Annual Report Summer 2019

The Digital Delivery of Legal Services to people on low incomes

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The
Legal
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Foundation

Contents

The Legal Education Foundation

This report follows from the last year's Digital Delivery of Legal Services annual report. It is the latest in a line of periodic reports going back to December 2014 published by The Legal Education Foundation (TLEF) and available on its website. It is a testimony to the rapid change occurring at the present time. The focus of these reports is the use of technology in the field of access to justice. However, it is hard to isolate this one area from the more general changes that technology is making to the economy, politics and the overall legal services market.

Information Technology and Legal Services

These reports are supplemented by a website (www.law-tech-a2j.org) and a twitter account (@law-techa2j.org). Some of the content of the website has been integrated into this current update.

The Author

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1. Introduction

This is the fourth annual and, in total, the tenth periodic report on the digital delivery of legal services for people on low incomes published by The Legal Education Foundation following an original report in December 2014. These follow a survey, Face to Face Legal Services and Their Alternatives: Global Lessons from the Digital Revolution published by Strathclyde University in 2014 and written jointly by Roger Smith and Alan Paterson. Together this body of work puts developments within somewhat of a historical context going back to 2012 when the research began.

In a way, not much has changed over this time. This is how the Strathclyde survey opened:

"The paradox of the present time is that publicly funded legal services are, in countries like the UK, under unparalleled strain. However, the deployment of new technology in the delivery of legal services is dizzyingly rampant. Despite pressures on government funding, this makes it a very exciting time with wonderful possibilities, not all of which are yet, by any means, fully apparent."

The three observations in this paragraph remain true. Publicly funded legal services remain under considerable strain. Indeed, the basic structure of civil legal aid and advice in England and Wales has been ripped up in the drive for government austerity. In contrast, the excitement of the new markets in LegalTech remains enticing. There is unparalleled interest in innovative products and considerable fever over the possibilities, particularly of artificial intelligence (AI). Intuitively, there must be possibilities for technological innovation in the access to justice sector of the legal services market. Yet, actual realisation of those possibilities remains elusive. Over the period of the reports cited above, there have been a number of what amounted to 'false dawns' - initiatives that looked as if they might be transformative but did not prove to be. We began with the drive by alternative business structures in England and Wales, like Cooperative Legal Services (CLS), to revolutionise the low-cost legal services market. We went through the heyday of the Dutch

Rechtwijzer which promised to transform self-help divorce. We were entranced by Nadia, the Australian AI-powered bot, that might have shown the way to a new approach to automated information provision. All three of these climbed a wall of hype and then collapsed. CLS and the Rechtwijzer continue to exist but only in severely truncated forms. Nadia was binned by the Government as ineffective and expensive.

Thus, we arrive at a position where for access to justice, no 'killer app', no one overwhelming innovation, has emerged. Most provision in most jurisdictions in fields such as consumer, housing and immigration remains face to face in traditional forms. Indeed, over this period, in many jurisdictions provision has regressed because of cuts to funding. Nevertheless, technology continues to hold both the promise and the actuality of change.

This report sets out to chart the development, such as it has been, of different strands of technology - chief among them improvement to internal business processes - manifest in the access to justice field. It is divided into three sections:

• The Context
• Current Developments
• Emergent Issues.

The main focus of the report is on legal advice and information services. However, unavoidably, the development of self-help provision in relation to courts and tribunals takes discussion into consideration of the development of Online Dispute Resolution (ODR) in courts and tribunals - particularly the ambitious modernisation programme in England and Wales. This, however, is an enormous subject in its own right - on which The Legal Education Foundation has done considerable other work, particularly in relation to data collection - and is only partially reflected here.

Much of the spade work for this report has been undertaken in producing contributions for the website and blog law-tech-a2j.org also supported by The Legal Education Foundation. The intention has been to produce a regular set of contributions which cover the most important global developments and issues for discussion. Analytics on the readership are given in the third section.

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2. The Context

We are in the midst of a rapid technological revolution – particularly focused on the potential of AI– which has the potential to transform our economies, societies and politics. We approach, depending on which guru you follow, a fourth industrial age or a second machine one. Law as an area of economic activity is not, of course, exempt. Go to a LegalGeek conference in London (last attendance 2000) or an ILTACON one in the US (with double that number) and you can see the frenzy and catch the smell of money. At stake are considerable markets. One estimate of the size of the LegalTech AI market is $2.5bn by 2025. A further estimate of the total available US market for LegalTech is $16bn. The Stanford University CodeX Techindex listed almost 1200 legal start ups in July 2019 that are 'changing the way legal is done'. Reflecting professional concern at these developments, there have been, around the world, a number of serious studies by Bar Associations of the impact of technology on their legal profession in jurisdictions including Singapore, England and Wales, the USA to New South Wales.

As technology took off, there was some effort to link access to justice with commercial concerns and hold the two markets together. Many a LegalTech conference around the world began with an access-focused hackathon. LegalGeek organised a well publicised one in 2017 that effectively launched the court modernisation programme. This was its enthusiastic definition of the process:

A hackathon brings people together to solve problems through competition. They generally last between 6 and 48 hours with participants forming groups between 2 and 6 in size. Each group typically consists of hackers, hustlers, and hipsters. The 'hacker' is someone who can code, the 'hustler' brings the concept together, whilst the 'hipster' is the designer. But it doesn't matter who you are or what your background is, hackathons are fun places to make new friends and work towards a common goal.

An estimate of the total available US market for LegalTech is

$16bn

Increasingly, there seems a realisation that hackers, hustlers and hipsters are not enough to solve some of the intractable problems of access to justice. The business people have tended to go their own way – largely leaving the issue of how technology will affect access to justice to be explored by others who might be able better to adjust to inadequate levels of clean data; uneven existing provision of services; significant levels of digital exclusion and woefully thin resources. They leave, however, three legacies – the possible 'trickle down' effect of generally applicable technology, such as case management systems; and the inspiration of comparable levels of change; and more specialist developments of the hackathon, like the global one run as the Global Legal Hackathon or by The Hague Institute for Innovation of Law, (HiiL) which have evolved to provide support in terms both of finance and technical assistance as well as competition. In particular, HiiL's justice accelerator programme has opened up opportunities for developers in access to justice from low income countries like Benin and Rwanda and has actively pushed a legal empowerment agenda (see below).

There are difficulties in following such use of technology as there has been. Technology is global in its impact. Law is, by contrast, overwhelmingly national. Thus, it does not make much sense to consider technology other than in an international context. On the other hand, the circumstances in which technology is used – the regulatory, professional and business context – are irredeemably national. So, for example, Americans have to agonise about the impact of the unauthorised practice of law in a way that the Brits do not. There are other barriers to getting an overall picture. In some areas, like AI, hype is rife. By contrast, much of the not for profit sector is rather shy of publicity so, for example, to keep track of what is happening in Australia, New Zealand or Canada can be hard, especially if you are in the UK. It is often quite hard to test products and extremely difficult if they are not in English - which is, no doubt, a bias in coverage.

A further complication is that organisations may get grant funding for projects which briefly flourish and then fall away as they are neither adequately sustained or promoted. There are other barriers. Poor people, by definition, have little disposable cash: services for those on basic benefits, for example, are going to have to be resourced by third parties – predominantly government and to a lesser extent foundations and pro bono legal-orientated legal practices. Areas of poverty law and practice lack the clean data which assists providers orientated towards, for example, document review. Adding to the problems for access to justice is the lingering impact of the 2008 financial crash which has been used to justify major cuts to legal aid funding in jurisdictions once among the most generous, such as Ontario and England and Wales. And, generally, there is an absence of rigorous, independent and published review of success or failure which makes it hard for the outside observer to judge success or failure.

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We need more of the kind of evaluation to which MyLawBC has recently subjected itself and which developed into 'an investigation into developing an appropriate benchmark for guided pathway-based websites'. Such openness can, on occasion, take some courage. Victoria Legal Aid was confident enough to publish a damning assessment back in 2016 of its 'Below the Belt' app but came up with major criticisms under the following headings: 'The project concept was not adequately tested'; 'We did not consider the marketing model'; 'the app became unusable'. More positively, there was a list of 'things we'd do differently next time'. This transparency is vital in assessing projects which can all too easily be rather embarrassing for their funder but where there is a real need to build on shared learning so that others do not make the same mistake. At a lower level of evaluation, much is to be gained from actually testing products - if necessary, with dummy zip or post codes - against the claims in attendant publicity.

The importance of technology in the access to justice sector is underlined by its rapid adoption within the justice system as a whole. This is happening in many jurisdictions but is particularly apparent in England and Wales. First, a modernisation programme of the courts and tribunals of

England and Wales will affect all aspects of their work. Much of the content of this programme is both desirable and outside the scope of this report. However, some is within. There have been a number of criticisms of the programme as a whole which impact on those on low incomes. They include the consequence of general issues: its ambitious scope - to cost £1.2bn; its funding by the sale of physical courts; the speed (the programme has been extended but is due to be completed in 2023); an emerging funding gap at the end of the project; the goal of reducing employees by 5000 and annual spending by £265m; the uncertainty voiced by the National Audit Office about how realistically this can be done; the lack of any explicit access to justice goals. Specific issues are particularly relevant to people on low incomes: the increased difficulty of physical access to courts and tribunals; assistance for those digitally excluded; proposed changes to how tribunals will work and the introduction of 'continuous online resolution'; the development of self-help materials for those unrepresented. Again, development is dogged by lack of independent evaluation on objective grounds and clouded, particularly in England and Wales, by a tendency to pervasive hype.

In addition, those providing services for people on low incomes will have to follow and re-orientate provision historically focused on physical representation as relevant adjudication increasingly goes online. Second, there is a wider use of technology, largely through AI systems in the criminal justice system that includes facial recognition, DNA profiling, predictive crime mapping and mobile phone extraction. All of these impact both on us all as the general public and those who might be more directly affected e.g. as potential suspects. These elements have been well documented in a recent Law Society report.

Within this overall context, the next section reports on current developments in legal services and how we might develop a framework to help understand them.
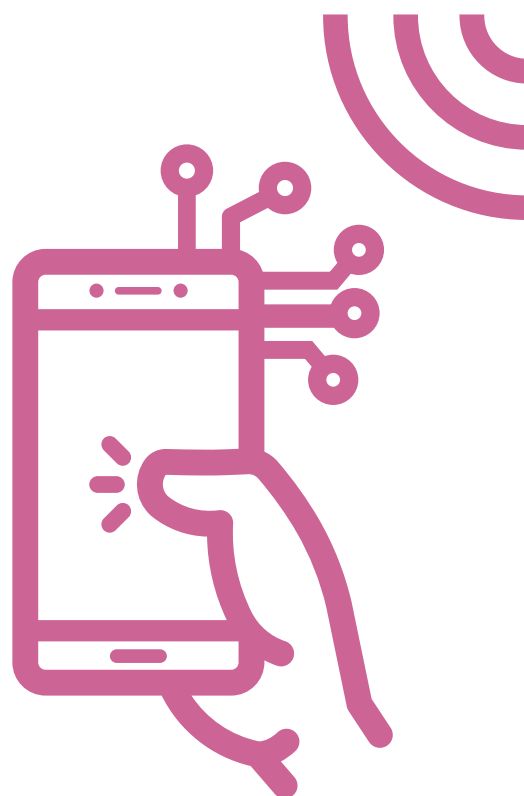
3. Current Developments

There are a number of different ways in which current developments could be analysed. One would be to collect initiatives under their various functions. In England and Wales, Nesta (once the National Endowment for Science, Technology and the Arts) identified the following categories in which it was 'interested … :

- tailored guidance to help identify and/or evaluate a problem and the options to resolve it;
- the identification and collection of information and relevant evidence in a suitable format;
- the completion of court documents;
- the creation of legal documents;
- earlier, lower cost and less adversarial resolution of problems, including ODR platforms.

Nesta selected this list on the basis of another. Its research revealed the following ways in which technology can support low income users:

- **Guided pathways.** Tools that guide users through a decision tree by asking users a series of questions and offering pre-defined outcomes based on specific responses.
- **Automated document assembly.** Document assembly tools automate the creation of legal documents or completion of court forms based on relevant information.

- **Online dispute resolution (ODR).** Online tools that allow for resolving consumer or civil law disputes without escalating to the courts.
- **Artificial intelligence (AI).** AI is an umbrella term for a variety of digital systems including machine learning and big data approaches to train and optimise their performance at tasks normally requiring human intelligence. In a legal context, it involves problem-solving capacity including data extraction, complex decision making, or operational planning. Some of the most widely used applications include:

  - **Expert systems.** Expert systems in the legal domain use rule or knowledge-based approaches and an inference engine to provide the user with expert knowledge on specific subjects

There are a number of different ways in which current developments could be analysed. In England and Wales Nesta identified a number

- **Natural language processing (NLP).** A group of AI applications for sophisticated manipulation of text, understanding language (like speech recognition) and generation of language (like text-to-speech).
- **Chatbots.** The top layer of another application (such as guided pathways or automated document assembly) that mimics human interaction and provides an interface between the customer and the rest of the application. The sophistication of chatbots varies.
- **Information and entity extraction** A technique for automatically extracting information from documents and classifying relevant information into pre-defined categories (like customer details, time and monetary values, etc.).

Another approach to categorisation would be to break down the various elements of access to justice and allocate different initiatives to each. This requires agreement on those different elements. This is one suggestion - to which different projects have been allocated as illustration but with explanation later in the text:

- **identification of problem** (eg the Learned Hands project by Stanford and Suffolk Universities - see below, information websites like those run by Citizens Advice and Law for Life;

- **identification of strategy for resolution** (this is a quote from an interview by Jin Ho Verdonschot on the Rechtwijzer in its final version - 'We have created a very problem-solving interface that supports people in several different ways, to have effective dialogue and negotiation. If they get stuck or they feel that it doesn't work anymore, we organise mediation, interventions on the platform. We organise adjudication interventions on the platform. We have a lot of self-help tools and applications on the platform as well. We also work a lot with model solutions that people in the Netherlands with divorce issues typically opt for in a separation agreement, to provide some building blocks for effective agreements in the separation plan.');

- **information and advice on resolution** (see the Rechtwijzer above);
- **referral and triage where appropriate** (the Legal Services Corporation's Legal Navigator, Illinois Legal Aid Online's OTIS, JusticeConnect's Gateway projects);
- **self-help to assist resolution** (eg the various PIP apps in England and Wales);
- **resolution** itself (eg various ODR programmes);
- **assistance with resolution** (eg various applications of a2jauthor in the US, Rechtwijzer);
- **technological assistance** in these processes (see below);
- **production and use of data** (see debate in relation to the courts);
- **assisting collective responses** (eg Justfix.nyc see below)

However, the approach taken below is a little different, largely based on the different forces of different kinds that have emerged historically in the application of technology to access to justice. This does involve a certain manipulation to bring together developments within a manageable list of categories but it does, hopefully, provide a helpful overview.

3.1. 'Trickle down' business technology

The first and overwhelmingly still the largest use of technology in A2J is what is effectively the 'trickle down' of its use generally and in the commercial legal sector. A US report published by Centre for Law and Social Policy (CLASP) and National Legal Aid and Defender Association (NLADA) as early as 2002 pointed to the use of such technology in the previous four years 'to accomplish many things that otherwise would not have been possible' such as:

- Improving program and office management through increased use of telephones and cell phones and computerised data collection.
- Allowing remote representation through conference calls and video conferencing. Quickly contacting clients with vital information. Using program websites to educate the public so that they may conduct their own research about their situations or avoid legal problems in the first place.

In doing this, organisations were following general trends at the time widespread through commercial and non-commercial provision. 10 years later, in 2012, the Legal Services Corporation (LSC) at its Technology Summit was noting how business processes could be further improved by technology:

All access-to-justice entities will employ a variety of automated and non-automated processes to make the best use of lawyers' time to assist requesters with their cases, including:

- conducting business process analyses to streamline their internal operations and their interactions with all collaborating entities
- having clients/litigants perform as much data entry and handle as many of the functions involved in their cases as possible (given the nature of the case and the characteristics of the client/litigant)
- having lay staff perform a broad range of assistance activities not requiring the expertise of a lawyer
- having expert systems and checklists available to assist and save time for lawyers and lay service providers
- maximising the extent to which services are provided remotely rather than face- to-face, to save the time of both the clients/ litigants and the service providers.

In the UK, The Legal Education Foundation is committed to a programme of upgrading law centres capacity to implement

a digital vision which includes…
a minimum standard for digital equipment and systems across the network … [followed by]:

- phased rollout of desktop computers to Law Centres.
- Move from office systems to cloud based services such as Office 365.
- Migration of data to secure cloud-based storage.
- Upgrading broadband where required.
- Establishing national IT support.
- Developing a national Law Centre data set and standardized set of forms.
- Distributing digital tools being developed for Law Centre specific use as they become available, such as, tools to assist with client reception, client feedback and document generation.

On a wider scale of the legal profession as a whole, Singapore's Academy of Law has developed a phased programme for all legal providers which begins with a 'baseline' level which includes products like document management systems and online legal research. The second prong extends its 'Tech-celerate' programme to more advanced provision including 'document assembly, document review, e-Discovery and automated client engagement'.

The goal is largely related to the commercial one of establishing Singapore as a dominant Asian legal economy but also allows for a degree of self-help: "Legal technology will likely usher in an era of unprecedented legal self-help and collaboration, with grandmothers eventually being able to write and execute their own wills without assistance from legal counsel ..."

Legal aid organisations in other jurisdictions have inched toward Singapore's baseline provision. Many have sought to install modern customer relationship management systems developed originally in a commercial context. The LSC has provided the funding for its own case management software, LegalServer. AdvicePro is a UK equivalent, associated with AdviceUK and widely used in the not for profit sector. The English and Welsh Citizens Advice Service – the largest national information and advice provider – has developed its own product, Casebook. Meanwhile, commercial products like Clio, are becoming more sophisticated and more relevant with the possibility of various 'plug in' additions which could make them an effective rival for practices with low income clients.

One issue is whether adapted commercial products will, in time, become better than those developed in-house. Another is the tapping of the potential of the guided online pre-interview questionnaire. This was the premise behind Siaro, developed by Alan Larkin and his Brighton firm Family Law Partnership. Behind this was a clear commercial imperative: 'I calculated that that if we could just get 30% of the clients using the questionnaire then there would be a worthwhile reduction in the soft cost of time otherwise being spent in initial telephone calls and some free interviews.' Siaro, in the event, did not go into commercial production. However, a lawyer, Quinten Steenhuis) at Greater Boston Legal Services in the USA has developed a very similar product, MADE or Massachusetts Defense for Eviction. This expands the concept from simple preparation for an interview (for which it can be used) to stand-alone assistance: 'This completely free guided interview is for Massachusetts tenants who are being evicted. It is estimated to take between 25 and 90 minutes for a typical tenant to use on their own. It will help you make sure that you respond to your landlord's eviction case correctly. It can send you reminders of important dates by text and email. It includes videos and educational links.'

There is a distinction between technology that improves efficiency and technology that radically alters business models and operation. You can see that in MADE's transition from Siaro's pre-interview questionnaire to its self-help function. Also, on the borderline – but still not really radically transformative – would be the use of Skype or video to extend services. A number of legal services organisations from clinics in Ontario to legal services providers in the USA and the UK are experimenting with video links from their home base to remote locations in a variety of different ways – sometimes involving pro bono advisers in the package. Jack Fleming of North Peel and Dufferin Community Legal Clinic in Ontario explains how they are using a link with a neighbouring community:

"Technically, the requirements are simple. We first started doing this with lawyers and paralegals using their laptops in their offices. When we moved into new office space, we included in the plans two video-conferencing rooms. These have a 55" computer monitor mounted on the wall and a computer under a table. When seated at the table in the room, the images on the screen are at the same level – effectively sitting across the table from us. A webcam is mounted just above the monitor, so that when the clinic caseworker and client are looking at the monitor, they are also facing the webcam. A control

on the table allows the direction of the webcam to be moved if necessary. We also have a polycom conference phone on the table as some video conferencing solutions use telephone audio. A softbox light in the room boosts the lighting, showing the client and caseworker more favourably than overhead fluorescent lighting. Finally, an 'on air' light outside the room warns others that it is in use, so the door should not be opened."

Eddie Coppinger of the Legal Advice Centre, University House in London's East End uses a similar mode of operation in a link with an advice service in the far west of the country. They developed their own app:

What we like about [it] is that it halves the screen so that you can simultaneously see the webcam and any documents. We can actually subdivide the screen so that, for example, a remote translator can be present as well. We hope that we will be able to train pro bono lawyers to use the package so that they can take calls at times that suit them. They will have access to our case management system and we will supervise them as we would normally. The system also has a web chat facility so that an adviser can seek help in real time with a query from our specialist staff.

Use of business technology improves the efficiency of both for profit and not for profit providers. It allows them to get more 'bang for their buck' and to use technology to extend the use of their resources. Kate Fazio of JusticeConnect in Australia shows how this approach to using pretty standard business practices might be taken further to reach commercial standards:

Technology is exciting when it comes to access to justice, however, a lot of basic stuff is not being done well in the legal assistance sector (and the legal sector more broadly). Search engine optimisation is a good example. Not-for-profit and government agencies are not coming up in google search results when common search queries are made … The sector needs to focus on getting some basic things right – their websites and data management systems, and then move into really innovative spaces. Once the sector has a stronger digital foundation, there are really exciting collaborative possibilities.

3.2. Internet-based legal services – variations of virtual legal practice

In 2012, aided by developments in England and Wales allowing third party funding and ownership of law firms, Co-operative Legal Services (CLS) led the charge for web-led firms with DIY unbundled legal services to impact on the market with cheap fixed fee packages in areas like divorce. It opened to considerable fanfare and was seen by the legal profession as a potential major disrupter. It largely failed, part of the reason presumably being that users preferred more traditional, individualised services. A Law Society supported attempt to head it off at the pass with a national consortium of traditional legal firms marketed under the name of Quality Solicitors has also largely faded away in consequence. In January this year, the Law Society Gazette announced (with barely concealed satisfaction):

"*The struggles of marketing outfit QualitySolicitors are brought into sharp focus by new accounts that reveal a steep fall in income and job cuts which leave the business with fewer than 10 full-time staff. For the year ended 31 March 2017, accounts filed on 20 December show that Quality Solicitors Organisation Limited generated turnover of £1.34m, down 25.6% on 2016. The company, which once aspired to be the first household-name legal brand, shed more than half of its full-time staff in 2016/17. By March it employed just one sales person (down from seven) and two people in marketing (down from four). Annual salary costs fell during the year from more than £900,000 to around £257,000. Exceptional costs on redundancies totalled £250,000.*"

There remain, in England and Wales, a number of virtual legal practices like the English example of Scott Moncrieff but their overall impact is marginal. Around the time that CLS took off, there was great excitement on both sides of the Atlantic with the possibilities of platforms of various kinds that would open up an online marketplace for legal services to a wider range of providers. A number of these emerged in the USA and fought battles with the legal professional bodies to establish themselves in the thick of practice restriction legislation. Right in the thick of this was Avvo, founded by Mark Britton. This was taken over

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by a bigger group, Internet Brands, and Britton left in 2018. The firm now seems to have lost its radical edge and has settled for being an online referral provision for lawyers. Avvo never had a UK operation but two other USA pioneers did. RocketLawyer can provide a series of legal documents and help with online company registration. LegalZoom first had a tie up with Quality Solicitors and then acquired a UK law firm, Beaumont Legal in Wakefield, and sought to build an online business largely around its conveyancing practice, wills and small business services. A number of surveys, eg in 2015 MarketWatch, have raised questions as to the suitability of online provision for assembly documents in non-standard situations. This claimed that LegalZoom had a market share of 6% in the USA and that revenues had doubled by 2016. Overall, however, these online, DIY

LegalZoom had a market

share of 6%

in the USA and revenues had doubled by 2016.
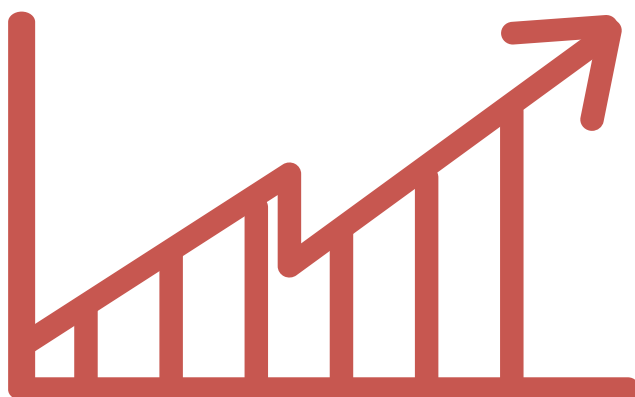
providers seem, at least in the UK, to have taken a sufficiently small share of the market to exclude themselves from being seen as major market disruptors. Online provision may yet improve but, as yet, it has not revolutionised legal services even in the most liberal of professional markets, England and Wales. It may be that there is some consumer resistance, both merited and not, to dealing with complex legal problems through DIY document assembly.

One form of internet-based service is document self-assembly. In the USA, the LSC has rather shrewdly funded a project called A2J author developed back in 2004 by 'Chicago-Kent College of Law's Center for Access to Justice and Technology partnered with the Center for Computer-Assisted Legal Instruction ("CALI")' to create A2J Author - a factory or a software machine to make hundreds of these front-ends for court forms, at a very low cost. It is a cloud-based software tool that delivers greater access to justice for self-represented litigants by enabling non-technical authors from the courts, clerk's offices, legal services organisations, and law schools to rapidly build and implement user friendly web-based document assembly projects.

This allows organisations to use a basic template to draw up a simple guided interview that generally takes a user through half a dozen steps to a courthouse where their objective is achieved - eg to issue

proceedings of some kind. A2J Author is supplemented by the work of a CALI and other NGOs, Law Help Interactive (LHI), a Pro Bono internet project, to provide assistance both to users and to lawyers. One of LHI's products, a motion to modify child support of spousal maintenance in Minnesota won recognition as the 'best automated form' in 2017 from the Self Represented Litigants Network. That reflects a move toward the provision of self-assembly documentation.

The UK has followed into the self-assembly field with caution. CourtNav, however, is very similar to projects fuelled by A2J author – without the visuals. It is an online tool developed by a specialist Citizens Advice Service office in the Royal Courts of Justice (the central civil courts of England and Wales). The system has now been taken up by the whole Citizens Advice service and can be accessed from local offices. It relies on pro bono lawyers to check the self-assembled documents.

There has also been some exploration in England and Wales of the possibility of interactive self-assisted letters rather than court interventions e.g. for a disability payment known as PIP where an app helps users with a letter of claim and another provider will produce a similarly interactive request for a mandatory reconsideration.

A user can be guided to complete a standard letter with information that is relevant to the matter in hand - and given 'just in time' resources to help them understand what is required.

The interactivity enabled by the internet offers a number of ways in which provision may be tailored to an individual user and services leveraged. The guided pathway framework for advice is one example. Another more specific use has been in digitalising 'legal health check ups'. This idea has been around for some time and, before the internet, it consisted of offering people a questionnaire to check on their legal needs. This is an obvious candidate for digitalisation and the newly created ABA Centre for Innovation has announced that:

"Currently in development is a free, online legal checkup tool that is being created by a working group led by the ABA Standing Committee on the Delivery of Legal Services. The checkup will consist of an expert system of branching questions and answers that helps members of the public to identify legal issues in specific subject areas and refers them to appropriate resources."

Actually, Canada has already got there in the form of Halton Community Legal Services in Ontario. Since it published an online legal aid checkup in 2014, around 3,000 have been completed leading to over 1000 requests for more legal advice and another 1000 for more information.

3.3. The Rechtwijzer, its Legacies – guided Pathways, legal empowerment and legal design

The Rechtwijzer project, initially funded by the Dutch Legal Aid Board, suggested that there might be internationally marketed products that combined user-focused guided pathways with online assistance in court proceedings - funded by legal aid authorities. The Dutch led a global approach with a practical product. Staff from what is now known as the Hague Institute for Innovation of Law or HiiL fanned out across the world to promote the Rechtwijzer, a product that they had designed in collaboration with the Dutch Legal Aid Board and an American developer, Modria (eventually subsumed into Tyler Technologies).

Thus, the Rechtwijzer was from the outset an international creation formed by three organisations, two of which (Modria and HiiL) had a very outgoing international approach, supplemented by a very outward looking legal aid board, all three of which were willing to put considerable time and resources into making an international impact by attendance at national conferences and pitching to various legal aid providers around the world. As one instance of its international reach, HiiL's Jin Ho Verdonschot addressed the LSC's annual technology conference in 2015.

From its first version developed from 2006, the Rechtwijzer was an early example of the advantages of legal design - though this was not a term in vogue as much as now at the time. Considerable effort went into its visual appeal and language. Margaret Hagan of Stanford's Open Law Lab wrote up the project in its heyday in 2014. She and others have now developed legal design as a major innovative force in its own right. This is her own definition of the concept:

"Legal design is the application of human-centered design to the world of law, to make legal systems and services more human-centered, usable, and satisfying. Legal design is a way of assessing and creating legal services, with a focus on how usable, useful, and engaging these services are. It is an approach with three main sets of resources - process, mindsets, and mechanics - for legal professionals to use. These three resources can help us conceive, build, and test better ways of doing things in law, that will engage and empower both lay people and legal professionals."

Ms Hagan's definition is a little circular since it involves repetition of the word 'design'. Another way of explaining the approach would be to note the attention that it gives to the user as the centre of the process, the vision of assistance as helping the user through a process or journey rather than the provision of static information; attention to the visual and intuitive; and a concern with appropriate language. All of these were hallmarks of the Rechtwijzer and are being developed as one of the most creative contributions of technological thinking. It probably merits more attention in countries like the UK which are rather lagging behind the USA.

Linked to the legal design approach, the Rechtwijzer showed the value of the 'guided pathway' in giving information in an interactive and bite-size way. Its designers saw users as taking 'justice journeys' in which they moved from bite size stage to bite size stage. Various

attempts have been made to follow this process elsewhere, notably with MyLawBC.com which was developed by the Rechtwijzer team in collaboration with the Legal Services Society of British Columbia. In England and Wales, Relate experimented with similar use of guided pathways. Both of these projects were impeded by the ultimate demise of the Rechtwijzer but, in particular, MyLawBC shows how guided pathways can be introduced into the two dimensional world of information provision which is still visible in websites such as citizensadvice.org.uk in England and Wales.

Finally, the Rechtwijzer, in its final version, showed the possibilities of online asynchronous mediation – forming a potential link with court and tribunal based services. This concept is now being adopted more widely, for example in some of the thinking behind the concept of Online Continuous Resolution in tribunals in England

MyLawBC shows how guided pathways can be introduced into the two dimensional world of information provision

and Wales. This element both foreshadows developments in the courts and echoes the tenets of the legal empowerment approach adopted, for example, by the Open Society Justice Initiative (OSJI) in its development work. In February 2019, OSJI published a report that it had commissioned from the Engine Room: Technology for Legal Empowerment: a global review. The Engine Room structured this around the idea of legal empowerment – a particular approach to the provision of legal services 'concerned with strengthening the capacity of all people to exercise their rights' and 'explaining to people how the law affects them on a day-to-day basis, improving their ability to access formal justice systems, and empowering people to change the law'. It is not necessarily that different in practice from a contrasting 'legal services' or 'legal aid' approach but it has a different emphasis which it might be profitable to explore in detail

The Engine Room report contains four detailed case studies: Themis or PLP 2.0 in Brazil, Lawyers4 Farmers in Uganda, MyLawBC in Canada and Haqdarshak in India.

elsewhere. One of its advantages is its globalism which tends to involve projects in developing countries as well as those more developed and generally considered here. The Engine Room report contains four detailed case studies: Themis or PLP 2.0 in Brazil, Lawyers4Farmers in Uganda, MyLawBC in Canada and Haqdarshak in India.

The Rechtwijzer was designed to increase the number of settlements which could be presented to the court for approval. It was not in itself an ODR platform where the online process itself resolved conflicts: agreements were drafted for submission to a judge in a conventional way for final approval. The hope was that with user payments from private litigators and contributions for legally aided parties it would become financially self-sufficient. The Dutch Legal Aid Board pulled the plug when it considered that it was running at too much of a loss. The reasons for its collapse have been contested. One of those involved in the project thought the reason for failure was that 'The Dutch legal aid board and Ministry of Justice did not actively market the platform'. But, there may be other reasons. This was a good product but it faced particular difficulties: there were changes of key personnel; the financial goals were too difficult to meet; not enough time was given; the organisational structure of three organisations trying to

work together was unwieldy. Some support for the view that the reasons were contingent rather than structural is given by the fact that the Rechtwijzer has been re-incarnated as a more limited product with easier financial constraints and a more national focus. It may yet arise from the ashes. Keep an eye out for its successor, Justice42.

Internationally, the Rechtwijzer's influence continues. The principles of the guided pathway remain in MyLawBC.com. London-based Relate is also about to relaunch its product originally developed with help from the Rechtwijzer team.

A number of advice websites – such as Victoria Legal Aid's Legal Checker – now incorporate interactive elements to narrow down relevant areas of information which are then given in familiar linear fashion - as a form of hybrid guided pathway/conventional information website. The possibilities that it opened up of online resolution are likely to be explored by court-based ODR schemes. The greatest intangible legacy is perhaps the internationalism engendered by the project - it successfully challenged national barriers even if the product never reached its over-ambitious sales targets.

3.4. The Impact of Courts and Tribunals – self representation and digitalisation

The long-standing need in the USA to provide some assistance for unrepresented litigants because of a lack of adequate civil legal aid unsurprisingly led to exploring the use of technology at an early date. The most notable product is A2j author which has spawned a number of applications in court document self-assembly.

A further potential current of interest in developing technology to provide legal services is the consequence of the drive for online courts. The University of Cambridge's Pro Bono Project has helped to provide a comparative analysis of developments in six jurisdictions. Others are opening up all the time – New Mexico and some of the courts in California have just announced online mediation in some types of cases – using a Modria (now Tyler Technologies) developed module.

This is not the place for a full analysis of the court modernisation process which raises a number of issues both about court functions and legal services. But, if legal aid is not to provide a central lead body for government-led technological access to justice reform, there is probably only one other really credible candidate (apart from occasional forays by Ministries of Justice) than the commercial market or a few foundations with, overall, very marginal funds: the courts. Around the world, governments and judges are being drawn to the possibilities of delivering their services online. Where the focus is on civil small court or tribunal claims, there may be opportunities for increased access to justice.

The leader in this field is the Civil Resolution Tribunal in British Columbia (CRT). This was created by legislation in 2012. The really innovative part of this tribunal has been its front end: the 'solution explorer' which it explains as follows:

"The Solution Explorer is the first step in the CRT process. We'll give you free legal information and self-help tools. If necessary, you can apply to the CRT for dispute resolution right from the Solution Explorer."

The leader in this field in the Civil Resolution Tribunal in British Columbia.

The explorer leads you to refine your issue and to ways of resolving it short of court action before you make an online application. The CRT has not been independently evaluated but by July 2018 23,971 people had used its small claims solution explorer and 40,865 for 'strata disputes', a type of housing dispute.

The CRT has been influential around the world. Lord Briggs, was asked to write a report to commence the digital court programme in England and Wales, he "visited British Columbia to see it. He placed high importance on the replication of something similar in the small claims court that he was recommending for his jurisdiction:

"success will be critically dependent upon the painstakingly careful design, development and testing of the stage 1 triage process. Without it, it will offer no real benefits to court users without lawyers on a full retainer, beyond those inadequately provided by current practice and procedure. Pioneering work in British Columbia suggests that it will be a real challenge to achieve that objective by April 2020, but one which is well worth the effort, and the significant funding budgeted for the purpose."

The first tier of the process was also explained in the report of a committee chaired by Professor Richard Susskind that preceded the Briggs Reports (para 6.2):

"The function of Tier One of HMOC [the Online Court] will be to help users with grievances to evaluate their problems, that is, to categorize their difficulties, and understand both their entitlements and the options available to them. This will be a form of information and diagnostic service and will be available at no cost to court users. This part of HMOC will be shared with or will work alongside the many other valuable online legal services that are currently available to help users with their legal problems. For example, systems developed by charitable bodies or provided by law firms on a pro bono basis will either sit within HMOC or be linked to the service. The broad idea of online evaluation is that the first port of call for users should be a suite of online systems that guide users who think they may have a problem. It is expected that being better informed will frequently help users to avoid having legal problems in the first place or help them to resolve difficulties or complaints before they develop into substantial legal problems."

The court modernisation programme in England and Wales has proceeded apace, funded largely and controversially by the sale of existing physical courts. Much has amounted to improvements particularly for professional users of courts - the judiciary, lawyers, the prosecution and police. However, in the rush for rapid implementation, the Briggs/Susskind initial stage has been somewhat left behind. In particular, the idea of the Solution Explorer was that it preceded issue of proceedings and was, thus, a free service.

The limitation of domestic English thinking is particularly concerning because a wave of jurisdictions are now poised to implement online small claims courts - from Utah and Ohio in the USA to Victoria in Australia. In this process, different weights are put on the objectives of saving money and increasing access to justice. That will, no doubt, be a major tension and source of debate for some time. Irrespective of that, however, putting court and tribunal processes online potentially revolutionises the work of the agencies that interact with them. Tribunals in England and Wales are hoping to move to a system of Continuous Online Resolution where a court file might look more like a What'sApp discussion. Agencies assisting users - and users themselves - are going to have to be geared up to deal with an appropriate form of representation. But the influence of that is yet really to be seen.
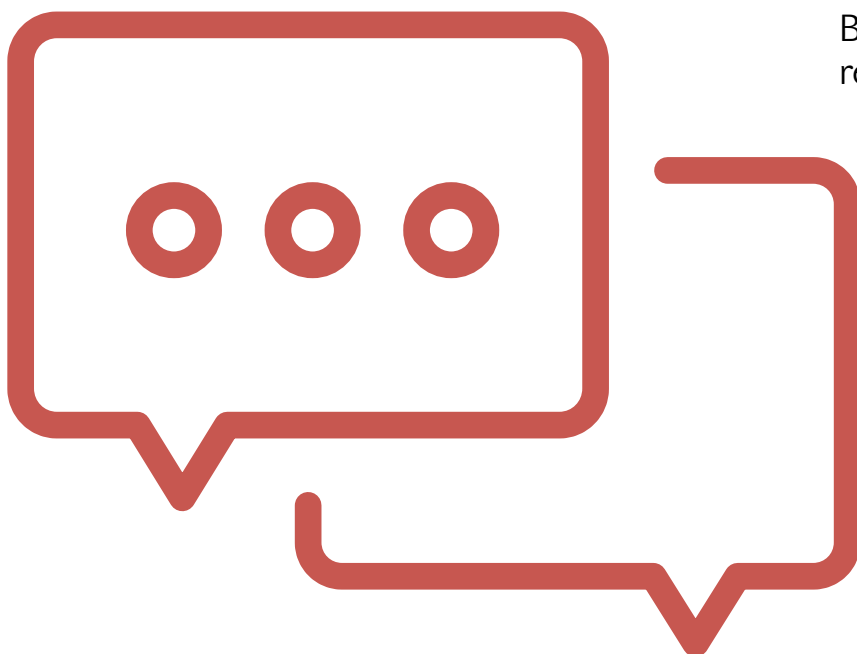
3.5. Artificial Intelligence and Chatbots

AI has such a broad political footfall that it justifies its identification as a motivator of technological advance in its own right. It would be misleading to describe it as a solution chasing a problem but two recent grant programmes from the English and Welsh government rather encourage such an observation. The Department of Business has given the Solicitors Regulatory Authority (SRA) £700,000 to run an AI-orientated 'Legal Access Challenge and has combined with another department in a further 'Strategy Challenge Fund' worth in total £6.4m with £262,000 going to a number of consumer-orientated projects. These are discussed more below.

The LSC identified the importance of expert systems. This takes us into the world of AI and its little sister, the Chatbot. Indeed, guided pathways are similarly a move towards the kind of branching logic required by AI and, ultimately, its application must be able to help in the presentation of information and advice.

DoNotPay

Chatbots have been the subject of enormous hype. At the centre of their use in an access to justice context has been Joshua Browder, one-time Stanford University student who is still only 22. He has developed a number, grouped under the Do Not Pay name and now available as an app in the USA which are based on the original field as a way of challenging a parking ticket. It is worth perhaps examining this development in some detail because Mr Browder is undoubtedly at the cutting edge of the use of bots and he has achieved considerable media coverage, most recently for the receipt of $4.6m of venture capital funding. It is, therefore, apparent that serious investors consider that his products have commercial prospects.

The DoNotPay apps have garnered a lot of interest - and now raised a lot of money. They deploy an interactive approach to the delivery of information which is where the frontier of the provision of advice/

information now lies. So, they indicate what might be done with an interactive approach - currently limited only by the capacities of chatbots. They could be further extended by the deployment of AI which would allow more sophistication and this is probably the plan.

Interactivity may be the future but content will always be king. The investment is presumably designed to upgrade current content so it might be unfair to judge this too harshly. However, we do not know what will be added. Meanwhile, we have three websites in the UK which offer better and specific information on parking than is suggested by the DoNotPay website currently available in the UK (which may, to some extent, be less sophisticated than the one developed in the USA). These websites are not standing alone - they emanate from distinct but different constituencies -

In 2013-14 councils in England generated a combined 'profit' of

£667M

from their day to day, on and off street parking operations.

the advice sector (the citizens advice website), the general consumer movement Consumers Association, and the financial consumer movement (moneysavingexpert).

It is worth noting that parking in the UK - and in most urban areas in developed countries - is highly regulated and very profitable. The Royal Automobile Club estimated that 'In 2013-14 councils in England generated a combined 'profit' of £667 million from their day to day, on and off street parking operations. This is a 12% increase on the 2012-13 amount of £594 million. £296 million (44%) of the overall total was generated by councils in London. Roads are festooned with single yellow lines, double yellow lines, single red lines and double ones as well as parking bays. You can get a ticket from the police, a local authority or a private landowner. And there are, as Citizens Advice explains, three types of parking ticket:

- a Penalty Charge Notice (PCN) or an Excess Charge Notice (ECN) – usually issued by the council on public land, such as a high street or council car park
- a Parking Charge Notice – issued by a landowner or parking company on private land, such as a supermarket car park
- a Fixed Penalty Notice – issued by the police on red routes, white zig zags or where the police manage parking.
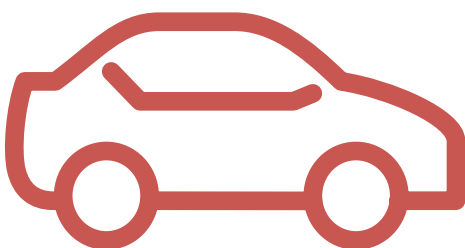
As a consequence of parking becoming in effect a big business, the validity of parking legislation and practice has been well explored and the currently contentious issues are generally those which are reasonably complex. For example, a recent case raised the issue of whether a man could legitimately park during working hours on a single yellow line. He was carrying his disabled daughter in the car and displaying a blue disability badge. The answer appears to be that you usually can park in these circumstances for a reasonable period (generally taken to be three hours but it varies with local authorities) unless the car is creating a traffic obstruction. Media coverage derived from the fact that he was forcefully arrested by the police.

This level of granularity in problems is way beyond what DoNotPay demonstrates in the version available in the UK. Indeed, this level of complexity may well be beyond the capacities of existing chatbots. Overall, it seems reasonable to assume the quality of the selected three UK websites (and there are others) is likely to be better than DoNotPay could reasonably become if only because they are embedded in constituencies with access to specialist sources of information - the advice and consumer movement.

Lower quality might not matter if there were an audience which, for whatever reason, prefers to use DoNotPay over other websites either because of better marketing or better interactivity. Mr Browder is quoted as asserting that 160,000 tickets were successfully challenged in the year to July 2017 though, since the app provides a downloadable and thereafter untraceable letter, it is hard to know how this figure was calculated. It would be helpful to have some independent verification. But, if correct, that is a significant number of users.

But there is a further twist. The current news of venture capital funding heralds a future development. Donors are presumably betting on a reasonable return. These are not grants from a charitable foundation: the money comes from experienced investors. The apps are ultimately to be monetised. So, the end result will be paid-for assistance from parking and other apps for relatively low money claims either on a contingency basis or for a fixed fee. Ultimately, you are likely to be offered privatised fee-based assistance at the very best equal (and for the reasons explained above probably lower) to that you can currently get for free.

There may be, however, yet one more twist in this argument - this time in Mr Browder's favour. Parking has served him well in terms of getting up and running with massive promotion. Actually, it may be the most difficult area of small money problems in which to give advice and information. Other small money disputes like those over late flights may involve only more limited contract law and be much easier. So, maybe the venture capitalists could be proved right after all. But parking - the area in which the provision is best known - does not seem easily susceptible - at least in the UK - to this sort of simple assistance unless very radically revised.

In any event, Mr Browder's future developments need to be watched. They raise in another form issues about the relationship of the for profit and not for profit sector which are covered in the next section.

Nadia was developed for the Australian government to improve services for people with disabilities. Nadia helps users access the National Disability Insurance Scheme.

Artificial Intelligence (AI)

Inevitably, AI has attracted considerable media attention. For a time, it looked like world leadership in legal services might have been seized by an Australian development, Nadia. This was extremely sophisticated, 'a virtual chatbot that can not only portray human emotion, but also read human facial expressions. The aim is to take chatbot service to the next level by humanizing the interaction between man and machine, basically by making them more like us. The chatbot, or Nadia as it (she?) prefers to be called, can 'see' users through webcams and get a better sense of users' emotions … Just like AI, Emotional Intelligence can learn through experience. The more Nadia interacts with real people, the better she will get at reading people's emotions. If a user changes his tone or facial expression, Nadia will be able to pick up on that and adjust her answers to better fit the user's emotional state … Nadia, who is voiced by none other than the amazingly talented Cate Blanchett, was developed for the Australian government to improve services for people with disabilities. Nadia helps users access the National Disability Insurance Scheme (NDIS) and find the information they need as well as improving their experience of the system.'

Nadia, alas, was scrapped. She proved too expensive and the technology, IBM Watson, was not powerful enough. She was, however, perhaps a glimpse of the future in answering questions on legal issues. There remains considerable interest in using Natural Language Processing and Machine Learning to help identifying and responding to legal questions. A project between Stanford University and Suffolk Law School has developed a game called Learned Hands to assemble some of the necessary data:

Learned Hands is a game in which you spot possible legal issues in real people's stories about their problems. You read the stories, and then say whether you see a certain legal issue - family law issues, consumer law issues, criminal law issues, etc. The game is also a research project. Each time you play, you are training a machine learning model to be able to spot people's legal issues. This model will be used to develop access to justice technologies that connect people with public legal help resources. It will help us to make a Rosetta Stone for legal help — linking the legal help guides that courts and legal aid groups offer to the people who are searching for help.

The LSC in the USA is involved in a joint project to develop Legal Navigator, described as:

"the first legal aid tool powered by artificial intelligence, is currently being rolled out by LSC, Pro Bono Net, Pew Charitable Trusts, and Avanade to help reduce the justice gap. The project's goal is help people with limited resources and knowledge about civil legal issues navigate through basic legal proceedings … The tool will be piloted in Hawaii and Alaska, with the hope of eventually expanding the service to communities across the country."

In England and Wales, we have been particularly blessed with committees and competitive grant schemes in relation to AI. The Judiciary has just appointed an advisory committee chaired by Richard Susskind. The Law Society, the professional body of solicitors allegedly a little miffed at their members' widespread absence from the judicial body, has set up a public policy commission chaired by its President (onetime head of Coop Legal Services) Christina Blacklaws.

As mentioned above the Department of Business, Energy and Industrial Strategy has given the SRA £700,000 to further kickstart the growth of AI in the legal profession and examine the implications. The SRA has subcontracted with Nesta (once more understandably known as the National Endowment for

Science, Technology and the Arts) actually to do the business. Even more money is coming from a joint Department of Business and Digital, Culture, Media and Sport Next Generation Services Industrial Strategy Challenge Fund. This apparently amounts to £6.4m given to '18 legal artificial intelligence and data analytics projects'. Much has gone to commercial or academic recipients but it also 'included £262,000 for consumer website and forum Legal Beagles and IBM, working together on ways of using AI to "predict best routes for consumers to find solutions to legal issues" and "locate legal knowledge faster, identify new patterns and trends, whilst at the same time helping consumers with their legal issues". In addition, 'a project on affordable legal advice, involving the Royal Courts of Justice, Solicitors Pro Bono Group and Islington Citizens Advice Bureau among others, was awarded £182,000.'

The Nesta challenge has now been issued:

The Legal Access Challenge will seek out technology-enabled innovations which directly help individuals and small businesses to understand and resolve their legal problems in more affordable and accessible ways. Applications will open in late May and four finalists will receive initial development grants of £50,000 with an additional £50,000 prize in Spring 2020 for the winner from among the four.

So, it is a case of watch this space.

This apparently amounts to
£6.4M
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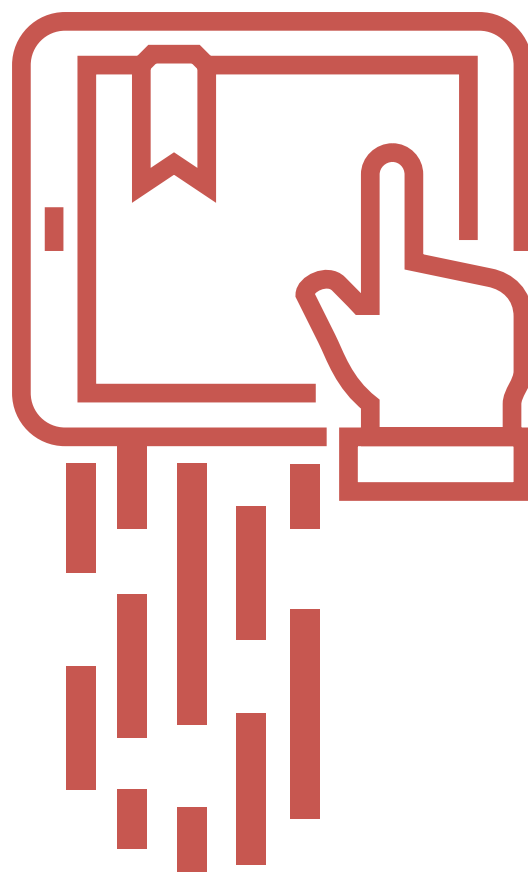
3.6. The aggregation of disparate gains

Here, we begin with a plan and continue in a less organised way with an aggregation of independent initiatives. The USA LSC, building on an existing technical initiatives programme, developed what it presented as a coherent plan for the use of technology among its grantees - those delivering legal services to those on low incomes in individual states - which was agreed at a summit in 2013. It identified a five point strategy as below.

Technology can and must play a vital role in transforming service delivery so that all poor people in the USA with an essential civil legal need can obtain some form of effective assistance.

> Technology can and must play a vital role in transforming service delivery so that all poor people in the USA with an essential civil legal need obtain some form of effective assistance.

The strategy for implementing this vision has five main components:

1. Creating in each state a unified "legal portal" which, by an automated triage process, directs persons needing legal assistance to the most appropriate form of assistance and guides self-represented litigants through the entire legal process.

2. Deploying sophisticated document assembly applications to support the creation of legal documents by service providers and by litigants themselves and linking the document creation process to the delivery of legal information and limited scope legal representation.

3. Taking advantage of mobile technologies to reach more people more effectively.

4. Applying business process/ analysis to all access-to-justice activities to make them as efficient as practicable:

5. Developing "expert systems" to assist lawyers and other services providers.

Each of these has developed in its own way both through LSC grants and otherwise. Looking back, this was a remarkably percipient list in which the first two are proving particularly important. The third - adapting to mobile - was really important but responsive design is now standard. The business processes, we have dealt with. Expert systems may come through the adoption of AI.

Portals

The USA principles from the 2013 summit provide the beginning of a grid against which we can place developments in different jurisdictions. Many jurisdictions are, for example, concerned to provide some version of an advice 'portal'. These differ in their emphasis but have some or all of the same elements. There is the provision of general information (for some jurisdictions, the distinction between advice and information is important, as in the USA, and others, such as the UK, it is not); referral to providers - who, in many jurisdictions, may be predominantly pro bono services (which in an increasingly accepted jargon, may be managed at levels that are often described as cold, warm or hot depending on how much assistance is given to the person being referred); and intake for specific services on clearly demarcated grounds of scope, merit (sometimes) and financial eligibility.

The LSCA is working on two demonstration projects in Alaska and Hawaii. These have assistance in kind from Microsoft and contributions from the formidable Pew Charitable Trusts.

Meanwhile, Justice Connect in Australia has just developed its similar Gateway project. With help from Google, Justice Connect is developing a suite of linked programmes:

"Our online intake tool, already launched, helps people quickly and easily understand whether they are eligible for our services, and make a full application online. Our referral tool will help our sector colleagues understand when we can help, and easily warm-refer clients deep into our system, reducing referral drop-out. Our pro bono portal will revolutionise the way we work with our network of 10,000 pro bono lawyers, ensuring we're making the most of their capacity, and matching them with the right clients.

An important element of a full portal is the provision of information which will potentially allow a user to deal with their own problem or, at the least, to understand it better. England and Wales has two of the best examples of general information websites: that of the citizens advice service and one by an organisation called Law for Life. Historically, these did not have to be so good at referral because legal aid was widely available

from lawyers in private practice. That position is now changing and there may well be a move to websites more like that of Illinois Legal Aid Online whose origins are in the pro bono movement and which combines the provision of information, some self-help material, referral and intake."

Serendipity, internet platforms, crowdfunding et al

There is a high degree of serendipity in current exploration of technology. It is important to keep open the potential for totally new products and services. This is a new field and new opportunities are opening up for innovators in all sorts of enterprising and unexpected ways - of which these are three examples. Rightsnet in the UK provides an internet platform on which rights workers can build up a community; be updated on new cases and legislation; and mutually assist each other to answer questions. In the US, Project Callisto is developing totally innovative ways using technology to combat sexual harassment on university campuses by facilitating the reporting of sexual harassment in a way which allows the automatic matching of records if users report the same perpetrator. Similar, but slightly different use of the confidential recording possibilities of the internet is made by Justfix.nyc which facilitates the recording of housing disrepair in New York City.

This has plans to expand into other cities both in the USA and elsewhere. And, finally, the crowd funding movement is a good example of an initiative which is, in practice but not theory, dependent on the internet. Technology operates as a valuable tool that brings potential funders together with opportunities. But, crowdfunding is beginning to have an impact. British-based crowdjustice.com has funded challenges to Brexit in the UK and Stormy Daniels in her US litigation against President Trump. Finally, AI itself can have unexpected uses. One UK family law practitioner uses his subscription to IBM Watson to predict costs on cases so that he can better meet the challenge of fixed fees.

All this activity throws up a number of issues which we need to log and puzzle through. These are discussed in the next section.

4. Current issues

This third and final session seeks to identify ten emergent issues which should figure in discussion of future developments. They follow from the analysis of the current state above as set out in the previous two sections.

1. Mapping, evaluation and research

In June 2019, legal design guru Margaret Hagan tweeted 'If you have a promising #accesstojustice tech or design idea that you have built and piloted, please share it with me! I'm going to start a mapping of the different solutions in this space, so we might start stitching them together into systematic innovation.' She then refined that by tweeting two days later: 'I'm most interested in mapping these #accesstojustice tech + design to specific needs people have in their journey through a particular civil justice problem. For example, what is an effective suite of interventions for a tenant facing eviction?'

The need to share information within England and Wales was stressed at a meeting of a Technology in Access to Justice Sector meeting convened by the Access to Justice Foundation the following month. The need to do so internationally was a recommendation of the very first report for the TLEF on the Digital Delivery of Legal Services to People on Low Incomes published in December 2014. This argued for:

a. maximum recognition that law might be natinal but technology and skills are global. In consequence, much can be transferable (as is happening with collaboration such as that between the Netherlands and other jurisdictions, and between British Columbia's Justice Education Society and the California courts);

b. recording and disseminating latest developments;

c. developing and encouraging international pathways for communication and learning;

d. encouraging evaluations; sharing the lessons, and developing a shared methodology which would allow comparison of effectiveness and cost efficiency;

e. sharing lessons on which technology proves the best for which purpose.

So, the need for mapping is pretty well acknowledged. This report is a contribution to that process - as is the attendant blog and website: law-tech-a2j.org. Inevitably, however, no one document, person or organisation can capture all that is happening. There remains a continuing need for both national and international studies of current developments drafted from a number of different viewpoints - the academic, the practitioner, the activist among them. It is particularly necessary because there are just not the resources, as pointed out in the first section, within the access to justice sector to duplicate the effervescent commercial market which can tolerate a degree of failure and duplication.

Mapping of developments is just the first step. It requires an accompanying mindset - a willingness to be transparent and to collaborate in circumstances where there is naturally a level of competition - particularly when it opens up the opportunity to build on other's successes. A key role, therefore, falls to funders. They can undertake and fund mapping exercises - as The Legal Education Foundation has funded this one. They can also insist on a related issue - transparency over targets and evaluations. The trouble for an outside analyst is to tread a cautious line between those who hype their achievements and those - all too many - who hide them. No doubt, funders could work on more sophisticated measures of evaluation but what would be of enormous practical assistance round the world would be a simple sheet of A4 for each funded project which was published on the internet. This would say something about its intentions, the goals by which its outcome was to be measured, and the results.

Projects need measurable goals for all the reasons that they are so popular in current management practice. Let us look at an example close to home: the blog at law-tech-a2j.org currently has around 12,000 readers a year who stay long enough to read a post; its goal by January 2020 is 15,000 and by January 2021 20,000. These are, hopefully, attainable - we will all be able to see. The goal that needs more work is to raise the number of repeat users - currently 2,500 in the year. The overwhelming majority of users come only once - that seems disappointing. In addition, only around 60 people currently subscribe to automatic receipt of each blogpost. Watch this space next year. Automatic recipients should certainly get to 100. So, the gathering even just of analytics data can provide a good way of mapping performance and setting measurable goals. And these are, of course, not the be all and end all. If unmet, the important thing to determine is why.

The point more generally is that disclosure of usage data of a website can be extremely helpful both as a spur to further action and as an indicator of success. Public disclosure simply of the numbers who stayed on a website for a length of time compatible with using it as intended would be a helpful first step to an indication of whether a project was working well or not. Add to that, if possible, some degree of selective polling of users with e.g. a pop-up questionnaire and you have the beginning of a valuable evaluation framework. MyLawBC has, for example, recently completed this kind of exercise. Its consultants had to work hard to get the numbers - including offering a $100 prize. They found what sounded like an authentic mix of results. One of the most interesting findings were that users tended to be poor, white and well educated. Another was that the Legal Services Society should pay more attention to how the website was covered by Google. Both of these are likely to raise issues common to other websites.

Disclosure of usage data of a website can be extremely helpful both as a spur to further action and as an indicator of success

2. Legal empowerment and legal services

The debate about whether access to justice provision should be seen within a legal empowerment context (delivering skills to the ultimate user) or legal services (delivering a result) goes back to the 1970s and beyond. Empowerment was taken up as a motivating idea by the development movement in the 2000s. Bodies like Namati ('We advance justice by helping people to understand, use, and shape the laws that affect them.'), the Open Society Justice Initiative and HiiL have all espoused an approach which includes legal empowerment as a goal. The approach has been given an impetus by the UN's adoption of sustainable development goal 16.3 to 'promote the rule of law at the national and international levels, and ensure equal access to justice for all'. A 2014 ODI paper espoused the mobilising concept of legal empowerment: 'Legal empowerment occurs when poor or marginalised people use the law, legal systems and dispute resolution or redress mechanisms (formal and informal) to improve or transform their social, political or economic situations, to hold power holders to account or to contest unjust power relations. Legal empowerment can be individual or collective. The justice and legal mechanisms used can be formal and provided by the state. In plural legal systems, however, justice and redress is often provided by non-state actors and may not be recognised by law (informal).'

Technology does nothing to alter the fundamental debate about the extent to which provision should seek to educate and skill as well as provide answers. But it does provide a vehicle by which legal assistance can be given within a wider than individual context - for example linked to concepts of public legal education as well as the more political notion of mobilisation. The resolution of this old argument may well lie in looking 'to segment the market', to identifying those within target groups who want/can absorb new skills to e.g. take a case on their own and those who need more personalised assistance. In the spirit of empirical research, it would be useful to know 'what works'.

3. Privacy, Monitoring and Marketing

Renewed public concern with privacy raises problems for providers who wish to monitor their usage. There may well prove to be a point at which users need to be propelled by some overwhelming need to cross a line to give identifying information about themselves. We need to find where this is because personal identification is clearly important in monitoring outcomes. Further issues arise when chatbots, like Nadia was, are designed to read facial expressions across the computer. At the very least, providers need to be transparent about this sort of development.

Time and time again, you see projects which sound like good ideas but which are surprisingly little used for all their potential. Research on MyLawBC, referred to above, pointed out the value of search engine optimisation. The other side of a concern to protect the privacy of users has to be a drive to better market and publicise innovative developments.

4. Exploring legal design

The legal design movement is one of the most creative developments of recent times in the field of access to justice technology. The Legal Design Lab at Stanford University has established itself as a leader in the field. Its techniques are spreading out of the university into the wider technology world. The Lab has developed a toolbox as 'a set of resources for aspiring designers who are approaching legal challenges with a creative, generative, human-centered approach. The toolbox provides

you with guides, tools, and examples to help you scope & tackle these challenges with design.' The approach, as discussed above, was evident in the development of the Rechtwijzer, but has been given additional momentum by being taken up in the USA. It is now returning to Europe. Legal Geek held its first legal design day in London in October last year and plans another for October 2019. Legal design places the user at the centre of the process - which gives difficulty to government agencies, such as Her Majesty's Courts and Tribunals Service in their modernisation programme, which may adopt some of the language and concept but are unavoidably implementing a programme with additional objectives such as revenue and staff savings. But, legal design provides a way in which technology can lead to connection of services to users and, as such, is one of the major areas of development which need to be mapped and communicated as widely as possible.

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5. Lessons from Health

There is increasing interest in the links between health and law at a delivery level. Medico-legal partnerships are of increasing interest around the world as the link between access to health and justice becomes better recognised. In England and Wales, Professor Dame Hazel Genn of University College, London is leading a project on this field funded by The Legal Education Foundation.

However, there are other points of crossover. One is the area of triage. A recent report stated:

The UK's National Health Service is rolling out a digital health initiative at one of its leading hospitals to transform the way it triages and routes patients in its system, in an effort that leverages chatbots and telemedicine services … Patients in Birmingham are being encouraged to use a set of interactive tools, including live and automated chat services, online symptom checkers, and video consultations with doctors and nurses. This "artificial intelligence triage" process will take about two minutes and will guide people as to whether they need to seek treatment.

The relevance of this to law is evident. And there are four points to note. First, the NHS is encouraging, not forcing participation. Second, the author has put the term 'artificial intelligence' in quotes. That, no doubt, is because the examples quoted of what is available do not

actually relate to AI at all: they are videos and interactive forms. Third, this system is designed only for triage; it only takes two minutes; and it is not being sold as more than that. Finally, there is the beginning of a row about the ownership of data obtained by this process.

6. Strategic leadership at national and international level

In most jurisdictions, individual providers of access to justice services have considerable autonomy in how they develop their use of technology. Funders can specify minimum standards; they can provide funds for specific purposes. They can , like the LSC, hold competitions for funds to assist development. It takes Singapore (see above) to be a bit more directive. That opens up how the incipient technology in access to justice movement can be given leadership and centralised momentum. This is an issue for almost every jurisdiction (except Singapore) but the question is even more pressing internationally.

For the time being, the answer may seem rather weak. But there is little alternative to continued encouragement by national bodies, like the LSC or (in England and Wales) the Ministry of Justice, for providers to explore the possibilities by bringing interested people together (like the LSC's annual technical conference), providing challenge and other funds, and generally expressing an interest.

Internationally, realistic development is even more diffuse. There are a number of networks encouraging international learning and development. They include HiiL, Open Society Justice Initiative, Namati and the International Legal Aid Group. However, at the present time, there is a need to be met in various other more informal ways. Margaret Hagan, speaking at a Pilnet/DLA Piper conference in London, made her plea for a central repository of developments. Her speech can be seen on YouTube.

## 7. Issues on court and government digitalisation and 'algorithmicisation'

A recent Law Society report has highlighted the growing use of algorithms in the justice system from uses such as pr WWedictive policing to decisions on bail and prison sentencing. Potentially, we have also to deal with the impact on judicial decision-making and its reporting. This is not necessarily negative. It should become increasingly possible to use technology to predict the parameters around which a case might be resolved and this will be a helpful addition to the armoury of a potential litigant. It might, for example, help those going through messy divorce cases to have identified for them the range of likely settlements based on past cases. Clearly, however, the key issues of transparency and accountability have to be kept under review. Agencies in relevant fields will need

to be vigilant in picking up issues as this sort of technology advances within government departments e.g. on deciding benefit claims. In particular, the process and result of fact finding will be crucial and will need to be scrutinised. This appears to have been a major weakness, for example, in England and Wales in relation to determinations based disability assessments.

More specifically, the digitalisation of courts and tribunals will undoubtedly have, as discussed above, an knock-on effect on users and agencies working on their behalf. More work will be shifted online and small agencies used to working more informally are going to need to gear up to work online themselves with the attendant software support which will make this possible. In England and Wales, the quality of digital processes and decision-making in tribunal and small claims cases will be reviewed as the court modernisation moves forward. Additional problems may arise as the ambitious programme enters its 'death zone', the period towards the end in 2023 when all the loose ends need to be tied up. This is where decisions are likely to be made on resourcing digital assistance and court fees which could prove negative to access to justice in the rush to make the books balance.

8. Regulation

In many jurisdictions, technology is throwing up issues about the prohibition of legal advice by non-lawyers. This is not the case under the relatively liberal regime in England and Wales. Nevertheless, the Legal Services Consumer Panel has produced a paper on Lawtech and Consumers which asserts 'The use of lawtech in delivering services to individual consumers is in its early stages. This is therefore an opportune time for policy makers and regulators to shape and encourage an ethical approach to it.' This sets out issues for discussion which range from transparency to quality. The paper is particularly concerned with issues relating to AI which is also the concern of the Legal Access Challenge being run on behalf of the SRA.
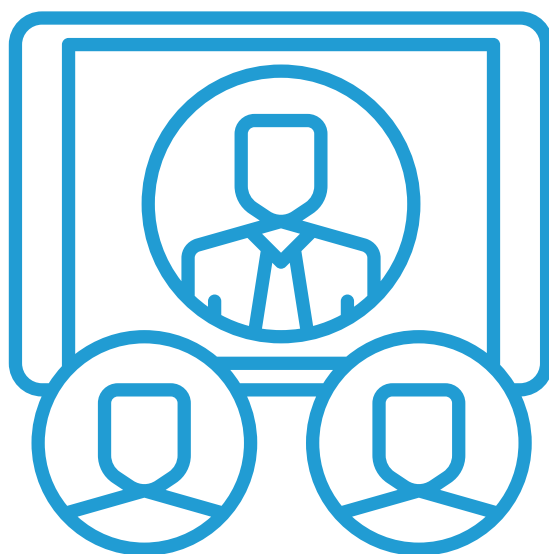
9. Referral, Triage and Sleeping with Google

A common problem for all jurisdictions is reaching target populations for assistance and referring them to appropriate providers. There is a growing interest in how artificial intelligence might be used to help in this. This has attracted some interest from major commercial interests and Microsoft, for example, has been very generous in its assistance to the Legal Navigator pilots in the USA. That raises an issue which might be better perhaps conceptualised around Google. A consistent lesson from current websites is that more attention needs to be given to how they promote themselves on platforms that uninformed users use to find answers to their problems. That will overwhelmingly be Google"s search engine - though

those wishing for greater privacy can use other engines like duckduckgo which do not monetise data on their users. For the longer term, we might begin to consider what is the desirable end point. Do we aspire for jurisdiction-wide websites which provide basic information and referral which are branded separately - and perhaps accepted as authoritative by Google as it does provision by Citizens Advice and Shelter in England and Wales - or do we see ourselves as ultimately working for some more active alliance with Google and similar search engines?

10. Digital exclusion and resistance

Finally, we have to address the issue of digital exclusion and digital resistance. The message of the failure of the Rechtwijzer and, in large measure so far, of website-based services such as Co-operative Legal Services would seem to be that consumers are not that enamoured of such provision even if it is reasonably cheap. They have preferred those that are traditionally delivered. Of course, the poor may have no choice. But the problem of using technology to address their needs is that a significant proportion of the population are excluded for a variety of reasons - be it competence in, and access to, technology, broadband or social, linguistic or cultural skills. We will find more data about this as the UK Government's programme of 'digital first' is rolled out in relation to benefits. We can also begin to

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A common problem for all jurisdictions is reaching target populations for assistance and referring them to appropriate providers

see from such as the MyLaw evaluation that those excluded are in particular groups - not just the poor. They are likely to be women, ethnic minorities, the very old and the disabled. The Royal Geographical Society's figures are that currently '5.9 million adults in the UK have never used the internet; There are 4.1 million adults living in social housing that are offline; The South East had the highest proportion of recent internet users (90%) and Northern Ireland was the area with the lowest proportion (80%); 27% of disabled adults (3.3 million) had never used the internet.'

One fundamental problem is that it does not necessarily make sense to separate digital capacity with general capacity. That has been the basis of the 'assisted digital' programme linked to the court modernisation programme but all the evidence suggests that what people actually need is integrated help on digital means and substantive resolution of their problem. Which brings us to end on a conclusion which will be no surprise to anyone in the field seeking to deliver access to justice services but may be a challenge to government agencies seeking expenditure savings. Technology can supplement but not supplant personal assistance.

5.9M
adults in the UK have never used the internet.

4.1M
adults living in social housing are offline.

3.3M
disabled adults had never used the internet.

5. Conclusion

The use of technology to provide access to justice is, therefore, developing - albeit in the shade of Legaltech more generally. We need to map these developments and to worry away at the questions which they raise. It should be an interesting time ahead.

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