IT developments in the courts: Are solicitors ready for them?: Speech by Lord Justice Brooke, Lord Justice of Appeal

I last spoke at a Law Society conference ten years ago. I came down to Brighton and read the Riot Act about the way solicitors' firms were not moving into the Information Technology (IT) age in a wide-awake way. I have lost the notes I used that day, but I think that I delivered four main messages:

First, that imaginative, well-planned use of IT was now absolutely central to the efficient and economic delivery of legal services. Next, that IT was far too important to be left to IT managers and IT suppliers. Thirdly, that external communications by IT with other firms, with the Bar and with Government agencies, and with clients and with the courts, was going to become increasingly important. And finally, that the Law Society had a central educational and leadership role to play in all this.

I was very pleased by the way the Law Society responded at that time. My message today is the same, if not more so. You have heard from Jo Wright and Dougie Barr about the IT hurricane which is now hitting the courts. Whether the hurricane works for good or ill, so far as your clients' needs are concerned, is now very much a matter for you.

We cannot go on as we are. Our court system is far too slow and inefficient and expensive. Quite soon civil and family justice will become even more expensive because current Treasury policies seem bound to lead to stiff increases in court fees. In family justice an experienced care judge tells me about the massive delays she encounters in fixing new appointments in child cases because the court's antiquated software does not enable her to fix a new appointment before the parties leave court. In civil justice our courts' back offices are awash with paper, and the paper files go missing, or are in the wrong place, or are back to front. Demoralised staff come, get trained, and then move on in search of more appropriate working conditions.

In criminal justice, judges are confronted on the Bench with pre-sentence reports that should have reached them the night before. Prison vans reach their destinations each evening with a load of prisoners who then have to hang about endlessly because the courts are still unable to warn the prisons whom to expect as soon as sentence is passed. The prisons therefore cannot do a lot of the paperwork before their new charges arrive. And there are massive overruns in legal costs for heavy criminal and family cases because judges cannot manage their cases effectively from the outset. One of the reasons is that judges are provided with no means of obtaining all the information they need for this purpose in an intelligible form as soon as they need it.

As you have been told, I am the judge in charge of modernisation. I am a full member of a small Court Service Board which meets once a month with a budget of £300 million to spend on court modernisation over the next three years. We have learned the hard way that court IT is far too important and difficult for judges not to be involved in the decision-making process from the outset. I lead a team of 30 judges, with varying IT skills, drawn from every level of the judiciary. Five of us meet senior Court Service managers on a new Judicial Technology Board six times a year. Below this board there are three judicial advisory groups, each headed by a high court judge, which meet once a month to give expert advice from a judicial perspective to the project teams on detailed issues within their particular bailiwicks.

I have often asked myself: why are solicitors not playing an equally prominent and effective role in all this planning? Two years ago I went to a court technology convention in Baltimore. I learned that US experience showed that 30% of the success of a good court IT project could be attributed to good management and 70% was due to leadership. The need to achieve a thoughtful understanding of human beings' natural resistance to change and of the best ways of managing this resistance formed one of the greatest challenges. I also learned that courts' IT projects could not possibly succeed unless all the key players on the court scene were each allowed to feel a sense of ownership of the project.

Civil servants are told they have to use the ghastly word "stakeholder" as a shorthand for this concept. I

prefer to speak of partners. Judges and Court Service managers and CJIT managers have driven this massive programme forward successfully so far as partners in a major enterprise. The time has now come to spread this partnership concept more widely. In my book solicitors and barristers and advice agencies and all the other agencies on the family and criminal justice side are just as much partners in the delivery of a fair, efficient and economic system of justice as the judges are.

I will soon be having separate meetings with the President of the Law Society and with the Chairman of the Bar to discuss with them what can be done to place effective partnership in court modernisation plans and implementation much higher up their agendas than it is now. And if their attention can be engaged, we might perhaps stand a better chance of persuading MPs and ministers to place civil and family court modernisation higher up their agendas, too. We will need a lot more money before we are through. In other jurisdictions the needs of the courts have been much better understood by politicians than has been the case in England and Wales. This is why their courts are not saddled with hundreds of ageing software databases which their manufacturers have stopped supporting.

I have placed on the website for the under "More speeches by Lord Justice Brooke" four recent speeches I have made on different aspects of court modernisation. I commend them to you. I do not have the time to say much about them today. One of them concerns the publication of court judgments on free access sites on the Worldwide Web. We are now publishing on the Bailii (British and Irish Legal Information Institute) site all the substantive judgments of my division of the Court of Appeal and of the Administrative Court as soon as they are available. Every solicitor in the country can now access these transcripts free of charge. I would like to take this opportunity of thanking the Law Society and its charitable trust for all the generous financial support they have given Bailii ever since it was created2 three years ago. I hope this support will continue! This is just one example of the massive benefits court technology can bring.

I will end by referring to certain aspects of current events in England, Singapore and Australia.

First, four stories from England. I visited Preston last September. A pilot scheme for direct e-mail communications with district judges had been running for about 18 months. A consent order for the release of clients' funds from court could be obtained by e-mail the same day, whereas it usually took 20 days to obtain. The take-up of this service by local solicitors' firms was pathetic (on average less than 4 e-mails each day). The use of the service by one very small firm represented 50% of its total use. The senior partner of that firm told me that it was marvellous, and it enabled his firm to provide a far better service to its clients. Many other local firms did not use it because they found it too complicated, or because they were not brave enough to communicate their efforts at draft orders to district judges direct, or because their firm's IT systems could not cope with it, or because their firm's business practices could not cope with it, etc etc.

It all reminded me of the excuses barristers' chambers used to make for not taking on able female or black and Asian tenants. There was an uncomfortable hush in a crowded courtroom that evening when I told 80 local solicitors that the days of successfully charging travelling time and waiting time might end abruptly if a costs judge thought that an item of business could have been done more economically by email and their firm had refused to co-operate.

Secondly, Money Claims Online (MCOL). This was pioneered by Perry Timms, who is chairing this panel. It is already winning international applause. It is a system for issuing simple money claims for up to £100,000 online with not more than two defendants, and with the facility for defendants to respond to the claim online. It represents the beginnings of the future electronic court file. Its use will achieve great savings at the court end of things because what is on the claim form does not have to be re-keyed manually. And it saves solicitors the hassle of posting or delivering claim forms to the court. Two or three solicitors' firms are major users of MCOL, and some are already attracting business from new clients once they are known to be using this remarkable service. But in general the take-up of MCOL by solicitors' firms has been very disappointingly low: a recent survey showed that 5% of the total use was by solicitors; 20% by businesses acting for themselves; and 75% by litigants in person.

Third, the Walsall mini-business centre. This was a really brave attempt by the Court Service to experiment by moving the back-office of a county court 200 yards down the street. Its purpose was to test what IT

might achieve if it were used more intelligently in support of civil litigation. We learned a lot of very valuable lessons, but in general the involvement in the project by local solicitors was very disappointing: for example, only 21 emails received for the entire month of May. A big opportunity was missed.

Finally, and coming closer to home, I become Vice-President of the Court of Appeal next week. I am determined to do all I can to modernise the business of the court and to make its processes even more helpful for those who use them. Last Friday I astonished a barrister's clerk by telling her not to bother to bring three copies of counsel's written submissions over to the court office at 5 pm just as all the staff were going home. If she e-mailed it to me, I would e-mail it on to the other two judges, and this is what happened.

In my in-tray is a research report on the work of the Court of Appeal. Its authors had tried to find out from solicitors what their firms thought of the service the court was providing and the ways it might be improved. 20 letters were sent out. Only seven firms bothered to answer. In our efforts to improve our service to their clients we are frustrated by solicitors' apathy. I have told the Master of the Rolls that when I take office I intend to write a similar letter to the senior litigation partner of each of a representative sample of thirty firms who use the court. I may well go on writing until I receive a reply.

So much for England. A great reluctance to change among many solicitors' firms, and a striking unwillingness to help those of us who are trying to achieve a better service for those who use the courts. I now go to the other side of the world, which I visited last April.

In Singapore, one of the district court's registrars showed me how every single case in his list has its own electronic file. Electronic filing is compulsory in Singapore, and lawyers and judges can render a far more efficient and economic service to the users of the courts as a result.

In Sydney the registrar of a lands court showed me how new arrangements for voluntary electronic filing were already vastly improving the quality of the service her court could provide.

In Melbourne I visited the new state of the art county court with its 46 criminal and civil courtrooms on the five floors of a central downtown site. There local firms can access the court's website to inspect the contents of a court file and enter judgment in default electronically if they see that no defence is on the file. Telephone inquiries to the court have been cut by 60%. I also watched a procedural judge doing her monthly morning list by a video link with lawyers at a court centre 200 miles away. When she made her order, it was instantly drawn up in court, and issued to the lawyers at both ends before they left court.

This is what we are aiming at. And this is what we will surely achieve in the next ten years. Jo Wright and Dougie Barr have told you of the speed with which things are now moving forward, particularly on the criminal justice side. In that context, I believe that the XHIBIT pilot currently used in 3 Crown Courts in Essex indicates what modern technology can achieve in a courtroom context.

Fleets are often all too happy to move at the speed of the slowest ship. This fleet is now moving so fast that the slowest ships will get completely left behind unless their captains wake up and do something about things now. I hope that the Lord High Admirals of the Law Society, and of every local law society up and down the land, will pick up the message we are giving out at this session, and will act on it. History tells us that the ships that got left behind tended to get torpedoed before they ever reached harbour.

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