

# Cloud expertise

Mark Solon explores life in the clouds & explains why experts should expect a revolution



In November 2015, the government announced an investment of £738m in the courts and tribunal services (in reality it is over £1bn), to modernise and improve the way they are run. Some of this funding, approximately 40%, will be raised through the sale of existing underutilised court or tribunal estate and the reinvestment of those funds. HMCTS began to invest the money only very recently, in April 2016, and will continue to do so until 2022.

Since that announcement, very considerable work has been undertaken by certain judges and HMCTS to plan co-ordinate and deliver the reform programme, some of which was outlined by Lord Justice Fulford, senior presiding judge for England and Wales, when he addressed last year's Annual Bond Solon Expert Witness Conference.

"As with all great revolutions, you either adapt rapidly or fade away," he said. "I am sorry to be uncompromising but we have simply got to change, and judges, lawyers, witnesses and all others who use our courts in all jurisdictions and at all levels must rapidly get used to the administration of justice being transferred, in large part, to the 'cloud'. Paper will disappear, pretty much entirely, from our courts. It must do so, in order for us to be able to manage our cases efficiently and effectively."

All judges (including magistrates, recorders and all other part-timers) have recently moved onto eJudiciary, a new and bespoke Office 365-based system that provides email, calendars, judicial training,

library resources, documents and much else all in one place on the cloud accessible on any device, anywhere in the world. Magistrates now work from iPads in court, receiving all the documents electronically, and their rota is run by an algorithm in the cloud, enabling them to book their sittings online.

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Fulford LJ went on to talk about the impact on expert witnesses: "As expert witnesses, you will no longer have to lug sets of papers in the boots of your cars; you will no longer have to hope that they will one day arrive in the post, but instead all the relevant documents in the case will be accessible to you via the relevant on-line portal, onto which you will be able to upload your report. The attendant convenience and improved working methods are substantial and self-evident."

This will be welcomed by experts who often complain of the large cardboard boxes of documents that have to be ploughed through. Digital versions allow much quicker

analysis and this will help when fees are limited by the principle of proportionality and when time scales are short due to strict court timetabling.

Fulford LJ confirmed that far more work will be conducted via video link now that the experience of this is far more satisfactory than only a few years ago. Although he acknowledged that the technology is not yet perfect by any means. He also anticipated we are not far off the moment when all expert evidence will be pre-recorded in advance of the "hearing", whether the latter is in a court room or is "virtual". This will please experts who often have problems around availability.

## Online solutions

Many critics have searching questions about the Online Solutions Court as proposed by Lord Justice Briggs. This is entirely understandable, but it is certain that all justice will eventually be substantively online with court appearances generally being reserved for the cases, or the stages of cases, that really need this form of interaction. Hearing in court must be necessary and proportionate to the nature of the dispute. Addressing the 400 experts at the conference, Fulford LJ said: "This will have consequences for your work, with the possibility of expert witness issues being determined without an old-style court hearing, but by telephone, video or even on the papers (depending always on the issue)."

He went on to emphasise, however, that in all this digitisation, every decision about substantive rights will be made by a judge and the main elements of conciliation will be conducted by a human being. He said he was also determined that there will be full support for members of the public who cannot easily cope with a digital approach and that there will need to be some early pilots conducted to see how this will work.

Fulford LJ also talked about transparency and open justice. He said the judiciary is fiercely committed to the principle of open justice. Greater digitisation offers both challenges and opportunities in this field, in that technology enables more data to be gathered that can be made accessible than historically has been the case. We will need to find ways in which the public can gain access to telephone, video and online hearings.

As the revolution gains momentum, Fulford LJ said he was determined that we will not "throw a cloak of secrecy over our new digital, computer-aided processes", but that this was going to "need imagination and commitment".

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