

# Kluwer Arbitration Blog

## Arbitration Tech Toolbox: The Future of Dispute Resolution: Evolution or Revolution?

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Over the last year, the potential for Generative AI in the legal services market has shaken the legal profession. While its impacts are not yet fully understood, many believe that it will transform many aspects of legal practice.

Of course, technology isn't new to the profession but to date almost all technology has been used to assist the execution of traditional legal tasks. Technology has driven efficiency and reduced costs in some areas, but the underlying legal tasks have not materially changed. That may not be the case going forward.

In April 2023, Sir Geoffrey Vos, Master of the Rolls of England & Wales gave the annual [McNair Lecture](#) when he spoke on the future of London as a pre-eminent dispute resolution centre. He said this:

*As I have been saying for some time now, digitisation, and now generative AI, is going to change both the kinds of disputes that need to be resolved and the way in which commercial parties will want and require them to be resolved. When everything is recorded on-chain, events and facts will be harder to dispute. It seems unlikely that parties transacting instantaneously on-chain are going to want to wait years to resolve their disputes in the traditional manner.*

What Sir Geoffrey captures in this statement is that both the types of disputes and the way in which disputes are handled will change. Crypto, block-chain and AI technology will all influence business transactions over time, meaning the type of disputes will evolve. Clients will rightly expect dispute resolution processes to keep up with the way in which businesses will transact in the future. Sir Geoffrey puts it succinctly “*When everything is recorded on-chain, events and facts will be harder to dispute.*” This goes to the heart of how cases are handled by lawyers now. Much is done in an analogue manner from the preparation of written submissions, witness statements and expert reports, and while electronic document management systems now host documents virtually, much of the review process is still human. When transactions, including significant aspects of their performance are all recorded digitally, will there still be a place for lawyers working in analogue?

For dispute resolution, in the UK and elsewhere, there is a strong push to digitalise civil justice. In the UK specific initiatives and pilots are being pursued in the civil courts, including online portals. On 20 November 2023, the Ministry of Justice in the UK launched the [Online Procedure Rule Committee \(OPRC\)](#) to provide guidance and develop data standards for the new digital dispute resolution ecosystem being established. Singapore too is pursuing similar [initiatives](#). These initiatives are bound to influence approaches to private dispute resolution as well, including arbitration.

### **The evolving use of technology in arbitration**

Since arbitration is largely a private affair, there is no direct public pressure to digitalise. The COVID-19 pandemic drove some digitalisation by necessity, primarily with the move to virtual hearings. Another area of development has been the recent creation of online platforms and processes for case handling. Institutions offering case management services include the ICC (with [Case Connect](#)) and the [SCC](#); [Opus2](#) also offers a specific case management service for arbitral institutions. These systems were built to receive filings from lawyers, which will involve uploading ‘analogue’ submissions in the form of statements of case, memorials, witness and expert evidence and documentary evidence. This is definitely a step in the right direction but like much technology adopted by the legal profession, it assists lawyers in doing the same process, and is tied to the traditional rules used by arbitral institutions. As this blog considers below, new platforms are now being developed which combine the use of technology with new approaches to dispute resolution procedures.

### **Is it time for lawyers to innovate?**

In a separate speech made by Sir Geoffrey Vos to the Bar Council of England & Wales in July 2023 at the [Lincoln’s Inn Annual Law Reform Lecture](#), Sir Geoffrey proposed three guiding principles:

1. That lawyers owe a duty to their clients to make constructive use of whatever technology that is available, if it helps provide a better, quicker, and more cost effective service to clients.
2. In the adoption of new technologies, lawyers need to protect clients from their adverse effects.
3. Lawyers should not forsake new technologies just because they offer a risk or challenge to the way things were done.

Lawyers should take note of these principles. The fear of change and, in particular, disruptive change, may mean some lawyers will place greater emphasis on the risks of new technology over its benefits. This is perhaps understandable and may not be driven by self-interest. Lawyers are trained to identify risk – so it is to be expected that there will be a cautious reaction to new technology, and innovation requiring change. However, clients’ views are more nuanced. Many businesses are willing to accept some risk when it comes to adopting new technology. For many, they have learned through experience that failing to embrace technology risks them falling behind their competition.

Lessons could be learned for innovative and entrepreneurial lawyers here. Clients may be more receptive than you think, and the lawyers that demonstrate they are looking at this from their

client's perspective will likely do well.

Arbitration is an area very well suited to innovation. The principle of party autonomy allows parties to devise very flexible approaches to dispute resolution. Unfortunately, many clients lament the lack of innovation in arbitration, seeing instead a process that has become more time consuming and costly than litigation, perhaps driven by due process paranoia by arbitrators. Recent suggestions by Lord Neuberger in his keynote address at the ICC UK Centenary Arbitration and ADR Conference (available in the ICC Dispute Resolution Bulletin Issue 2023-3 [here](#)) point to a potential solution. Among other proposals, Lord Neuberger invited institutions to toughen their rules to enable arbitrators to be more robust and less concerned about due process. Good advice, but it may be hard for established institutions to take genuinely innovative or bold steps here.

### **Arbitration for global online dispute resolution platforms**

There is, however, a new generation of online dispute resolution platforms emerging. You may not have heard of them yet and they are unlikely to be targeting high value complex cases given the cautious approach of lawyers and their parties when it comes to such cases. Instead, online dispute resolution platforms are likely to target the substantial market for smaller cases.

[pinqDR.com](#) is one such example.<sup>1)</sup> With backing from industry experts it has built a fully online platform, as well as bespoke arbitration rules, offering an efficient process for B2B disputes. Its rules allow parties to get to a binding award in around 8 weeks. That represents a drastic reduction in the time to resolve disputes, from over a year to around two months. The cost saving for parties with just one case is significant. For those with regular disputes of this nature, the time and cost savings will be enormous and will greatly enhance business productivity. pinqDR is not revolutionary, but adopts a number of evolutionary changes. As well as operating entirely online, and with a much shorter timetable – its rules have been drafted around the online platform – pinqDR arbitrators are required to take a much more proactive approach to the case and, importantly, the ability of parties and arbitrators to extend time limits is significantly constrained.

Online arbitration platforms are innovative but don't yet represent a huge evolutionary leap. They do, however, signal the shift towards the digital world envisioned by Sir Geoffrey Vos and others. There are rational reasons why evolutionary change will be preferred to revolution in the world of dispute resolution. Leaving aside the inherent caution of lawyers, parties are likely to be slow to adopt new technologies and processes for the resolution of large cases where the outcomes are material for both parties. Parties, lawyers and arbitrators should expect change to come from the bottom up – the resolution of disputes that individually do not represent a strategic outcome for the parties but where overall cost savings in a more efficient process could be significant.

The evolution of online arbitration platforms, however, may well see platforms develop additional capabilities to allow evidence to be directly imported (in digital form) from other digital environments (such as smart contracts and e-commerce platforms) and introduce AI elements to assist the parties and arbitrator. We have personally also seen how the use of AI in arbitration has been compared to the role of a tribunal secretary. Namely, the ultimate decision-making rests with the arbitrator but some of the management of the process and evidence along the way could be handled by AI.

While any new entrant into the arbitration market will face significant challenges, those able to establish efficient processes for smaller value cases may find themselves best placed as the confidence of parties and lawyers using those platforms grows. Similarly, providers unable to offer efficiencies through better—and better use of—technology may ultimately lose out.

*Further posts on our [Arbitration Tech Toolbox](#) series can be found [here](#).*

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## References

?1 The authors of this post are the founders of pinqDR

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