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Gove is right: our antiquated court system produces two-nation justice

Heather Brooke

As legal aid cuts force people to represent themselves, the costly, tortuous steps to access court records threaten access to justice. But it needn't be this way - as the US shows

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Justice must be seen to be done. It is a famous aphorism laid down in 1924 by Lord Hewart, the lord chief justice. But what happens when people put this principle to the test? When they actually go to court?

Michael Gove has given his own account of this exercise, narrating in his first speech as justice secretary his experience of today's courts. He found "snowdrifts of paper held in place by delicate pink ribbons", cases derailed by the late arrival of prisoners, broken video links or missing paperwork, a rape victim who had waited nearly two years for her case to be heard: overall, a "creaking, outdated system".

You don't have to be a justice secretary to witness the inefficiency and antiquated ways of the courts. In fact, as legal aid cuts bite, more people will have to represent themselves in courts where they encounter a system that is the very opposite of user friendly.

We pay a lot for this system, but many would argue it's not enough. The Royal Courts of Justice may be as grand as palaces, but many others are dilapidated, their facilities in desperate need of modernisation. Investing in justice should be a point of principle but also a matter of practicality. When people see and experience justice being done efficiently and fairly, they are content to abide by the rule of law.

Gove was right when he identified a two-nation justice system. "While those with money can secure the finest legal provision in the world, the reality in our courts for many of our citizens is that the justice system is failing them, badly."

Too often the public - the people funding the system and in whose name it operates - are treated as an afterthought at best, a nuisance at worst. It seems obvious that courts should be user friendly, directed to meet the needs of the general public, but too often they cater only to a cloistered elite.

Back in 2010 I did the same exercise as Gove. I was researching my book *The Silent State* and wanted to get some court documents. In America where I've worked, this process is usually simple: speak to the clerk, look through the files, make copies.

These days many American courts have digitised indexes for searching, sometimes the records themselves are digitised. The US supreme court has an online docket search, digitised transcripts and audio files. You can access court records electronically in Australia, Canada, New Zealand and South Africa.

Here's how it worked in England. I go to the Royal Courts of Justice - one of the best-resourced courts in the land. I have the names of the parties but when I speak to the clerk in the information office he says I need the case number. Without it I can't proceed.

"How do I get that?" I ask, assuming there's a database I can search. There isn't. Instead there is a "search room" further down the hall. I have a friendly chat with a man there who says a search costs £5 per 15 minutes and I have to pay in advance at the fees office, which is (of course) at the other end of the corridor and around a corner. But how will I know how much to pay when I don't know how long it will take? The clerk says he'll be lenient: "I'm not going to hassle you every five minutes, but if there's a queue then you'll have to go back and pay more money." Though "15 minutes should be enough".

I go to the fees office where there's a queue. I wait, pay, get a paper receipt and return to the search room. I find the case number in a few minutes then return to where I started - the information office. Now I have to fill out (by hand) a paper form specifying the documents I want. I'm told I'll have to wait two to five days for them to be delivered to this office. When these paper documents arrive I'll have to get another paper receipt from the fees office if I want to make photocopies.

And if I want to see anything from the case files (which I do), then I'll need permission (another form) and another receipt (the cost is £75 if the application is "on notice", and £40 if the application is "without notice or by consent"). I'll need to go before a "master" to explain why, in the interests of justice, I should be given access.

So to recap: that's four different people in four parts of the high court just to get one document that most likely existed in electronic form. And that's just the beginning of the obstacles. The court lists of who is up for trial are notably difficult to obtain, sentencing records are secret, and a cartel of private companies controls the transcription market, meaning only the richest can afford a record of their case.

As more people have to represent themselves in court such difficulties in accessing necessary information will hinder not only access to documents, but access to justice itself.

It needn't be this way. There are civic technology champions eager to reform the courts. What might a collaboration with MySociety or the Open Data Institute produce? Until now the courts have been disdainful towards those with the knowledge and drive to innovate. Maybe now, with Gove's resolve, the creaking cloisters will finally embrace the modern age. His desire to reform the courts is welcome. His desire to knobble the people's right to know by curtailing the Freedom of Information Act is not.

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