

Review of the Administration of Civil Justice

SUBMISSION ON (A) IMPROVING PROCEDURES AND PRACTICES, (D) REVIEWING THE USE OF ELECTRONIC COMMUNICATIONS INCLUDING E-LITIGATION AND POSSIBILITIES FOR MAKING COURT DOCUMENTS AVAILABLE OR ACCESSIBLE ON THE INTERNET AND (E) ACHIEVING MORE EFFECTIVE AND LESS-COSTLY OUTCOMES FOR COURT USERS.

SUBMISSION

I am making a submission to the Group for the Review of the Administration of Civil Justice under the headings of:-

- A. Improving procedures and practices ~~{and removal of obsolete, unnecessary or over-complex rules of procedure}~~;
- D. Reviewing the use of electronic communications including e-litigation and possibilities for making court documents (including submissions and proceedings) available or accessible on the internet;
- E. Achieving more effective and less costly outcomes for court users, particularly vulnerable court users.

I am a solicitor (non-practicing), Chairman of Legal IT Ltd. & Bundledocs Ltd., Computer services suppliers to the legal profession, former Council member and Chairman of the Law Society Technology Committee. I lecture on technology subjects. CV available if required. I was a member of the working group on Supreme Court Computerisation in 2002-2004 and also the Law Reform Commission dealing with e-conveyancing and preparation for the Land and Conveyancing Law Reform Act 2009. I also acted as liaison between the Revenue Sheriff's Association and Revenue in the development and updating of the automation of their connected Computer systems and between the Receiver of Fines Representatives and the Department of Justice on the automation of fines recovery, now under way.

I note that your group are looking at better procedures and use of technology as ways of improving the Courts system. Sometimes, the solution to what looks like a huge problem is easier than anticipated if you can get back to the basics and agree them and, in this respect, my proposal deals with two very basic issues, the format of electronic documents and standardising the method whereby they are presented.

In relation to the review, my submission relates to what I believe would be a simple method of standardising electronic documentation, working with the existing systems to move over to electronic communication and documents and also a proposal for the latest collation software to deliver standardised court-ready documents, better, cheaper and faster than at present.

WORKING GROUP ON SUPREME COURT COMPUTERISATION.

The Supreme Court Committee was set up by Mr. Justice John Murray to provide a paperless solution to the court in e-filing, trial presentation and court technology. A report was obtained from System Dynamics Ltd. on the problems needing to be overcome. It involved a hardware and software solution, including court presentation systems. Similar projects in other countries have been successful, but implementation costs have been high. In any event, in this case, the project was dropped. Recent technology advances in the Supreme Court have not addressed the problem. I believe that developments in the technology field in the meantime would permit such a project to go ahead now at a fraction of the cost of same in 2004. However, it may be more appropriate now to concentrate, not on the eventual electronic submissions to Court, but on the way in which electronic documents can be created to a single standard in the first place.

THE RULES OF COURT.

I am addressing the objective of the Group to review electronic communications and e-litigation. (Topic D) The first question to ask is whether or not the present Rules allow electronic documents and on what format? I am dealing with improving procedures and practices (Topic A) but I am not making any observations on the removal of obsolete, unnecessary or over-complex rules of procedure. I wish only to seek to tailor electronic changes to the existing rules rather than to suggest overall changes in the rules themselves. Procedural or obsolescent matters are for other experts to address.

The amendment of rules to cater for advances in technology was addressed by the U.S. federal and state courts a few years ago. Instead of rewriting all the rules of Court, they

simply added the words “or electronic format” to many of the existing rules, permitting litigants to present material in electronic or paper medium. Whether or not they were satisfied with the rules, they did not change them and electronic communication is now becoming the norm in Court filing. I think that any interim change in the Rules in Ireland should incorporate electronic filing as an option. Recent changes to the rules of the Superior Courts in 2016 have included electronic filing and storage in some areas of litigation and this has been adopted and implemented without any problems as far as I am aware. There are no reasons that would obviate the extension to electronic filing across the board, except to make adequate administrative provision in the respective offices for doing so and to adopt sensible interim measures to govern the change-over from paper to electronic filing.

A COMMON DOCUMENT FORMAT: PDF/A.

At present, litigation in Ireland is still almost wholly paper based. It seems incongruous that, while law firms prepare cases using advanced technology products, the whole case is then printed, with paper taking over. Until recently, e-litigation was looked on as some sort of huge project to introduce an entirely new overall system which all litigants and their legal teams would have to learn, understand and comply with. Court Staff and judges would be required to learn new products and systems and adapt their methods to suit. The entire project would likely be designed by a team without experience of Court practice and, the target users being lawyers, their project would be met with stout resistance. While some countries such as Finland and Singapore have introduced partial e-Court systems, I don't think any country has gone the whole way. Unless there is a desire to change the whole system fundamentally as unfit for purpose, this is not something which is practicable to implement, even if it could be designed.

Though fundamental change may not be needed, I believe that change to technological practice should now be introduced gradually, systematically and without heavy expense. In this regard, it is important to agree and implement a set of basic standards for electronic documents and to introduce a sensible set of rules as to how they might be presented to the

Courts. I say that the introduction of these basic principles is an essential pre-requisite to Court-based electronic communications and e-litigation.

PROPOSAL 1, STANDARDISE THE FORMAT OF ALL ELECTRONIC DOCUMENTS PRESENTED TO COURT. [Topic (a), (d) and (e).]

In this submission, I am dealing with the establishment of a simple and effective set of rules to standardise electronic documents in e-litigation, causing as little disturbance as possible and allowing for the successful movement from paper to electronic format without bringing the day-to-day running of the Courts to its knees.

Given that documents are the backbone of litigation, the first thing to standardise is the electronic format, one that is as common to the lay litigant in the District Court as it is to the Judges of the Supreme Court. Happily such a common factor is already in place. The Federal and State Courts in USA and elsewhere have standardised on Portable Document Files (.PDF) format, with court documents deliverable in PDF/A format, being an internationally accepted standard in archiving secure and substantially unalterable documents. Access to PDF use is free and open to all. Files in other formats such as spreadsheets, photographs, maps and word processing format can, with relative ease, be converted to this format for court display and document exchange. Delivery of documents in this format levels the playing field between poor and vulnerable litigants on the one hand and those with substantial resources on the other.

In terms of electronic archiving, the US courts have also standardised on PDF/A as the most efficient and robust form of archiving. It has become the norm also in trial presentation, the US courts having reversed from complex trial lectern systems to PDF based common trial presentation. This is fairer for litigants as cheaper trial systems, based on PDF, have become prevalent for trial presentation and products have been designed to deliver the presentations without expense to the Courts Services.

Documents can be delivered in PDF, but laid out in traditional format, replicating Court documents as they appear on paper today, thereby easing the transition to electronic

format. Pleadings or submissions could be exactly the same on screen as on paper, thus allowing those who prefer paper to print off the material, but still be on the same page and wavelength as those who have moved on to electronic format. During transition, those who use electronic format can view the documents on screen, while those preferring paper can just print the documents and turn the page. In my view, the number of paper users will reduce exponentially if a successful presentation system and common format is developed. My view also is that this can be done by the litigants, without expense to the Courts Service provider.

Storage space in Court Offices can be saved. Delivery of documents may be by paper (for the moment), CD, External drive, email or by uploading electronically signed documents to secure websites controlled by the Courts service, thus enabling a gradual change over from paper to direct electronic communication. The reduced cost of the electronic delivery would allow the market to drive litigants to the cheaper electronic solution. Court fees could be paid online with the applications, with perhaps a penalty for paper.

To give effect to the introduction, the existing rules may be extended to allow submission of documents in electronic format. Obviously, there will need to be measures for storage of documents filed etc. This has already been addressed in the 2016 rules and, as above, it appears to be working satisfactorily.

I should clarify that I am making no recommendation on the structure of any website or receiving mechanisms for Court documents, but this aspect is already adequately served in existing Government online services and should not cause a problem. I do not express any opinion as to whether or not court documents should be made available on the Internet other than to comment that technically, subject to security measures, such access can readily be made available online and, if such documents are to be made available, then a standard format such as PDF/A is unalterable, accurate and economical.

PROPOSAL 2. A COLLATION SOLUTION TO ONLINE DOCUMENT PRESENTATION IN THE COURTS. [Topic (a), (d) and (e).]

The next step is to standardise on the presentation or filing of documents in the Courts. This is already in place in that the structure, composition and, to a lesser extent, the presentation, sectioning, indexing and numbering of court documents is governed by the Rules, forms and practice notes. Again, rather than an overall change of procedures, I recommend that minimum document collation rules be put in place, so that electronic documents will be the same as, or better than court documents presented now on paper.

Pleadings and Documents should be sectioned and sub-sectioned where necessary, numbered sequentially or by section and indexed in common format. For discovery, a minimum standard, such as numbering or Bates numbering should be implemented. The intent would be to enable the presentation of case documents (Pleadings, Reports, Submissions etc.) much as it is done at the moment, but to allow for an electronic as well as (or rather than) a paper presentation. The advantage of having a common document format (PDF/A) and a proper collating system is such that Court users can go over to an electronic presentation standard first and then, when all parties are furnishing documents in the same format and order, changes to the overall rules for conduct of cases can be made with greater speed, less disturbance and with less user-resistance and delay.

COLLATION OF DOCUMENTS

Normally, the collation of Court Documents involves gathering pleadings, correspondence, reports, maps and photographs, numbering them manually with some element of success and manually indexing some or all of them. Some PDF products can collate documents, usually by applying numbers to them electronically. For proper collation to Court standard a collation product is better. Collation products can be single products, add-ons to document management systems or add-ons to existing Court systems such as would be used by bespoke users like the Legal Aid Board.

In 2012, I needed a simple collation system and asked my colleagues in Legal IT Ltd. if they could come up with a solution. Over the last 6 years, they have designed and, with the assistance of Enterprise Ireland, brought to market Bundledocs.

Put as simply as possible, Bundledocs enables a lawyer to collect a group of documents from an ordinary computer, tablet or even a phone and to collate them together to make a numbered, sectioned, indexed book, such as a brief, case, pleadings, motion, submission or as required. It works on any ordinary computer and needs nothing added. The documents on the computer are ordinary documents in a folder and can be word processing, pdf, spreadsheets, photographs, plans and/or other types. Bundledocs turns them into a single book or document in PDF format. It does it to a high standard and the same way every time. The document has an index like a book and is either numbered or section numbered. It can be opened on any computer and read immediately, every topic being indexed and bookmarked for easy access. It can also be printed, just like Court Documents at the moment, but the printed book and the PDF bundle are exactly the same, except that the electronic version is more versatile. A review in 2016 in an American Bar Association publication described Bundledocs as one of the “Document Utilities Every Lawyer Should Be Using”.

Bundledocs has been in use for 5 years in Irish Courts without any problems, save that prior to Court, the bundles produced have to be printed to comply with the bulk of the existing Rules.

Bundledocs is easy to operate, needing little training and costs as little as €10 per month with no upfront purchase cost. It is in everyday use with thousands of users. Bundledocs is now being used worldwide, mostly by legal firms, some with international presence.

THE SOLUTION [Topic (a), (d) and (e).]

Bundledocs would be an ideal solution to the objective to standardise the presentation of documents to the Courts. I am summarising these advantages in short below, but would of course be happy to expand further if your group wishes:-

- 1) Bundledocs takes a group of documents from an ordinary computer, tablet or phone and collates them together to make a numbered, sectioned, indexed book, such as a brief, case, book of pleadings, motion, submission or any Court document, large or small.
- 2) All documents produced are in standard PDF and can be filed in PDF/A.
- 3) All documents are sectioned if required and page-numbered by page or section.
- 4) All documents have a dynamic index with click to access every document in the bundle.
- 5) All documents hyperlinked and bookmarked so that moving around in the document is instant.
- 6) Documents produced can replicate existing briefs, cases, pleadings or submissions in every respect, but to a much higher standard.
- 7) The entire bundle document is converted from Word, Excel, Pdf, Tiff, Giff, Jpeg and other formats to a single PDF standard, ready to read or print.
- 8) Secure password protected sharing of document bundles with others.
- 9) Access on computer, laptop, tablet or phone. Print also.
- 10) Collaboration of multiple users in different locations on same case using Bundledocs.
- 11) All elements of the product are industry standard and can be used on any computer, laptop, tablet or phone.
- 12) Capable of handling small cases and huge cases. No operational limit.
- 13) Bundledocs court documents can be OCR'd. (optical character reading) for searching purposes.
- 14) Redaction, if needed, can be produced in Bundledocs with documents retained in redacted and unredacted format.
- 15) Citations in submissions can be either bookmarked and indexed or hyperlinked to original website, (Bundledocs current project, 2018).
- 16) Books of Statements, Notices to admit and trial issues can be produced quickly, amended in collaboration and monitored more efficiently for case progression.
- 17) Last minute amendments, additions alterations or reports can be added without affecting documents already submitted or the sequence of documents, thereby avoiding last minute adjournments.

- 18) The cost of preparing a case, brief or submission in Bundledocs is a fraction of that applying at present. The physical time in preparing Court documents and indexing, sectioning, copying and circulating is measurably less than at present and many times more efficient, achieving more effective and less costly outcomes for court users.
- 19) The Bundledocs Court bundle can be built as the case progresses, reducing the critical time for document preparation just before the case is to be heard.
- 20) Bundledocs could be applied as a template to establish minimum standardised layouts and composition of electronic court documents in future.
- 21) Bundledocs is suitable for Discovery by referencing and indexing all documents discovered and applying Bates numbers if required.
- 22) No extra, special or unusual equipment is required to produce, print, store or file a document produced for Court in Bundledocs.
- 23) Document bundles can be made available to the Court Service before hearing to establish whether or not they have been competently prepared, saving trial time
- 24) Bundledocs can be presented to a Court online, on a screen/TV, on multiple screens/TVs or on paper and all at the same time. It can ease the hearing of proceedings from paper to screen.
- 25) Document bundles can more easily be compared and agreed by collaborating parties prior to hearing and last minute issues avoided.
- 26) Bundledocs is linked to main document management systems such as iManage, NetDocuments, Worldox, Timeslice and also Action Step and Clio Case management. API available for linking to bespoke systems.
- 27) Bundledocs is not the only collating software product available, though, being a successful standalone product, it is the most apposite product to the element of electronic document standardisation which the Review Group may need to consider. It is open to the group to set standards for collation and invite Bundledocs and other products to meet same.
- 28) Bundledocs is Irish owned and designed. Complies with international security standards.

- 29) Bundledocs is simple and intuitive to use. It is economical and available to all. There are no training charges, no upfront costs and no special equipment needed. It thereby achieves more effective and less costly outcomes for court users.
- 30) The product and the documents can be sited on the Courts' computer facilities, if required for security purposes.
- 31) Standardised Court bundles makes it easier for legislators to tackle revised Court practice regulations.
- 32) It can be a cloud-based product or installed securely on premises for network or direct access. It can be sited securely on Government computer systems.
- 33) Cloud version complies with G-Cloud 9 Bundledocs was approved as a UK Government SaaS supplier for G-Cloud 7. In normal commercial use, Bundledocs is secure stored with Microsoft Azure. Bundledocs' data is stored in Europe, in Microsoft's Azure Cloud data centres in Dublin, Ireland and Amsterdam, Netherlands.

I could go on. If your group finds these principles apposite to the project, I would be happy to come to talk to you, hopefully with the aid of my colleagues in Bundledocs who are more technically aware of the product than I. Bundledocs is at www.bundledocs.com

Disclosure:- I am chairman and a shareholder of Legal IT Ltd. And Bundledocs Ltd. I have a financial interest in Bundledocs.

Frank Lanigan. (05/2/2018).

Tel. 059 9131908

████████████████████

Email. frank.lanigan@ckcarlow.com

PO Box 52, Carlow.



Bundledocs, Westpoint Business Campus, Link Road, Ballincollig, Co. Cork, Ireland, P31 E446
Tel: +353 21 482 6320 | Website: www.bundledocs.com