

Technology and Commercial Practice

Giles Reid, Advocate

Where are we now?

- Scottish Civil Justice Council: First Report on the New Civil Procedure Rules:
- “All evidence in civil cases... should be recorded digitally.”
- “A key aim... was to ‘move away from paper based processes.’”

Where are we now? Commercial Court

- Practice Note No 1 of 2017:
- “Productions need only be lodged in electronic format.”
- “Parties are encouraged to produce bundles of authorities in electronic format only.”
- Website guidance for practitioners.

Where are we now?

Inner House

- Practice Note No 3 of 2015:
- Court may (and now almost invariably will) appoint parties to lodge electronic documents.
- Parties must follow the formatting requirements set out in the Practice Note.

Where are we now?

Practicalities

- Rules and reality.
- Practitioners lead and the rules follow.

Where are we going?

“The Scottish civil courts lag behind many jurisdictions in their use of IT. IT can provide obvious advantages in facilitating communications in a country with extensive rural areas. Failure to keep up with developments will create an ever increasing gap between the citizen’s experience of work and society and his experience of the justice system. This is a matter not just of hardware, but of procedure, rules and attitudes.”

The Gill Report

Where are we going?

“Over the next 5 years plans will be developed which will see the court room, and its ancillary offices, redesigned in light of modern ideas and technology.”

Lord Carlaway

Rules re-write project

- Move to electronic processes and digital recording.
- Integrated Case Management System (ICMS) to be introduced.
- Civil Online portal.
- Digital presentation of evidence.
- Online blind bidding.

What might the future be for legal technology in Scotland?

“ 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.

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.”

Just “mess for less”?

- Are the Rules of Court a good guide?
- Importance of the attitude of those involved in litigation.
- Innovation and flexibility are key.