



## Rechtwijzer: why online supported dispute resolution is hard to implement

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*In March 2017, HiiL, Modria and the Raad voor Rechtsbijstand (the Dutch legal aid board) announced that their cooperation around the Rechtwijzer platform had ended. What happened to this “revolutionary” online justice platform and what are the lessons learned? Three theories and some indications about what will come next.*

### **1. Rechtwijzer separation: the platform and the philosophy**

Separation is the biggest reorganization challenge most people will ever face during their lives. A [Justice Needs Survey](#) completed in Holland in 2014 clearly spelled out the impact divorce has on couples and their children. Three quarters of all divorce related issues result in mental health problems, be they stress or something more severe. 22% of people with separation problems mention violence occurring. Citizens reported financial worries, confusion as to the complexity of the process and that agreements certified by courts do not always work for the couple when acted out in real life. This impact stretches further than the separating couple themselves, but reverberates through their children, family and friends. Legal help is difficult to select, use and manage. It does not always meet the needs people seeking assistance.

The mission of [Rechtwijzer Uit Elkaar](#) has been to seek to reduce this burden. Through innovating the legal process of divorce itself, by reducing the adversarial nature of the process, and by making it clear and easy to follow. The platform starts from a simple principle: begin with the end in mind. So the entire design is focused on letting people agree on all the things they need to restructure their lives after a divorce. It does not support mediation or adjudication as we know it, but it redesigned mediation and adjudication services so that they ensure that the parties can make fair, sustainable agreements, that enable them to continue their lives.

The platform has a diagnosis phase, an intake phase, then invites the other party to join and do the same intake. Once both parties completed their intake, they can start working on agreements on the topics that have to be dealt with in every separation, such as future communication channels, children matters, housing, property issues (money and debts) and income issues. The dispute resolution model is that of integrative (principled) negotiation. So the process is based on interests rather than rights, but the parties are informed about objective criteria from the law so they can reach fair agreements through informed consent. The rules for dividing property, the rules for child support and the standard arrangements for visiting rights are examples of rules that users are informed about. In order to safeguard their rights, the agreements are always reviewed by a neutral lawyer.

The platform was built on the Modria online dispute resolution platform. This platform was designed for consumer disputes (e-commerce) that are to be resolved quickly, supported by algorithms. It had to be made suitable for separation, where people have to work on their individual solutions and need to own them because they have to apply them for many years. So HiiL operated a front-end with the online dispute resolution support for relational disputes such as separation. This front-end communicated with the Modria platform through APIs. The platform was offered to end-users by the

Dutch legal aid board through its website. Modria and HiiL charged a set-up fee and a fee per user to the legal aid board. The platform charges users a fixed fee for mediation, review and adjudication. For users entitled to legal aid, the legal aid board subsidizes the user fees.

The platform was welcomed very positively by the media, by international experts and by reports on court reform through online dispute resolution. We counted over 60 media mentions in 12 countries, including the Economist and major newspapers. We gave dozens of presentations in conferences, parliaments and at ministries. We received visits from civil servants at ministries and leading judges. The only really criticism came from the Dutch bar that wanted to see more safeguards for security and informed consent, and also lobbied for having lawyers do the intake instead of doing this online. So, by and large, it seemed we were on to something.

## ***2. Theory 1: Citizens do not want online supported resolution services***

According to the latest legal needs survey in the Netherlands (Geschilbeslechtingsdelta 2014), 48% of people seeking assistance in the legal sector want advice about how to solve the problem. 45% wants advice about their rights and obligations, 24% wants help with approaching the other party, 20% wants mediation, 18% some kind of financial advice and 16% help with starting a procedure (more than one answer possible). The demand for a lawyer making their case in court is much less prominent (9%). Citizens thus overwhelmingly want the type of assistance an online supported dispute resolution platform can provide: a clear path to resolution, just in time information about rights, reaching out to the other party and mediation.

For us the ultimate test came down to whether the platform actually worked for users. Users' evaluations during the process were generally positive, and increased when we implemented improvements. The average ratings for the phases were 7 out of 10, with slightly lower ratings initially for the review phase, which quickly improved when both platform and lawyers adjusted their working methods.

The most important indication is what users say after 6 months. This is a standard period for evaluating dispute resolution services such as mediation. As previously mentioned, stress and related mental health problems have had a big impact on people in separation proceedings. For us it was vital to find out whether our users reported reduced or normal stress levels throughout our procedure, giving us a clear indication that our choice to reduce the adversarial approach of traditional divorce can lead to an improved procedure. Using *Rechtwijzer Uit Elkaar* led to over half of the participants experiencing low or very low stress levels during their separation, with 36% experiencing normal stress levels.

It may be difficult to believe that users experience less stress when using a platform with an average completion time of 24.3 hours. However, users can spread out these hours as they like, so as to deal with each step of the divorce at their own pace. Our users have reported as a result that they have more control over when and where they utilise the platform. In fact 84% of participants felt that they have more control over their separation as a direct result of this user empowerment.

“The process is clear and *Rechtwijzer* takes finding, helping with and resolving issues seriously”.

Traditionally, control in the legal separation process is left in the hands of the lawyers hired by both parties. The *Rechtwijzer Uit Elkaar* process does not seek to remove lawyers from the equation, but instead to integrate them in the platform. Legal professionals are vital to ensuring the quality and fairness of the agreements, and to provide guidance and support where needed, at the click of a

button. What Rechtwijzer Uit Elkaar seeks to do is empower legal professionals to maximise their interventions in such a way as to aid our users, but not supersede their judgement. As a result, 82% of users felt respected or very respected by lawyers or mediators on the platform.

Divorce is a monumental upset in anyone's life and the legal process should not make that undertaking more difficult than it already is. Almost 70% of the participants state that to a great or very great extent the emotional pain they felt before using Rechtwijzer Uit Elkaar was reduced after separating on the platform. Indeed, over 70% of the participants found the process fair to a great or very great extent. The positive emotional impact of Rechtwijzer Uit Elkaar on users lives was very encouraging.

Close to 60% of the people starting a case and paying the fee found their partner willing to participate, finalized their agreements through the platform, filed them at courts and saw their separation registered. This is a satisfactory retention percentage, taking into account that a substantial percentage of couples reconciliates, another group postpones their divorce for various reasons, some separations escalate and some couples just find another way of doing their divorce. Legal professionals are used to substantial numbers of clients who drop out of the process or shop around for other options, as legal needs studies consistently show..

The quality of the agreements couples have been guided to making are a marked improvement over those of a traditional divorce process. When asked 72% of the participants rated their experience on the platform with 8 out of 10 or more (7.7 on average) and 70% said that its use led to effective and sustainable solutions. Although there is obviously a self-selection effect that makes comparison difficult, this can be contrasted to an average separation procedure in the Netherlands scoring 2.81 on a 1 to 5 point scale.

There was no ambiguity in the willingness of most users to recommend the process to others. We also observed that the number of Rechtwijzer users went up quickly when major media reported about the platform. The users were from all income-groups, and somewhat more from groups with more education.

So the conclusion seems to be that at least a substantial proportion of the population is ready for online supported dispute resolution services and is enthusiastic about using them. Without major marketing efforts, we easily reached a market share of 2-3% of the separation market (becoming the biggest "law firm" for separation) and saw spikes of 5% after mentions in the media.

### ***3. Theory 2: Legal aid boards, ministries, courts and law firms not ready for online supported dispute resolution services***

The expectation of the Rechtwijzer teams at the partners was that legal aid boards, ministries and courts would want to move forward with this type of ODR solutions quickly after the Dutch delivered a proof of concept. There was a legal aid crisis going on in many countries. Jurisdictions struggled with implementing mediation or other non-adversarial legal services. The dissatisfaction with the current court procedures is considerable in most jurisdictions, with the possible exception of some Nordic countries, Switzerland, Austria and Germany, where settlement processes are well developed and integrated in accessible court procedures. Quality of legal aid delivered by solo practitioners and small firms is a major issue. Online support of a redesigned legal process opens the door to improvements on all these counts. So why not move forward?

That did not happen. The English NGO Relate worked with us to test an English version. The Legal Services Society in British Columbia implemented a version supporting only negotiation, without

mediators, adjudicators or reviewers. But it was hard for them to gain financial and regulatory support for a full scale launch in England or Canada. We tried to bring together a consortium of legal aid boards for jointly developing the system. There was considerable resistance among legal aid board directors around joining a public-private partnership between a non-profit foundation for access to justice, a Silicon valley start-up and a leading legal aid board. Naively perhaps, we thought that such a partnership would make innovation happen and do this in a trustworthy way.

For those who joined the ODR conference in The Hague in May 2016 and saw the trend report we wrote for this ([ODR and the Courts: the challenge of 100% access to justice](#)), it is probably no surprise that the necessary cooperation processes did not materialize. In this report, we devoted an entire chapter to the institutional barriers to reaping the full benefits of online supported dispute resolution services. At present, legal aid boards, courts and ministries are not actively looking for the best processes to help their citizens resolve their disputes. There is not a lively international market for the best possible procedures for separation, neighbour disputes or drugs related crime.

Why is that “market” not materializing? Our experience is that legal aid boards are mostly busy with funding lawyers, spending 80-95% of their budgets on that, and have not yet found a parallel financial model for delivering access to justice in innovative ways. Websites or mediation services are often funded as projects, not so much as part of the core program. Courts try to digitize their current procedures, spending huge sums on this that mainly goes to IT services companies that deliver tailor-made software. But their procedures, which are prescribed by legislation, do not allow implementation of innovative technologies. Ministries mediate between politicians, courts and the legal profession, without a clear vision on the future of access to justice and funding. There is a lot of talk about ODR, but no serious attempt yet to introduce it for a class of problems that really matters to citizens.

The attempt in British Columbia (Civil Resolution Tribunal) and England and Wales to set up ODR for small claims is a case in point. It may sound smart to start small and then scale up. But will scaling up ever happen? We are pessimistic, based on earlier experience with small claims innovation worldwide. Leaving small claims to the innovators is a nice gesture that shows willingness to innovate. But it does not require real change in the court system or the legal profession, because nobody in the system is dependent on small claims. Starting with small claims may just be “token reform”. The positive impact on citizens of starting with small claims is negligible. Citizens seldom have individual small claims; companies have. As consumers, they do not go to legal procedures, but to helpdesks and social media. What keeps them awake is separation, debts, employment termination, personal injury, adverse outcomes from medical services, misleading financial products, housing problems and neighbour disputes.

Another option for bringing online supported services to the market is through law firms. Relate sought cooperation with an organization of law firms serving families with resolution services. In the Netherlands, we had some explorative dialogue with the organization of family lawyers and mediators. The problem seems to be that individual law firms are too small to invest in new technology. They are limited in their growth and innovation options, because regulation does not allow them to bring in outside investors, entrepreneurs, IT professionals or professionals from other disciplines as co-owners of their firm. Law firms are also not allowed to pay referral fees, so business models based on that are difficult as well. Finally, lawyers are restricted in their ability to serve the couple, or the family, because of a conflict of interest.

As a group, lawyers serving families have conflicting interests. Some live from adversarial litigation. Some are mediators or lawyers serving the entire family. Some target the rich, some the middle class,

some the poor. Most live from hourly fees, with very little know how to set up an efficient, scalable service.

The government organizations responsible for access to justice and the regulated private providers are thus not there as buyers. At this moment, they cannot implement innovative dispute resolution systems that integrate legal information, legal review/advice, mediation and adjudication. They watch the developments, but until now, they mainly continue to do their own thing, restricted by a system of rules that is not designed to allow for innovation.

#### ***4. Theory 3: The market can resolve the access to justice problem, so government not needed, and we failed to deliver***

The third option is that Rechtwijzer did not work because we at HiiL failed to deliver. In that theory, the government is not needed to support an ODR system or any other civil procedure. Providers of dispute resolution systems such as Rechtwijzer should just better “sell” their product on the market.

There are certainly things we could have done better. The combination of a platform for e-commerce disputes and a relational dispute front-end was perhaps not optimal. Seeing that the Dutch legal aid board and Ministry of Justice did not actively promote and market the platform, we could have raised money for this and have done this ourselves. Academics turned innovators turned operators; perhaps that did not lead to the optimal skill set. We could have made the platform more attractive for lawyers working on it, and perhaps focused too much on satisfaction of end-users, as well as offering them an affordable platform in the spirit of legal aid.

We debated theory 3 a lot internally. One group, let us call them the experienced dispute system designers, pointed to the submission problem. Getting “the other party” to the table and parties voluntarily agreeing to use the same procedure is not happening often. This is the reason why voluntary mediation fails to attract huge numbers of disputes, and the same is true for arbitration and many new, voluntary procedures at courts. The causes of this are not well understood. Emotions, tactics, reactive devaluation of proposals from the other party, lack of trust in decisions of third parties and communication problems may play a role. The small market share of voluntary procedures is a fact, though. Why would ODR platforms be different?

In this version of the theory, rather strong incentives are needed to bring the two parties to an ODR platform in order to let their dispute be resolved. Courts provide such incentives by means of the rules for decisions by default. Generally, it is advisable to show up in court. Otherwise the court will render a decision on the basis of the allegations of your opponent. In rural or other communities of limited size, people are inclined to listen to informal leaders when they invite them to discuss a dispute. But in a country such as the Netherlands, where social norms are less strong, there may be little incentive to use a procedure initiated by the other party.

In the more optimistic perspective on the submission problem, the other group says that it can be resolved by making it easy, safe and attractive for both parties to submit to the procedure. On the Rechtwijzer platform, the defendant does not have to pay. The invitation to participate is worded in a friendly way, without threats, and the defendant is asked for her of his interests and views regarding possible solutions, instead of having to react to the proposals and positions of the other party. Moreover, most couples will sense that there is a common interest to resolve the issues fairly, without risk of escalation. This might induce both parties to participate.

We just do not yet know whether an online dispute resolution system, used by two parties in a conflict, can exist as an independent service, offered by the market. Until now, it did not emerge,

although the underlying dispute resolution know how is available and the IT challenges seem to be surmountable.

If involvement of government is needed, we do not know exactly how much of it is necessary. The optimal mix may consist of some elements of endorsement, referral and subsidy. The use of neutral (online supported) dispute resolution services may also be promoted in other ways. The government could make this mandatory for those wanting to use lawyers with a government subsidy, stimulating both lawyers and clients to use the platform. Or it might be prescribed: Using a neutral dispute resolution platform can be made a condition for obtaining a government subsidy for dispute resolution or be a condition for access to courts decisions.

There is nothing new here. Currently, in many countries, only lawyers can give you access to courts. Use of them is promoted in many ways. So why not create a level playing field between lawyers and ODR, as well as other innovative legal services?

### ***5. Conclusions and implications***

So, what can the Rechtwijzer case teach us? Online supported dispute resolution can be effective. Using such a platform can be a satisfactory experience for the users, reducing stress and placing them in control over their future. Outcomes can be sustainable, fair, improve relationships and help undo some of the harm done.

The challenge is how to implement this improved way of resolving disputes. The main providers of justice, such as courts, legal aid boards, ministries and law firms cannot implement online supported dispute resolution under the current regulatory regimes. Offering ODR to citizens as an independent service is an option, but it is uncertain whether it will succeed without some form of government support. Although many forms of alternative dispute resolution failed to make a breakthrough in the past, a smart ODR offering may yet be able to do this.

A new organization, supported by HiiL know how, and in cooperation with the Dutch legal aid board, has been set up to develop a new platform, with a new offering. Many of the lessons learned will be implemented. During the next months, more information will be available.

The broader lesson is about innovation in legal dispute resolution systems. That is hard to achieve. ODR is no different from mediation, problemsolving courts, fast tracks, ombudsmen and countless other attempts to replace traditional court procedures by more innovative mechanisms. The demand for better procedures from citizens is huge. But the government institutions to which we entrust adjudication and legal aid do not have processes for implementing and scaling up innovation. Truly opening up to innovation. That should happen first.