

# Judicial Modernisation Paper

September 2021

## Introduction

In March 2021, the Lord Chief Justice, the Minister for Justice and the Director of NICTS, set out their joint vision for [Modernising the Courts and Tribunals in Northern Ireland](#) (“the Vision Statement”). NICTS will shortly publish a Digital Strategy for the period 2021-2026, which aims to enhance and accelerate the achievement of the objectives set out in the Vision Statement. This document outlines and prioritises the judiciary’s requirements for digital transformation across all court tiers and business types and will be used to inform the delivery of the NICTS Digital Strategy.

## **Background**

The need for reform of the justice system was established in the Civil and Family Justice Review (CFJR) Reports in 2017, the Gillen Review of Serious Sex Offences in the criminal courts, and in various high level reports before and since. The CFJR set out flagship recommendations for modernisation, which included changes to practice and procedures supported by new and innovative technology.

The overriding objective of all courts is to deal with cases **justly**<sup>12</sup>. An efficient and timely process lies at the heart of this objective, and the digital reforms outlined in this document will support modernised court systems that are **just, proportionate and accessible**.

---

<sup>1</sup> The overriding objective is set out at Order 1 rule 1A of the Rules of the Court of Judicature Northern Ireland 1980, and Order 58 Rule 1 to the County Court Rules (Northern Ireland) 1981. - (1) The overriding objective of these Rules is to enable the Court to deal with cases justly. (2) Dealing with a case justly includes, so far as is practicable - (a) ensuring that the parties are on an equal footing; (b) saving expense; (c) dealing with the case in ways which are proportionate to - (i) the amount of money involved; (ii) the importance of the case; (iii) the complexity of the issues; and (iv) the financial position of each party; (d) ensuring that it is dealt with expeditiously and fairly; and (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.

<sup>2</sup> Dealing with a criminal case justly as set out in PD2/2019 includes:- (a) acquitting the innocent and convicting the guilty; (b) dealing with the prosecution and defence fairly; (c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights (“ECHR”); (d) respecting the interests of witnesses and victims and keeping them informed of the progress of the case; (e) dealing with the case efficiently and expeditiously; (f) ensuring that appropriate information is available to the court when issues of bail and sentence are considered; (g) considering any need for non-statutory reporting restrictions; and (h) dealing with the case in ways that take into account:- (i) the gravity of the offence alleged; (ii) the complexity of what is in issue; (iii) the severity of the consequences for the defendant and others affected; (iv) the vulnerability of any witness or defendant, and (v) the needs of other cases.

Some progress has been made, but the impact of the Covid-19 pandemic, has highlighted that much more can and must be done to make access to justice more efficient, accessible, modern, and fit for the future. The judiciary and legal profession reacted quickly to adapt to new ways of working remotely, adopting revised case management procedures to minimise dependency on court hearings where practicable. Early work on piloting e-bundles in place of voluminous hard copy court papers has been positive. Such initiatives will be developed further where there are clear benefits and in appropriate cases. It is clear that we need to escalate and invest in reform so we can recover from the impacts of the pandemic, ensure our future resilience and provide a platform for future development to meet the demands of an ever-changing society.

There will always be a need for court hearings whether physical, hybrid or remote - whether the environment is to be virtual or physical is to be determined only by the 'interests of justice.' The NICTS Digital Strategy must continue to support the administration of justice delivered by an **independent judiciary**<sup>3</sup>.

### **Vision**

Modernisation will only be effective in meeting the needs of those seeking justice, where the judiciary, legislature and administration work collaboratively and are properly funded to develop and introduce incremental and synchronised changes, with the support of the legal profession and other justice organisations. This document sets out the views of the judiciary on how modern courts will work, to provide just, proportionate and accessible outcomes, where technology can support or enable these changes, and will help inform the NICTS Digital Strategy and plans for delivery going forward.

Judicial decisions and the outcomes of cases should be regarded as **just** by all parties. The judiciary must be supported by modern, transparent and reliable processes. The system must be **proportionate** to save people time, minimise costs, and reduce the impact of legal proceedings on their lives; it must be **accessible** to those who cannot afford legal representation, those who feel excluded due to disability, or are not comfortable using new technology.

### **Future Court Processes**

Those coming before our courts have an issue to resolve regardless of whether it is criminal, civil, or family. Some do not wish or need formal court hearings or complex legal argument to achieve that aim. Alternative, less formal, quicker, and more cost-effective ways to address disputes will be a key part of the toolkit available in the future to secure the administration of justice.

---

<sup>3</sup> In accordance with section 3 of the [Constitutional Reform Act 2005](#), and section 1 of the Justice (Northern Ireland) Act 2002 (as substituted by section 4 of the 2005 Act).

These new processes, some of which may include digital elements, include:

- More and better ways to access justice for all those who need it - **quicker and simpler processes** will be designed for professional and public court users alike; **an iterative approach of practice directions and protocols** to be developed to allow **flexibility** to review and adapt to evolution of systems until a steady state is reached before being set in more formal court rules;
- All parties should be able to **commence a claim / proceeding on-line** using easy-to-follow forms and processes, guided by clear instructions, with support to do so from properly trained staff or automated help features. Access to paper-based systems will remain for those who need them, with the provision of support to users key to successful implementation;
- **Alternative resolution options** should be promoted, or at least clearly signpost the parties towards a choice of methods to help clarify and narrow the issues in dispute, which might include new pre-action protocols, early neutral evaluation, on-line dispute resolution tools, or mediation, whether in person, remote, or based on the papers. This may involve a compulsory triage of cases to narrow and define the exact issues in contention;
- Where resolution is reached at an early stage, the **agreement can be lodged for the courts approval without the need for a hearing**, unless the judge determines one necessary e.g. approval of minor's settlements;
- For matters proceeding to court, a **funnel or triage system** will be designed to allow early judicial oversight at the most appropriate level to identify the most urgent or serious matters, and give early case management directions where needed. Earlier and more detailed input will be a core feature in attempting to streamline cases;
- Where issues remain in dispute, these will be **directed to the most appropriate decision-maker**, through **more efficient case management** systems where directions may be based on the papers, discussed in telephone or video conferences and available immediately to those involved in the case;
- **Reliance on paper-based systems will gradually be reduced** as judges, the profession and court users all become more familiar and confident in using digital methods to lodge papers, communicate, manage case progression, and display digital evidence;
- **Remote hearings** will continue for most matters to be determined up to the point of final hearing which will be held in person where appropriate, though professional or expert witnesses may increasingly be permitted to give their evidence remotely, saving time and cost;

- **Better use will be made of judicial resources**, eliminating routine tasks that can be automated, or supported by administrative staff with judicial oversight; dealing more efficiently with the bulk of case management using digital communications; and focussing expertise and court time for the most complex cases, or hearings on issues, which have been narrowed to the core issues in dispute.
- In lower volume courts, better case management information will **help judges list cases** that do require a hearing more efficiently, at a scheduled time and with witnesses attending at a pre-arranged time-slot;
- The increase of **problem-solving courts** in the criminal and family justice system with an emphasis on **early intervention** and alternative resolution outside the court system, will in time change the format of faster paced, high volume courts. Such initiatives will include on-line dispute resolution, and a guilty plea portal (for magistrates' courts), to allow greater scheduling of cases at times throughout the day with more time available to deal with contested hearings.

### **Impact on Courtroom Usage**

- Physical courtrooms that ensure the integrity and formality of court hearings will continue to be required, but will be modernised to take advantage of more efficient systems and technology:
  - **Criminal** business at all tiers dealing with remands into custody, trials, contests, sentencing and matters which cannot be dealt with by alternative means will continue to require courtrooms, with secure holding cells, consultation and waiting facilities; remote evidence centres for vulnerable and intimidated witnesses to give evidence without having to come near a courtroom or see the accused; reliable in-court digital evidence display; and modern facilities for jurors to support their determination of the issues they are charged with;
  - **Family** Courts must be designed to better meet the needs of those who are before the courts and the professionals who work to support them. They must aim to minimise combativeness between the parties to protect the welfare of children or victims of domestic abuse, and be adaptable to accommodate the wider range of support services often required in child and family matters; with courtroom technology that supports the move towards efficient paperless hearings, and remote evidence for non-contentious professional and expert witnesses;
  - **Civil** Courts, must be flexible and adaptable to deal with a wide range of hearings, with courtroom technology that supports the move

towards efficient paperless hearings, and remote evidence for non-contentious professional and expert witnesses.

- Courtrooms must have a **stable and secure infrastructure** to support the technology required to allow courts to operate remotely, and for the judge, legal representatives and parties to use more efficient **e-bundles and electronic evidence display technology** in place of cumbersome and more costly paper versions;
- Vulnerable and intimidated witnesses should have access to **special measures** such as being able to give their **evidence remotely** without the need to enter the court, or be supported by registered intermediaries or interpreters to aid communication, and ensure they understand the court processes;
- It is critical that the services and systems implemented within the courts are **technology agnostic** and readily available to users in terms of compatibility so that costs are kept to a minimum.
- There will be **less need for the public or profession to physically attend court** buildings which will provide NICTS with an opportunity to review the court estate and invest in providing **diverse multi-functional courts** and chambers suitable for a range of court hearing types.

### Impact on the Judiciary

- The Judiciary will be supported to adapt to new ways of working, through their involvement in progressing the agreed recommendations for reform; re-designing simplified practice and procedures; testing new initiatives through pilots; the development of clear practice directions, protocols and guidance, and training in using the new digital systems to manage their caseloads 'out of court' and make the most of the efficiency benefits;
- The proposed reforms will, in time, move much public-facing courtroom business to back office systems with **judges managing cases largely in chambers, or by remote technical means** supported by administrative court staff. **Data management** – security and ease of use - will be core requirements, as will the **training** and support of judiciary and staff assigned to assist them;
- Case information will be available electronically and the reliance on paper will reduce as the use of e-bundles and e-files are implemented;
- Judiciary will have access to a digital case management solution, accessible by relevant parties to monitor and prompt staff and parties to progress actions to ensure readiness for hearing;

- Improved digital management and statistical information will be available to the judiciary to help manage their caseloads, inform decisions, and anticipate and plan resources more efficiently to meet business needs;
- Early steps should be taken to help prepare the judiciary and expand their digital / technology skills in dealing with matters in non-traditional hearing based systems to ensure they are properly trained and equipped to deal with these changes when implemented;
- Appropriately trained administrative support will be available to ensure the best use is made of judicial time and expertise, and to support the smooth running of the courts.

### **Impact on the Legal Profession**

- The legal profession will continue to play a key role, but their professional skills must be extended to dealing with matters in different, more modern ways than the traditional hearing based systems, and continuous engagement with the legal colleges, institute and committees is vital to ensure the profession are properly trained and equipped to deal with these changes;
- Alternative Dispute Resolution options, problem-solving courts, and modern ways of progressing cases through virtual 'back-office' processes will significantly change the traditional model of consulting with clients and witnesses in the vicinity of the courtroom as the volume of court hearings decreases. Virtual 'consultation rooms' will be required to ensure the smooth running of the court, to allow counsel to speak 'off-side' with their instructing solicitors, or for practitioners to speak with their clients. The profession should spend much less time travelling and attending court buildings as the need for physical hearings reduces;
- Both the Bar and solicitor practitioners will have real-time access to commence, progress and track proceedings on-line, including electronic case and listing information, and facility to view court orders in their cases;
- Practitioners may need to invest in modern technology and IT systems as the reliance on paper reduce and the use of e-bundles and e-files are implemented;
- The profession will be kept informed and engaged as NICTS progress their Digital Strategy and implementation plans to ensure that they can adapt their practices to meet the needs of their clients, and support the planned changes in a timely manner.

## **Incremental Approach**

Modernisation of court processes will be incremental and build largely on:

- the recommendations of the [Civil](#) and [Family](#) Justice Reviews and the [Gillen Review: Report into the law and procedures in Serious Sexual Offences in Northern Ireland](#), taking into account lessons learned during Covid-19
  - judges will lead implementation of the practice and procedural recommendations for areas under their responsibility, giving fresh momentum to the necessary changes within judicial control e.g. Judicial Reviews, Chancery etc.
  - these will be progressed under the oversight of the shadow Civil Justice Council, shadow Family Justice Board, Judicial Digitalisation Steering Group and Crown Court Liaison Committee as appropriate;
- protocols and practice directions which will underpin the early changes and later inform amendments to court rules (referred to the secretary of the Court Rules Committees for consideration where required);
- research and advice on similar initiatives, and the challenges faced, in other jurisdictions will inform best practice;
- agreed priorities for modernisation in conjunction with NICTS / DOJ
  - co-ordinated with identified policy / legislative changes required to give effect to digital modernisation (e.g. e-service, e-discovery or digital signatures).

## **Culture Change and Training**

Culture change, engagement and training will be key to the success of digital modernisation. While much of the communication will be agreed through the NICTS Stakeholder Advisory Group, focussed engagement will need to be commenced at an early stage with the Judicial Studies Board, Bar Council, Law Society and Law Schools as to how they can prepare and support current and future judiciary and legal practitioners. NICTS will be responsible for providing training on the technology employed, with readily accessible support whether in person, online tools or via a telephone helpline.

NICTS will be responsible for providing access and support to all those with a need to access digital services, whether directly or via trusted third parties (eg Community Advice NI, Victim Support NI, NSPCC, Litigants in Person Reference Group, etc). Digital access points, supported by staff, will be available in court and tribunal buildings for public use.

## Integrity

- Nothing progressed in line with this strategy will undermine the constitutional position of an independent judiciary.
- The integrity of modern digital justice systems, through appropriate, robust resilience and audit arrangements, should be developed by NICTS in conjunction with the judiciary and other partners an agreed implementation plan.
- Security of digital data is imperative, with secure controlled access and protections to ensure data is only visible to appropriate parties, or limited to the judge only through robust regulatory frameworks developed to support implementation.
- Where digital data is shared, the justice system must develop lawful, ethical, transparent and proportionate mechanisms in order to improve public understanding of the operation, efficacy and fairness.
- The costs of developing and implementing a digital system must not be unduly prohibitive to those with a need to access justice, or to the public purse (though legal aid or other Government / publicly funded bodies). Where savings are made through efficiencies gained these should be taken into account when reviewing scale costs and court fees at the earliest opportunity.
- In support of the Strategic Oversight Board and NICTS Modernisation Portfolio Board, the judiciary will work with NICTS, the shadow Civil Justice Council, shadow Family Justice Board and Crown Court Liaison Committee, and the secretary of the Rules Committees to identify priorities for digital modernisation and plan for the underpinning practice and procedural changes required to deliver them operationally.
- NICTS will work with DOJ to address policy or legislative requirements required to give effect to the agreed priorities, or initiatives that might have an impact on this strategy.

## Conclusion

Modernisation of our justice system through digital means is urgently required to help courts recover from the challenges of the pandemic; and to future proof services to meet the public expectations of modern services; meet rising demand; and resolve disputes quickly and cost-effectively; adding value, where court attendance is required, by focussing the time and expertise of all parties. In a changed world these issues have become imperative to allow courts to meet the needs of both the

personal and business spheres. It is imperative if Northern Ireland is to deliver effective justice and compete globally.

The digital priorities focus on simplifying procedures and giving people new routes to justice to help improve access, reduce delays and cut costs. Working together with NICTS this process will include changes to enable people to access services online, from case commencement to resolution/ conclusion, and develop new systems to help people resolve more disputes themselves. The judiciary anticipate less reliance on physical hearings and digitally enabled case management processes will free up time for judges to concentrate on the most contentious or complex issues, hopefully in reduced timeframes.

The move to digital courts will be developed using an iterative approach to modernise courts practices and procedures in as flexible a manner as is feasible within the legislative framework or changes being progressed, and available resources. The judiciary will work in co-ordination with NICTS to prioritise and support delivery of this strategy, to be one in which the public, court users, the judiciary and legal professionals, all can have absolute confidence.