

Technology and the coronavirus

In a recent speech on technology and the law, Lord Hodge remarked that the legal system was only at the foothills in terms of embracing technology in modernising its processes and infrastructure; present conditions may well be expediting that climb. Protections for access to justice must be at the heart of any such transition.

The Covid-19 emergency has upset business as usual in both procedural and substantive aspects of our legal system. Substantially, the focus will inevitably be on the restrictions legislated for in the Coronavirus Act 2020 and regulations made under the Public Health Act 1984. Indeed, the courts have already been called on to determine the balance between measures taken by public authorities to control the spread of Covid-19 and protecting the rights of the citizen. Procedurally, Covid-19 protocols mean that most hearings are conducted on platforms such as Skype and judgments handed down remotely.

This sudden demand however for technological solutions in the administration of justice undoubtedly raises questions about the constitutional right of access to justice. Access to justice is the right on which all others depend: if you cannot access a court to vindicate your rights, those rights necessarily remain theoretical only. Vulnerable groups such as the homeless, those experiencing mental ill-health or living in poverty are groups more likely to require legal services and many will be more digitally excluded than other groups. Therefore, for them, the prospect of having to use a computer or smart device – with access to one not being guaranteed -- when bringing a legal complaint may have a powerful dissuasive impact. It is to be remembered that such groups have already suffered reduced services when accessing justice on foot of government cuts to local authority and legal aid budgets. When the immediate upheaval has passed, it is imperative that greater digitisation works for such groups and does not inadvertently encourage disengagement. In its recent report on the subject, the Law Society praised the capacity of innovation and technology for legal empowerment and improving access to justice, for example through online drop-ins and web-based assessments for advice centres; but warned against its wholesale replacement of face-to-face advice provision. In this sense, nothing changes: the user must be able to affordably access early advice directly from a qualified lawyer – this is

the fundamental principle around which any innovative or technological scaffolding must be built.

With the timeline of the pandemic remaining unpredictable, it is not known how long the current protocol measures will be in place. It is fair to argue that the longer such measures remain, the more difficult it will be to simply revert to the status quo ante. Transitioning to greater reliance on tech solutions must not place further barriers in the way of those least able to navigate the legal system as it currently stands. To put the matter another way, the importance of access to justice reaffirmed by Lord Reed in *Unison v Lord Chancellor* must apply equally to the digital as to the analogue.

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