

IT Improvements for Family Courts

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How much more can we use information technology (IT) to improve the quality and efficiency of our work as lawyers and judges within the family courts themselves? Can some simple, relatively inexpensive measures make significant improvements and savings? Family law has always had a disproportionate number of IT dinosaurs; the nature of the work often self selecting! But many of us are keen to bring our daily experience of IT benefits, efficiency and lifestyle methods to our work and for our clients.

The Department for Constitutional Affairs (DCA) and Her Majesty's Courts Service (HMCS) have appreciated this. In their consultation paper, "Family procedure rules: a new procedural code for family proceedings", number CP19/06, they have proposed the use of e-mail for service of court process. The consultation has recently closed and I hope the proposal is quickly adopted. However, this introduction of e-mail service merely highlights that there are other related areas where improvements can be made.

This article addresses them as well as arguing for e-mail service of court documents. Part of the frustration is that much of this is already going on elsewhere in the English court system. Is there any reason why it cannot be extended to family law or will the IT dinosaurs prosper and family law become a litigation Jurassic Park?

Electronic issuing of proceedings

There would be much benefit for courts, lawyers and clients, including costs and time savings, if it were possible to issue proceedings electronically. An application, under the Children Act 1989 or in Form A or indeed perhaps an originating application, would be sent electronically to the court. The solicitor issuing the application would have a credit arrangement with the court and the fee would be automatically debited. The proceedings would be issued and a return date given. It would be either served by the court, electronically or by hard copy if the recipient was not receiving by e-mail. Alternatively a service copy would be sent to the applicant's lawyers duly sealed. This by now would almost certainly be a pdf document, primarily to avoid changes. Electronic issuing may not be possible if original documents are required to be filed simultaneously e.g. the marriage certificate. But in a number of cases, it is permissible for the certificate to be filed later and before the special procedure (SP) application, so this would not necessarily be a real obstacle to electronic issuing.

One significant court resources advantage is that this work could be undertaken outside the court building, perhaps outside of the expensive metropolitan centres, and controversially perhaps outside the country. Certainly the work could be undertaken over night. A further advantage is that the office issuing electronically need not be limited to each family court. One office could undertake the electronic issuing for all the family courts of England and Wales. This would produce yet further savings by way of efficiency and productivity. It should increase quality.

Clearly there would still be some occasions when an urgent application had to be made and issued over-the-counter. Moreover, some lawyers as well as litigants in person would not have access to facilities to issue electronically. However in my experience, a good proportion of court applications are made by the specialist family law firms and departments who have the electronic resources. There would be security implications but this arises with many similar direct online access procedures undertaken by other government departments and commercial organisations. I have no doubt it could be satisfactorily overcome. Of course there would need to be careful coordination between the court office and the office issuing electronically. However as a considerable amount of court paperwork and court files are already electronically tracked by way of the issue, service and

movement of papers in a court building, this would just be one additional part of the exercise. For lawyers, it would produce a saving of court clerks physically issuing and collecting applications and it would give greater immediacy and control in the delivery of papers to the court for issue. I have been following this particular trend with interest. It was in about 1998 that, predictably, the family courts in San Francisco and Singapore introduced electronic issuing. A number of other family courts around the world have followed suit in varying extents. I believe it is being piloted in English civil courts. I do encourage it to be given very good and urgent consideration for family law.

Electronic court listings

One of the most time-consuming procedural tasks in court is actually fixing a new date. The advocates come with their dates of availability, sometimes the parties have fundamental dates they cannot make and then of course there is court availability with often very long delays. I propose that in a limited fashion the court availability dates should be available electronically within the court building. Perhaps it might even be possible to be made available externally. In this fashion, it would make it hugely quicker and simpler to select the mutually convenient date. It would be akin to choosing the air seats on an airline.

Whilst working in Sydney for two years, it was frequent experience when fixing a date in court for the judge to have in front of him on his computer screen (not yet a feature of most English family law judges and family law court rooms) the availability dates over the coming weeks and months, both for him and for others at his level and at other levels of family courts, both up and down. This made it much easier to fix. Of course, the availability dates would not show which cases were listed on which dates as this is a matter of confidentiality, just as the internet airline seats do not show who is sitting where. It would however show which slots were free in the court diary including nearby courts and/or those "higher or lower" in the court system for a transfer. I am sure that having court availability dates open for electronic inspection would significantly help listing and fixing.

Wireless zones in court buildings

I urge that family court buildings should have wireless broadband access. There are a number of benefits, for practitioners and judges. Despite the exorbitant charges made by some hotels for wireless broadband access, the reality is that it is relatively cheap to install, requires a moderately small amount of servicing and minimal ongoing costs. There are a number of advantages for lawyers, of communication and of information. They can receive e-mail from their office, from clients and from others, within the court building, perhaps during breaks in sessions, perhaps at lunchtime and before and after court. This may directly relate to the case in hand and therefore be beneficial to the client and the resolution of the case.

With the ever increasing number of international cases, often documents and letters arrive late because of time differences and when the matter is already before the court. Sometimes judges require more information or clarification from the lawyer in the other jurisdiction. At present there are frantic telephone calls, advocates trying jointly to speak on one mobile phone, with e-mail responses sent to Chambers or law firms and then rushed to court. There is already a printing facility available to lawyers in the London family courts so documents could be run off and brought to the court's attention much more quickly.

The benefit of wireless zones in court buildings may however simply be lawyers obtaining their e-mails whilst waiting and therefore making their time more efficient. For barristers, it has an advantage of allowing better access with their Chambers and instructing solicitors for ongoing cases. Blackberries and mobiles are a solution but have limitations.

Equally important is access to information. I have particularly regard to the electronic libraries, in part

available on disk and sometimes downloadable to a hard drive but increasingly available only online. Sometimes as a case develops there is a need to refer to a reported case but the advocates do not have access to these cases without going back to their Chambers. With online access, this would not be a problem. At one recent FDR, we were unable to settle, frustratingly, as there was a dispute about whether Miller sharing included income. The advocates and the judge disagreed. Access by each of us in the court room to online libraries might have helped remove a stumbling block from a FDR settlement and so allow quicker resolution. The younger generation of family lawyers, and some of us not so younger generation, turn first and foremost to electronic libraries, online libraries, for our legal resources. Turning to a book is very much the second resort. Yet when we go to court, we have to carry one or more books. There should be access to our online libraries whilst at court.

So great do I believe will be the benefit to the online publishers that I wonder whether the court service might be able to strike a deal with one of the primary online family law publishers in the providing of the wireless access in the court buildings. Having it freely available in family court buildings will inevitably attract some lawyers who will purchase it for their offices. For judges, there would be similar benefits. A good number now have access to online resources supplied by the DCA but deputies often do not and in any event, it is rare for these facilities to be available in the court room itself.

Court intranets

When dealing with complex finance dispute resolution cases, there is often detailed reference to spreadsheets. Advocates start with figures which are disputed. As the FDR or final hearing progresses, figures become firmed up or agreed and it is often helpful for there to be one communal agreed spreadsheet shared between advocates, solicitors and judges. But this is not possible electronically. I recall a FDR involving Peter Duckworth, Lewis Marks QC and Wilson J (as he then was), three of the most numerate family lawyers of our generation. The advocates made frequent reference to the information and software packages on their laptops as the FDR progressed, recalculating and reformulating offers and outcome positions. The judge urged them in their endeavours in order to predict and reach a common consensus. Yet after each stage, new figures were added in biro to the communal spreadsheets and cheap calculators used to rework the final figures! How much better if they could have worked on one combined intranet document on each of their PCs in the court room. It would be ideal to have an intranet system within a court whereby a document could be shared and worked on as the case developed.

The Family Court Website

The DCA and the HMCS have made considerable strides in the development of a web site for the Family Courts and deserve rightful praise and congratulations. Alas there are always increased standards and expectations! My time in Australia caused me to have frequent resort to the Australian Family Court web site. It was then very good. It has just been relaunched at the recent Australian Family Lawyers Conference in Perth and is now even better. It is the best of its kind in the world. It is at www.familycourt.gov.au. We have copied many innovative ideas and procedures from Australia. I commend a review of the Australian web site and to consider what we can learn in England for our equivalents.

Electronic service

I express an interest in this as I believe I was the first person in England to serve proceedings by e-mail, in 1999 as set out in an article in October 1999, published at [1999] Fam Law 726

There are now very few law firms which do not have e-mail, including for each individual lawyer and with a general e-mail address on the letter-heading and web site. E-mail has largely taken the place of fax. Yet whereas we can serve by fax, we cannot yet serve by e-mail. This should be urgently

rectified, as proposed in the HMCS paper referred to above. I cannot see any reason why service by e-mail should not be identical to the conditions for service by fax. If a law firm has any e-mail address on its letter-heading or web site, it should be able to receive service of documents by e-mail. Most firms check their general e-mail address regularly, and indeed most firms have an arrangement to forward expeditiously to particular partners the enquiries received via the firm's general e-mail address. If a general e-mail address is on the letter-heading or web site, service should therefore be possible to that address.

I have always been unhappy about the position in law whereby law firms could say that they are not prepared to accept service by fax. I understand that some small firms may close down for a short holiday period alternatively are worried that no one looks at the fax machine. But good office management and case management dictates that fax machines should be regularly checked. I would prefer that this exception did not continue into e-mail service. I cannot see that it is needed with the greater flexibility that e-mail allows. Unlike fax, e-mail can be automatically forwarded to another address, alternatively collected from any location with only the basic rudimentary web access. It is not like service by fax to a fax machine which is physically in only one location. If firms are prepared to put an e-mail address on their letter-heading or web site for the use of clients and to attract inquiries, they should be required to accept service.

It must be made clear which address is the appropriate one for e-mail service. I still find that some lawyers in reputable firms do not use the "Out of Office Assistant" made available by e-mail providers and which automatically notifies when someone is out of the office and not receiving e-mail. Moreover some lawyers give out their e-mail address including on their firm's web site yet do not check their e-mail regularly. Finally some dinosaurs only use their secretaries for e-mail (even one liners!!) and this is not checked when the secretary is on holiday or leaves. This presents a potential problem. The Law Society should be addressing this. No doubt it is highly frustrating and embarrassing to the other partners in the firm.

In the meantime the new court rules on e-mail service must look at the practicality of professional life. The answer is that service by e-mail should be to the general e-mail address given on the letter-heading or web site of the firm, if to be served on a firm of solicitors. If there is no such address, service can be on the address of the partner or fee-earner dealing with the matter, or whichever other address has been indicated by the firm as suitable for receipt of service. The consequence of the possibility of service on some partners who may not check their e-mails regularly will result in more law firms including an e-mail address on the letter-heading. As far as individuals are concerned, service by e-mail should be allowed where it can be shown that the individual has used e-mail over a sustained period and regularly collects e-mails and responds promptly. I would like to see the requirement to send a hard copy abolished in due course. However I do not believe we are yet in a position in society to abolish it now and so it should continue. Given that e-mail service will hopefully be introduced, I believe that fax service will gradually wither away. Nevertheless I think there is a benefit in directing that service should be by e-mail where available and only by fax where e-mail service is unavailable or unreliable.

A question arises as to proof of service. Where e-mail addresses are discreet and personal as in the case of almost all law firms, it is possible to send a cookie to have a notification of receipt and of opening. However the larger e-mail hosts such as MS and Yahoo, do not allow this. Many personal clients use them. In these cases, the evidence will be from the sent box of the party serving by e-mail. Some have said this is susceptible to abuse, fraud etc. If this allegation was raised, I am satisfied the family courts would be able to consider it in the totality of the case.

Conclusion

None of these proposals are science-fiction, unavailable technology, exorbitantly and disproportionately expensive nor are they beyond the experience of many lawyers and parties and judges. It is already happening across commerce. Some of my proposals are happening in other parts of the court system in England and Wales already. As a family law practitioner, solicitor and mediator and deputy district judge, I do hope it will be possible for these changes to be introduced soon to our family courts.

Note

Since the above was written, Her Majesty's Courts Service (HMCS) have announced they are considering introducing Electronic Filing and Document Management (EFDM) in the Family Courts. Among other things, EFDM would enable documents to be filed electronically without the need for specialist software, would allow court documents to be sent electronically to parties and the court to store and manage case files electronically. It would replace the current paper court file with an electronic case file, allowing parties to view case activity through a web based service, and send and receive papers electronically. However, this service may involve a user paid charge.

HMCS has commissioned Ipsos MORI to conduct an online survey in January and February to look at law firms' views on EFDM. The survey has been endorsed by the Law Society. There may be some delays in implementation but this is very positive news.

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