

**What would a truly citizen-centred  
justice system look like?**

Professor Dame Hazel Genn  
Zelman Cowen Oration 2017



Access to justice  
is a global concern

‘Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.’



# Ideal of Access to Justice

Aware of rights and obligations (legally capable)

Equipped to avoid legal problems

Aware of redress/resolution processes

Able to access redress/DR process

Effectively engage

Fair procedures

Just outcomes



A citizen focused  
justice system



# What does 'a citizen' look like?



What if money was no object?





**What would a truly citizen-centred  
justice system look like  
in the context of effective use of  
limited resources?**

What problems do people have?

What do they need?

How can we meet those needs?

Service development

System development

The role of technology



What do everyday legal problems look like?



# What have we learned?

Everyday legal problems are **ubiquitous**

Problems tend to cluster and cascade

Disadvantaged have more and do less

People often take the wrong 'path'

Use of formal legal system rare

Vast unmet need for information, advice  
and advocacy



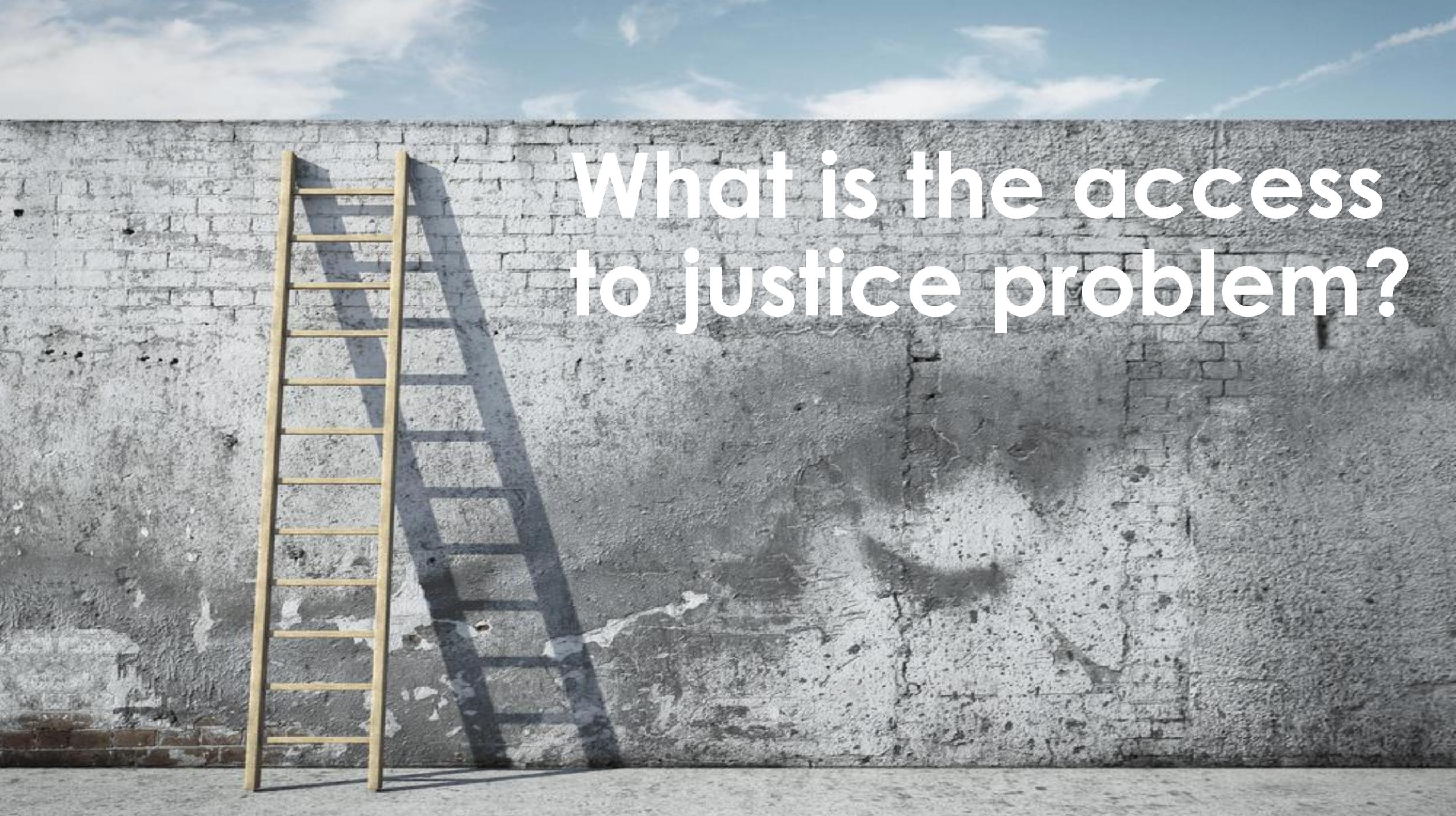
# Social and health effects of unresolved legal problems

Family break-up

Unemployment

Mental and physical ill-health



A wooden ladder leans against a grey brick wall. The ladder is positioned on the left side of the frame, with its shadow cast onto the wall to the right. The wall is made of large, rectangular bricks and has a rough, weathered appearance. The sky above is a clear blue with some light, wispy clouds. The overall scene is brightly lit, suggesting a sunny day.

What is the access  
to justice problem?

# The access to justice problem

Lack of knowledge/awareness of rights

Sense of powerlessness/hopelessness

Going to the wrong place for help

Unable to afford cost of legal services

Unable to access legal aid

**The choice for those without advice**

**do nothing** (“lump it”)

**OR**

**do-it-yourself**

Do it  
Yourself  
Justice

The Rise  
and Rise of  
SRLs



# Justice Gap



# So what do citizens want?

Early, affordable, informed advice

Determination or dispute resolution processes that are

Easy to use

Cheap

Quick (within reason)

Authoritative

Fair

For the law to be different than what it is

To be saved

To get on with their lives!



# Service and system development



# Guiding policy from citizen perspective

How to make more **effective** use of resources to meet the needs that citizens have

Designing services with **needs** and **behaviour** in mind rather than funder convenience or provider assumptions

**Rethinking procedures** to make courts and tribunals more accessible - especially to SRLs



There's little that's new  
under the sun.....

# 'Low Commission' Jan 2014

## Guiding Principles

**Early** intervention and advice

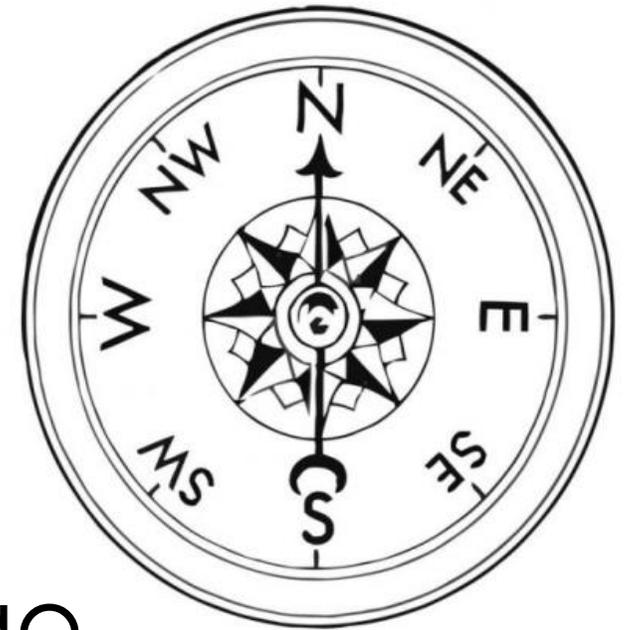
Invest in **prevention**

**Simplify** legal process

**Tailor** services to needs

**Embed advice** where people go

**Triage** and 'navigators'



# Holistic approach



Develop range of DR processes

Public Legal Education (Empowerment) PLE

Develop capability/resilience

National advice strategy – co-ordination

Health-Justice Partnerships – **social prescribing**

Judges to adopt more  
“inquisitorial” approach where  
LIP involved

More relaxed rules on lay  
advocates where it would help  
the court

Greater use of “McKenzie  
friends”



JUDICIARY OF  
ENGLAND AND WALES

The Judicial Working  
Group on  
Litigants in Person:  
Report

July 2013

# Victoria Access to Justice 2016

- Improved data
- Accessible information about legal issues
- Triage and diversion
- ADR
- VCAT online and simplification
- More effective legal aid services
- Integrated services
- Pro bono
- Measures supporting SRLs



# Bach Commission 2017

## **A Right to Justice**

Right to Justice Act

Justice Commission

Put back legal aid provision for  
children

welfare

immigration

National PLE strategy

Universally accessible advice



# Bach Commission

Taking services out into the community

Meeting the need rather than

Central online advice portal

Integrated services

Doctors' surgeries

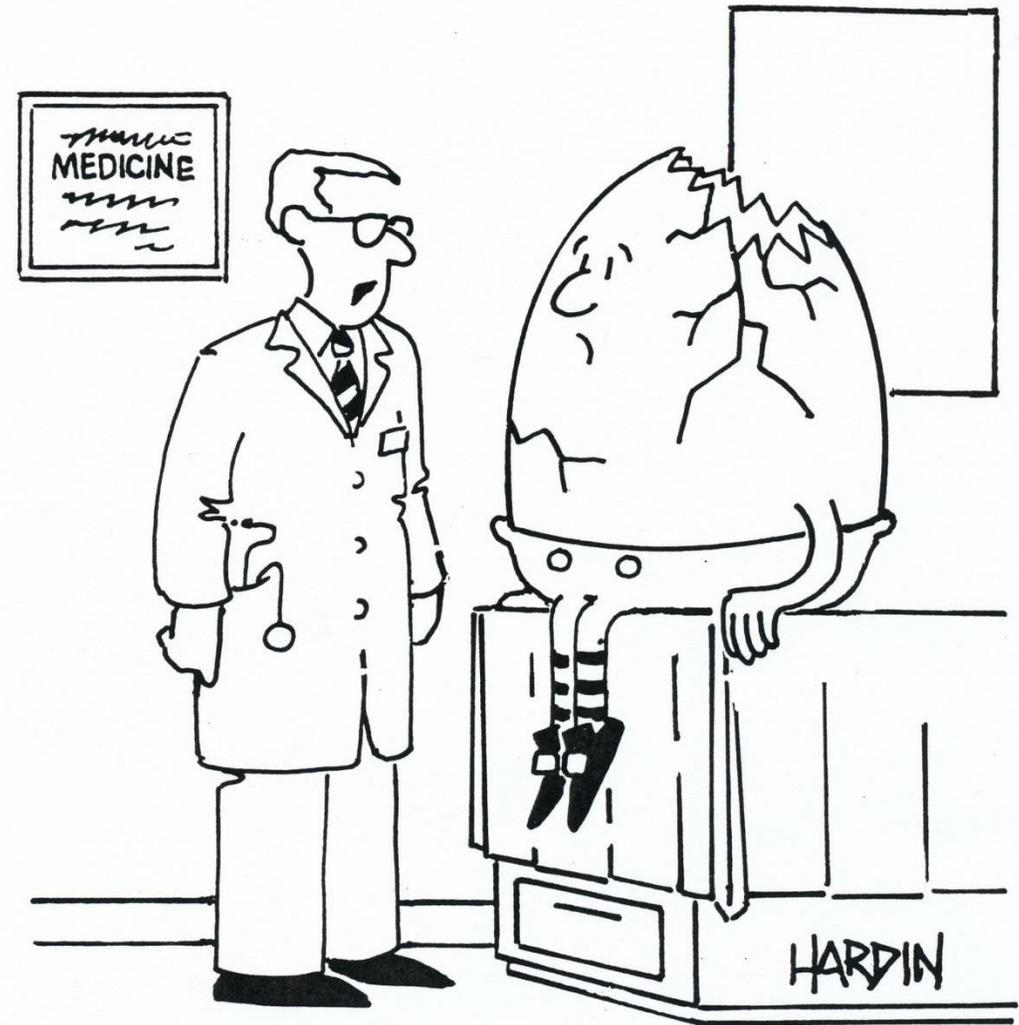
Trusted intermediaries



31 October 2017  
Government review of  
Legal Aid exclusions

“Maintaining access  
to justice continues to  
be at the heart of our  
reforms.”

**Justice Minister**



"It's worse than we'd thought. I'd like  
to call in all the kings horses and  
all the kings men."

# Citizen-focused Service development



**Early, integrated, local, need related**

Improve **data on need**

Information and advice **not just for the poorest**

**Early advice where people go**

Helping **navigate** toward a resolution

**Integrated services**

**Multi-disciplinary centres**

**Legal advice in care pathways**





**Vulnerable  
people  
don't just  
walk in the  
door**



GP surgery often  
first place people  
seek help



Does that person need  
anti-depressants or do they  
need to sort out the  
problem with their landlord?

# UCL Integrated Legal Advice Clinic

Co-located legal **advice and representation** for patients of GP

**Law students** supervised by qualified lawyers and advisers.

Welfare, employment, housing, family law

**Research** exploring links between legal advice and health



**Newham East London  
Liberty Bridge Road GP Practice**

# Service Benefits

Free legal service for local community in need

Impacts well-being and health

Impact social determinants of ill-health

Impact health service use

Impact GPs working practices

Evidence base for debate & policy



# Problem avoidance

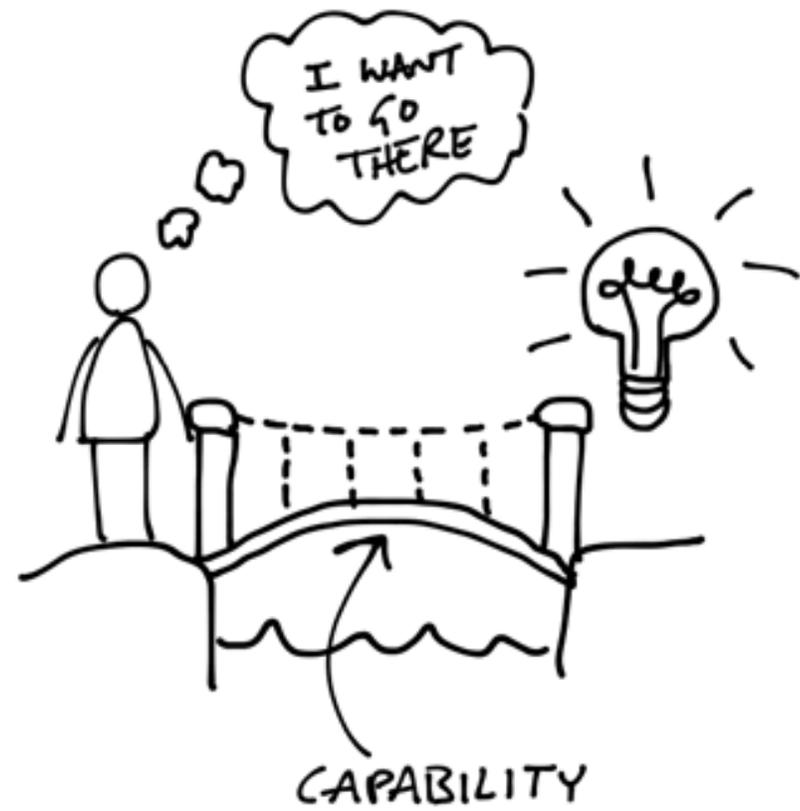
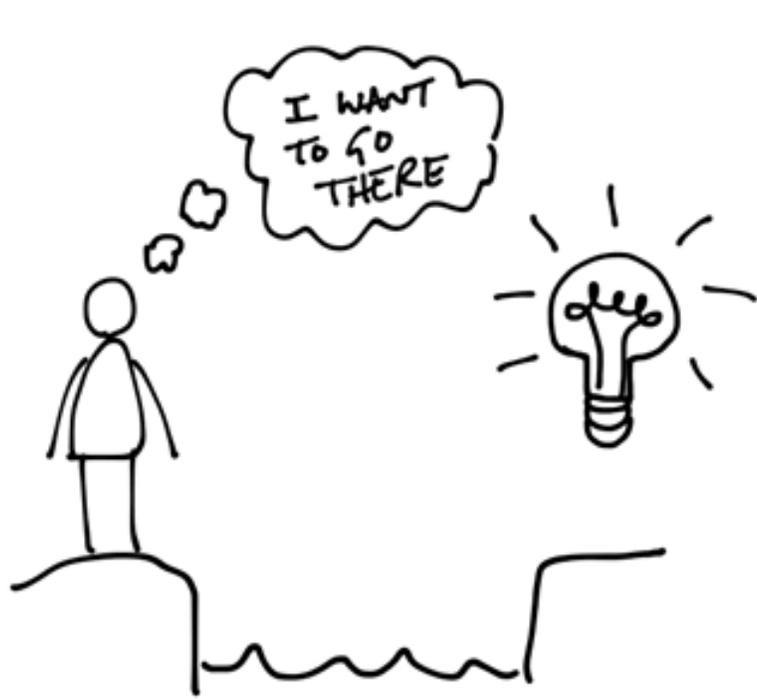
~~UN~~PREPARED

A hand is shown in the bottom right corner, holding a piece of white chalk and drawing a horizontal line underneath the word 'UNPREPARED'. The word is written in blue chalk, with the 'UN' part crossed out with a large white 'X'.

# WORK AND FINANCE

**WE ARE  
MACMILLAN.  
CANCER SUPPORT**

- Early discussions about work and finance can be vital in preventing problems.
- It doesn't have to be a long discussion
- You don't have to be an expert but do need to understand the importance of work for health and wellbeing.
- Macmillan has developed a range of online and offline resources to support you to have conversations and direct patients to information on work and finance and relevant services



# Improving Legal Capability

# What is Public Legal Education?

Targeted activities designed to equip legally capable “enabled” citizens

Emphasis on problem solving, confidence, skills

Increase ability to:

Avoid problems

Manage problems

Resolve more quickly

Know when, how and where to get help when it is needed



# How to get it?

## **It will not happen by accident**

Strategic approach to PLE - What works?????

Coordinated funding

Build and support partnership of providers

Identify and promote good practice

Ensure sustained activity and development

# Citizen-focused System development

A grayscale topographic map of a mountainous region, showing a network of paths or roads. The terrain is characterized by numerous ridges and valleys, with the paths following the contours of the land. The paths are represented by thin, light-colored lines that branch out across the landscape. The overall appearance is that of a complex, interconnected network of routes.

**Multiple paths**

# How does triage work in legal services?

Not everyone enters the justice system in the same place

Responsibility on everyone to direct people to appropriate path

Triage should be undertaken by advisers, courts, tribunals

Build in opportunities for early resolution and settlement

## Triage

Sorting and allocating resources on the basis of need or likely benefit



# Identifying an appropriate path

What is the nature of the “fuss”?

What are the variables?

**Parties** – business v citizen, citizen v state?

**Resources** – personal skills/financial

**Balance of power** – even/uneven

**Subject matter** – rights or interests?

**Complexity** – legal/factual

**Depth of conflict**

**Issue of public importance?**

Which matters should be helped into the public system?

# The role of technology in refocusing the public justice system



A close-up, blue-tinted image of a person's face, looking down at a glowing globe. The person's nose and mouth are visible in profile, and the globe is illuminated from below, creating a strong contrast with the dark background.

# THE FOURTH INDUSTRIAL REVOLUTION



# RESOLVER

Online Dispute Resolution  
already being used to resolve  
millions of disputes arising from  
online transactions



Your customer issues, resolved  
Fast and fair resolution for commerce

# Public justice system context

Public justice system founded on different principles from mediation, ODR and private dispute resolution

Parties are NOT both volunteers

Public courts call reluctant parties to account  
**including the state**





Finding the balance  
Simple procedures – just  
outcomes



# Features of court/tribunal procedure

Tryadic decision-making

Orality

Advocacy

Synchronous procedures

Physical congregation



UK Vision

‘Digital by Default and Design’

Online issue

Automated triage

Document upload

ODR

Online determination

Virtual hearings

**‘Court as a service not a place’**



In the 2020s there will be scope for **AI systems** to provide solutions without the direct involvement of human beings



**CIVIL JUSTICE COUNCIL  
ODR REPORT  
2015**

# Canada leading the pack



Online advice and resolution

Civil Resolution Tribunal

“The future lies in steadily harnessing new technologies to improve access to justice.”

Mark Benton QC

Legal Services Canada





# Solution Explorer

# Access to justice advantages

Simplified new rules

Explanations at each stage

Procedure embedded in online processes

Online triage – provides information and advice on alternative approaches

Documents uploaded

- **Technology offers opportunities for literate, capable, relatively educated litigants and businesses**
- **Less complex cases?**



Who is an **average** justice system user?

Could online processes **reduce** access to justice?



# Procedural change



# Tectonic shift in the concept of court and possibly justice

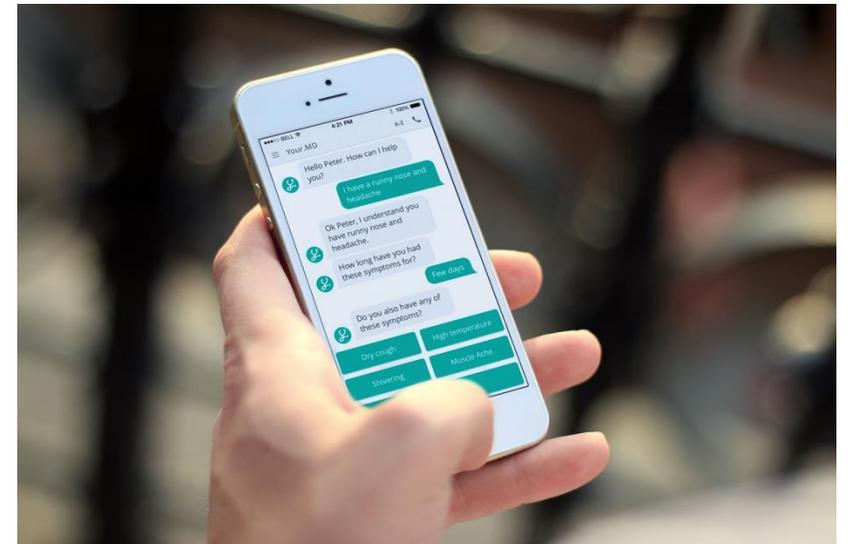
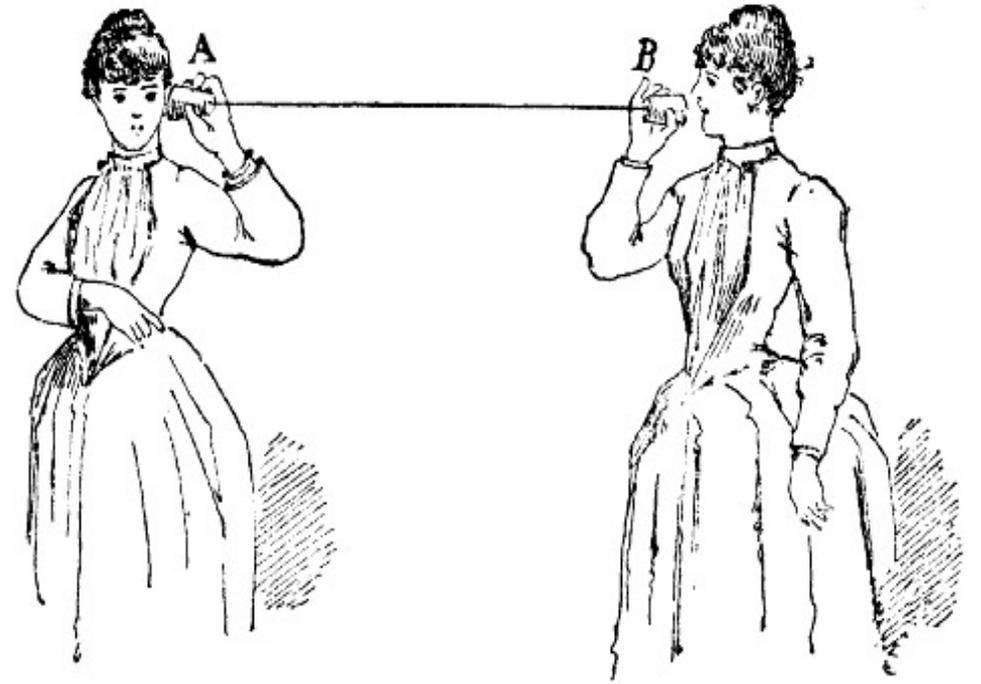
From adversarial to inquisitorial

From physical to virtual or semi-virtual

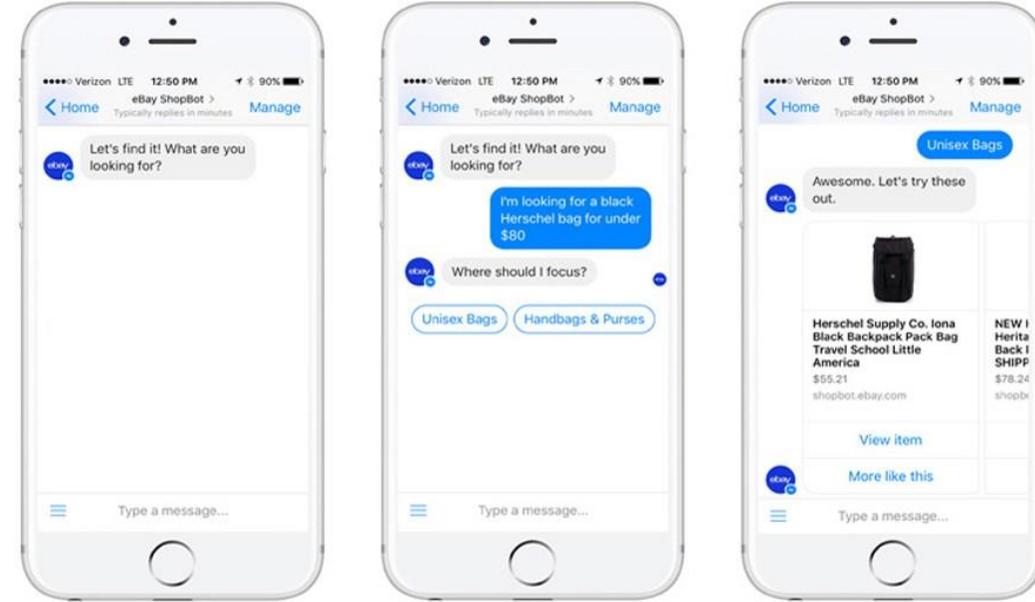


# Asynchronous processes

- More efficient and accurate?
- Helpful for SRLs
- Can amend
- May improve quality of material
- Stops SRL being silenced
- Prevents interruption
- Prevents dominance by one party
- May neutralise courtroom dynamics



# Asynchronous process challenges



Departure from adversarial principles

Changes way evidence presented and challenged

Removes spontaneity

Changes role and approach of representatives

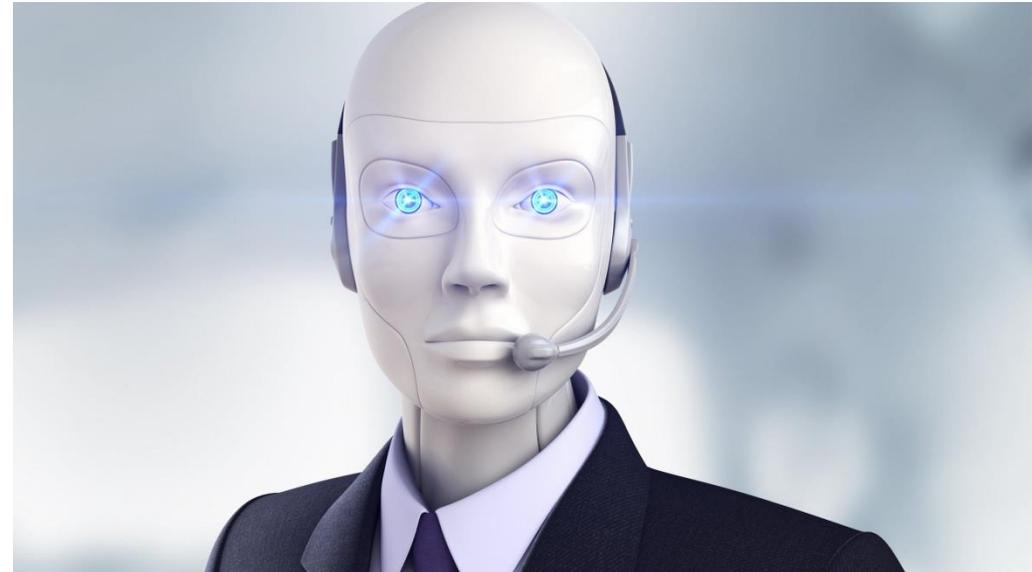
Burden of responsibility on judge

# ODR in the public justice system

## The Future of Justice



How Technology is Shaping the  
Dispute Resolution Ecosystem



# Merging ODR and public justice

Elevates it as integral to justice system **BUT**

ODR is problem-solving

Objectives and ethics unrelated to legal merits

Processes opaque

If ODR fully integrated into public justice process  
what happens to principles of substantive  
justice?

# Virtual courts 'Smart courts' Online hearings



# Hangzhou internet Court in China



# Opportunities

Convenience for parties and judge

Less stressful for parties?

Economy – fewer court buildings

Options

- Completely online interactions

- Telephone

- Skype

- Video link using courtroom

- Video link with everyone remote including judge





# Challenges

## **Perspective of judge**

Impact of not seeing parties live – assessments of credibility more or less bias?

Better than on paper but worse than in person?

Different relationship in virtual communication?

Impact on jury decision-making?

## **Perspective of party**

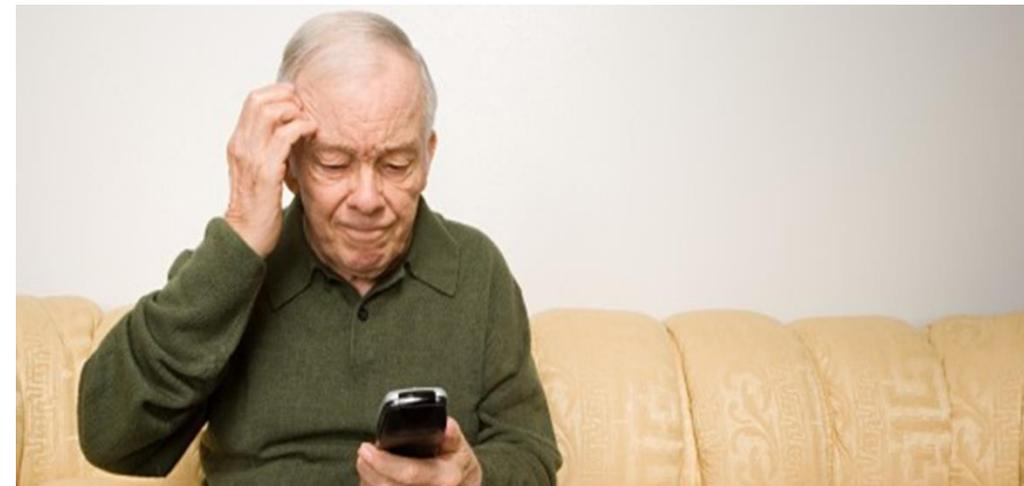
Engagement with process

Trust

Fairness

# Some questions

Who will the future users be?  
Will online benefit SRLs?  
Will online benefit judges?  
Will online affect power imbalances?  
Will virtual hearings be more or less just than F2F or paper?  
What about open justice?



**Trust in the justice system** depends on fundamental values:

Transparency – open justice

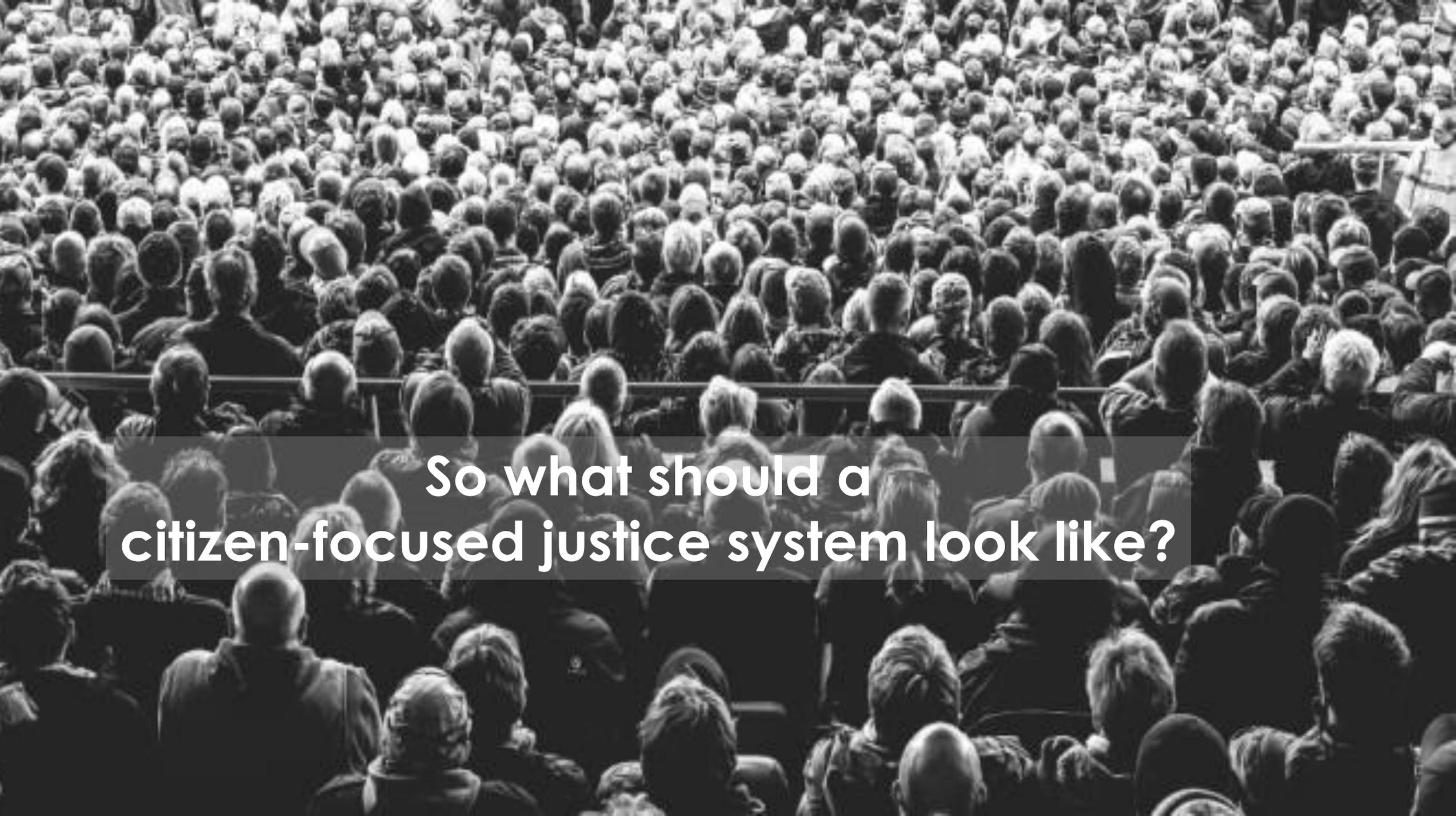
Conspicuous impartiality

Consistency

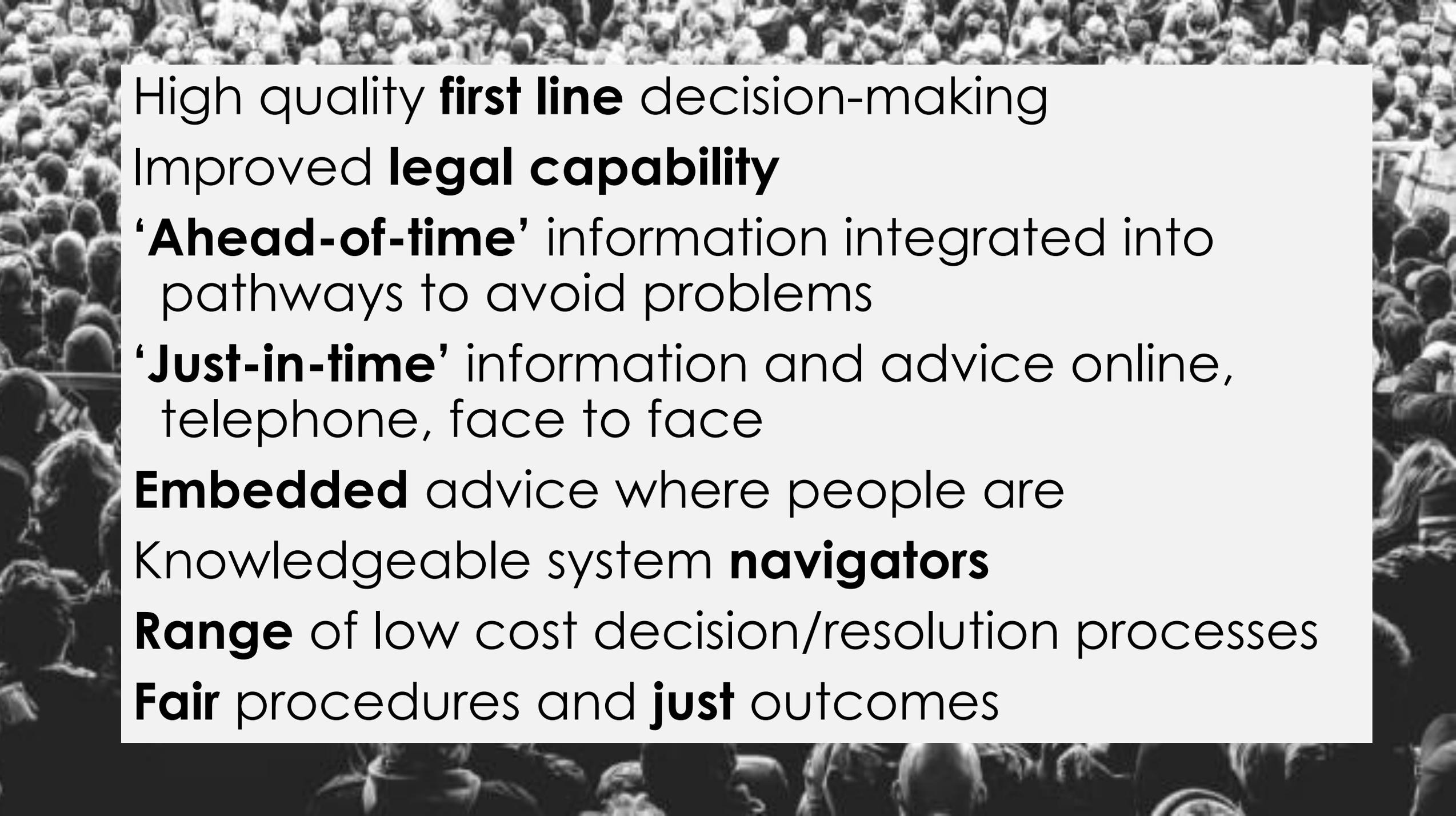
Explanation of rules and decisions

Parties having a voice in proceedings



A high-angle, black and white photograph of a massive crowd of people seated in an arena or stadium. The perspective is from behind the audience, looking down the length of the seating area. The people are densely packed, and their heads and shoulders are visible. A horizontal railing or barrier runs across the middle of the frame, separating the foreground from the rest of the crowd. The lighting is dramatic, with strong highlights and deep shadows, creating a sense of scale and anonymity.

**So what should a  
citizen-focused justice system look like?**



High quality **first line** decision-making

Improved **legal capability**

**'Ahead-of-time'** information integrated into pathways to avoid problems

**'Just-in-time'** information and advice online, telephone, face to face

**Embedded** advice where people are

Knowledgeable system **navigators**

**Range** of low cost decision/resolution processes

**Fair** procedures and **just** outcomes

Thank you!

Any  
questions?



Nadia an online virtual assistant, who can speak, write and chat online while answering questions