

Appendix 1 - Note of Online Dispute Resolution Conference, The Hague, May 2016

International learning

Lord Justice Fulford opened the conference and set out the £700 million investment in England and Wales to bring procedures online and develop a hybrid system with telephone and video conferencing, and face to face hearings where necessary. Other countries such as Singapore, Austria and Estonia are doing similar to allow courts to become paperless.

Some countries are now trialling online dispute resolution. Highlights included:

Netherlands – seen as leading the way with the Rechtwijzer model for separating couples. It has so far helped 300 couples to separate and there are a further 900 currently registered on the system. It takes around 60 days from start to finish and costs between 390 and 540 Euro per person. A reviewer analyses the information provided by each of the parties to ensure that any agreement reached is fair and within the law.

British Columbia – Following significant legal aid cuts in 2002, and inspired by Rechtwijzer, MyLaw BC has been developed as an information system rather than a full blown access to justice system and does not include access to reviewers or mediators. It is in its soft launch phase and includes information and advice for separating couples.

Relate/UK – About to soft launch a version of Rechtwijzer's self-guided platform for separating couples. It is similar to the system in the Netherlands and includes access to mediators, legal experts and Relate's own relationship advisers.

France – a tech start-up has developed an online small claims platform called Demander Justice, which since its launch in 2012 has processed more than 250,000 cases. For 4 years, the French bar associations have been launching unsuccessful judicial procedures against Demander Justice, claiming it is infringing lawyers' monopoly for assisting and representing people before the court.

Issues and themes

- **Funding** – North America in particular has struggled to make the invest-to-save arguments for ODR because the funding of the courts system is not transparent, but legal aid cuts have driven the need to reform in many countries.
- **Compulsion** – there was much debate about whether couples should be forced to seek mediation and advice through ODR before having access to the courts, except in cases of risk and domestic abuse. The arguments fell fairly evenly between those believing couples would not use ODR if it was not mandatory, and those feeling that any compulsion would defeat the object of supporting couples to willingly settle through ODR.
- **Risks of implementation** – any system will need be secure to avoid data breaches. There are safeguarding and ethical issues to consider such as where separating couples are unevenly matched financially, which is why Rechtwijzer includes reviewers to analyse the information and potentially ask for further evidence. But that might not go as far as forensic accounting to ensure one party is not hiding assets. One risk of the Relate system that was raised by academics from the UK is that if

MoJ now implements a separate system, there will be potential confusion for service users.

Conclusions for England and Wales

MoJ Digital spoke towards the end of the conference and set out the Government's presumption that all services should be digital, with additional support to access it for those who need it. A priority is to reduce the number of cases going to court and provide alternative dispute resolution tools. MoJ emphasised the need to map service user needs within any system design or re-design.

Compared to the challenges in other countries, England and Wales is in a strong position to develop an ODR system for separating couples. Unlike in some other countries, these reforms have the backing of senior Judges and with settlement conferences and other pre-court resolution models in development, ODR could be a key part of this framework.

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