initial issue is the identification of what major themes can be identified and then, subsequently, how those themes should be teased out. It is clear that, in almost all countries and particularly those which are technologically developed, a revolution is occurring in the way that technology itself is developing and also how, as a result, technology is changing established ways of working. This is the process of disruption for which Professor Richard Susskind has for decades played the role of John the Baptist. Well, now it is happening – for all that many practitioners, both in the profit and the not for profit sectors – might wish it were not. So, in these circumstances, we should be able to identify specific themes which we need to pursue both to understand and influence for the better, if we can, what is happening.

‘A revolution is occurring in the way that technology itself is developing and also how, as a result, technology is changing established ways of working’

My first attempt at identifying the key questions of the moment is set out below. Are they best expressed as written or could they be amended, altered or supplemented?

**First**, empirically, how is – and how can – the development of digital delivery benefit those on low incomes through:

- a) new forms of effective legal practice;
- b) the delivery of legal advice, information and assistance;
- c) help to self-represented litigants and, potentially, on-line determination of disputes?

**Second**, what opportunities does digital delivery give to further the convergence of the training of legal skills and legal services?

**Third**, against what criteria should digital developments be measured, evaluated and regulated?

**Fourth**, what is our best estimate of digital exclusion and what implications does that have for how it should be addressed?

Below are some thoughts on how these issues might be approached.

### 1a. Changes to legal practice

We can identify changes of two kinds. First, there are changes in communication so that, for example, a good website is beginning to replace a good physical location as a draw for clients. Clients and lawyers can communicate through a mix of different ways so that physical meetings can be supplemented or replaced by virtual or electronic ones. The development of video communication means that there need be no opposition between face-to-face and digital communication. Clients can be given more information about their case and its progress made much more transparent. Providers can package their wares in different forms varying from bulk provision to third parties (eg with a provider subcontracting will drafting for 'national' brands such as law firms, legal insurers or others providers who are not even explicitly legal) or obtaining customers through linked not for profit sites (possibly raising transparency issues).

Automated assembly can revolutionise the user-creation of documents which can be combined with professional supervision in a variety of ways. More fundamentally, the application of artificial intelligence or, less ambitiously stated, 'guided pathways' opens the door to a more automated approach to legal practice that is not limited to the creation of documents. This process is at the very beginning. It poses an interesting challenge for the not for profit sector. Do organisations like community law centres hold to a community-oriented paradigm that stresses face-to-face contact with users for whom this is particularly necessary because they are disproportionately digitally excluded (see below) or do at least some seek to explore the potential value added of using a Rechtwijzer model of interactive provision in addition? The private sector, particularly with the regulatory changes in England and Wales, may be able to raise the funds for major investment in new forms of practice but is this possible for those without access to commercial funds? Are there new forms of collaboration opening up, such as the network of Quality Solicitors law firms?

## 1b. Legal Advice

Legal diagnostic sites are being developed, for example in the US, for the purposes of intake triage: they offer potential savings and consistencies. But, how far can sites go beyond a signposting role to actually giving individually tailored information and advice (in jurisdictions where this is permissible under practice regulations) which integrates with the initial diagnostic function? Indeed, in models like that for the BC Civil Resolution Tribunal or the Rechtwijzer or as advanced by the English Civil Justice Working Party on ODR, how far can we conceive of systems which take a potential user through a process from individual signposting, then advice, then into an online resolution phase? Less ambitiously, the two national advice websites in England and Wales – [citizensadvice.org.uk](http://citizensadvice.org.uk) and [advicenow.org.uk](http://advicenow.org.uk) have revamped themselves with the aim of greater clarity. To what extent is that an acceptable end point for advice provision on the internet and to what extent should it simply be seen as a suitable resting point before moving on to the application of guided pathways and artificial intelligence? Can we identify and list the criteria for a good website as was attempted in Digital Delivery?

### 1c. Self-represented litigants

All over the Common Law world, judges are concerned at the growth of self-represented litigants and the resulting challenge to an adversarial model of justice. We can identify a number of responses. One is to seek ways in which such troublesome users can be removed from the courts – leaving courts for those with the resources to hire lawyers. Another is to seek the assistance of cheaper representation eg through a growth in MacKenzie Friends. Still another is to use internet provision to put self-represented litigants in a position better to negotiate the courts – through assisted document assembly (as in the RCJ CAB's CourtNav programme) or skills training, familiarisation with the courts (see below) or some other form of help. Digital assistance for litigants by outside agencies raises the issue of the courts themselves. As they digitise their processes, how should those be integrated with the needs of self-represented litigants? As courts begin to explore Online Dispute Resolution (ODR) either as a way of diversion into some form of mediation or as mainline determination, what questions arise as to basic constitutional requirements such as public access to the courts and hearings?

### 2. Opportunities for convergence between advice/ information and education/skills?

Technology is precipitating a convergence between previously separate worlds of legal advice and public legal education. The Justice Education Society of British Columbia has developed training programmes, mandatory for some litigants on post-separation issues in family cases. Courts in the US and Australia have posted videos giving instruction on aspects of how to handle your case if you are representing yourself. In the US, the Legal Services Corporation is funding a cartoon video to help self-represented litigants with advocacy skills through one of its Technology Initiative Grants. Already, we can see the possibilities of trans-jurisdictional collaboration: the Californian courts have borrowed the Canadian NGO materials. How far might this process go? How could it be encouraged?



### 3. Measurement, Evaluation and Regulation

The Legal Service Corporation requires grant-holders to provide an evaluation of grant-funded technology projects. In general, however, there is very little publicly available and rigorous evaluation of projects. This impedes lesson-learning and proliferation. Do we need to encourage projects to publish data from the most basic level upwards from google analytics to the actual use of dummy clients and attempts to 'test to destruction'? Even the recent evaluation of the Rechtwijzer, which is probably the most thoroughly examined digital legal services project, was not subject to objective testing but was based largely on subjective assessment of users. How can we find out how objectively good any advice is? Does it comply with what an experienced and trusted adviser would say was the best available? Is there a danger of second-rate advice that, for example, encourages women, often the weaker party in a relationship breakup, to settle for a distribution of assets less favourable to them than would be the result of a judicial decision? Could we build up a model approach to measurement and evaluation over different jurisdictions? The English Legal Services Consumer Panel (see below) raises some regulatory issues about digital provision. How should we respond?

### 4. Digital Exclusion

Crucial to any encouragement of digital delivery is an assessment of the impact of digital exclusion. In *Digital Delivery of Legal Services to People on Low Incomes*, the assessment was made that digital delivery could reach about half of those on low incomes. Some of those more bullish about the issue (eg the Civil Justice Working Party on ODR) assert that the figure is considerably higher – perhaps as high as 90 per cent. The extent of digital exclusion – which may be through lack of skills, culture, intellectual capacity or access to the internet – is vital in the role that digital delivery can play. What do we think is the best available figure for England and Wales? Is that likely to be similar to other similar jurisdictions such as Australia, the US, the Netherlands and Canada? What are the policy implications?

Any responses and thoughts would be welcome: contact [rsmith@rogersmith.info](mailto:rsmith@rogersmith.info)

**Roger Smith**

'Guided pathways opens the door to a more automated approach to legal practice that is not limited to the creation of documents.'

# 2. British Columbia

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## 2.1 MyLawBC: Update

Sherry MacLennan,  
Legal Services Society of BC

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We have produced a YouTube video clip to introduce MyLawBC – and its emblem, which was being finalised with user testing feedback at the time of our last update. This is available at: [www.youtube.com/watch?v=h3vI5zdt-tY](http://www.youtube.com/watch?v=h3vI5zdt-tY) Work has focused on mapping the guided pathways for the planned streams of family law, family violence, wills and estates and foreclosure. Much support is being received from the Hague Institute for the Internationalisation of Law (HILL) during this work. Prototypes are being built by our graphic design team so we can do interim user testing this summer and our writers are working hard on the questions and answers that populate the pathways as well as working on the pathways' end points. We are working with contracted lawyer-subject matter experts, and staff lawyers and managers to ensure that we achieve a good functional integration of in-person services, legal aid and other resources.

Our planned external advisory committee meeting was postponed to the fall as a result of the unexpected unavailability of a key staff member. Awareness of the

project is growing locally among the Bar and other interested stakeholders. Communications and messaging about the project is increasingly important. It is becoming clear that at least some members of the Bar have concerns about perceived negative impacts on their business models and fear users may not get needed legal advice.

There seems to be a fear that this platform might be a replacement for legal services. While such digital delivery may be possible in the not so far off future, e.g. the recently developed Ross the IBM Watson powered super computer lawyer, MyLawBC is not that platform.

The lawyers who have worked more closely with us recognise that it is a diagnostic tool that will help people, many of whom who are not retaining lawyers in any event. MyLawBC will help clients be clear about their issues and priorities before they see a lawyer if they are retaining one. If not, the platform will help them get reliable information and self-help as well as connect them to relevant free and low cost legal resources.



We plan to engage more of the Bar in our user testing this summer in order to allay concerns and create a deeper understanding

of the project, and how it can support lawyers wishing to increase the public's access to justice by unbundling legal services.

## My problem, my solution, MyLawBC

Imagine a website that is built around your needs, where you can work through your legal issue using a guided pathway, ending with an individualized action plan, information, and the services you need. A site that also provides a hotline, live chat, or automated attendant service. A site that anyone can go to and say 'Here's MY solution to MY legal problem.'

### **This is our vision for MyLawBC:**

- An innovative, easy-to-use integrated resource that ordinary British Columbians can use for help with their legal problems.
- A site that actively guides you to a resolution for your legal problems, or to resources and information to help you avoid legal problems.
- A unique resource created with the participation of BC's public legal education and information (PLEI) providers, working towards a shared goal.

### **Here is what MyLawBC will do:**

- Give you the tool that you need to identify, manage, and resolve your legal issue.
- Guide you to a solution to your legal problem using an interactive, question-and-answer approach.
- Integrate available personal assistance, over the phone and online.

We're planning to launch MyLawBC by the end of 2015. Until then, come back often to check for updates!

It's all about you – so everyone can say: my problem, my needs, my solution, MyLawBC.

### **Find out more:**

Legal Services Society  
(Legal Aid BC)  
400 – 510 Burrard Street  
Vancouver, BC V6C 3A8

T (604) 601-6000

F (604) 682-0965

E [mylawbc@lss.bc.ca](mailto:mylawbc@lss.bc.ca)

## 2.2 MyLawBC in its own words

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These pages are taken with permission from the blog covering developments on the MyLawBC website – [devblog.mylawbc.com](http://devblog.mylawbc.com). They are the first two of four FAQs which explain the intentions of the project.

### MyLawBC frequently asked questions – Part 1

MyLawBC is a big project and we've received a lot of questions about it. We've compiled answers to some of the most common questions and, over the course of a few posts, we'll answer those questions.

#### What is MyLawBC?

MyLawBC is an innovative new online service that expands access to justice. Initiated by the Legal Services Society, this interactive application actively engages users to identify and address common legal problems. Users will follow a guided pathway, which identifies their needs and enables them to take action to solve their problem. This is an entirely new approach to providing Public Legal Education and Information (PLEI) in British Columbia. We will launch MyLawBC by the end of 2015.

For family law issues, MyLawBC includes a negotiation platform where former partners can work on resolving issues through online dialogue. Newly expanded Family LawLINE telephone services complement the online features for a uniquely integrated approach to online family law services.

#### What makes MyLawBC new and different?

MyLawBC is markedly different from other PLEI resources because it:

- engages the user in a series of questions and answers to help diagnose their legal issue,
- lays out a step-by-step action plan to address that issue, and
- includes a family negotiation platform, with the potential for additional dispute resolution services at a later date.

By having a 'conversation' with the user, MyLawBC can customise the information provided to the user and only give them what they need to know. By supporting conversations between people in conflict through the negotiation platform, MyLawBC supports the early resolution of family problems.

### What is a guided pathway?

Guided pathways are a way for the website to diagnose a legal problem and lead the user to appropriate next steps. As users navigate the website, they will be asked a series of questions. Their answers to these questions will determine the information and the resources they see and, ultimately, the action plan they receive at the end of the pathway.

Guided pathways are already familiar to many British Columbians in other contexts, such as taxes and health. MyLawBC is part of an international movement to provide legal information in new and innovative ways, taking advantage of continuing developments in technology.

### What is the negotiation platform?

This is the tool that lets both people in a conflict chat with each other online and develop an agreement together that resolves the issues. For family law disputes, the negotiation platform encourages reflection on common goals and interests that may aid resolution. It provides a format using legal information and standard phrasing that will lead to a separation agreement developed by both parties.

### What areas of law will MyLawBC cover?

When the website first launches, it will focus on:

- family law issues around divorce and separation,
- family violence,
- advanced life planning,
- wills and estates, and
- foreclosure.

As we move forward, we envision the website growing to cover more areas of law that touch the everyday lives of ordinary British Columbians.

### How did LSS choose these topics?

We reviewed British Columbia literature on legal needs, including LSS-Law Foundation funded reports, and consulted with PLEI providers to determine priority needs and audiences. We chose topics that respond to those priorities, taking into account available resources and taking care not to duplicate efforts where other agencies plan to respond to those priorities.

‘By having a “conversation” with the user, MyLawBC can customise the information provided to the user and only give them what they need to know’

Does MyLawBC replace the Family Law website, Aboriginal website, and LSS' other PLEI materials?

No. MyLawBC does not replace the Family Law in BC website, Aboriginal Legal Aid in BC website, or any of our other PLEI materials. It is an entirely different way to access legal information. MyLawBC will guide people to take actions that are unique to their situation, and support them to better understand, manage, and/or resolve their legal issues.

How will LSS measure MyLawBC's success?

We will track the website's usage to find what is or isn't working in the guided pathways. In addition, we will gather feedback through multiple web surveys and in-person focus groups to ensure MyLawBC delivers the innovative solutions we aim for.

### MyLawBC frequently asked questions – Part 2

What public need does MyLawBC meet?

In almost any conversation about the barriers to accessing justice, members of the public express high levels of frustration with the overwhelming amount of information online and how hard it is to identify the correct and reliable resource for their needs. Research into how people find information online supports this view.

MyLawBC will make it easy for people to find what they need. It will empower them to take action to solve every day legal problems. Instead of spending hours browsing various websites and trying to sort out which information applies to their situation and still not knowing what actual steps to take to move their own matter to a resolution, people can find an immediate answer to their problem that doesn't involve reading about options that don't apply to them.

How will MyLawBC help improve the justice system?

MyLawBC will increase access to justice for everyday issues, which will improve confidence in the justice system. It empowers people to take actions to resolve their problems before they escalate to matters requiring the courts. MyLawBC will support people in making decisions and accessing resources – from free legal services, including mediation, to advice on when getting a lawyer is the best option and how to do that. If going to court is necessary, MyLawBC will help users of modest means to access easy-to-use self-help guides and support.

### Does MyLawBC support lawyers who want to improve access to justice in BC?

MyLawBC provides a collaborative tool lawyers can trust to help them make the most efficient use of their time with clients. Legal advice and costs can focus on the more complex and intractable problems. Lawyers who direct their clients to this resource will have better-informed clients and be better able to support the increasing numbers of people looking for unbundled or fixed-fee services. Lawyers will know that clients who use MyLawBC have access to up-to-date, reliable information and forms.

### How is MyLawBC collaborative?

We actively engaged many non-profits, including among others, PLEI and community agencies, Access Pro Bono, the BC Elders Institute, and government departments, for assistance ranging from consultation, advice, and contributions to the project vision, setting priorities for topic areas, and the generative scrum process used to develop the guided pathways.

We will establish an advisory committee and other working groups as needed among stakeholders, which will help guide the website's development. The MyLawBC platform provides the opportunity for future PLEI collaboration, as other agencies may lead the development of additional pathways or subject streams.

### What consultations did LSS have?

We consulted with all major PLEI providers and justice system stakeholders in BC.

### My clients have literacy barriers. Can they work through MyLawBC on their own, or will they need my help?

MyLawBC will be written in plain language and developed to be usable by people with no legal knowledge. Some people may still need help. We will emphasize user testing throughout development to ensure the website we build takes into account users' needs and minimizes barriers posed by low literacy and computer skills.

'MyLawBC provides a collaborative tool lawyers can trust to help them make the most efficient use of their time with clients'

## 2.3 The Civil Resolution Tribunal of British Columbia: 10 things to know

Shannon Salter

Chair, Civil Resolution Tribunal

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- 1 When it opens (planned for early 2016), the [Civil Resolution Tribunal \(CRT\)](#) will be the first online tribunal in Canada and one of the first in the world. The CRT will resolve small claims and strata property disputes. Our Knowledge Engineering work continues to progress. We are creating, hiring and training new positions including Expert System Support Analysts, Content Specialists and Knowledge Engineers.
- 2 On May 14, 2015, the [Civil Resolution Tribunal Amendment Act](#) received royal assent. The amendments allow the CRT to become mandatory for strata property disputes and small claims disputes below a certain monetary threshold. You can read more about the amendments [here](#).
- 3 The CRT's [first 18 tribunal members](#) were appointed this May, after a rigorous competition process. The tribunal members have legal training, subject matter expertise, and experience with administrative law and/or adjudication.
- 4 Earlier this year, we welcomed [Richard Rogers](#) onboard as acting CRT Registrar and Executive Director. A lawyer by training, Richard has been involved in the project team which developed the CRT, and he previously served as the registrar of the Property Assessment Appeal Board.
- 5 The Solution Explorer is the front-end of the CRT, and will allow us to provide legal information, tools, and resources to the public, for free, regardless of whether they have a CRT claim. Our goal to create a stable, repeatable and well documented knowledge engineering process is nearly complete. Creating the expert knowledge for the Solution Explorer Expert system will be a key to its success. It is the tool that will deliver expert justice and dispute resolution guidance directly to non-expert users (the general public). A stable methodology will help us to repeat this process for new tribunals and other law and justice service providers who choose to follow the same approach in the future.



- 6 PriceWaterhouseCoopers is building the Solution Explorer and the CRT dispute resolution software, powered by the Salesforce.com platform, an industry leader in database management. We expect to release a beta version of the Solution Explorer this fall, and to launch the dispute resolution software early next year.

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- 7 The CRT is getting a new home! Early this fall, we will be co-locating with the Labour Relations Board, using a converted hearing room as office space, and sharing reception and other facilities. The CRT's remote workforce allows us to have a minimal footprint, and we have promised the LRB that we will be good neighbours and not drink out of the milk carton.

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- 8 The CRT has partnered with [PovNet](#) to conduct focus groups with advocates and their clients across British Columbia, to help us better understand the needs of CRT parties who may have barriers to accessing justice. PovNet is also developing a 'helper tool' to make it easier for these parties to get the assistance they need (we'll let you know more about these focus groups in an upcoming post).

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- 9 In February, a committee of the United Kingdom's Courts and Tribunals Judiciary recommended the creation of [Her Majesty's Online Court](#), and identified the CRT and a Dutch ODR project as world-leading models to watch.

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- 10 This website has updates on implementation, guest posts from stakeholders, a [contact form](#) for the public, and information on how the CRT will work. Since launching late last year, the website has generated close to 17,000 hits and hundreds of email queries.

'Our goal to create a stable, repeatable and well documented knowledge engineering process is nearly complete'

# 3. England and Wales

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## 3.1 Citizens Advice

Beatrice Karol-Burks and Ashley Scarfield

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New and improved digital advice goes live on [citizensadvice.org.uk](http://citizensadvice.org.uk)

This is the advice website for Citizens Advice, the UK's largest advice provider dealing with any issue, from anyone, spanning debt and employment to consumer and housing plus everything in between. In the last year alone, the Citizens Advice service helped 2.1 million people with 6.6 million problems. The service delivers advice from over 3,300 community locations in England and Wales, run by 338 individual charities. Citizens Advice is the national body for bureaux and is a registered charity in its own right.

Over the last three months we have been putting our [new approach to digital advice](#) into practice. Following testing with clients and advisers in Local Citizens Advice we've [published new advice content on Universal Credit](#), completely replacing the information on our website for the first time.

We've also designed and are now doing the final testing of new advice content on energy, faulty goods and benefits entitlement.

All our new content marks a shift away from 'writing about things' – instead we're focussing on solving people's problems based on research and data.

**2.1m**

people helped by  
Citizens Advice service

**3,300**

community locations in  
England and Wales served

For example, when developing our Universal Credit content we learnt about the issues that clients were having around knowing what information they needed to apply, and what documents they had to bring to their interview. We've clearly added this information into the 'Apply for Universal Credit' content, and given clients and advisers the option to download a checklist that can be printed off.

We also heard about the long waiting time between applying for Universal Credit and getting the first payment. To address this, we've clearly directed clients to information about how to get an advance payment while they wait, helping them avoid rent arrears and other debt.

These are just a few examples that show how we're giving advice that helps solve real problems.

## 3.2 Overview of the Relate Rechtwijzer development

### Laura Dowson, Relate

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Relate received funding through the Google Impact Challenge UK 2014 to deliver a 'proof of concept' for an online family dispute resolution service.

We started our project with user insight and market research. Since February 2015 we have been working with The Hague Institute for the Internationalisation of Law (Hiil) and Modria to customise Rechtwijzer Divorce & Separation for the legal requirements of England and Wales.

With the support of wide variety of stakeholders we have been to adapting Rechtwijzer's guided pathways, endpoints and contextual information. The initial scope for our development includes guided self-help (diagnosis, intake, negotiation), mediation support, and neutral review. There is also support with

the emotional stress of separation through Relate's LiveChat service.

The development has also been supported by an Expert Advisory Group with representation across the separation support sector. The purpose of this group is to ensure the development plans fully reflect existing insight and integrate well with the current landscape of support for family separation; support quality assurance; and guide the project to a smooth and sustainable scale-up.

We will be running user tests from mid-August and a small live trial. This will conclude our 'proof of concept' after which we will start work on getting ready for a public launch by the end of the financial year.

## 3.3 Susskind Report on Online Dispute Resolution (ODR)

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Darin Thompson, working himself on the BC Civil Resolution Tribunal, has put together a valuable summary of press coverage of what is officially the report of the Online Dispute Resolution Advisory Committee of the Civil Justice Council on *Online Dispute*

*Resolution* chaired by Professor Richard Susskind ('the Susskind Report').

[nexsyslegal.tumblr.com/post/111163530411/courts-of-england-wales-odr-advisory-group](https://nexsyslegal.tumblr.com/post/111163530411/courts-of-england-wales-odr-advisory-group)

## 3.4 Technology: A Regulator's View

### Roger Smith

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Two recent reports from the Legal Services Consumer Panel in England and Wales provide an insight into the emergent use of new technology by the legal profession. Both are orientated towards regulatory issues of concern but both are interesting more widely. They indicate the importance of new forms of virtual legal practice – one, *2020 Legal Services: how regulators should prepare for the future*<sup>1</sup>, is general and the other, *Comparing Methods of Service Delivery: a case study on divorce*<sup>2</sup>, is specific to a comparison between face-to-face and digitally delivered provision in divorce cases.

Reports from England and Wales of this kind are particularly useful because the legal market in England and Wales is approaching a major transformation. This is the result of a number of factors but they include the impact of a regulatory regime which allows third party ownership of law firms and has thereby encouraged an influx of entrepreneurial foreign legal enterprises (such as Rocket Lawyer or LegalZoom from the US or Slater and Gordon from Australia). In addition, regulation relates to specific forms of legal activity not a wholesale prohibition on the 'unauthorised practice of law' as in the US. On top of these attractive factors, England and Wales has

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<sup>1</sup> [www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/2020consumerchallenge.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2020consumerchallenge.pdf)

<sup>2</sup> [www.legalservicesconsumerpanel.org.uk/ourwork/](http://www.legalservicesconsumerpanel.org.uk/ourwork/)

[Online\\_Self\\_Help\\_Tools/Documents/Online%20services%20-%20Divorce%20case%20study%20%20final.pdf](http://www.legalservicesconsumerpanel.org.uk/ourwork/Online_Self_Help_Tools/Documents/Online%20services%20-%20Divorce%20case%20study%20%20final.pdf). The report was written by Karen Troubridge and Graham Williams of BDRC Continental

historically had high levels of public funding for legal aid which are now swiftly subsiding and is relatively technologically literate (it has the highest use of internet shopping in Europe<sup>3</sup>). In addition, there has been increasing interest in 'unbundling' services. It is clear from the Panel's divorce study that the big draw for customers to the internet/self-help is cost: 'Online divorces were reported to be significantly cheaper than those delivered via traditional methods.'<sup>4</sup>

The Panel's general study identified four inter-locking 'key developments':

#### **a) Self-lawyering**

The core challenge ahead is to extend access to justice to those currently excluded from the market because they cannot afford legal services. This need and other forces, including government policy, consumer empowerment, technology and the effects of liberalisation, will combine to result in less involvement by lawyers in many of the tasks that until now have made up their staple diet. Consumers will seek alternatives to lawyers or use them in different ways. In place of lawyers will be greater self-lawyering, online services, entry by unregulated businesses, and also by regulated providers, such as accountants and

banks, who will diversify into the law. Calls will grow for more radical solutions that cut lawyers out, such as an inquisitorial style of justice and ODR, which are better suited to the new funding realities.<sup>5</sup>

#### **b) The influence of technology**

Technology will go to the heart of all aspects of legal services in the future, changing how legal problems are identified, people and businesses resolve their disagreements, the way consumers choose providers, how legal services are delivered and law firms run their businesses. Technology has the potential to greatly enhance access to justice, but it should not be viewed as a panacea – those currently excluded from legal services are the least likely to be online, and it cannot substitute for the human touch in every situation. Technology also promises to both transform how people consume legal services and create new markets. This innovation should mostly be beneficial, but will bring with it new 'digital detriments' for regulators to contend with. The market should be neither more nor less risky, but policymakers will need to reorient regulation and update skill sets to recognise and manage new risks that replace old ones.<sup>6</sup>

A specific influence in the field of technology has been in ODR and

<sup>3</sup> www.retailresearch.org: UK online sales in 2015 amounted to €62bn compared with €185bn for Europe as a whole.

<sup>4</sup> As above, p7

<sup>5</sup> As above, p4-5

<sup>6</sup> As above, p6

a partly associated drift from using the courts to using other forms of resolution – no doubt, in part driven by high entry costs to the courts. ‘It is extraordinary;’ reports the Panel, ‘that since 2000, the annual number of small claims hearings has halved from approximately 60,000 to 30,000 while over the same period the Financial Ombudsman Service’s annual caseload has risen from 30,000 to over 500,000.’<sup>7</sup> More widely, Amazon resolves 60m disputes a year through automated systems developed by Modria (albeit in a particular context where reputation is important to parties). This has led to a wider drift away from lawyers as dispute resolvers: 72% of PPI [personal protection insurance] complaints made to the Financial Ombudsman in 2013-14 were brought through claims management companies. The Civil Aviation Authority has also reported increased numbers of complaints made via claims managers.<sup>8</sup> The trend away from lawyers is fostering developments like McKenzie friends, once seen usually in an NGO context and now spreading into a commercial sector of its own.<sup>9</sup>

### c) Consumer Behaviour

Across the economy, bolstered by strengthened consumer rights, transparency on provider performance and greater access to redress, and aided by more

sophisticated intermediaries which help people find better deals, the traditional consumer-business relationship will be turned on its head. However, the extent to which these broader developments will impact on legal services is unclear. Our data shows consumers are becoming slightly more empowered and the sector will not be immune to broader societal changes. Yet, inherent features of the market militate against empowering consumers.<sup>10</sup>

### d) Market Changes

Informed observers think the legal services market will be unrecognisable by 2020 as the pace of change accelerates following the Alternative Business Structures (ABS) reforms. Current ABS developments – including consolidation, specialisation, emerging brands, investment in marketing, technology and new delivery methods, hold clues to the future. The law will increasingly become a more business-like environment. This should deliver benefits to consumers and widen access, but it may also bring more sophisticated marketing and commercial practices seen in other markets that have caused consumer detriment.<sup>11</sup>

The one set of data necessarily absent from the Panel’s studies is

<sup>7</sup> As above, p19

<sup>8</sup> As above, p20

<sup>9</sup> As above, p22

<sup>10</sup> As above, p6-7

<sup>11</sup> As above, p7-8



the commercial success or failure of the recent wave of innovation and investment. It certainly has not been all plain sailing for the new entrants to the market. Slater and Gordon shares have had a hard time.<sup>12</sup> Co-operative Legal Services, the one-time first entrant into the market as a new non-legal 'brand' has had roller coaster results.<sup>13</sup> But, there is little denying the extent of the market transformation on which the sector is currently embarked:

Solicitors Regulation Authority (SRA) data suggests ABS have made significant inroads in certain areas, for example they account for a third of turnover in the personal injury market. Contrary to fears about cherry picking work, ABS have captured a significant percentage of turnover in mental health and social welfare. This bodes well for securing access to justice in areas of legal work often considered unprofitable.<sup>14</sup>

The Panel is intrigued by the implications of a third age of computing which will disrupt information-intensive industries like legal services.<sup>15</sup> In this context, the report identifies the Rechtwijzwer as an outlier in law and looks to the impact of Artificial Intelligence (AI) initiatives such as IBM

Watson: 'By looking at a patient's medical records it can say with 95% accuracy that one type of chemotherapy is better than other options. Over 90% of nurses who use Watson in the field follow its guidance.' It is clear that AI has yet to make much of an impact in the legal market. Presumably, rules against unauthorised practice of law would impede its use in the US. More apparent is the impact of document assembly programmes which are credited with providing the low cost technology that has raised the proportion of US citizens who have made a will from 30% to 50%.<sup>16</sup> The Panel reveals itself as somewhat almost getting sentimental in its view of AI's future:

Finally, legal problems are often highly personal, emotive or stressful, while people's circumstances can be complex and multi-faceted. There may be a risk that policymakers attracted by the cost benefits of technology become too zealous in seeing it as a panacea and forget that the human touch is core to the effective resolution of legal issues. While, of course, many people already successfully resolve all sorts of problems without face-to-face advice, and technology can deliver highly personalised services, there is something

<sup>12</sup> <http://www.lawgazette.co.uk/practice/slater-and-gordon-shares-dip-as-key-quindell-contract-set-to-end/5050276.article>

<sup>13</sup> <http://www.thenews.coop/92504/news/consumer/how-the-groups-legal-business-fits-into-restructure-plans-for-the-co-operative/>

<sup>14</sup> As above, p50-51

<sup>15</sup> As above, p25

<sup>16</sup> As above, p26

uncomfortable in the thought that all legal issues can be reduced to computer code where most communication happens through an avatar. Good lawyers are counsellors and creative problem solvers, not just experts in the law. Knowing how hard to push, and when to pull back, will be a key challenge.<sup>17</sup>

According to our survey data, around half of legal services are already delivered remotely – online or by telephone or post. Surveys show strong consumer demand for online services: in one, 47% of consumers polled said online delivery is important to them. Law firms are responding to this demand: the same survey found that 23% of law firms currently offer 24/7 interactive online legal services and a further 26% plan to within a year. Technologies such as online case tracking, familiar in conveyancing, are designed to improve the customer experience and cut costs for the law firm. Here technology is enhancing, not replacing, the existing delivery of legal services.<sup>18</sup>

Very similarly to the analysis in *Digital Delivery*<sup>19</sup>, the Panel indicate the infiltration of new methods of practice.

Technological solutions are also being used to attract, and in some cases filter, new customers. For example, Bott & Co's Car Incident Assistant app enables users to take photographs of the accident scene using the iPhone's integrated camera, record their current location using its GPS capabilities, store relevant information in relation to their accident and submit these details via email to the firm ... automated documents is an example of where technology is changing the shape of existing markets. One leading provider, Epoq, produces over 300 legal document templates encompassing areas of law such as family, wills and probate, landlord and tenant, and business and employment. Quite possibly this technology will expand the market or see lawyers use their time more efficiently or occupy different roles, rather than remove the lawyer altogether. Most products involve a lawyer checking the document's accuracy or refer consumers to professional advice where it would be better to consult an expert ... The internet is also creating new types of legal services. An example is 'ask an expert' services where consumers post questions concerning a legal

<sup>12</sup> <http://www.lawgazette.co.uk/practice/slater-and-gordon-shares-dip-as-key-quindell-contract-set-to-end/5050276>. article

<sup>13</sup> <http://www.thenews.coop/92504/news/consumer/how-the-groups-legal-business-fits-into-restructure-plans-for-the-co-operative/>

<sup>14</sup> As above, p50-51

<sup>15</sup> As above, p25

<sup>16</sup> As above, p26

<sup>17</sup> As above, p27-28

<sup>18</sup> As above, p28-29

<sup>19</sup> [www.thelegaleducationfoundation.org/digital-report](http://www.thelegaleducationfoundation.org/digital-report)

issue and someone provides an answer. Different business models offer either a one-off payment or regular subscription payments.<sup>20</sup>

The Panel's divorce study suggests that users are relatively sophisticated about the medium in which they receive services. Those choosing assisted self-help tend to have cases which are simpler and with less animosity between the parties: 'participants who were separated between 2 and 5 years were more likely to use the online route than face-to-face and over three times as many petitioners who had been separated over 5 years used an online approach than a face-to-face approach. In situations where the divorce would seem more contentious, such as adultery, petitioners were more likely to use a face-to-face method.'<sup>21</sup> Intriguingly, users may not have noticed all that much difference as channels of communication merged: 'According to petitioners' perceptions, online providers offered a variety of services to their clients, including other channel support, such as telephone support. The variety of services offered is very similar to face-to-face providers.'<sup>22</sup>

The Panel's overall regulatory concern takes it toward a series of regulatory principle including simplification; support for innovation; some slightly vague assertions of 'contributing thought leadership on the regulatory implications of developments such as the rise in litigants in person and online dispute resolution'; and (this very similar to our concerns) 'maximising the evidence base by which performance of all types of legal services can be monitored and judged by regulators and consumers'.<sup>23</sup> Some of its objectives are probably less to be obtained by regulatory than other means. For example, 'designing policies so that vulnerable consumers share fully in the gains of market reforms' is an objective that may require the expense of government money on legal provision more than any regulation of existing provision. Ultimately, it may well be that it is perfectly apparent to the Panel that regulation is not all but it is, alas, in no position to say so. However, both these reports have the great value of being thoughtful, analytical and evidence-oriented excursions into the field of digital developments in legal services. Well worth a read.

<sup>20</sup> p29

<sup>21</sup> p22

<sup>22</sup> Divorce Study as above, p28

<sup>23</sup> As above, pop

# 4. The Netherlands

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## 4.1 Rechtwijzer 2.0: Update

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### New Website

The beta version of Rechtwijzer 2.0, Divorce and Separation, was soft-launched in November 2014. The Legal Aid Board and HiIL adopted a cautious approach, making sure that the pilot phase would take place in a controlled environment with prompt technical and other assistance to the first clients. The next step in the pilot phase was to connect an informational website to Rechtwijzer: [rechtwijzer.nl/uitelkaar](http://rechtwijzer.nl/uitelkaar). This website went

live on 1 April 2015. The website contains information about the different phases of separation, and topics that are frequently asked about by people going through a divorce. Whilst also explaining how separation works without using Rechtwijzer, it offers information about the use of Rechtwijzer, including the services offered on Rechtwijzer and the costs. On a page called 'Start with your separation plan' users are guided to Rechtwijzer.

'The website contains information about the different phases of separation, and topics that are frequently asked about by people going through a divorce'

## Number of Users (as per 10 July)

Phase	Numbers (10 July 2015)	Numbers (27 March 2015)
<b>Intake</b>	47 users have finished the intake and are waiting for their partner to join	24 users
<b>Dialogue</b>	74 cases (148 users) have initiated negotiations.	41 cases (82 users)
<b>Mediation</b>	4 cases are currently in mediation	1 case
<b>Adjudication</b>	1 case is currently in adjudication	1 case
<b>Review (mandatory)</b>	6 cases have finished the dialogue and are now in the payment process preceding review	4 cases
	18 cases are currently being reviewed	9 cases
<b>Finalisation</b>	In some cases (marriage and registered partnership with children under 18) the court has to decide. In total, 16 cases have been submitted to court and have been finalised	1 cases
	The court procedure is pending in 12 cases	13 cases
	Overall 53 cases have been finalised on Rechtwijzer	14 cases
<b>Total (as from November 2014)</b>	200 cases have past the payment after the initiator has finished intake and invited the respondent	160 (both people and cases)

### Eligible for Legal Aid

Legal aid has been granted to 80 users (in 58 cases).

### What we see after six months

#### Length of process

On average a full process on Rechtwijzer (from the moment the initiator has invited the partner until the reviewer has approved all agreements made by the parties) takes 45 days.

The dialogue phase takes on average 15 days. The review takes 31 days. Number of review sessions needed to get to approved separation plan: 2.5. (Note: these are regular days, not business days)

The averages for the follow up process are:

- From the moment the case is finalised on Rechtwijzer to submission to court: 17 days.

- From submission to ruling: 36 days. (Note: these are regular days, not business days)

This knowledge about how long the different steps in the process take, is shared with (prospective) users of Rechtwijzer on the website. Also to set expectations: while Rechtwijzer helps parties to arrange their separation online in an efficient way, Rechtwijzer does not facilitate separating in a flash: coming to good solutions together and with the assistance of the reviewer takes some time.

### User satisfaction

As of May users receive a link to an online user survey after finishing each phase. These surveys have replaced the surveys by phone that have been done from the start. The number of respondents is still very low, which does not yet allow for a thorough and sound analysis. Very tentatively, we see that users value the fact that they can use Rechtwijzer in their own time and pace. Particularly the dialogue phase scores high. Less satisfied are users with the time it takes to have their case reviewed. Also technical issues lower the satisfaction. The Legal Aid Board has received 17 complaints. These users have received a refund.

### Not much use of Mediation and Adjudication

Only a few parties have made use of the Mediation and Adjudication services offered on Rechtwijzer. We have formulated two hypotheses for this low usage.

#### 1. Costs

We understand from users that saving costs is one of the reasons for choosing Rechtwijzer. The fact that users need to pay extra for Mediation and Adjudication (optional services) could be the main reason why these services are hardly used. Review is a mandatory step, and therefore people take the costs for the review into account.

#### 2. Expectation of role reviewer

In general we have seen that users' expectations of what the reviewer does occasionally extends beyond checking finished agreements on legal validity, balance and sustainability. Users sometimes leave matters open to solve after they have sought the reviewer's advice. This can also be a reason for the infrequent use of Mediation and Adjudication: users await what the reviewer has to offer before deciding to buy the service of mediator or arbitrator.



## Progress of the platform

Rechtwijzer was launched as a minimum viable product: a version of the platform that has all the content and functionalities to get to high quality solutions, but which will be improved based on the users' feedback in a continuous, iterative process. So far, 23 improvements have been implemented. These range from a set of new model solutions to field validation when people insert their personal details.

This pilot phase is also used to technically stabilise the process of continuous adaptation of the platform. Since the launch, 23 unique bugs have occurred. These were almost all connected to implementation of new features. Modria has recently put in place new elements that would need to result in less technical problems when releasing new features.

## Service providers

As repeat users the service providers have been exposed to the most to technical difficulties. But the biggest challenge of Rechtwijzer is the new way of working it demands from these professionals.

There is getting used to working with the platform itself: how do all functionalities work, where do I find what I need. Next to trainings and technical guidelines and other reference documents that are offered, the availability of the

Contact Centre to ask questions is important to support service providers in answering these questions.

Then there is the communication with parties. Communication on the platform goes via chat. The choice for other, offline, ways of communication are left to the service providers. We see that some service providers have opted to keep all information on the platform, through chat. Others we know to make phone calls with parties. A number of service providers chose to invite parties to their office to finalise the separation plan. During the several meetings that have been organised for the service providers to share experiences, the issue of what to do online and what to do offline is a recurrent point of discussion. Currently, we see a tendency with the service providers that they wish to speak to the parties at least once personally, either by phone or by meeting.

The biggest worry of service providers is informed consent: have the parties fully understood the consequences of their decisions? This becomes even more pressing when parties do not offer enough information about what has motivated them to get to a certain agreement. It is then the role of the service provider to ask the parties to mediate better and to find out whether the informed consent

is there. However, the platform can also be further adapted to facilitate informed consent. The directions in which this will be pursued in the coming period is: further improvement of the model solutions, making certain actions in the platform more compulsory (uploading of documents, answering questions about motivation, for instance when parties agree not to go for alimony) and more checklists.

### Conclusion

The number of persons using Rechtwijzer to separate has nearly doubled since the first update in March. The launch of the information website in April may have attracted more users. In 29% of the cases one or both parties received legal aid. Users are very satisfied with Rechtwijzer when it comes to working together in their

own time and pace; they are less satisfied with the time it takes to have their case reviewed. This is resembled in the completion times: 15 days on average for the dialogue phase, and 31 days on average for the review phase. Users tend to postpone decisions on agreements to the review phase, expecting more substantive advice from reviewers. This apparent mismatch in service expectations and service delivery, and the under-use of mediation and adjudication services have prompted us to reconsider the package of services, with a likely addition of early neutral advice. The iterative process of improving Rechtwijzer – both technically and substantively – is paying off and is resulting into an increasingly user-oriented platform that empowers people and facilitates high quality divorce plans.

29%

of the cases one or both parties received legal aid

15

days on average for the dialogue phase

# 5. Australia

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## 5.1 Speech on the money

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Chief Justice Bathurst of New South Wales gave a thoughtful and well nuanced speech on the impact of new technology on the role of barristers. Worth a read – *iAdvocate v Rumpole: Who will survive? An analysis of advocates' ongoing relevance in the age of technology*

[www.supremecourt.justice.nsw.gov.au/Documents/Speeches/2015%20Speeches/Bathurst\\_09072015.pdf](http://www.supremecourt.justice.nsw.gov.au/Documents/Speeches/2015%20Speeches/Bathurst_09072015.pdf)

His most hopeful comment for practitioners was that 'a 2013 Oxford University research report predicted that there was around a 40% likelihood of judges being replaced by robots, whilst the likelihood of lawyers being replaced was as low as 3.5%'.

'The likelihood of lawyers being replaced( by robots) was as low as 3.5%'

# 6. United States of America

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## 6.1 Legal Services Corporation Technology Initiative Grants (TIG) Conference 2016

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The Legal Services Corporation is holding its 2016 TIG Conference between 13-15 January 2016 in San Antonio Texas. Coverage of last year's conference is available at: [www.thelegaleducationfoundation.org/wp-content/uploads/2015/01/LSC-TIG-conference-report.pdf](http://www.thelegaleducationfoundation.org/wp-content/uploads/2015/01/LSC-TIG-conference-report.pdf)

The next newsletter will be published in the autumn. Content proposals are welcome. Contact [rsmith@rogersmith.info](mailto:rsmith@rogersmith.info)