

CIVIL  
JUSTICE  
COUNCIL

**ONLINE DISPUTE  
RESOLUTION  
FOR LOW VALUE CIVIL CLAIMS**

**Online Dispute Resolution Advisory Group**

**February 2015**

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# Foreword from the Rt Hon Lord Dyson

## Chairman of the Civil Justice Council and Master of the Rolls

This is an important and timely report, and I am very grateful to Richard Susskind and the members of his CJC working party for this work, and for producing an exciting and important report. I believe that it will act as a catalyst for far-reaching reforms to our civil justice system.

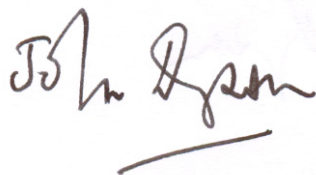
There is no doubt that online dispute resolution (ODR) is an area with enormous potential for meeting the needs of the system and its users in the 21st Century. Its aim is to broaden access to justice and resolve disputes more easily, quickly and cheaply. The challenge lies in delivering a system that fulfils that objective.

This report illustrates a number of areas where ODR is already successfully in use, both in this country and internationally. At a time of major pressure on public spending and high legal costs, ODR offers a major opportunity to help many people for whom public funding to resolve disputes is not available, or for whom legal costs are prohibitive.

ODR is also in harmony with wider changes in society, in particular the advances in technology and the large scale use of online services to transact all forms of business. The courts have some catching up to do with other areas of business and Government.

It is important that we get this right. A system linked to the court service would provide reassurance for all users.

There will be a lot of work to be done, but I have no doubt that ODR will play an important role in the future of civil justice. This report is a very important first step in that process, and I welcome its publication, and the CJC's association with this work.

A handwritten signature in black ink, reading "Rt Hon Dyson", with a horizontal line underneath.

# Introduction and overview

In this report, we call for radical change in the way that the court system of England and Wales handles low value civil claims. We strongly advocate the introduction of online dispute resolution (ODR). In summary:

- For low value claims, we are concerned that our current court system is too costly, too slow, and too complex, especially for litigants in person.
- To overcome these problems, our main recommendation is that HM Courts & Tribunals Service should establish a new, Internet-based court service, known as HM Online Court (HMOC).
- On HMOC, members of the Judiciary would decide cases on an online basis, interacting electronically with parties. Earlier resolution of disputes on HMOC would also be achieved – through the work of individuals we call ‘facilitators’.
- We predict two major benefits would flow from HMOC – an increase in access to justice (a more affordable and user-friendly service) and substantial savings in the cost of the court system.
- ODR is not science fiction. We present a series of case studies from around the world that clearly demonstrate its potential.
- We argue that to improve access to justice, it is vital not just to have better methods of resolving disputes but also to have effective ways of avoiding and containing disputes. ODR can help here.
- The technology underpinning ODR is evolving rapidly. We make a series of predictions about the likely capabilities of later generations of ODR system.
- Our Group would be pleased to work closely with HMCTS in a new phase of work, that should focus on piloting the proposals in this report.

I am extremely grateful to the Master of the Rolls, Lord Dyson, and to the Civil Justice Council (CJC) that he chairs, for supporting the work of the ODR Advisory Group. I am also greatly indebted to all members of the ODR Group itself (see Appendix 2), who devoted much of their spare time to this report. Many others assisted us. I extend my thanks particularly to Harvey Briggs, Annalise Curry, Aled Davies, Peter Elkin, Tessa Shepperson, and Darin Thompson. We have also been helped by the work of the Austerity Working Party of JUSTICE, chaired by Sir Stanley Burnton. Peter Farr and Andrea Dowsett, of the Judicial Office, deserve separate mention for so affably keeping us on the rails. Finally, the ongoing encouragement of Lord Thomas, the Lord Chief Justice, is very much appreciated.

**Professor Richard Susskind OBE**  
**Chair of Civil Justice Council’s Online Dispute Resolution Advisory Group**  
**IT Adviser to the Lord Chief Justice**

# 1. Context

- 1.1 This is the first report of the ODR Advisory Group of the Civil Justice Council. The group was set up on 25th April 2014, with terms of reference that can be found in Appendix 1. In broad terms, our remit is to explore the potential of ODR (online dispute resolution) for civil disputes of value less than £25,000. The membership of our group is laid out in Appendix 2.
- 1.2 This report should be read in conjunction with our complementary website, which can be found at [www.judiciary.gov.uk/reviews/online-dispute-resolution](http://www.judiciary.gov.uk/reviews/online-dispute-resolution). Our main recommendations, arguments, and evidence are set out in this report, while working papers, links to other relevant resources, interviews with experts, and materials that are better presented graphically, are provided on the website. A listing of the resources available on the website is provided in Appendix 3.

## IT and ODR

- 1.3 IT can be used in support of the court system in two quite different ways. The first involves the application of technology to improve what is already in place today. In this way, IT is grafted onto existing working practices and so replaces or perhaps enhances current systems. This approach tends to be costly, difficult, and, in the end, often delivers ‘mess for less’, that is, it replaces today’s inefficient, paper-based processes with IT-based systems. It does not fundamentally change the underlying processes and procedures.
- 1.4 The second use of IT in the courts is to enable the delivery of services in entirely new ways. When this is the aim, it encourages new and imaginative thinking and urges reformers to start afresh, with a blank sheet of paper. In this report, we take this second approach. We propose new ways in which justice can be administered through the use of ODR techniques. This is therefore in contrast with many projects that are currently in progress in the civil justice system – those that fall into our first category and are seeking to systematize the traditional operation of the courts.
- 1.5 Our conception of ODR is broader than that of many specialists in online dispute resolution. When we speak of ODR we are referring to the use of IT and the Internet to help resolve disputes (other than the computerization of the current court system). Our exclusion in brackets means we do not consider, for example, that conducting court hearings across video links or online tracking of the progress of trials to be ODR. Although we take a wider view of ODR than others, we have drawn heavily in our thinking from best practice in mainstream ODR around the world.
- 1.6 When a conflict is handled using ODR, a traditional courtroom or hearing room is not employed. Instead, the process of settling a dispute is entirely or largely conducted across the Internet. In other words, dispute resolution services are made available as a type of online service. Many techniques fall under the umbrella of ODR. Sometimes human beings remain heavily involved, as when ODR systems provide facilities for judges, mediators, or negotiators to handle disputes

by communicating electronically with parties and by reviewing documents in digital form. On other occasions, the assessment of a legal problem or the negotiation itself might be enabled by the ODR service without much or any expert intervention.

- 1.7 ODR techniques are already being deployed around the world in resolving a wide range of disagreements – from consumer disputes to problems arising from e-commerce, from quarrels amongst citizens to conflicts between individuals and the state. ODR is not appropriate for all classes of dispute but, on the face of it, is best placed to help settle high volumes of relatively low value disputes – robustly, but at much less expense and inconvenience than conventional courts. We find that ODR is best explained by example. Accordingly, in Section 4, we provide a set of illustrations of ODR in action.

## Ambitions of this report

- 1.8 This report offers a broad statement of direction for the future use of ODR in the civil justice system. It is not a detailed blueprint. It is our first word rather than the last word on what we believe should be an important new direction for dispute resolution in England and Wales. One of our central aims is to raise awareness of the broad potential of ODR. We hope to encourage debate and reflection, not about the intricate details of implementing ODR but on the principles and implications of handling disputes in the way we propose. Our report is also a call for further work – in particular, to pilot the general approach that is recommended here.
- 1.9 For many lawyers and judges, our recommendations and the contents of the report may appear rather alien and even disruptive. Our Group takes the view that radical new solutions are needed in these challenging times for the court system. In an era when affordable court service – and so access to justice – is under severe threat, we ask of our readers, if not that they embrace a new mind-set, then at least that they keep an open mind. We are asking for a willingness to contemplate that civil disputes, in the future, may need to be managed and resolved in ways quite unlike those embraced by our traditional system. Perhaps the most fundamental question that must therefore be posed is this – is court a service or a place? Do we always need to congregate physically in a court building to resolve our differences? Or might some of our civil problems be more appropriately resolved using one of a number of online techniques?
- 1.10 The strong view of our Group, and this is a position that has strengthened as our work has progressed, is that ODR holds enormous potential to bring two great benefits to our justice system: a lower cost court system and an increase in access to justice. In appropriate cases, we are therefore saying that ODR can deliver more affordable and accessible dispute resolution.
- 1.11 ODR is not science fiction. Famously, each year on eBay, around 60 million disagreements amongst traders are resolved through ODR. This is a well-established way of resolving disputes, appropriate for the Internet age. Other jurisdictions, most notably, Holland and Canada, are already forging ahead. If, in England and Wales, we aspire to have a court system that leads the way, then we already have some catching up to do.

## 2. Recommendations - Summary

- 2.1 Our principal recommendation is that HM Courts & Tribunals Service (HMCTS) should establish a new, Internet-based court service, known as HM Online Court (HMOC). We recommend that HMOC should be a three-tier service.
- 2.2 Tier One of HMOC should provide Online Evaluation. This facility will help users with a grievance to classify and categorize their problem, to be aware of their rights and obligations, and to understand the options and remedies available to them.
- 2.3 Tier Two of HMOC should provide Online Facilitation. To bring a dispute to a speedy, fair conclusion without the involvement of judges, this service will provide online facilitators. Communicating via the Internet, these individuals will review papers and statements and help parties through mediation and negotiation. They will be supported where necessary, by telephone conferencing facilities. Additionally, there will be some automated negotiation, which are systems that help parties resolve their differences without the intervention of human experts.
- 2.4 Tier Three of HMOC should provide Online Judges – full-time and part-time members of the Judiciary who will decide suitable cases or parts of cases on an online basis, largely on the basis of papers submitted to them electronically as part of a structured process of online pleading. This process will again be supported, where necessary, by telephone conferencing facilities.
- 2.5 The establishment of HMOC will require two major innovations in the justice system of England and Wales. The first is that some judges should be trained and authorized to decide some cases (or aspects of some cases) on an online basis. The second innovation is that the state should formally fund and make available some online facilitation and online evaluation services.
- 2.6 To ensure the implementation of our principal recommendation, we propose three supporting recommendations:
  - that HMCTS introduces an ODR stream into its current programme for the reform of civil, family, and tribunal work, and allocates a modest fraction of its £75 million annual reform budget (over five years) for the establishment of HMOC;
  - that all political parties offer in-principle support for HMOC, as a viable way of increasing access to justice and reducing the cost of the resolution of civil disputes; and
  - that the Civil Justice Council invites the ODR Advisory Group to commence a new phase of work, collaborating with HMCTS and the Judiciary in formally piloting ODR, designing HMOC, and raising awareness of this new approach to the handling of civil disputes.

- 2.7 Although our terms of reference are restricted to civil claims under the value of £25,000, we believe that that the jurisdiction of HMOC should also be extended to suitable family disputes and to appropriate cases that come before today's tribunals.
- 2.8 The remainder of this report expands on the recommendations of this section and on our underlying thinking.



## 3. The case for ODR

3.1 Our civil justice system is creaking. Its many problems have been well stated by others: by senior judges from Lord Woolf to Lord Justice Jackson; by numerous academic commentators; and also by legal practitioners<sup>1</sup>. Above all, as public legal funding declines, there is widespread concern today that dispute resolution in our courts is disproportionately expensive and insufficiently user-friendly for litigants in person.

### The challenge facing our courts

3.2 Having reviewed much commentary on the shortcomings of the civil justice system, our Group has focused on the challenge of providing a court-based dispute resolution service for low value claims that is:

- affordable – for all citizens, regardless of their means;
- accessible – especially for citizens with physical disabilities, for whom attendance in court is difficult if not impossible;
- intelligible – to the non-lawyer, so that citizens can feel comfortable in representing themselves and will be at no disadvantage in doing so;
- appropriate – for the Internet generation and for an increasingly online society in which so much activity is conducted electronically;
- speedy – so that the period of uncertainty of an unresolved problem is minimized;
- consistent – providing some degree of predictability in its decisions;
- trustworthy – a forum in whose honesty and reliability users can have confidence;
- focused – so that judges are called upon to resolve disputes that genuinely require their experience and knowledge;
- avoidable – with alternative services in place, so that involving a judge is a last resort;
- proportionate – which means that the costs of pursuing a claim are sensible by reference to the amount at issue;

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<sup>1</sup> See, for example, Lord Woolf, *Access to Justice* (1995, 1996), Lord Justice Jackson, *Review of Civil Litigation Costs* (2010), Hazel Genn, *Judging Civil Justice* (2009), and Hodge, Jones & Allen, *Innovation in Law Report 2014* (2014).

- fair – affording an opportunity for citizens to present their cases to an impartial expert, delivering outcomes that parties feel are just;
- robust – underpinned by clear rules of procedure and fully implementing the law of the land;
- final – so that court users can get on with their lives.

3.3 Although our current court system is populated by first-rate judges whose quality of work is very high, our shared view is that our current way of resolving low value civil cases in conventional courts fails to satisfy the majority of our thirteen criteria.

### A new approach

3.4 The temptation to which many proposed reformers have succumbed in the past is to believe that the best way forward in saving costs and increasing access to justice is to streamline our existing system rather than change it fundamentally. We suggest that we are unlikely to make great strides by automating what we already have in place.

3.5 In respect of the NHS, Sir Muir Gray, an eminent doctor, has observed in conversation that ‘we’re not going to change until we’ve run out of money’. We may apply the same sentiment to the justice system where many would argue that we have indeed run out of money. If we concede, accordingly, that we have to change, we should consider not simply improving our court system or even salvaging our traditional ways of resolving low value claims. We should be prepared to rethink the way in which society handles civil disputes and problems.

3.6 We submit that ODR offers one promising and fundamentally new approach to the resolution of civil disputes. Based on the global experience of successful ODR projects, if well implemented and widely used, we believe this technology solution can tick all thirteen of the boxes in Paragraph 3.2.

### The economic case

3.7 It is not yet possible to present a fully articulated business case for HMOC. This can more responsibly be done after some piloting of ODR. But we do believe that two predictions can safely be made. First, if we are able to take cases out of the conventional court system and into the online environment, then this will reduce both fixed and operating costs. For example, the unit costs of civil claims (that is, the cost per individual claim) conducted by judges sitting online (from their homes, for instance) will be significantly lower than the costs of judges sitting in courts. And, if a large number of disputes come to be resolved by HMOC, this would have significant implications for the court estate – there will be a reduction in need for many of the current buildings and the land on which they sit. Our second prediction is that the introduction

of online facilitation (Tier Two) will greatly reduce the number of cases that actually reach judges – and the cost of disposing of cases through facilitation should be considerably lower than that of judges deciding the cases, whether or not online, because the individuals involved will be less senior.

- 3.8 HMOC will, of course, require robust, secure, and reliable technology on which to run. This need not be costly, because there are already standard ODR platforms that can be licensed and deployed. We expect that the set-up costs of this and ongoing development costs could comfortably be covered by the court fees that parties would pay. We further expect that these fees will be lower than conventional court charges. Subject to what we say in Paragraph 9.6 about setting online court fees at a level that will discourage vexatious use of HMOC, we would suggest a charging mechanism that bring savings both for court users and for the court system.
- 3.9 Even if HMCTS took the view that a bespoke system should be developed to support HMOC, this would incur development costs that would be modest in comparison to the current expenditure on maintaining and upgrading the current systems. Certainly it would be a tiny fraction of the £75 million that is being allocated annually for the next five years for the civil justice reform programme.

## 4. Examples of ODR in action

4.1 In this section, we provide a series of illustrations of ODR in operation. We are not endorsing or recommending any of the systems. Our purpose instead is to show the way in which ODR is actually being used. Presented in no particular order, the examples we have selected are as follows:

- eBay
- Rechtwijzer 2.0
- Canadian Civil Resolution Tribunal
- Financial Ombudsman Service
- Nominet
- Resolver
- Youstice
- Online Schlichter
- Cybersettle
- Modria
- Traffic Penalty Tribunal

This selection is by no means exhaustive. There are many more systems up and running around the world. We provide a summary of the best known of these on our website.

### eBay - [www.ebay.com](http://www.ebay.com)

4.2 A remarkable 60 million disagreements amongst traders on eBay are resolved every year using ODR. There are two main processes involved. For disputes over non-payment by buyers or complaints by buyers that items delivered did not match the description, the parties are initially encouraged to resolve the matter themselves by online negotiation. They are assisted in this by clearly structured, practical advice on how to avoid misunderstandings and reach a resolution. Guidance is also given on the standards by which eBay assesses the merit of complaints. If the dispute cannot be resolved by negotiation, then eBay offers a resolution service in which, after the parties enter a discussion area to present their argument, a member of eBay's staff

determines a binding outcome under its Money Back Guarantee. This e-adjudication process is fast with strict time limits. The claim must be escalated to eBay within 30 days from the actual or latest estimated delivery date and, to encourage a full opportunity for self-resolution, no earlier than 8 days since the complaint was first raised with the seller. Disputes over feedback (reviews by buyers of sellers), which can include reviews that might otherwise lead to court-based defamation claims, are dealt with by an independent company called Net Neutrals. Their service is called Independent Feedback Review (IFR). Using a separate discussion space for each dispute, a trained independent neutral reviews the evidence from both parties, invites fresh argument, and determines whether the feedback meets one of four criteria for removal. The process takes seven days and eBay removes the feedback pending the outcome. Operational only in the Netherlands, a novel crowd-sourcing resolution process for feedback disputes is available for one of eBay's subsidiaries, Marketplaats. After arguments are exchanged, 21 'jurors' are randomly selected from a volunteer panel of experienced users of Marketplaats and shown the details of a dispute. The buyer is given 7 days to respond and the seller then has 2 days to rebut. The jurors, after that, have 10 days to review and they issue a decision as to whether the feedback should be withdrawn. Marketplaats acts in accordance with the majority decision.

### Rechtwijzer 2.0 – [www.hiil.org/project/rechtwijzer](http://www.hiil.org/project/rechtwijzer)

- 4.3 Rechtwijzer 2.0 was developed for the Dutch Legal Aid Board by the Hague Institute for the Internationalisation of the Law (Hiil). The service is provided by the Netherlands Ministry of Justice and Security. It is designed to help parties resolve disputes through a process that takes them from problem diagnosis, through facilitated, Q&A-based framing of their case, to problem solving and assisted negotiation and, finally, to various forms of online ADR (alternative dispute resolution). To assist in negotiation, the process provides automated legal guidance, based on the answers parties have given during the Q&A session. The first service, now live, is for matrimonial disputes, including divorce and ancillary matters, such as custody and maintenance. Landlord and tenant and neighbour disputes are planned for the future. The ADR phase is reached on failure of the parties to reach a resolution by themselves. This takes the form of online mediation or arbitration. The process takes place online on a secure and confidential platform, designed for asynchronous dialogue. The platform enables the mediator to engage in separate confidential discussions with each party, consistent with normal mediation practice. Finally, as a 'fail safe' against a resolution being reached that does not satisfy the criteria of 'fairness', agreements go before an independent lawyer for confirmation.

### Canadian Civil Resolution Tribunal – [www.civilresolutionbc.ca](http://www.civilresolutionbc.ca)

- 4.4 The Civil Resolution Tribunal is an online tribunal that is due to be launched in the summer of 2015 in British Columbia, Canada. It is a public scheme, regulated under the Civil Resolution Tribunal Act 2012. The online tribunal will be available as an alternative pathway to the traditional courts for resolving small claims through a process that is expected to be more convenient and less costly. It will deal with claims (under 25,000 Canadian dollars) relating to debts, damages, recovery of personal property, and certain types of condominium disputes. It will

not handle disputes affecting land. The online tribunal will operate in several stages. In the first instance, the facility will help users explore possible solutions. Then, parties will be required to use the tribunal's online negotiation platform, which is subject to short timelines and supported by templates for statements and arguments. If a settlement is not reached, then a tribunal case manager will be appointed to assist the parties to settle their dispute through a mediation process that will take place online or over the telephone. If parties do not settle by this mediation process, they will then be invited to agree to a third and final stage of adjudication. The adjudicator will contact the parties via the online platform, over the phone, or, when necessary, through video-conferencing, and then will make a decision that will be final and binding.

### Financial Ombudsman Service - [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

- 4.5 The UK Financial Ombudsman Service was established by statute in 2000 as the mandatory ADR body in the financial services sector. Its function is to resolve disputes between consumers and UK-based financial businesses quickly and with minimum formality. Its casework process is designed around the principle that a dispute is usually best resolved at the earliest possible stage and that most problems can be resolved without needing a formal determination by an ombudsman. Businesses covered by the ombudsman have the opportunity to resolve disputes before the service becomes involved, but they must resolve complaints promptly – and always in fewer than eight weeks. Once a complaint is referred to the service, its process is geared towards early and informal resolution. Its case-handlers ('adjudicators') attempt to facilitate an amicable resolution to the dispute between the two parties, usually resulting in adjudicators writing to parties with their view on what the fair and reasonable outcome should be. If both parties agree (which typically happens in around 90% of cases), the dispute is resolved. But either party may disagree and ask for the case to be referred to an ombudsman for final, binding, determination. The service has trialled new ways of working that will allow some disputes to be settled even more informally and quickly – that is, in hours and days. An ombudsman's determinations can be accepted or rejected by a consumer, but if a consumer accepts the decision then it is binding. These decisions are not appealable, but are subject to judicial review. In 2013/14, the Financial Ombudsman Service resolved 518,778 disputes, of which 487,749 were resolved by adjudicators and 31,029 by ombudsmen. The service is a 'distance' service, so that each year there are usually less than 20 face-to-face meetings with adjudicators or ombudsmen. The average cost per case for 2014/2015 is expected to be £567.

### Nominet - [www.Nominet.org.uk](http://www.Nominet.org.uk)

- 4.6 Nominet is a domain name registry company which has run the .uk domain name since 1996 and has run the .cymru and .wales domain names since September 2014. Nominet has to register .uk domain names on a 'first-come, first-served' basis – without examining the merits of the application. It therefore established a Dispute Resolution Service (DRS) to provide a means of resolving .uk domain name disputes without recourse to court. To pursue a claim through the DRS, complainants have to demonstrate that they have rights in a name that is the same or similar to the disputed domain name and that the registration has been abusive (for

example, the spelling of a domain name is deliberately very similar to the complainant's in order to confuse Internet users). The first stage of the DRS requires a complainant to complete a form on Nominet's website. This includes specifying what remedy is being sought (the most common remedy is the transfer of the disputed domain name to the complainant). The material submitted by the complainant is then sent to the registrant of the domain name. Nominet then appoint a mediator, who contacts both parties by telephone to seek a solution. The majority of cases settle at this stage and the mediation generally takes around two weeks. There is no cost to either party at this stage. If the case does not settle via mediation, the complainant can pay to have an independent expert appointed. The expert's decision will be based solely on the materials submitted by the complainant and the registrant. Appeals from the expert stage are permitted, but rare. Both the expert's decision and that in any appeal are published on the Nominet website.

### Resolver - [www.resolver.co.uk](http://www.resolver.co.uk)

- 4.7 Resolver is a UK-based online facility that helps consumers raise complaints with suppliers and retailers. The operators of the site have populated it with the e-mail contacts of the complaint departments of over 2000 major organizations. Through a form-filling exercise and helped by the provision of standard phrases, a consumer is given online assistance in drafting a complaint. This is then e-mailed directly to the relevant complaint department. The suppliers and retailers are urged to respond to the Resolver e-mail address so that the exchange of messages can be stored on the consumer's case file that is then maintained on the site. The service presently covers energy, telecoms, transport, loan companies, restaurants, high street shops, solicitors, and many more sectors. Resolver provides a platform through which parties can discuss their differences in a structured way. Emoticons are provided to help consumers better express their emotions. The service hold details of the escalation procedures of the 2000 organizations and guides users from first-tier complaints handling up to the highest level. Users are alerted by e-mail to any responses and are prompted to escalate when responses are not received. The service is free of charge, both to consumers and to the organizations to whom they are complaining.

### Youstice - [www.youstice.com](http://www.youstice.com)

- 4.8 Youstice is an ODR service for handling large volumes of low value consumer complaints, relating both to goods and services, whether or not the purchases took place online. There are two tools. The first enables negotiation between parties. It provides assistance in framing arguments – parties are invited to describe their position by selecting from a series of phrases, with relevant icons for each. The site also suggests suitable solutions that again can be represented by icons. A form of structured (asynchronous) dialogue can take place within a limited area for free form comment. The objective is to encourage and facilitate the parties to reach an agreed settlement directly between themselves. Using the second tool, customers can escalate cases and seek an independent review by one of a number of neutrals accredited by Youstice. Customers can file their claims either directly at the retailers' websites or at websites of consumer organizations. Shops are entitled to use the Youstice logo if they reach agreement on Youstice with consumers

in at least 80% of cases and they implement at least 98% of the agreements reached or of decisions by third-parties. Use of the facilitated negotiation platform is free to consumers, with Youstice earning its income from the retailers who pre-register and who display the Youstice logo in their marketing.

### Online Schlichter - [www.online-schlichter.de](http://www.online-schlichter.de)

- 4.9 The Online Schlichter is an online mediation service for Business-to-Consumer e-commerce and direct selling disputes. It has been run by the German-French European Consumer Centre (ECC) in Kehl/Strasbourg since 2009 and has been financed by the Ministry of Justice/Consumer Protection of six regional governments of Germany. Its aim is to increase access to justice and reduce the number of cases reaching the regular courts. It has also received funding from legal insurance and standard bodies (Trusted Shops and DEVK) and the direct selling association, a membership body (Bundesverband Direktvertrieb). The service is free for both parties and the mediators/advisors are independent lawyers at the ECC. There is considerable emphasis on analyzing the case from the start and providing both parties with legal advice and evaluation of their legal position, thereby correcting any unfounded expectations about their rights. This online advice is partly automated by using textual building blocks and decision trees. This up-front advice and evaluation often helps to achieve early settlement. The mediator makes a non-binding recommendation. In about two-thirds of all cases both parties accept the recommendation and the case is settled accordingly. In 2014 around 1500 cases were filed with the Online Schlichter (1142 in 2013, and 859 in 2012). The average duration from filing to acceptance of the recommendation is 60 days. About 28% of cases deal with the non-delivery of goods, 21% of cases concern defective goods, and 17% of disputes concern consumers withdrawing from a contract. Its high settlement rate attests to the success of this technique for small claims.

### Cybersettle - [www.cybersettle.com](http://www.cybersettle.com)

- 4.10 Cybersettle, based in the US, developed software to provide 'blind bidding' services. This is a process designed to speed up negotiation when all that is in dispute is how much is owed. In broad terms, the claimant and defendant each submit the highest and lowest settlement figures that would be acceptable to them. These amounts are not disclosed but if the two ranges overlap, a settlement can be achieved, the final figure usually being a split down the middle. It is claimed that Cybersettle handled over 200,000 claims of combined value in excess of \$1.6 billion, and that the City of New York used the system to speed their settlement process for a backlog of 40,000 personal injury claims. More than 1,200 claims were submitted and it is claimed that there was a 66% settlement rate within 30 days of submission, savings in litigation costs of \$11.6 million, with an average reduction of settlement time of 85%. Similar systems have been developed in the past, such as The Mediation Room in the UK. However, when Cybersettle obtained a worldwide patent, some competing systems closed down. While the current status of Cybersettle is unclear, a new blind bidding service, TryToSettle.com, was launched in 2014 in the USA, under a licence granted by Cybersettle. A Canadian company, SmartSettle.com, offers a simpler staged bidding version of blind bidding.



## Modria - [www.modria.com](http://www.modria.com)

- 4.11 Modria is a spin-off from the ODR departments of eBay and PayPal and was formed by the head of those departments, ODR pioneer, Colin Rule, who led the team that built the online dispute resolution system that is used so extensively by eBay (see Paragraph 4.2) and PayPal. Modria provides a cloud-based platform on which businesses and public bodies can customize and build their own ODR services. It supports various ODR methods, including diagnosis, negotiation, mediation, and arbitration, and also offers a configurable case management and workflow system that handles case intake, document generation and management, scheduling, reporting, and status messaging. By using Modria, therefore, governments need not design and develop their own ODR technology. Modria has ISO 27001 certification for information security and its processes and technology resolve hundreds of thousands of disputes each year, for clients such as the American Arbitration Association (road traffic accident cases), the Dutch Legal Aid Board (Rechtwijzer – Paragraph 4.3), Marketplaats (see Paragraph 4.2), and leading e-commerce and payments companies.

## Traffic Penalty Tribunal - [www.trafficpenaltytribunal.gov.uk](http://www.trafficpenaltytribunal.gov.uk)

- 4.12 The Traffic Penalty Tribunal (TPT) of England and Wales has recently launched a web-based portal BECK (Best Evidence Cloud Knowledge), for use by appellants, respondent authorities as well as the adjudicators and administrators. The Portal enables appellants to appeal, upload evidence and follow cases and hearings under one evidence screen and account. Likewise, each authority has a dashboard showing current cases, enabling them to submit evidence, comment, and follow progress of hearings and decisions. Appellants create an account and receive all notifications by email. They comment on evidence, request their preferred hearing type and follow progress of the case through to the decision, viewed online. Their dashboard displays the status in each case, prompting actions. The TPT administrators, who no longer data-input, now focus on customer service, for example, ‘offline’ appellants phoning for a form or help. TPT’s workload, which will shortly increase by 30%, will be administered by the same staff numbers with reduced case closure times. Adjudicators can manage their own caseload, send directions to parties, and easily see uploaded evidence, including videos, which is also displayed to all parties. At telephone conference hearings all participants can view the same evidence, guided by the adjudicator.

## 5. Rethinking access to justice

5.1 Most civil justice reforms that are proposed by judges and policy-makers focus on improving dispute resolution and on streamlining the conventional court system. Improving access to justice has come to mean improving the way disputes are resolved – for example, by making the process quicker, cheaper, less combative, and easier to follow. Our Group takes a wider view of what is needed to increase ‘access to justice’.

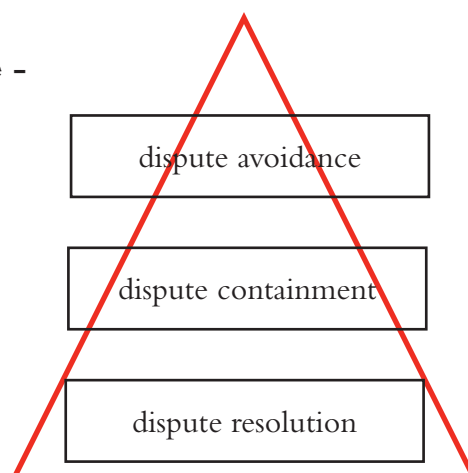
### Beyond dispute resolution

5.2 Informed by the case studies in the previous section and numerous other ODR systems around the world, and drawing also on some published work on the subject<sup>2</sup>, we suggest that access to justice is better conceived under three headings:

- dispute resolution;
- dispute containment;
- dispute avoidance.

5.3 In suggesting this subdivision, we are claiming that to improve access to justice we should do more than ensure that judges in courts are affordable and available to resolve disputes. It is also vital that we can help prevent disagreements that have arisen from escalating excessively (frequently, it is lawyers as well as the parties who need to be contained); and, furthermore, that we find ways of preventing legal problems from arising in the first place (putting a fence at the top of a cliff rather than an ambulance at the bottom). The diagram below shows these three elements and the superimposed triangle, representing the state’s current provision of justice services, suggests that it focusses far more on resolution (courts and judges) than on containment and avoidance.

**Emphasis of the state - today**

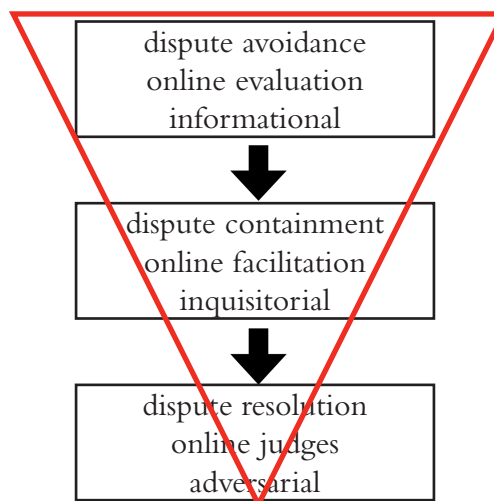


<sup>2</sup> Richard Susskind, *Tomorrow's Lawyers* (2013).

## Extending the work of our courts

- 5.4 Paradoxically, at a time when saving costs is a government priority, we propose that the courts extend their scope – beyond dispute resolution to include both dispute containment and dispute avoidance. Our assumption is that better containment and avoidance of disputes will greatly reduce the number of disputes that need to be resolved by judges.
- 5.5 This could be the legal world’s ‘fluoride moment’ – just as putting fluoride in the water in the 1950s radically reduced the need for dental work on tooth decay, then, similarly in law, appropriate investment in containment and avoidance should greatly reduce the number of cases coming before our courts. Prevention should be better than cure. We propose two online techniques for this purpose: online facilitation to support dispute containment; and online evaluation to support dispute avoidance. These will complement the work of online judges but will generally be invoked before judges become involved.
- 5.6 The nature of the processes involved in each of our three categories will be quite different. Very broadly speaking, online judges will continue to work within an adversarial system of dispute resolution, online facilitation will embrace a more inquisitorial method, while online evaluation will be informational in style and approach. Much more can and should be said on this categorization. For now, we intend simply to give a flavour of the differences.
- 5.7 The diagram below sets out a proposed new approach for the state, based on the broader view of access to justice outlined above. By advocating greater emphasis on dispute avoidance and containment, it turns traditional thinking on its head.

### Emphasis of the state - proposed

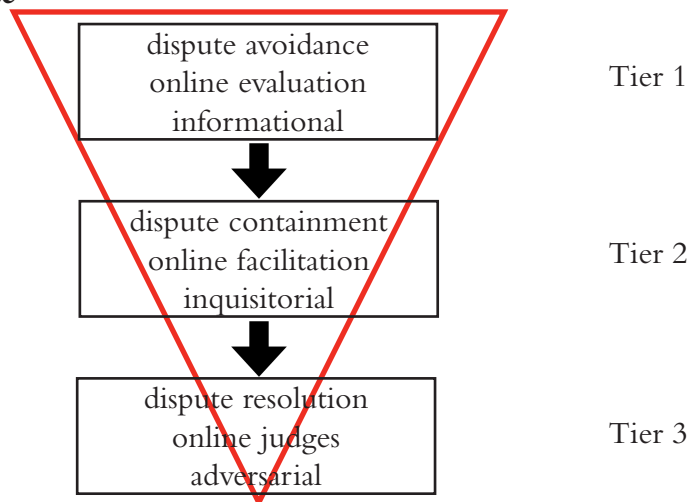


- 5.8 In summary, the approach recommended here is not just to streamline conventional courts to save costs and increase access. It is to embrace a more preventative philosophy. For this purpose, we need an architecture for HMOC that is quite different from the set-up in conventional courts.

## 6. Principal recommendations in further detail

- 6.1 In this section, we expand upon the principal recommendation of Section 3, namely, that HMCTS should establish a new, Internet-based court service, known as HM Online Court (HMOC). Building on the ODR case studies in Section 4 and the extended idea of access to justice laid out in Section 5, we recommend that HMOC should be an integrated, three-tier service, as depicted in the following diagram.

**Emphasis of the state - proposed**



In this section, we are restricting our proposal to what we call ‘first generation’ ODR systems. In Section 8, we indicate what the second and third generations might look like.

### Tier One – Online Evaluation

- 6.2 The function of Tier One of HMOC will be to help users with grievances to evaluate their problems, that is, to categorize their difficulties, and understand both their entitlements and the options available to them. This will be a form of information and diagnostic service and will be available at no cost to court users. This part of HMOC will be shared with or will work alongside the many other valuable online legal services that are currently available to help users with their legal problems. For example, systems developed by charitable bodies or provided by law firms on a pro bono basis will either sit within HMOC or be linked to the service. The broad idea of online evaluation is that the first port of call for users should be a suite of online systems that guide users who think they may have a problem. It is expected that being better informed will frequently help users to avoid having legal problems in the first place or help them to resolve difficulties or complaints before they develop into substantial legal problems.

### Tier Two – Online Facilitation

- 6.3 If problems are not resolved through this initial online evaluation, then users proceed to a second stage – online facilitation. At the heart of this will be trained and experienced facilitators,

working online, who can review papers and statements from parties, and then help them by mediating, advising, or encouraging them to negotiate. A mix of ADR and advisory techniques will be used. The process will be actively led by the facilitators in a, broadly speaking, inquisitorial rather than adversarial manner. This facilitation is in the spirit both of ADR (alternative dispute resolution) and of EDR (early dispute resolution). They will not be binding but we expect the outcomes to be accepted in many cases. This approach is inspired partly by the work of Adjudicators who work in the Financial Ombudsman Service (see Paragraph 4.5). These are individuals who manage to dispose of 90% of the Service's workload, so that only 10% of cases reach the ombudsmen. We anticipate a similar filtering on HMOC – that the facilitators will bring many if not most disputes to speedy, fair conclusions without the involvement of judges. The facilitators will be supported where necessary, by telephone conferencing facilities. Additionally on Tier Two, there will be some automated negotiation, which are systems that help parties resolve their differences without the intervention of facilitators. Users of Tier Two will incur a court fee, significantly lower than that charged on Tier Three.

### Tier Three – Online Judges

- 6.4 Tier Three will provide a new and more efficient way for judges to work. Online judges will be full-time and part-time members of the Judiciary, who decide suitable cases (or parts of cases) on an online basis, largely on the basis of papers submitted to them electronically, as part of a structured but still adversarial system of online pleading and argument. This process will again be supported, where necessary, by telephone conferencing facilities. The decisions of online judges will be binding and enforceable, enjoying the same status as decisions made by judges in traditional courtrooms. A court fee will be payable but much lower than in today's courts. Aside from making judicial services available at a lower cost, this will provide a new, more flexible career option for the Judiciary.

### HMOC

- 6.5 The establishment of HMOC will require (and offer the opportunity for) the creation of a new body of court rules and practices. In tone and content, these should be consistent with the broader aspiration of a court service that is intelligible, accessible, speedy, and proportionate in cost. This, in turn, calls for rules that are simple, clear, and compact. There is also scope here for embedding the rules in the ODR system itself, so that, for example, when users complete forms online, the systems will require that this is done in a compliant way and any consultation will proceed only when formalities have been met.
- 6.6 One way of looking at the diagram in Paragraph 6.1 is as though the inverted triangle is a funnel or filter, with only a relatively few cases proceeding through to the online judges. Here is where the efficiencies and cost savings lie in HMOC – cases are handled by lower cost facilitators rather judges and those cases that do reach judges will be handled at less expense because they will not involve court buildings with their associated operating costs. At the same time, the broad

base of the triangle represents greater access to justice with many more citizens being helped with their problems.

- 6.7 As a dispute service, Tier Two and Tier Three will be the core of HMOC. One innovation here is bringing an ADR-like procedure into the court system itself. This contrasts with traditional ADR, which, historically, has been separate and outside the courts, as an alternative to traditional litigation. Facilitation is conceived as complementary to the work of judges, filtering out disputes that can be solved by compromise, negotiation, or early legal insight. This should help avoid the costs and often the profound ill will between the parties that full-scale litigation can generate. As suggested, facilitation can therefore be regarded as an online form of early dispute resolution (EDR), which is generally taken to involve similar non-binding techniques to ADR (including negotiation, early neutral evaluation, conciliation, mediation, and so forth).
- 6.8 This HMOC process is integrated from the disputants' perspective in two senses: first, that all three tiers will be accessible on the same platform and, second, that the three tiers should be managed as one coherent system with fully integrated databases and software. The purpose of this integration, once again, is to help achieve settlement at the earliest opportunity.
- 6.9 We suggest HMOC should have a procedure whereby online judges have the discretion to refer cases to the conventional court system – where, for example, there is an important issue of legal principle involved or where it is considered that the credibility of witnesses or evidence would be better judged in a physical courtroom. We also suggest that decisions made by online judges should be subject to the same rights of appeal as equivalent decisions made in the conventional court system.
- 6.10 Although HMOC may be regarded and managed as a new division in the court system, its jurisdiction will not be like that of a physical court. Nor will it fully replace any existing court. While we anticipate that HMOC will have full jurisdiction over some types of dispute, we also expect, for other types, that parties will have the option to choose between HMOC and the conventional court system. Finally, we predict that, for more complex disputes, some parts of the process will be settled in the traditional court system and setting, while other parts of the same dispute – for reasons of speed and cost – will be handled in HMOC.

## 7. Pilots

- 7.1 In Paragraph 2.6, in one of our supporting recommendations, we call for the piloting of ODR. This is a crucial next step and we say more on the subject in Paragraph 10.2. With regard to selecting the pilots themselves, our initial thinking is that two broad categories of dispute should be selected: first, where there are already high volumes of the chosen type of case in our courts; and, second, where there are large volumes of a type of problem that are not currently being resolved. In this way, we can explore whether ODR can deliver cost savings and increase access to justice. We expect that parties would be asked to volunteer to use the pilot services.
- 7.2 Our Group looked at several types of dispute as candidates for piloting and, in particular, at small claims, road traffic claims, and housing disputes. For the purpose of this report, we have selected small claims as an illustration. This category of claim falls into our first grouping above. There are great volumes of small claims in the courts today and we can envisage savings and improvements from allocating some of these cases to HMOC. In selecting small claims for discussion, we are not definitively suggesting that this should be formally piloted. Our purpose instead is to give a sense of why ODR is relevant and how it might work in practice.

### Small Claims

- 7.3 The current ‘small claims track’ in the civil court system is designed for less complex cases – those usually up to a value of £10,000, and personal injury and housing disrepair claims up to a value of £1,000. Small claims cases make up almost 70 per cent of the total number of hearings in the civil courts, even though the number of small claims going to hearing has decreased over the past 10 years from 51,046 in 2003 to 29,603 in 2013. Despite the simplified and informal procedures, it can take more than six months for a small claims case to reach a hearing before a judge.
- 7.4 To reduce the number of small claims currently going through the courts, the Department of Constitutional Affairs (now the Ministry of Justice) launched a pilot in 2005 of a free Small Claims Mediation Service (SCMS) to try and reduce the time and expense of attending court. HMCTS now employs 17 mediators and several additional support staff, at a cost of approximately £1.2m, as part of a nationwide service to offer mediation at no cost to parties involved in small claims disputes. SCMS is available for all small claims except personal injury claims, road traffic accidents, and housing disrepair cases. Cases with a value of up to £10,000 per year are now automatically referred to mediation, where both parties indicate this is acceptable. Otherwise, cases are recommended for mediation by the judge. The service yielded an estimated judicial time saving of 6170 hours between April 2014 and October 2014. If the mediation is successful and a case does not proceed to trial, the time to settlement figure can be reduced to 20 weeks.
- 7.5 Some private providers in the UK also offer useful help for those with small claims level disputes (for example – <http://www.small-claims-mediation.co.uk>). These offer useful and innovative

approaches but can cause some confusion for claimants, who are perhaps unclear about the different charging models, the different processes, and whether a given service is state-supported or indeed trustworthy.

- 7.6 It is our Group's view that ODR could improve our court-based system for resolving small claims. HMOC could bring further savings in cost and time. By channeling small claims through an ODR pathway, we would encourage parties to resolve their cases at the earliest possible opportunity and empower these court users to find solutions without judicial involvement. It would be a less daunting and more user-friendly process, a clearer pathway through the justice system. An example of a more user-friendly approach to small claims is operational in British Columbia and can be viewed at [www.smallclaimsbc.ca](http://www.smallclaimsbc.ca).
- 7.7 In operation, a pilot of HMOC for small claims could be initiated by asking those involved in defended claims whether they wish to take part in an ODR pilot via the Directions Questionnaire (N180). At Tier One, there would be guidance and management of expectations, explaining how and when things are done in HMOC. There could be advice on how to achieve possible settlement without expert help, identification of appropriate options for resolution of different types of small claim (for example, housing, debt, business claims), and links to online resources of other advice agencies. At Tier Two, HMOC would differ from SCMS in two ways. First, the facilitation, in the first instance at least, would be online (telephone conferencing could follow, if necessary). Second, the facilitators would tend to be more inquisitorial, participative, and advisory than the current mediators. We expect these two changes would result in more disputes being settled at this stage. On Tier Three, the online judges would resolve the claims on the papers. This may be supplemented by some telephone conferencing, if deemed appropriate.
- 7.8 The three-tier service of HMOC would not simply computerize the existing small claims mediation service. Instead, it would offer a more integrated service and, on Tier One, it would help users more fully to understand their problems and options. Any ODR pilot would need to be evaluated against the existing scheme in the same manner as the initial small claims pilots which were a forerunner to the current scheme<sup>3</sup>.

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<sup>3</sup> S Prince and S Belcher, *An Evaluation of the Small Claims Dispute Resolution Pilot at Exeter County Court* (Department of Constitutional Affairs, 2006).



## 8. Future systems

8.1 It was part of our brief to consider likely future developments in ODR, with particular reference to emerging technologies. We refer here to our working papers on this subject. These are available on our website. In summary, we look at four categories of future system in these papers:

- systems to help analyse legal problems;
- systems to assist in negotiation;
- systems to assist in decision-making;
- systems that make decisions.

8.2 We identify a number of enabling techniques and technologies that we predict will bring advances in each of these four categories. These include artificial intelligence, 'big data', affective computing, crowd-sourcing, machine learning, what-if analysis, and virtual meeting rooms. The technical details and precise systems are less important in this context than the need to recognize that there is no finishing line in the world of IT. Whether or not our specific predictions about future directions turn out to be accurate, it seems to us very unlikely that the supporting technologies will not evolve at all. Given the advances we are witnessing across the IT and Internet worlds generally, we think it safe to assume that ODR systems will become steadily more useful and powerful.

8.3 We translate this assumption into the expectation that two further generations will follow the first generation systems that are proposed for HMOC in Sections 2 and 6.

8.4 The main characteristic of what we call 'second generation' ODR systems will be the addition of video technology. By the time this is fully introduced in HMOC, we expect this to be a form of 'telepresence' (systems whose sound and video quality is so high that users feel as though they are in the same room as those with whom they are engaging). In crude terms, this will be like adding a very high quality of Skype video call to the ODR service and this will replace the telephony that will be used in the first generation. In this way, users will have video conferences: in Tier One (Evaluation) perhaps with advice counselors or pro bono advisers; in Tier Two (Facilitation), with specialists who are, for example, mediating or offering neutral views on legal merits; and, in Tier Three (Judges), directly with judges (in a suitably designed online environment).

8.5 The third generation of systems, which we can expect to be in widespread use in the 2020s (and in occasional use much sooner), will be those that are enabled by AI (artificial intelligence). In Tier One, these will provide a question-and-answer session with users and offer some kind of legal diagnosis and perhaps draft an appropriate document in support. For certain categories of

dispute, in Tier Two, these systems will themselves be able, without the direct involvement of human beings, to facilitate negotiation and informal settlement. In Tier Three, these AI systems will act as ‘intelligent assistants’ for judges – advising on possible decisions and lines of reasoning. We are not anticipating, at least for the purposes of this report, that AI-based systems will replace human online judges.

## 9. Policy and legal issues

- 9.1 Our Group maintains that a primary role of the state in a democratic liberal democracy is to provide an affordable and accessible public dispute resolution service with an independent Judiciary at its core. We acknowledge and welcome the work and services of the ADR community, which often provides a private sector alternative to the courts but we maintain that the health of a legal system and the rule of law itself depend on the existence and widespread use of a public court system that applies, clarifies, and develops the law through decisions that are authoritative, enforceable, final, and can set precedent. However, this policy position does not preclude the possibility of judges providing this service across the Internet. Nor need it limit the role of the courts to dispute resolution (as opposed to dispute containment and dispute avoidance).
- 9.2 While it may be that primary legislation will be required fully to implement HMOC, legal opinion on this point should be sought once a fuller specification of the powers and remit of HMOC is settled. Meanwhile, we understand that there is scope for various ODR pilots to be conducted under practice directions made under the auspices of the current Civil Procedure Rules.
- 9.3 There is some debate in the ODR community as to whether an online dispute handling process of the sort that we recommend would provide a fair trial. In respect of Tier 3 of HMOC, we see no reason why traditional principles of natural justice (requiring that parties are given an opportunity to plead their cases and that judges are independent) cannot be achieved in using a transparent ODR process that is governed by a clear set of rules. Similarly, we have concluded that well-conceived ODR can provide a fair hearing under Article 6 of the European Convention on Human Rights. We are, however, monitoring the work of Spain's Mr Jordi Xuclà, a member of the Parliamentary Assembly of the Council of Europe, who is preparing a report on the human rights implications of ODR.
- 9.4 One of the great potential benefits of well-designed ODR services is that litigants in person will have access to dispute resolution services that are intelligible and user-friendly for the non-lawyer. Some observers have worried, however, that HMOC would offer an 'economy class' justice service, while the conventional courts would be a superior 'business class' service. We respond in two ways. First, we believe that ODR-based service will be superior to most conventional court service – quicker, less costly, easier to use, and less combative. But, in any event, we anticipate that for many types of dispute, in due course, parties will not have any option – all cases that meet given criteria will be allocated to HMOC.
- 9.5 One concern that is commonly raised in connection with ODR is that its compulsory use could greatly disadvantage those who do not use the Internet. This is an important issue and one on which one of our members has recently written at length<sup>4</sup>. While it is important that ODR does not create new problems of access to justice, it is also crucial that the current level of

<sup>4</sup> Roger Smith, *Digital Delivery of Legal Services to People on Low Incomes* (2014).

Internet usage in England and Wales is grasped. The 2013 edition of *The Internet in Britain* (the biennial analysis of Internet usage produced by the Oxford Internet Institute at the University of Oxford), establishes that 78 per cent of the British population are now users (of whom, 65% ‘used at least one of a set of government information and service delivery applications in the past year’). While the balance of 22% is certainly a significant proportion, it transpires that only a small fraction of these non-users ‘definitely’ have no-one who could assist them. This suggests that around 5% of the adult population are in fact out of reach today, which is a smaller proportion than is popularly assumed.<sup>5</sup> Nonetheless, we cannot assume that all Internet users will be able to use HMOC confidently. We suggest that those who are unable to use the service (and this minority group itself is likely to shrink over time) should be given special support by officials at HMOC in the future rather than delay or prevent the introduction of ODR into the court system of England and Wales.

- 9.6 Another concern that has been expressed to our Group is that a very easily accessible ODR process may encourage litigiousness, promote a more combative culture, and empower vexatious litigants. If online services enable many more citizens to understand and enforce their actual legal entitlements, then we regard this as increasing access to justice rather than encouraging litigiousness. Nonetheless, we recognize that a system that is very easily accessible might tempt or encourage litigants to pursue many cases with no realistic prospect of success. To deter both the speculative and vexatious, we suggest that the fees for using Tiers Two and Three of HMOC, are set at a level sufficient not to deter people of limited means from enforcing their rights but high enough to make prospective users think twice before commencing online claims.
- 9.7 The recommendations of this report are in the same spirit as the European Regulation on ODR (Regulation (EU) 524/2013), which will come into force in January 2016. The ODR Regulation obliges the European Commission to establish an ODR platform to facilitate communication between consumers and traders involved in a dispute and a certified ADR provider. It will help consumers identify an appropriate ADR provider and allow for the exchange and translation of documents. The main objective of the ODR regulation is to help facilitate cross border trade, giving consumers the confidence to shop online within the EU, in the knowledge that help is at hand should they experience a problem with their purchase. The ODR platform will not seek to resolve the dispute itself; rather it will (if both parties agree) channel such disputes to a relevant ADR scheme. All online EU businesses will have to provide a link to the ODR platform, as will all websites acting as a platform to sell goods and services. Following a consultation in March 2014, on applying the ODR Regulation and the accompanying ADR Directive (Directive 2013/11/EU), the UK Government will begin implementing its reforms in July 2015.

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5 Oxford Internet Institute, *OxIS 2013 Report: Cultures of the Internet* (2014).

## 10. Next steps

- 10.1 On the assumption that the statement of direction provided in this report is approved in general terms by the Civil Justice Council, the Judiciary, and HMCTS, we envisage two further phases of work that will lead to the full scale introduction of HMOC to the justice system of England and Wales.

### Phase 1 – Piloting, designing, and awareness-raising

- 10.2 Our Group recommends that HMCTS should formally pilot ODR as soon as is practicable. The preliminary exercise here will be to identify and agree upon a selection of categories of legal dispute that are considered to be suitable for disposal by ODR. These may well coincide with the possible pilot that we discuss in Section 7 but consultation with the legal profession and consumer groups will be necessary before any final decisions are made on this issue. Our Group would be pleased to collaborate with HMCTS in working out how best to manage a pilot scheme (taking operational issues into account), and to engage with Ministry of Justice analysts to agree an evaluation strategy for the pilot.
- 10.3 Drawing on the experience of the pilots, three major exercises will be central to Phase 1. The first will be the production of a specification of the scope, jurisdiction, and functionality of the launch version of HMOC. The second will be the drafting of an appropriate set of rules and practices to govern the future conduct of HMOC. Given the more general aspiration to keep HMOC intelligible and user-friendly, it will be imperative that these rules are simple, clear, and compact. The third exercise will be the procurement or development of a technical platform for HMOC. Our Group is inclined, where possible, to license existing software rather than develop systems from scratch, but it would be premature to decide on this until the clear specification of HMOC is drawn up.
- 10.4 During this first phase, we would also expect open discussion, within and beyond the legal profession, about the potential and limitations of ODR. The ODR Advisory Group would help lead this debate, by organizing events, publishing widely, and adding more materials to our website. We would also expect to benefit during Phase 1 from the experience of the ODR projects being conducted in other jurisdictions, especially in British Columbia and Holland.
- 10.5 We would expect Phase 1 to be progressed during 2015 and 2016. As recommended in Paragraph 2.6, the ODR Advisory Group of the CJC would hope to work closely with HMCTS and the Judiciary in Phase 1 and that it would make sense for this work to proceed under the auspices of the civil justice reform programme.

## Phase 2 – Establishment of HMOC

- 10.6 We expect that Phase 2 will be led by HMCTS with the active support of the Judiciary and, again, as part of the civil justice reform programme. Phase 2 will be devoted largely to the formal and full roll-out of the first version of HMOC as an integral part of the court system of England and Wales.
- 10.7 We expect that this first version of HMOC will be, in the terminology introduced in Section 8, a ‘first generation’ ODR service. However, we recommend that another task for Phase 2 will be to start the design and development of the second and third generations that we anticipate.
- 10.8 We would expect HMOC to be launched in 2017.

# Appendix 1 - Terms of reference

The terms of reference for the work in this report are as follows:

- To conduct a review of the potential and limitations of the use of Online Dispute Resolution (ODR) for resolving civil disputes of value less than £25,000 in England and Wales.
- To review and categorise existing forms of ODR, to consider their likely future development and in so doing to raise awareness and understanding of the opportunities and challenges of ODR.
- To undertake an initial cost/benefit analysis of ODR as an alternative and accessible means of resolving disputes, identifying clearly any limitations and drawbacks of ODR processes.
- To kick-start the policy process of considering options for ODR provision and regulation.
- To take account of technological advances and developments that will affect the use and attractions of ODR.
- To consider the overlaps between ODR and virtual courts.
- To prepare a report for the CJC (in the first instance), with recommendations for next steps or further research required.

# Appendix 2 – Members of ODR Advisory Group

The members of the Civil Justice Council’s ODR Advisory Group are as follows:

Professor Richard Susskind (Chair), IT Adviser to the Lord Chief Justice

Mick Collins, Ministry of Justice

Dr Pablo Cortés, University of Leicester

Adrian Dally, Financial Ombudsman Service

Andrea Dowsett, Assistant Secretary to the Civil Justice Council

Peter Farr, Secretary to the Civil Justice Council

Paul Harris (Observer), HM Courts and Tribunals Service

Professor Julia Hörnle, Queen Mary University of London

Matthew Lavy, Barrister, 4 Pump Court

Nick Mawhinney, Department for Business, Innovation & Skills

Dr Sue Prince, University of Exeter

Graham Ross, mediator, consultant in technology & dispute resolution

Beth Silver, Barclays Bank (and CJC member)

Roger Smith, researcher, writer, and solicitor

Tim Wallis, mediator and solicitor

William Wood QC, barrister, Brick Court (and CJC member)



## Appendix 3 – Summary of website

This report should be read in conjunction with its companion website, which can be accessed at [www.judiciary.gov.uk/reviews/online-dispute-resolution](http://www.judiciary.gov.uk/reviews/online-dispute-resolution).

We have provided a range of resources at the website:

- A downloadable version of this report.
- A short video introduction to ODR and the work of the ODR Group.
- A listing and analysis of ODR systems around the world.
- A series of interviews, in audio and in video, with leading world experts in ODR.
- Various working papers written by the ODR Group.
- Links to other relevant online resources.
- Biographical details of members of the ODR Group (with a register of interests).