Preventing Digital Exclusion from Online Justice

A Report of JUSTICE

Chair of the Working Party
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JUSTICE

Established in 1957 by a group of leading jurists, JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. We are a membership organisation, composed largely of legal professionals, ranging from law students to the senior judiciary.

Our vision is of fair, accessible and efficient legal processes, in which the individual's rights are protected, and which reflect the country's international reputation for upholding and promoting the rule of law. To this end:

- We carry out research and analysis to generate, develop and evaluate ideas for law reform, drawing on the experience and insights of our members.

- We intervene in superior domestic and international courts, sharing our legal research, analysis and arguments to promote strong and effective judgments.

- We promote a better understanding of the fair administration of justice among political decision-makers and public servants.

- We bring people together to discuss critical issues relating to the justice system, and to provide a thoughtful legal framework to inform policy debate.

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Please note that the views expressed in this report are those of the Working Party members alone, and do not reflect the views of the organisations or institutions to which they belong.

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EXECUTIVE SUMMARY

Many people struggle to access technology, or to use it – at least without assistance. The ongoing programme of reform to the justice system in England and Wales poses potentially serious problems for "digitally excluded" users.

The Working Party was concerned about digital exclusion from online justice services – including the proposed Online Court for lower-value civil claims and the risk that technology might exacerbate existing barriers to justice. But we believe that, with more investment in digital inclusion, creative thinking, and inclusive design and technology, there is an opportunity to realise the full potential of the Online Court and to improve access to justice for many people. Achieving this will depend on a continuing programme of learning from users' experience and understanding and responding to users' needs. The Introduction to this report explores the current programme of justice reform in more detail. Our recommendations are set out in full at the end of the report.

The digitally excluded

The first half of this report focuses on some examples of extreme digital exclusion. People can be digitally disadvantaged in many ways – including through an inability to access the internet or digital devices, lack of basic digital skills, or problems with confidence and motivation.

The Working Party looked at some groups at high risk of exclusion, and made a number of recommendations, including that:

- HMCTS should conduct more research (including qualitative research) about how people behave in an online environment and on choices between various "Assisted Digital" channels.

- HMCTS should collect and make available the widest range of data possible to support research by external experts.

- Assisted Digital services should be tested in regions where internet access is still limited and support services may be difficult to access.

- Specific attention should be paid to solutions for highly excluded groups, like homeless people and detainees.

- Greater investment should be made in "trusted faces" in "trusted places", i.e. services already providing digital support and internet access.

Technology and design

The second half of the report considers how to minimise obstacles for the "computer challenged" through inclusive, assistive technologies and accessible design. Future-proofing is a key theme as new developments offer opportunities for improved accessibility. Among other recommendations, we suggest:

- HMCTS should design the Online Court, and other online justice services, with an independent "look and feel" to reflect the constitutional independence of the courts.

- HMCTS should maximise the benefits of the "multi-channel" approach, e.g. helping people move with ease between digital access, phone assistance, face-to-face assistance and paper.

- Online justice services should cater for the most affordable and ubiquitous mode of digital interaction: mobile technology.

- HMCTS should conduct end to end pilots of online justice services, learning from hearing and enforcement stages what is required at earlier stages.

Next steps

Our recommendations are mainly directed at HMCTS. The Reform Programme makes tackling digital exclusion an urgent priority, and HMCTS' "Assisted Digital" project recognises that many people will need digital support to access 21st century justice.

However, HMCTS cannot solve this problem alone. The Government should recognise that the costs of bringing digital skills and access to relatively small numbers of people are amply justified, and probably bring significant savings elsewhere. There is also some reason to be optimistic. The general trend is towards increased digital capability, and ever-changing technologies may actually decrease the need to be "digitally savvy" (as ever-more user-friendly technologies become available).

I.   INTRODUCTION

Overview

1.1   The Ministry of Justice and Her Majesty's Courts and Tribunals Service ("HMCTS") have started an ambitious programme of court reform. In late 2016 the *Transforming our justice system* White Paper[1] proposed an overhaul of the justice system in England and Wales. Some reforms are widely welcomed – such as the promise to do away with "the tyranny of paper with all its inflexibility, cost, delay and sheer waste".[2] The reforms depend upon increasing use of technology including plans for a new "Online Court" for certain civil proceedings.

1.2   Crucially, use of remote, virtual and online proceedings[3] is set to expand across the justice system. Ultimately, the Reform Programme aims to take the justice system into the 21st century and beyond. This is an opportunity to improve access to justice for substantial numbers of ordinary court users. The potential benefits of accessing justice services online rather than in person include a more accessible and understandable way of interacting with the court, increased convenience, reduced cost, and the ability to stay better informed of the progress of one's case – without the "delays, and constraints that come with physical hearings".[4]

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[1] Ministry of Justice ("MoJ"), *Transforming our justice system: summary of reforms and consultation* (Cm 9321, 2016), available at https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/supporting_documents/consultationpaper.pdf

[2] Digitisation – i.e. moving towards paperless systems – avoids "the tyranny of paper with all its inflexibility, cost, delay and sheer waste". Briggs LJ, *On the cusp of a civil revolution*, The Annual Harbour Lecture (12th October 2016), p. 16.

[3] This Report focuses on online proceedings, the archetypal modernised justice proceeding that presents challenges for the "digitally excluded" (see *Scope and definitions*, below). Virtual proceedings include e.g. video-conferencing into a physical courtroom, whereas in fully online proceedings there need not be any physical court space. "Remote" proceedings is a broader term, including telephone hearings. See further R. Susskind, *Online Courts and Online Dispute Resolution*, April 2016, available at http://wbc.advocates.org.uk/richardsusskind.pdf

[4] Public Law Project, *The Digitalisation of Tribunals: What we know and what we need to know* (5 April 2018), p. 23.

1.3 However, there is a risk that online justice services will leave certain people behind. The White Paper recognises this issue, estimating that 70% of the UK population may be either "digital with assistance" or "digitally excluded".[5] It is important that the reformed justice system is inclusive and accessible to all.

1.4 This report focuses on digital exclusion. Moving justice services online could reduce access to justice for those who lack access to technology and for "computer challenged" people.[6] That concern is not limited to civil justice, and nor are most of our recommendations. However, the proposed Online Court demonstrates the problem acutely. There have been serious objections to the current reforms because of legitimate concerns about whether digital exclusion will be tackled.[7] We take these concerns very seriously.

1.5 Finally, as JUSTICE has argued previously, technology has huge potential to improve access to justice.[8] Wireless internet is faster and more widely available than ever.[9] The price of devices, especially smart phones and tablets, are reducing and their capabilities are expanding so that for many they represent a computer in the pocket. And new technologies are opening up possibilities for those who were previously digitally excluded because of the difficulties of interfacing with earlier online offerings. For example, while blind people previously relied on costly screen reader software, many now benefit from cheaper voice-activated digital assistants.[10]

1.6 There are wider benefits to enabling the "offline" to access the internet. Age UK cites increased and easier contact with family and friends.[11] A current estimate suggests that being online saves people more than £700 a year on average. And recent research – focussed on people without a bank account, most of whom were low-income and living in social housing – suggests that smartphone ownership can "help better money management".[12] We return to the benefits and downsides of internet use later in this report, recognising concerns like data protection.

[5] *Supra*, note 1, p. 13, para 7.1.3. We treat both these categories as types of "digital exclusion" (see *Scope and definitions*, below).

[6] The term "computer challenged" comes from: Briggs LJ, *Civil Courts Structure Review: Final Report* (2016), p. 38, para 6.17, available at https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf At para 6.5.2 of the CCSR, Briggs LJ described "difficulties of various kinds with computers" as one of the "main criticisms" of his Online Solutions Court.

[7] *Ibid* and Letter from the Chair of the Justice Select Committee to Lucy Frazer QC (27 February 2018), p. 3-4: "We do not consider that [Assisted Digital help] proposals have been adequately developed, evaluated or costed. If digital justice is implemented more widely without adequate mitigation for those without access to, or familiarity with, the internet, then this would raise a serious issue of discrimination and fairness". https://www.parliament.uk/document/commons-committees/Justice/correspondence/20180227-Letter-Lucy-Frazer-court-tribunal-estate.pdf

[8] JUSTICE, *Delivering Justice in an Age of Austerity* (2015) ("the Austerity Report"), available at https://justice.org.uk/justice-age-austerity-2/ On general trends in technology and law, see e.g. R. Susskind and D. Susskind, *The Future of the Professions* (OUP, 2015).

[9] Although see further Chapter II about rural areas.

[10] In 2018, Amazon's digital assistant Alexa (which comes with its Echo Dot device) costs under £50 – and another digital assistant, Apple's Siri, comes as standard on iPhones. By contrast, a blog from 12 January 2008 suggests that the standard version of JAWS screen reader then cost $895 (approx. £460): https://webaim.org/blog/jaws-license-not-developer-friendly/ Currently, JAWS home edition is £838.80 incl VAT from RNIB: http://shop.rnib.org.uk/accessible-technology/electronics/computer-accessories/jaws-16-0-standard-screen-reading-software.html A more basic software is available for $399 (£280): http://www.serotek.com/systemaccess

[11] Age UK, *Later Life in a Digital World* (December 2015), p. 29, available at https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/active-communities/later_life_in_a_digital_world.pdf

[12] Lloyds Bank, *UK Consumer Digital Index 2017* (March 2017), available at https://www.lloydsbank.com/assets/media/pdfs/lloyds-bank-consumer-digital-index-2017.pdf p. 16 "In 2016, the Index showed that people could save an average of £744 per year by being online".

Scope and definitions

1.7 HMCTS has various projects addressing the different parts of its Reform Programme. Although an Act of Parliament is needed for some changes, HMCTS is hard at work on the elements that do not. The reform projects are all at various stages of advancement and progressing quickly; the next section briefly outlines a few of them. In this report, the term "online justice services" is used for everything from applying for a divorce or probate online, to a fully-fledged Online Court.

1.8 The term "digital exclusion" should be read broadly. It includes those who lack access either to the internet or to a device, or the skills, ability, confidence or motivation to use it – as well as those who rely *on* digital assistance.[13] A significant proportion of people still lack even basic digital skills,[14] or are unable to access the internet reliably or at all. We focus on pressing and serious impediments to accessing modernised justice, and on litigants-in-person (LIPs).[15]

1.9 This Working Party concentrated on the challenge of digital exclusion from justice. Therefore, we investigated in some detail HMCTS's plans to provide technical assistance with *all* new digital services (the "**Assisted Digital**" project). This crucial HMCTS service is still in its infancy. Though the emphasis is on online justice services, our recommendations on technology and design are relevant to online advice offerings as well.

HMCTS Reform Programme

1.10 In late 2016 the *Transforming our justice system* White Paper[16] set out plans to overhaul the justice system in England and Wales, including:

- Significantly increased use of remote (i.e. video and telephone) hearings, which is seen as "an easy and convenient alternative for everybody",[17]

- A new digitised probate system, with applications made and managed online,[18]

- A new online divorce application,[19]

- A new process for making guilty pleas to certain criminal offences online,[20] and

- Moving the Social Security and Child Support Tribunal online – benefits appeals are intended to be "one of the first services to be moved entirely online, with an end-to-end digital process".[21]

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[13] See further Chapter II. We recognise that having skills is not the same as the much broader concept of attaining real "digital understanding", i.e. "we not only know the reason for a task and its potential consequences, but also appreciate the wider context of and around our actions." DotEveryone, *This Is Digital Understanding* (September 2017), available at https://medium.com/doteveryone/this-is-digital-understanding-694c2140e335 Though this report is about the digitally excluded, many such people may be socially excluded too. Social exclusion is a complex concept, about which definitions differ. It could refer to any/all of: low household income, social class DE, and leaving school by 16. See generally, Good Things Foundation ("GTF"), *The real digital divide?* (June 2017), available at https://www.goodthingsfoundation.org/sites/default/files/research-publications/ofcom_report_v4_links.pdf

[14] We use terms like "digital skills" and "digital capability" broadly, not technically. Currently, the five official "Basic Digital Skills" (or "BDS") are: managing information, communicating, transacting, problem-solving, and creating. The Tech Partnership, *Get digital basic skills framework*, available at https://www.thetechpartnership.com/globalassets/pdfs/basic-digital-skills-standards/basic_digital_skills_framework.pdf In spring 2018, the Tech Partnership consulted on a new Basic Digital Skills framework.

[15] See generally the Austerity Report (*supra*, note 8). Online justice should not create even more barriers for LIPs.

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[16] MoJ, *Transforming our justice system: summary of reforms and consultation*, *supra*, note 1.

[17] *Ibid*, p. 4.

[18] *Ibid*, p. 5.

[19] HMCTS, *HM Courts and Tribunals Service tests fully digital divorce application* (30 January 2018), available at https://www.gov.uk/government/news/hm-courts-and-tribunals-service-tests-fully-digital-divorce-application

[20] MoJ, *Transforming our justice system: summary of reforms and consultation*, *supra*, note 1 , p. 15.

[21] *Ibid*, p. 10.

1.11 The court Reform Programme follows other public sector digital projects.[22] In 2014 the Government launched a *Digital Inclusion Strategy*, and committed to reducing digital exclusion. The Government Digital Service ("GDS") and various Government departments created 25 new digital "exemplar services". Recognising the previous tendency to simply put paper forms online, their aim was to design digital alternatives "so good that people would prefer to use them".[23] The modernised services included applying for carer's allowance and booking prison visits online.

1.12 Change was fast-paced, and according to the GDS some exemplar services "made it much much easier to do important things".[24] In 2017, the National Audit Office labelled digital transformation a "mixed success";[25] Government departments have experienced huge cutbacks, so transformation programmes can be challenging. However, some "exemplar services" had interesting design features, explored further in **Chapter III**. Up-to-date data on the modernised services can be found on the Government's online "Performance Platform".[26] In brief, two examples of quite complex "exemplar services" are:

- The Lasting Power of Attorney registration online service. People fill out a form online to appoint someone to make decisions for them if they lose mental capacity. The online service aimed to improve the previous paper-based service, in which around 20% of applications contained errors.[27]

- The Carer's Allowance online service. This is a benefit for people looking after someone with substantial caring needs. The exemplar service replaced a previous online process with low digital take-up. Extensive user testing preceded the new online service.[28] Recent data on the Platform shows that nearly 70% of users accessed the digital service by mobile or tablet devices.[29]

Digital exclusion – the scale of the problem

1.13 As of 2017, almost five million people in the UK had never used the internet, of whom most were older than 75. Of adults aged 16-44, 99% were recent internet users. Over 11 million adults lack basic digital skills, such as being able to complete online forms or re-locate websites.[30] A notable development of recent years has been the rise in the use of mobile devices: significant numbers of adults now rely on smartphones and tablets to access the internet.[31]

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[22] See e.g. GDS, *Digital transformation exemplar services* (1 June 2013), available at https://www.gov.uk/government/publications/gds-transformation-programme-2013-to-2015/digital-transformation-exemplar-services and Gov.UK, *Digital Inclusion*, available at https://www.gov.uk/performance/digital-inclusion

[23] *Ibid*. On redesigning services, rather than "simply taking an existing paper form and putting it online", see e.g. DWP Digital, *How we are treating online forms as services with user needs* (21 January 2016), available at https://dwpdigital.blog.gov.uk/2016/01/21/how-we-are-treating-online-forms-as-services-with-user-needs/

[24] GDS, *Looking back at the exemplars* (27 March 2015), available at https://gds.blog.gov.uk/2015/03/27/looking-back-at-the-exemplars/ After 2015 came further changes to departmental funding and a new *Digital Strategy* (1 March 2017), available at https://www.gov.uk/government/publications/uk-digital-strategy

[25] National Audit Office, *Digital transformation in government* (30 March 2017), available at https://www.nao.org.uk/wp-content/uploads/2017/03/Digital-transformation-in-government.pdf

[26] Gov.UK, *Lasting Power of Attorney registrations*, available at https://www.gov.uk/performance/lasting-power-of-attorney The information varies by service. For some, Platform data includes digital take-up, completion rate, and devices used for access. See further Part III.

[27] MoJ, *New online application service for Lasting Powers of Attorney (LPA)* (2 July 2013), available at https://www.gov.uk/government/news/new-online-application-service-for-lasting-powers-of-attorney-lpa

[28] DWP Digital, *Live and kicking* (2013), available at https://dwpdigital.blog.gov.uk/2013/10/18/live-and-kicking/

[29] Gov.UK, *Carer's Allowance: new claims*, (Data for the period 9-15 April 2017), available at https://www.gov.uk/performance/carers-allowance

[30] Statistics from Office of National Statistics ("ONS"), *Internet users in the UK: 2017* (19 May 2017), available at https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2017 *except* on lack of BDS (defined *supra*, note 14). Per Lloyds Bank, *UK Consumer Digital Index 2017*, *supra*, note 12, p. 5: "the number of people without skills has reduced to 11.5 million".

[31] Ofcom, *Adults' Media Use and Attitudes Report 2018* (25 April 2018), available at https://www.ofcom.org.uk/__data/assets/pdf_file/0011/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf p. 1; p. 8: "A quarter of adults (26%) only go online through devices other than a computer, and 8% only use a smartphone to go online".

1.14 An academic analysis published in 2016 compared internet non-use in Great Britain and Sweden. It suggested that over time, "non-user populations have become more concentrated in vulnerable groups", i.e. those who are "older, less educated, more likely to be unemployed, disabled and socially isolated". The authors describe an "entrenchment of digital exclusion among the most vulnerable" in both countries – the advent of a "digital underclass".[32]

1.15 On digital exclusion, a 2017 Government strategy stated:

[F]inancial exclusion and digital exclusion often go hand in hand. People who are the least online are often heavier users of public services, highlighting the need to design services to include them… A significant proportion of the adult population may never attain the digital skills to use online services without support, because of disabilities or lack of basic literacy skills.[33]

1.16 Though the UK population might never attain full digital capability, more can be done: in Norway, the truly "digitally excluded" figure is as low as 2%.[34] Responding to the Government's strategy for expanding digital inclusion, a leading digital inclusion charity was optimistic about the potential for further improvement:

[We help] people who are over 90 years of age use the internet independently and many people who have disabilities use the internet confidently …We hope that there will be a plan of action for how the Government will support the [millions] without digital skills, rather than an acceptance that those who aren't online now never will be.[35]

1.17 The scale of digital exclusion in the justice context specifically is unclear. Citizens Advice, which advises millions every year through its website and face-to-face, have observed: "some of the factors linked to digital exclusion are more prevalent among the clients who contact Citizens Advice services in person: they are more likely to be on lower income, or be disabled or have a long term health condition". Unsurprisingly, a Citizen's Advice survey found that older users of its services were "more likely to lack basic digital skills and internet access", but in general its face-to-face clients were "twice as likely to lack basic digital skills than adults in the UK".[36] By contrast, nearly half the users of Advicenow, Law for Life's public legal information website, were disabled and nearly half identified as being on low incomes. [37]

1.18 Other commentators have also expressed concern that LIPs are likely to be more digitally excluded than the general population:

[R]esearch from the Legal Education Foundation found only 50 per cent of those entitled to civil legal aid pre-2013 would be willing and able to operate online. People facing the type of legal problems for which legal aid is needed are much less likely to be able to utilise the internet to resolve their problems. As the Legal Education Foundation note, it "certainly cannot be assumed that effective access simply equates with access to the internet."[38]

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[32] E. J. Helsper and B.C. Reisdorf, The emergence of a "digital underclass" in Great Britain and Sweden: changing reasons for digital exclusion, (New Media and Society, 2016).

[33] Cabinet Office and Government Digital Service, *Government Transformation Strategy: background* (9 February 2017), available at https://www.gov.uk/government/publications/government-transformation-strategy-2017-to-2020/government-transformation-strategy-background

[34] GTF, *A Leading Digital Nation by 2020* (24 February 2014), available at https://www.goodthingsfoundation.org/research-publications/leading-digital-nation-2020-calculating-cost-delivering-online-skills-all "Countries such as Norway have usage rates in 2013 of 98% … with an accelerated approach [the UK] could reach 90% well before 2020" (p. 4).

[35] Helen Milner, *If we wish modern democracy to flourish, it is imperative we respond*, available at https://helenmilner.com/2017/02/09/if-we-wish-modern-democracy-to-flourish-it-is-imperative-we-respond/ We note that in January 2018, the Government announced that there will be "full funding for basic digital training for adults from 2020". See here: https://www.gov.uk/government/speeches/anne-milton-speech-at-bett-show-2018

[36] Citizens Advice, *Digital capability: understanding the digital needs of face-to-face clients of Citizens Advice* (August 2016), available at https://www.citizensadvice.org.uk/Global/Public/Impact/Digitalcapabilityreport_final_July%20(3).pdf p. 8. This report also found that face-to-face clients were: 1) "twice as likely to lack basic digital skills as people in the UK" (p. 6), 2) "twice as likely to lack access to the internet than adults in Great Britain" (p. 6), and 3) "our face-to-face clients' digital skills are lower across all age groups than adults in the UK" (p. 8).

[37] Lawforlife, *Annual Review 2017*, available at http://www.lawforlife.org.uk/wp-content/uploads/LfL_AR2017_proof6_FINAL.pdf p. 7.

[38] The Bach Commission on Access to Justice, *The crisis in the justice system in England and Wales* (November 2016), available at https://www.fabians.org.uk/wp-content/uploads/2016/11/Access-to-Justice_final_web.pdf p. 16.

1.19 Accurately measuring digital exclusion from justice is clearly complicated. As the Bach Commission identified in the above quotation, vulnerability can be situational. In addition to the digitally excluded who will probably need digital assistance throughout, others who might normally be confident online may struggle with online services when faced with crises such as divorce or debt which reduce people's confidence and capability. The unfamiliarity of the process, its importance and the sheer amount of information that needs to be absorbed and processed can make these interactions challenging.[39]

HMCTS' cross-cutting "Assisted Digital" ("AD") service

1.20 The Government, and HMCTS in particular, recognise that not everybody can engage online and have pledged that new justice services will be accompanied by digital support services. HMCTS's "Assisted Digital" service aims to ensure that everyone can use the reformed justice system: "in designing different services we will need to tailor the solutions based around the needs [of users]… A one-size-fits-all approach is not appropriate".[40]

1.21 There will be various "channels" of Assisted Digital support, which will use face-to-face, telephone and web chat assistance as well as continued access to paper channels for those who require it. This is an important difference from the recommendation made in the recent Civil Courts Structure Review ("CCSR"), which recommended against maintaining a paper channel indefinitely.[41]

1.22 The work of the Assisted Digital team includes focus groups and accessibility testing with users. The service has so far focussed on reform projects within Civil, Family and Tribunals (CFT) and on supporting people at the application stage.[42]

1.23 In September 2017, HMCTS announced that the leading digital inclusion charity Good Things Foundation ("GTF") would be its delivery partner for the face-to-face Assisted Digital services – i.e. help with digital delivered in person.[43] The contract commenced on 11 September 2017 and is 24 months in duration. From April 2018, pilots of face-to-face Assisted Digital began roll-out in various locations, including Swansea, Sunderland and London.[44] HMCTS itself will provide *telephone* assistance with digital via customer support call centres, and in doing so will collect data to evaluate the digital support services. **Chapter II** of this report looks at GTF in more detail, including its 5000 "Online Centres", a small number of which will pilot face-to-face digital assistance for HMCTS.

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[39] *Supra* note 14 on social exclusion, and Chapter II on socially/digitally excluded young people. Our focus is digital exclusion per se. One consultee pointed out though that even digitally-savvy low-income people may struggle to interact with online justice while juggling childcare and work responsibilities. The well-known problem of "scarce cognitive bandwidth" could be exacerbated by so-called "asynchronous" justice, i.e. frequent/repeated interactions (as opposed to simply turning up on a certain day). Such concerns go beyond helping the digitally excluded, but are relevant to the Reform Programme in general. We note that some users will prefer more flexible processes, for example outside of work hours. Other reforms are relevant, e.g. greater user input into scheduling/listing of cases.

[40] MoJ, Transforming our justice system: summary of reforms and consultation, supra, note 1, p. 13, para 7.1.4.

[41] Briggs LJ, *Civil Courts Structure Review: Final Report* (2016), available at https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf See para 6.15: "It is not a realistic answer in my view to seek to solve the problem of the computer challenged by the permanent retention of a parallel paper-based equivalent to online access".

[42] Information supplied by HMCTS. We agree that it makes sense to start with the inability of "offline" users to access the first stage, or entry point, to a service.

[43] *Ibid*. According to GTF, through its national network of Online Centres, it engages with digitally excluded people and helps them build digital confidence, gain basic digital skills and achieve a wide range of positive social/economic outcomes e.g. better health. GTF has its own learning platform, 'Learn My Way' (v4), designed for people with low digital skills and confidence. Since 2010 they have helped over 2.4 million people lead better lives with digital. GTF has previously worked with central Government both on delivery (see *Future Digital Inclusion with DfE* (2016-17), available at https://www.goodthingsfoundation.org/projects/future-digital-inclusion) and service design (see *Widening Digital Participation with NHS Digital*, available at https://digital-health-lab.org/).

[44] GTF and HMCTS, *A handbook for Online Centres* (20 March 2018), available at https://www.onlinecentresnetwork.org/sites/default/files/online_centre_handbook_v.1.pdf p. 5. This document does not specify locations in London, but we understand from GTF that the pilots include Hackney and Tower Hamlets.
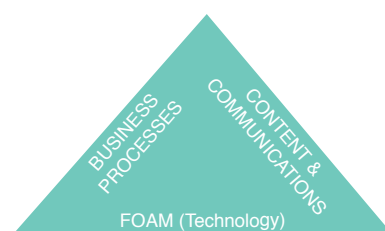
1.24	We note that HMCTS has identified interactions with current court services that do not work well and has prioritised digital innovation to overcome these issues, for example the online divorce petition and the Track my Appeal service in the Social Security Tribunal. These have resulted in considerable improvements in experience for users. They have also reduced the burden of routine work chasing lost files, correcting faulty petitions, and answering telephone enquiries for HMCTS releasing savings for further improvements. This has been the experience with other digital interfaces, notably the Traffic Penalty Tribunal, which has been able to introduce successive improvements based on user experience and feedback. We hope that HMCTS will take a similar approach to investing in learning about the Assisted Digital experience and building these improvements into the pilots and subsequent permanent arrangements. Making publicly available the data around AD delivery would also support research by others that would increase the value of the understanding.

1.25	At the time of drafting, HMCTS was not yet able to offer a service whereby people could telephone one of its service centres and have the call handler fill in the form on their behalf and post it out for checking – a particularly useful interface for those who are able to deal with matters on the telephone but do not have internet access or capability.[45] At present all the call handler can do is to talk through the process with the caller (who is filling in the form on their own screen). We understand that a rule change is required to allow this to happen and hope that this additional channel may become available in the near future.

Figure 1 – Case study from the Traffic Penalty Tribunal

The Traffic Penalty Tribunal (TPT) has now had more than three years' experience of online appeals.

In developing their digital system, 'Foam' (Fast Online Appeals Management) and transforming their service, they apply three fundamental principles:

BUSINESS PROCESSES / CONTENT & COMMUNICATIONS / FOAM (Technology)

TPT recognised that in introducing an online case management system they needed to examine and adjust their business processes, and take great care in the drafting and presentation of the content, instructions and form questions on the screens. The technology is, literally, the platform on which the service is based.
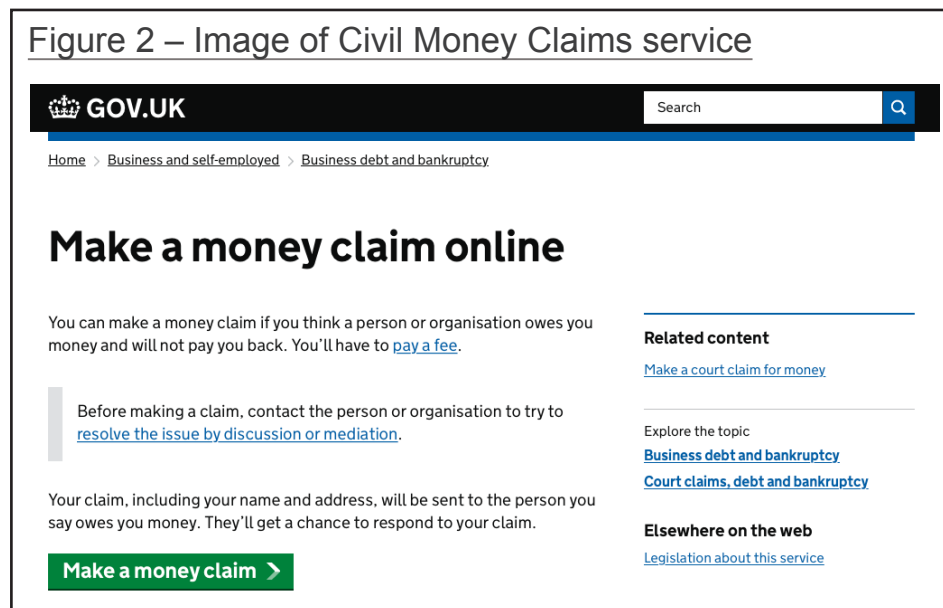

The Online Court

1.26	In civil justice, the most important element of the reform programme is commonly called the "Online Court".[46] The White Paper describes this as an entirely new procedure "to resolve many disputes entirely online, using innovative technology and specialist case officers to progress routine cases through the system and reserve judicial time for the most complex cases".[47] This draws on proposals made in the CCSR, mentioned above, authored by Lord Justice Briggs (as he then was).

1.27	The CCSR resulted in an Interim and a Final Report (the "Briggs Reports"). The Final Briggs Report[48] proposed numerous important reforms in civil justice, including a new court for relatively modest civil money claims called the "Online Solutions Court" with three distinct stages: 1) Automated online triage, 2) Conciliation by a case officer, 3) Determination by a judge. HMCTS has already developed a new online service allowing LIPs to issue money claims up to £10,000 online. Many of the important details about the Online Court have yet to be worked out. From a digital exclusion perspective, the key feature is that many cases in this new court will be dealt with online or virtually. Eventually most civil cases will fall within its jurisdiction, so it is important to tackle digital exclusion now.

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[45] This has long been the model of the Financial Services Ombudsman and is also one of the ways in which people can engage with the Traffic Penalty Tribunal, whose staff act as "proxy users".

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[46] We recognise that the term "Online Court" is not ideal – the final hearing may not be online. However, this term is widely used and it captures the idea that – unlike at present – many cases will start online and others dealt with entirely online.

[47] *Transforming our justice system: summary of reforms and consultation, supra* note 1, p. 8. The White Paper promised that there would be greater recourse to "case officers for routine tasks": members of court staff with special training who could carry out straightforward work under judicial supervision.

[48] Briggs LJ, *Civil Courts Structure Review: Final Report, supra*, note 6, p. 36.

1.28 In early April 2018, the HMCTS civil money claims service was made available to the public[49] – the first step towards the Online Court as described in the White Paper. *Figure 2* below illustrates this service. It shows that, to its credit, HMCTS is attempting to use plain, simple language (see further **Chapter III**). A notable feature of the online Civil Money Claims service is that its design is identical to all other Government websites (it is hosted on Gov.Uk). In **Chapter III**, we argue that this standardised design and lack of independence from Government is constitutionally problematic.

Figure 2 – Image of Civil Money Claims service

Additional context: the need for legal help (especially in civil justice)

1.29 This report follows on from an earlier Working Party report by JUSTICE, *Delivering Justice in an Age of Austerity* (2015) ("the Austerity Report"), chaired by Sir Stanley Burnton. That report focussed specifically on civil justice. It looked at how to adapt an adversarial system given that most people cannot afford lawyers for ordinary civil disputes, and legal aid is largely unavailable. The Austerity Report made recommendations on legal advice, information and assistance. Most importantly, the Working Party recommended the development of an integrated online and telephone platform to provide legal information, guidance and advice in civil justice – run by a "consortium" (including e.g. the legal professions), but publicly funded.[50]

1.30 This report focuses on digital exclusion, and how to overcome it. This report is also not limited to civil justice. As explained above, some see the risk of digital exclusion as a fundamental objection to the entire Reform Programme.

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[49] HMCTS, *Quicker way to resolve claim disputes launched online* (6 April 2018), available at https://www.gov.uk/government/news/quicker-way-to-resolve-claim-disputes-launched-online Figure 2, illustrating the CMC webpage, is available at: https://www.gov.uk/make-money-claim

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[50] See generally chapter 3 of the Austerity Report (*supra*, note 8). The JUSTICE platform offered possibilities for personalised advice (i.e. referrals to lawyers), and used telephone help, so was neither exclusively online nor automated. As the Interim Briggs Report noted (para 4.13), his Online Court was inspired by, but "significantly different" from the Austerity Report. Both reports look at experiences in Canada and the Netherlands of creating interactive diagnostic web platforms in limited areas of the law. They both also recognised the limits of international comparisons; for example, in British Columbia's Civil Resolution Tribunal, people cannot be legally represented (Final Briggs Report, para 6.23). Neither report suggested that technology replace lawyers – for instance, the Final Briggs Report sought to encourage early, bespoke, affordable advice from qualified lawyers (see e.g. para 6.26).

1.31 HMCTS' Assisted Digital is limited to help with the digital aspects of online justice services (i.e. technical help). Assisted Digital will not provide legal help. We recognise that the lack of legal help for ordinary litigants in civil justice is a real problem as well.[51] Three reports in the last three years have tackled this problem and made recommendations on it. They are the JUSTICE Austerity Report, the Briggs Reports (described above), and the 2017 report by the Bach Commission (focussed chiefly on legal aid).[52] All are relevant to the proposed Online Court. In general, both the Briggs Report and the Austerity Report were optimistic about the potential of technology to alleviate unmet legal need. Both also insisted on the need to reshape civil justice to make it more investigative. In both reports, someone in the modernised civil court itself (a registrar or case officer) actively assists the litigants.

1.32 The 2017 Bach Commission Report is the most recent authoritative contribution on the issue of legal help, differing significantly in focus and scope from the Briggs Report and the Austerity Report. It recommended an online legal advice and information "portal", not dissimilar to the recommendation of the JUSTICE Austerity report that there be a publicly-funded legal information and advice platform.[53]

Conclusion: the importance of tackling digital exclusion

1.33 All those we have spoken to recognise both the potential of technology, and the challenges of digital exclusion. Previous reports have agreed that digital exclusion from online justice is a problem, but had different views on the scale of the problem, and how to resolve it. This report focuses on digital exclusion, and practical measures that may help to tackle it. We believe that the move to online justice services should improve access to the courts, not make it even harder.

1.34 Our Working Party was entirely dedicated to the problems presented by digital exclusion, and there may be important points of difference with previous reports. For example, the Briggs Report suggested that the Online Court should not maintain a paper channel indefinitely. By contrast, one of this report's key recommendations is to exploit the multi-channel approach, including a paper channel (see further **Chapter III**).

1.35 Innovative thinking, a focus on user needs, continued learning from users' experience, and more investment in digital help are crucial to preventing digital exclusion from modernised justice services. Our recommendations broadly fall under two headings:

- Providing assistance to people at high risk of digital exclusion **Chapter II**), and

- Minimising exclusion through design and technology (**Chapter III**).

1.36 This report proceeds in two parts. **Chapter II** focusses on groups at high risk of digital exclusion. We highlight unequal access to digital technology and skills, confidence and motivation precisely because we recognise that technology can empower people and transform lives for the better. **Chapter III** surveys the need for smart and accessible design for online justice services and assistive technology.

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[51] HMCTS recognises that the boundary between legal help and other types of help can be unclear. It could learn important lessons from the Personal Support Unit in this respect, which has experience training its volunteers in recognising the limits of the help they can provide, and avoiding giving legal advice.

[52] See the Austerity Report, *supra*, note 8; Briggs LJ, *Civil Courts Structure Review: Final Report*, *supra*, note 6; The Bach Commission on Access to Justice, *The Right to Justice* (final report) (September 2017), available at http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf These reports are summarised in more detail in an Online Annex, available at justice.org.uk.

[53] *Ibid*, the Bach Report, recommendation 24; and the Austerity Report, para 3.14.

II.   PEOPLE AT HIGH RISK OF DIGITAL EXCLUSION

Introduction

2.1   This chapter examines problems facing some digitally excluded groups in more detail. It makes broad recommendations, and invites further consideration of specific, practical solutions for certain cohorts.

2.2   HMCTS' Assisted Digital service intends to ensure that sufficient support is in place to accompany online justice services. We have found them to be receptive to new ideas. The judiciary-led Litigants-in-Person Engagement Group (LIPEG) also informs its work.[54] Good Things Foundation ("GTF"), HMCTS' current partner for face-to-face digital support, has also engaged with us on these important issues.

2.3   The scale of the challenge is considerable. As noted in the Introduction, the reasons why people may be digitally excluded are extremely varied and each person's experience of exclusion is a unique combination of their need, circumstances and skills, confidence and motivation. Nevertheless, particular groups are more affected in ways which bear examining to learn possible solutions to their common problems. The Working Party was struck by the range of people that might need to use Assisted Digital services (including those who might otherwise be confident online but need assistance because of the importance or perceived complexity of the task).

2.4   There are also broader obligations on the Government to ensure that more people have at least basic digital skills and to expand free internet access.[55] As digital charity Doteveryone has noted: "The internet is the defining technology of our age. Connectivity and information are utilities, like electricity or water, that touch and influence every aspect of modern life."[56] This was already of pressing importance given the scale of digital transformation across society – but justice services are of special, constitutional importance.[57]

2.5   Examining some of the problems faced by groups at high risk of digital exclusion, like people with disabilities,[58] has two interrelated benefits. First, it shows the need for further research into the user needs of specific hard to reach groups. Second, it shows that creative thinking, time and effort could minimise digital exclusion from justice services. The potential benefits of modernising public services are high – for users and the Government alike. But further effort to overcome digital exclusion is needed for the Reform Programme to live up to its potential.

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[54] Chaired by Sir Robin Knowles, this group brings together a range of stakeholders, *e.g.* JUSTICE, the Advice Services Alliance and Citizens' Advice. HMCTS attends these meetings.

[55] See Introduction, note 14 on the Basic Digital Skills framework.

[56] Doteveryone, *People, Power and Technology: the 2018 Digital Attitudes Report*, available at https://doteveryone.org.uk/our-work/digital-attitudes-survey/

[57] See e.g. *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51, at [65]

[58] The term "disability" is used broadly. As the World Health Organisation explains, it is "an umbrella term" including e.g. impairments. WHO notes that disability is "not just a health problem" and also includes "environmental and social barriers". See further: http://www.who.int/topics/disabilities/en/

Context

HMCTS' multiple Assisted Digital channels

2.6   It is helpful to look at what exactly is proposed by Government as the "Assisted Digital" service. This involves a number of different channels by which the user might access digital support. A brief overview of each channel is provided by the Inside HMCTS blog:[59]

> **Telephone**
>
> We will provide a telephone contact number for people to call if they get stuck or just need some reassurance. We will be able to answer questions quickly, or spend time talking a user through…
>
> **Webchat**
>
> For people who are comfortable using online services, but who might have a question about a process, we'll provide webchat … lots of people tell us this is their preferred way of accessing support as it means that they don't need to leave the webpage … [we] are working on how and when to implement this into our services.
>
> **Face-to-face**
>
> For people who have difficulty accessing or using an online service, we will provide a face-to-face service which will provide access to technology and support through our online processes. … [delivered by] Good Things Foundation who are one of the UK's leading digital inclusion organisations. We'll be working with them to design and develop this service and we aim to start trialling this support in a limited number of locations …
>
> **Paper**
>
> We'll encourage and support people to use our digital services, however paper channels will always remain and be provided for those who need them.

HMCTS' Good Things Foundation ("GTF") and its Online Centres

2.7   HMCTS' provider of face-to-face Assisted Digital is the Good Things Foundation, which has a very diverse network of 5000 "Online Centres" that can provide face-to-face digital help. HMCTS chose GTF to design and pilot face-to-face "Assisted Digital" support during the initial phase of reforms. The first part of the Online Court (the Civil Money Claims web service) went public in April 2018. At the same time, face-to-face Assisted Digital services began pilots in some areas:

> *Over the next 6-8 months we will 'test' face-to-face assisted digital support across centres in Swansea, Sunderland, Liverpool, St Helens, Doncaster, Birmingham and London. We will introduce each new HMCTS service as it becomes available online, starting with Civil Money Claims. We will then take stock and use our early learning about 'what works' to improve the service before it is extended to more geographical areas and more HMCTS services. We will continue testing face-to-face assisted digital support through to September 2019, when together with HMCTS we will make clear recommendations on how it could be delivered as a mainstream service.*[60]

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[59] Inside HMCTS blog, *Helping people access our services online* (12 October 2017), available online here https://insidehmcts.blog.gov.uk/2017/10/12/helping-people-access-our-services-online/

[60] GTF and HMCTS, *A handbook for Online Centre*s (20 March 2018), available at https://www.onlinecentresnetwork.org/sites/default/files/online_centre_handbook_v.1.pdf For the pilot phase, staff/volunteers with expertise in building digital confidence/skills will receive training from GTF to deliver HMCTS face-to-face digital help. Only organisations within the GTF network are funded by HMCTS to provide face-to-face AD services. GTF estimates that there are upwards of 30,000 volunteers across its Online Centres Network.

2.8 This chapter will examine specific examples where access to the internet is a real challenge. As a general point, we observe at the outset that many at risk of digital exclusion rely on freely-available internet in public spaces.[61] GTF is interesting in this respect, because GTF's network of 5000 Online Centres includes libraries and job centres.[62] Virtually all libraries and jobcentres in England and Wales now offer free internet access.[63] In addition, many organisations that are GTF "Online Centres" already provide technical help to people with low digital skills (quite apart from the HMCTS Assisted Digital pilots).

2.9 Libraries are a good example of a place that many already turn to for digital assistance.[64] We note the statutory duty on local authorities "to provide a comprehensive and efficient library service" in the area (in England, there were slightly over 3000 libraries in 2016).[65] GTF informed us that there are more than 2500 libraries in the GTF Online Centres network. It is also worth noting that the availability of different types of Online Centre varies by region. Beyond this, a large number of community-based organisations, both inside and outside the Online Centres Network, provide digital inclusion and assistance to those who need it.

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[61] Although internet-enabled devices are increasingly affordable, paying for reliable internet access is still a significant challenge for some. Not all digitally excluded people are low-income, but there is a correlation (see Introduction, *supra* note 13). The Greater London Authority informed us of (ongoing) efforts to expand free internet access across London. See e.g. Mayor of London, *The Smart London Plan*, https://www.london.gov.uk/sites/default/files/smart_london_plan.pdf p. 52 ("Super Connected Cities").

[62] GTF, *Our Network*, available at https://www.goodthingsfoundation.org/our-network Online Centres also include e.g. social housing providers and Citizens Advice centres. NB: in this section (and accompanying footnotes) references to libraries are to *public* libraries, as distinct from e.g. academic libraries, or prison libraries.

[63] On libraries, see Kathy Settle, *Reflections on 3 years leading the Libraries Taskforce* (4 April 2018), available at https://librariestaskforce.blog.gov.uk/2018/04/04/reflections-on-3-years-leading-the-libraries-taskforce/; *Libraries Taskforce secures further funding to roll out free wifi in public libraries across England* (28 July 2015), available at https://www.gov.uk/government/news/libraries-taskforce-secures-further-funding-to-roll-out-free-wifi-in-public-libraries-across-england On jobcentres, see House of Commons, *The future of jobcentre plus*, (2 November 2016), available at https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/57/57.pdf para 88. We recognise that public spaces are under strain; noting, e.g., possible closures/re-locations of some job centres – see e.g. Gov.UK, *Update on the future of DWP jobcentres* (6 October 2017), available at https://www.gov.uk/government/news/update-on-the-future-of-dwp-jobcentres

[64] According to the Libraries Taskforce trained staff in libraries ("supported by volunteers") help local people to "become independent [digital] users" and to access a variety of online services. Kathy Settle, *Improved digital access and literacy: How libraries deliver* (19 September 2016), available at https://librariestaskforce.blog.gov.uk/2016/09/19/improved-digital-access-and-literacy-how-libraries-deliver/ More information on the Libraries Taskforce is available at https://www.gov.uk/government/groups/libraries-taskforce and https://librariestaskforce.blog.gov.uk/

[65] The Public Libraries and Museums Act 1964, section 7. Strictly, this places a duty on library authorities to make library facilities available "for all persons desiring to make use thereof". The section suggests that the statutory duty is to make library facilities available to people who reside, work or are in full-time education in the area, with a power to offer facilities to others. The total number of libraries in 2016 can be found in a spreadsheet at: Gov.UK, *Public libraries in England: basic dataset* (1 July 2016), available at https://www.gov.uk/government/publications/public-libraries-in-england-basic-dataset According to this data, there were 3034 'static' libraries in England then. This data set includes both statutory and non-statutory provision, so this figure is a mix of council-run and other types of libraries. For comparison, there are currently 2,422 Costa Coffee stores in the UK: Whitbread, *Full year results* (25 April 2018), available at https://www.whitbread.co.uk/~/media/Files/W/Whitbread/press-releases/press-release-25-04-2018.pdf p. 4.

2.10 Of course, even without the Reform Programme, demand for free internet and digital help well exceeds supply; such services are over-burdened. HMCTS must think about what is available for the most digitally excluded, and how best to reach them. In 2016, GTF worked with the Libraries Taskforce, making available a Digital Inclusion Fund for research projects trialling digital help for "hard to reach" people (delivered through libraries).[66] These people were "typically those less likely to engage with libraries, adult learning or digital skills training due to specific access barriers" – including disability, low income, literacy and lack of access to technology. The projects included lending people tablets, digital skills lessons, and "mobile classrooms". The projects took place across 200 library branches in areas from Somerset to Newcastle, and "supported 1,630 digitally excluded people to improve their basic digital skills". The report found that supporting these people to gain digital skills can generate huge savings, and recommended further investment in digital skills training.[67]

2.11 In 2016, the Government announced that the Department for Culture, Media and Sport and the Libraries Taskforce were setting up a new fund of £4m for pilot projects in libraries to "provide people with opportunities that they might not have otherwise". 30 projects benefitted in total, across more than 40 council areas. A number of the successful projects supported delivery of improved digital access and literacy.[68] As this chapter illustrates, justice reforms make tackling digital exclusion an urgent priority.

Reaching those at high risk of digital exclusion

2.12 Finally by way of context, we note that the Assisted Digital pilot is limited in a number of respects, including:

- There are only two ways of accessing the face-to-face help at this stage: phoning an HMCTS Customer Telephone Service Centre (CTSC) or self-referral, i.e. walking into an Online Centre and asking for help.[69] There is mention of "outreach appointments"[70] but the details are not clear. An example of "outreach" would be digital helpers visiting institutional settings where people are likely to have issues that could be resolved through online justice services;

- The pilot is currently limited to the geographic regions mentioned above;

- Though GTF and HMCTS are keen to learn as much as possible, (and have already benefitted from the input of organisations like the Revolving Doors Agency), we are not aware of any independent, academic or external research to accompany the pilots;

- "[T]his is not a digital inclusion pilot" so the helpers will not be actually training people to be digitally self-sufficient – though they are interested in learning "how far the pilot also helps people become digitally included".[71]

2.13 We have heard from consultees that many people may need digital assistance and reassurance with navigating online justice services. We are encouraged that the HMCTS multi-channel approach is designed to help with this, and discuss this further in **Chapter III**. But some groups of people are at high risk of digital exclusion because of their defining characteristics or their situation and these pose a particular challenge when designing both online justice services and the Assisted Digital services. It is important that HMCTS and its delivery partner aim to reach the *most* digitally excluded, not just people who can come to them.[72]

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[66] Tinder Foundation, *Library Digital Inclusion Fund Action Research Project Evaluation* (July 2016), available at https://www.goodthingsfoundation.org/sites/default/files/research-publications/library_digital_inclusion_fund_action-research-project-final-report.pdf pp. 4 and 6.

[67] *Ibid*, p. 24.

[68] Gov.UK, *Libraries Deliver: Ambition for Public Libraries in England 2016 to 2021* (6 March 2018), available at https://www.gov.uk/government/publications/libraries-deliver-ambition-for-public-libraries-in-england-2016-to-2021/libraries-deliver-ambition-for-public-libraries-in-england-2016-to-2021 Kathy Settle, *And the successful projects are* (22 March 2017), available at https://librariestaskforce.blog.gov.uk/2017/03/22/and-the-successful-projects-are/ NB: DCMS has since changed its name to the Department for Digital, Culture, Media and Support.

[69] GTF and HMCTS, A handbook for Online Centres, supra, note 60, p. 9.

[70] *Ibid*, p. 9.

[71] *Ibid*, p. 6.

[72] See further, by way of comparison: JUSTICE, *Innovations in personally-delivered advice: surveying the landscape* (January 2018), available at https://justice.org.uk/our-work/areas-of-work/civil-justice-system/innovations-personally-delivered-advice-surveying-landscape/ and JUSTICE, *What is a Court* (2016), available at https://justice.org.uk/what-is-a-court/

2.14 With this in mind, this chapter explores some clear examples of digital exclusion:

- Inability to access technology and/or the internet,

- Lack of skills, confidence and/or motivation (including concerns about privacy and data protection),

- Access enabled by digital helpers.

Problems accessing technology and/or the internet

2.15 In this section we look at the problems faced by some groups that face clear digital exclusion and highlight some of the issues that may help to address them.

Geography

Rural areas

2.16 Broadband speeds, and access, are worse in rural areas.[73] In late 2017, "the UK Government announced that it would legislate for a broadband universal service obligation (USO), giving UK people a legal right to request a 10 Mbit/s broadband connection".[74] In the meantime though, such broadband speeds are inaccessible to over a million properties (about four per cent of homes and offices in the UK).[75] As one article observed:

A sizeable minority cannot engage in online activity considered to be 'normal' and increasingly expected of private citizens by Government...This digital divide is largely due to inadequate infrastructure...it is likely that these territorial divides will persist for the foreseeable future.[76]

2.17 Some areas face uniquely difficult challenges with infrastructure – for instance, "there remain areas in Wales with no mobile coverage at all".[77] Efforts to provide face-to-face digital support must also recognise the "relative scarcity of services and facilities" generally in rural areas.[78] In less affluent rural areas with poor public transport, lower-income people might especially struggle to travel to the nearest source of digital assistance. People who cannot afford better internet coverage might then be doubly digitally excluded by geography and poverty.[79]

2.18 Lack of universal access to the internet is a significant issue in its own right. Everyone recognises the importance of such access, and the Government has taken some steps to fulfil the promise of a fully digital society.[80] Court reforms make better infrastructure and greater digital capability of more importance than ever before. We recognise that a fully digital society takes time, and further investment. For HMCTS, it is important to facilitate access to digital services right now.

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[73] Ofcom, *Digital divide narrows, but 1.1m UK homes and businesses cannot get decent broadband* (15 December 2017), available at https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/connected-nations-digital-divide

[74] Ofcom, *Ofcom confirms priorities for 2018/19* (28 March 2018), available at https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2018/priorities-201819; Gov.UK, *High speed broadband to become a legal right* (20 December 2017), available at https://www.gov.uk/government/news/high-speed-broadband-to-become-a-legal-right

[75] Robin Pagnamenta, *Rural areas get right to superfast broadband, The Times* (21 December 2017), available at https://www.thetimes.co.uk/article/rural-areas-get-right-to-superfast-broadband-p5rhxzj70

[76] L. Philip, C. Cottrill, J. Farrington, F. Williams and F. Ashmore, 'The digital divide: patterns, policy and scenarios for connecting the 'final few' in rural communities across Great Britain', *Journal of Rural Studies* (2017), available at p. 397.

[77] Ofcom, *Mobile coverage improving but rural Wales lacks decent service* (15 December 2017), available at https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/wales-mobile-coverage-service

[78] DEFRA and Arts Council England, *Rural library services in England: exploring recent changes and possible futures* (May 2014), available at https://www.artscouncil.org.uk/sites/default/files/download-file/Rural%20library%20services%20in%20England%20-%20exploring%20recent%20changes%20and%20possible%20futures.pdf p. 13. See also the Law Society's map of "legal aid deserts", available at https://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/end-legal-aid-deserts/

[79] Dr Anne-Marie Oostveen, *Access Denied: Qualitative research*, (31 December 2014), available at https://www.oii.ox.ac.uk/research/projects/inadequate-broadband-access-in-rural-britain/

[80] For example, through the new universal speed obligation. *Supra*, note 74.

2.19 Rural populations exemplify the problem well. Libraries make up around half of GTF's Online Centres Network, and even for rural communities libraries might provide "a better online experience than is otherwise available in a local area, [enabling] the library to perform a valuable role as a network hub for local people".[81] Some libraries offer home visits or outreach services, and some rural areas may be fairly close to other facilities that – if properly supported – could offer *additional* digital access and support (for example large universities using volunteer student helpers). An analysis of what is available in very rural areas would help.

2.20 Further, we recognise that in rural areas, physical venues may be the least accessible Assisted Digital channel. Indeed, subject to satisfactory technology and facilitation of legal and other support assistance, remote court proceedings may be preferable for many rural people. At the same time, some of these people will need access to face-to-face digital help. We suggest testing Assisted Digital in more rural, deprived areas than the current pilots provide for. It is important that such areas with little or no legal access (e.g. legal advice centres) are included. Outreach services should also play an important role – for example, Assisted Digital helpers travelling to a care home with tablets. Outreach services should focus on reaching highly excluded groups. Conceivably, such outreach could form part of the current pilots.[82]

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[81] DEFRA and Arts Council England, *Rural library services*, *supra*, note 78, p. 13. We note also that GTF has published a toolkit following work with the Prince's Countryside Fund, available at https://www.goodthingsfoundation.org/news-and-blogs/news/helping-rural-businesses-thrive This is designed to help those wishing to provide digital inclusion in rural areas identify key tasks and issues.

[82] In previous reports, JUSTICE has emphasised the importance of "pop-up" courts and legal advice outreach services. See JUSTICE, *Innovations in personally-delivered advice* and *What is a Court?*, *supra*, note 72. Again, we note that some library services provide outreach beyond their static sites – such as mobile libraries, home services for those otherwise unable to get to a physical location, and 'pop-up' libraries in other community buildings – and as explained above, many GTF's Online Centres are libraries.

Urban areas

2.21 While living in a rural area may cause digital exclusion because of the combination of lack of broadband, poverty and lack of accessible services, there are also significant problems for the most vulnerable in urban areas. Many people who are the most likely to have legal issues, and to be digitally excluded, are also the heaviest users of public services. They may struggle to access the internet because of the cost of broadband, the cost of devices, or through a mixture of lack of motivation, confidence and skills. Local authorities recognised this as a major issue for heavy users of services because of the improved interaction and lower cost that online interaction can offer, especially important given the squeeze on local authorities' budgets. We have been impressed by the way in which forward thinking councils have invested time and effort in reaching out to the most vulnerable and helping them to come and to stay online. For example, Lewisham Council trialled a tablet lending scheme ("My WiFi") in conjunction with the Greater London Authority, and has worked with corporate partners and community organisations to reduce digital exclusion. Wigan Council introduced "digital champions", i.e. staff members assisting members of the public to access online services, and also ran hundreds of "Get Online" sessions.[83]

2.22 We note that GTF research identified significant regional "hotspots" of digital exclusion – around a million people in the West Midlands, the North West and Yorkshire are classed as non-internet-users.[84] It is laudable that the current Assisted Digital pilots focus on regions with high levels of socio-economic deprivation.[85]

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[83] Consultation with JUSTICE. Lewisham informed us that they have worked with diverse partners –like digital inclusion organisation Go On UK, Argos, Lloyds Bank and social housing associations. See also Siobhán McKenna, *Deputy Mayor launches the Mi Wifi digital inclusion project in Lewisham* (25 September 2017), available at https://librariestaskforce.blog.gov.uk/2017/09/25/deputy-mayor-launches-the-mi-wifi-digital-inclusion-project-in-lewisham/

[84] Good Things Foundation ("GTF"), *The real digital divide?* (June 2017), available at https://www.goodthingsfoundation.org/sites/default/files/research-publications/ofcom_report_v4_links.pdf

[85] The Index of Multiple Deprivation (2015) ranks English local authorities on the basis of what proportion of their neighbourhoods are in the most deprived 10% of all neighbourhoods in England ("the test"). The areas in the Assisted Digital pilots are in the most deprived 50 local authorities in England on this test. For example, Liverpool is the 4th most deprived local authority in the Index as 45% of its neighbourhoods meet the test. The Index is available at https://www.gov.uk/government/statistics/english-indices-of-deprivation-2015

Care homes

2.23 An important local authority responsibility is the provision of social care, both in the community and in residential services, such as care homes. In 2016, Age UK reported that the vast majority of care homes in England lacked access to the internet.[86] Doteveryone estimates that 70.5% of "care homes with 'old age' provision" do not offer internet to their residents. Its research also suggests that superfast broadband is inaccessible for many care homes. This is a real problem, because care homes tend to have lots of staff and residents, who may require high bandwidth for activities like Skype calls.[87]

2.24 Care home residents may face other barriers too, due to disability or age. However, many residents want and need technology. The residents in the Age UK report spoke of various benefits of getting online, such as hobbies and contacting their relatives.[88] Lack of internet access may also compound feelings of loss of independence when going into care.[89]

2.25 Another important point from HMCTS' perspective is that many care home residents will struggle to travel, especially if Online Centres are not close by (e.g. a care home in an isolated area). Care homes could yield especially rich and interesting data for outreach pilots, because of the preponderance of users with high risk factors (lack of internet access, age and/or disability).

Homeless people

2.26 Homeless people are another extremely digitally excluded cohort. According to the charity Shelter, hundreds of thousands of people in Britain are officially homeless.[90] Many of them will have legal issues that could be addressed. Anecdotally we understand that many street homeless people have access to devices like smartphones, which like many people they use for keeping in touch with friends and sometimes for accessing essential goods like shelter and food.[91] However, they face obvious problems with paying for services like unlimited calls or data. And there are other concerns too, like theft and inability to charge phones.[92]

2.27 The sad reality is that many homeless people face hostility when accessing services that others might use. A very recent evaluation by GTF found "conflicting reports" about homeless people's device ownership and digital skills levels – but various sources were unanimous that homeless people face "specific barriers to internet access". [93] Free internet may be ubiquitous in places like coffee shops, but is usually reserved for customers. Public services that provide free access to the internet can be unwelcoming too.[94] It is unclear which services specifically aimed at homeless people – such as night shelters – routinely offer free access to the internet.

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[86] Age UK, *The digital inclusion of older people in care homes* (2016), available at https://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Services%20for%20Later%20Life/ID200921%20Digital%20Inclusion%20In%20Care%20Homes%2024ppA4.pdf?dtrk=true "One survey found that from a total of almost 18,000 care homes in England only 2835 provide internet access" (p. 3).

[87] Ollie Sheldrick, *Is broadband provision good enough for care homes?* (8 December 2016). JUSTICE found this article on Doteveryone's blog, but it is now unavailable online.

[88] Age UK, *The digital inclusion of older people in care homes*, *supra*, note 86, p. 14 and Appendix 1.

[89] Wifinity Blog, *The importance of digital inclusion in care homes for the elderly* (5 September 2016), available at https://wifinity.co.uk/importance-inclusion-elderly/

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[90] Patrick Butler, *One in every 200 people in UK are homeless, according to Shelter, The Guardian* (8 November 2017), available at https://www.theguardian.com/society/2017/nov/08/one-in-every-200-people-in-uk-are-homeless-according-to-shelter

[91] See e.g. Lemos & Crane, *The potential for empowering homeless people through digital technology: A preliminary literature review* (2013), available at https://www.lemosandcrane.co.uk/resources/LemosandCraneDigitalEmpowerment.pdf p. 2 which describes homeless people as "surprisingly resourceful" at getting hold of digital technologies (quotation taken from a 2013 World Social Science Forum paper; Lemos & Crane also cite data from the USA about device ownership (2011); full citations, Lemos & Crane, p. 16). Various UK articles are also suggestive of homeless people's use of digital devices. See e.g. A Little Change, *A Little Change Is Evolving* (6 November 2017), available at https://www.alittlechange.co.uk/blog/posts/2017-11-06-a-little-change-is-evolving; Shumila Begum, *You may think the words 'app' and 'homeless' are rather contradictory* (2 December), available at http://www.supportsolutions.co.uk/blog/client_groups/homelessness_/smartphones_for_the_homeless_new_app_created_to_help_homeless_people_find_food_and_shelter.html

[92] *Ibid*, Lemos & Crane.

[93] Good Things Foundation, *Reboot UK: Social outcomes powered by digital* (January 2017) available at https://www.goodthingsfoundation.org/sites/default/files/research-publications/reboot_social_outcomes_v5.pdf, p. 6. This is GTF"s evaluation of its Reboot UK programme with the Big Lottery and Homeless Link and it is also suggestive of good practice to increase homeless people's digital confidence.

[94] See e.g. Lemos & Crane, *supra*, note 92, p. 6.

2.28 These are not problems that HMCTS can resolve but, given the range of legal issues likely to be experienced by homeless people, HMCTS should seek a nuanced, up-to-date understanding of the barriers here. In the AD pilots it should include looking at trusted services that homeless people generally use for digital access, including identifying gaps in infrastructure. HMCTS and GTF should also investigate improvements in accessibility of venues that have relatively good infrastructure already. "Trusted faces and places" providing digital support to the most excluded should receive support to reach more homeless people.

2.29 We recognise the good work already being done in some places. Some homelessness centres make specific provision to help users to resolve a range of practical and legal issues as well as helping them gain new skills and seek employment and permanent accommodation. For example hostels providing free internet access,[95] or Crisis Skylight services helping with computing skills.[96] In October 2017, a pilot scheme was launched in Manchester to enable homeless people to join libraries and access their digital facilities. The scheme was launched in response to a perceived *need* for online services amongst homeless populations: "due to increased demand for online applications from the Jobcentre, DWP and housing agencies, many [Lifeshare] clients have previously ended up facing benefit sanctions, or have missed bidding on properties due to not being able to access the internet at the appropriate time".[97] The Government should invest further in such efforts.[98]

2.30 Voluntary efforts try to fill the "technology gap" in some cases. For example, the organisation Social Box has identified computer access as an effective component to pull individuals *out* of homelessness. This small organisation is running schemes to provide used laptops to homeless people who are moving into accommodation.[99] But for those with no access whatsoever, access to free public services will be even more crucial. Undoubtedly the Government should do more to ensure, for example, free internet access is available in "trusted places".

Detainees

2.31 Detainees are a population for whom physical access to technology presents a real challenge. Indeed, detainees face obstacles accessing any Assisted Digital channel. Although there are significant security aspects to consider, not least interference with witnesses or the commission of further crime, digital access could be allowed for some detainees for some purposes. Controlled access to online justice services would offer detainees up-to-date information on their own cases – a prospect currently hampered by infrequent legal visits, restricted telephone access and the vagaries of secure postal systems.

2.32 Concerns have previously been expressed about criminal defendants' inability to access fully digital services.[100] IT provision is highly variable in secure facilities, sometimes absent entirely. Modernisation of criminal justice is particularly relevant for prisoners, but they may also have ongoing online civil or tribunal disputes.

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[95] Mark Jackson, *Wifinity's Charitable Initiative Installs Free WiFi in 4 Homeless Hostels* (22 December 2017), available at https://www.ispreview.co.uk/index.php/2017/12/wifinitys-charitable-initiative-installs-free-wifi-4-homeless-hostels.html

[96] Crisis Skylight provides services through cafes, libraries and fixed centres. See Crisis, *How Crisis Skylight London can help you*, available at https://www.crisis.org.uk/get-help/london/services/how-crisis-skylight-london-can-help-you/

[97] Manchester City Council, "*Manchester City Council and Lifeshare launch library membership scheme for people who are homeless*" (27 October 2017) http://www.manchester.gov.uk/news/article/7821/manchester_city_council_and_lifeshare_launch_library_membership_scheme_for_people_who_are_homeless

[98] Though we note the Government's fund for libraries, see above, this was a relatively small investment. We note also the Government's recent commitment to fund digital skills training – but only from 2020: *supra*, note 35.

[99] SocialBox, *Laptops for Homeless support – latest updates*, available at https://www.socialbox.biz/laptops-for-homeless-support-event/

[100] Criminal Justice Joint Inspection, Delivering Justice in a Digital Age – A Joint Inspection of Digital Case Preparation and Presentation in the Criminal Justice System, (April 2016), available at https://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/delivering-justice-in-a-digital-age.pdf paras 1.33 and 6.5: "In 2016, judges expressed concern about "how unrepresented defendants were going to be able to access their papers once the court becomes fully digital". See also JUSTICE, *Mental Health and Fair Trial* (27 November 2017), available at https://justice.org.uk/our-work/areas-of-work/criminal-justice-system/mental-health-fair-trial/

2.33 From a broader perspective, access to technology for prisoners could facilitate family contact and improve skills. In 2014, the Chief Inspector of Prisoners called for greater internet access for prisoners, supervised and based on individualised risk assessments. He linked this to modernisation of the justice system, noting increased use of digital case records and video hearings.[101] A 2016 review by Dame Sally Coates spoke to prisoners' "very limited internet access" and welcomed plans for improved digital infrastructure across the prison estate.[102] Further, some digital capability is important for rehabilitation, especially future employability – but opportunities for training (e.g. through prison libraries or education programmes) are presumably limited by the access problems already described.

2.34 Generally, we understand that prisons have proven slow to adapt to digital innovation – with internal processes (including prisoners' applications) remaining largely on paper. Security concerns result in significant restrictions even for visitors. For example, we were informed that in some prisons, although legal representatives may bring digital devices on prison visits, there is no Wi-Fi in the relevant meeting rooms and legal representatives are prohibited from "hotspotting" using other devices. Items such as smart watches and USB sticks are contraband.[103]

2.35 The digitisation of criminal justice is quite advanced. Crown Prosecution Service papers are served either by email in magistrates' courts or uploaded into the Digital Case System ("DCS") for the Crown Court. The next stage for modernisation of criminal justice is the Common Platform.[104] For all systems, HMCTS is looking at how to enable unrepresented people to access their cases online. For detainees, there are specific, additional barriers to such access. We understand that DCS is presently only accessible by legal representatives with a secure email address.[105] Accessing alternatives might be very difficult from detention, making those in prison or custody wholly reliant on others, such as a legal representative taking paper copies of digital files into prison, which incurs additional and unnecessary costs. Further, the ever-increasing use of video conferencing and hearings by video link in criminal proceedings renders it more difficult for physical copies of papers to be delivered to defendants remanded in custody. The risk is that all parties (including the judge), save for the defendant, will have unrestricted access to all papers, whilst the defendant may remain unaware of the detail of the material upon which he is being convicted or sentenced.

2.36 In some cases, in-cell technology and other solutions are being developed. Some prisons introduced secure, self-service kiosks allowing access to prison services (e.g. checking prison account balances, or scheduling visits). More advanced innovations include, for example, experiments with in-cell technology at HMP Thameside, the provision of tablets to inmates at HMP Dovegate and trials with damage proof laptops at HMP Peterborough. We were also told that in some cases, prisoners have access to secure email systems. In addition, the 2016 Coates review described a digital learning platform allowing prisoners access to a small number of "approved internet sites…in very carefully controlled conditions". The Coates Review suggested that virtual learning had great potential but was not working in practice – including due to poor broadband and obsolete equipment.[106]

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[101] HM Chief Inspector of Prisons, *Modernising Justice through New Technologies – Improving Prisoner Access to New Technologies* (24 June 2014), available at https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/02/MODERNISING-JUSTICE-THROUGH-NEW-TECHNOLOGY-FINAL.pdf p. 3.

[102] Dame Sally Coates, *Unlocking Potential: a review of education in prison* (May 2016), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/524013/education-review-report.pdf p. 42, para 4.2.7; p. 46, para 5.13. The quoted comment was in the context of distance learning courses. She suggested that prison platforms should "afford suitably-assessed prison learners greater access (controlled, limited and monitored) to internet sites, including from in-cell terminals".

[103] JUSTICE consultation with Serco, February 2018.

[104] The Common Platform is a digitised system that aims to integrate the previous HMCTS and CPS case management systems (much of which existed in hard copy). The project began in 2014 and remains in development. See HMCTS Blog, *Introduction to CJS Common Platform Programme* (30 June 2016), available at https://insidehmcts.blog.gov.uk/2016/06/30/introduction-to-common-platform-programme/

[105] Criminal Bar Association, *Digital Case System*, available at https://www.criminalbar.com/latest-updates/digital-case-system/ For more information on the DCS, see e.g. Gov.UK, *Crown Court Digital Case System training guides and videos* (29 January 2016), available at https://www.gov.uk/guidance/crown-court-digital-case-system-training-guides-and-videos

[106] Dame Sally Coates, *Unlocking Potential: a review of education in prison*, *supra*, note 102, p. 45, paras 5.5-5.12.

2.37 Overall, a secure system through which prisoners are given access to their criminal cases and other relevant online justice services should be considered, together with access to AD services that accompany that online facility. The Government has already started modernising digital infrastructure across the custodial estate, and authoritative commentators have pressed the importance of greater internet access for prisoners. [107]

2.38 Other detainees are at high risk of digital exclusion as well. For immigration detainees, Detention Services Order 04/2016 gives guidance to Home Office immigration removal centres: "Each centre must ensure that internet access enabled computer terminals are available to detainees 7 days a week for a minimum of 7 hours a day, though individual time slots may be limited if there is excessive demand."[108] This means *regulated* internet access, however. Certain websites (including social media and pornographic materials) can be blocked. It is unclear how much internet access detainees are afforded in practice, especially in privatised immigration centres. We understand that in some cases, immigration detainees' personal devices, e.g. smartphones, are removed.[109]

2.39 Other detainees' such as mental health in-patients will be similarly digitally excluded by lack of internet access and confiscation of personal devices. The NHS Digital website suggests that free internet is not yet widely available for such patients: "Wi-Fi is being put in place in a small number of trusts, before it is rolled out to mental health, community and acute trusts across the country (subject to approval of funding)."[110]

2.40 In 2017, seven Mental Health trusts received funding "to pioneer world-class, digital services to improve care for patients experiencing mental health issues." In pilot areas, mental health in-patients were actively encouraged to use digital apps. However, this seemed focussed on healthcare-related tools, rather than internet access generally.[111]

2.41 We appreciate that for the most extremely excluded there are no easy answers. A much more comprehensive and up-to-date picture of all detainees' access to technology on the ground would be very useful though, including both publicly-run and privatised facilities. Compared to the abundant data on digital exclusion generally, there is a paucity of evidence about detainees and their digital needs. We suggest that HMCTS tap into the best available evidence and creative thinking regarding detainees' digital exclusion.

2.42 Detainees may never have access to technology for all purposes, or in all cases. Enabling some access to digital justice services is a more modest ambition.[112] As illustrated above, some detainees are already permitted access to technology for some purposes. For example, for virtual learning, some prisoners already have access to certain "white-listed" internet sites. Secure, controlled access to online justice services may be feasible. It certainly merits further investigation, and conversations between HMCTS and various parts of the Government.[113] HMCTS should also remove small but potentially significant barriers, for example inability of detainees to access their own criminal case files digitally.

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[107] HM Chief Inspector of Prisons, Modernising Justice through New Technologies – Improving Prisoner Access to New Technologies (supra, , note 101); Dame Sally Coates, Unlocking Potential (*supra*, note 102).

[108] NB the review date for this Order is May 2018. Home Office, *Detention Services Order 04/2016*, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/523833/DSO_04-2016_Detainee_access_to_Internet.pdf

[109] JUSTICE consultation with Serco, February 2018. We were informed that in at least one Immigration Removal Centre, detainees have their smartphones removed, and they are given simple mobile phones instead.

[110] NHS Digital, *NHS WiFi in secondary care*, available at https://digital.nhs.uk/nhs-wi-fi/secondary-care

[111] NHS England, *Mental health patients set to benefit from pioneering new digital services* (12 April 2017) https://www.england.nhs.uk/2017/04/mental-health-patients-set-to-benefit-from-pioneering-new-digital-services/

[112] It is important to acknowledge that 1) there are serious difficulties for detainees in accessing any channel and 2) some detainees do not have lawyers, or indeed any visitors at all. While *prisoners'* rights (at least) are necessarily curtailed by virtue of their incarceration, access to the courts has been affirmed as a common law right. There is clearly a difference in kind between enabling detainees to access an online court, versus for social media, gaming or other ordinary purposes.

[113] Such as NOMS, the Home Office, and the NHS.

Problems with skills, confidence, motivation

2.43 Annual reports have been published on basic digital skills since 2015. The 2017 "Digital Index" report found that 9% of people have no digital skills at all, and 21% lack basic skills (11.5 million people).[114] Between 2016 and 2017, 1.1 million people gained basic digital skills – and over-65s "improved more rapidly than any other age group, by 6 points within a year."[115]

2.44 According to the Digital Index, face-to-face help is important for the offline.[116] As discussed at the start of this chapter, many people access free face-to-face digital help through libraries and other organisations. There are also some free self-help resources.[117] Some digital skills training is not free, but available at relatively low cost. For example, there are University of the Third Age (U3A) services nationwide. Some local U3As offer computer classes specifically aimed at, and delivered by, retired people.[118] It is important to understand what makes digital skills training successful: features may include peer-to-peer learning, lots of repetition, and being supportive and non-judgemental.[119] Importantly too, the Digital Index identified low awareness of sources of digital help among the offline.[120]

Older people

2.45 Older people have lower digital capability than the UK average, and lack basic digital skills more than other age groups.[121] The majority of offline people are retired and over 65.[122] Moreover, while Ofcom's 2017 analysis showed that nearly 80% of those aged 65-74 were "recent internet users", this fell to 41% of people over 75.[123]

2.46 Correspondingly, device ownership falls among elderly populations – of those aged over 65, 41% own a smartphone, 67% own a PC or laptop, and 44% own a tablet.[124] However, between 2015 and 2016 there was a noticeable increase in smartphone ownership among both the over-65s and the over-75s – "the only two age groups for which use has increased".[125]

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[114] Lloyds Bank, *UK Consumer Digital Index 2017* (March 2017), available at https://www.lloydsbank.com/assets/media/pdfs/lloyds-bank-consumer-digital-index-2017.pdf We note that this study was commissioned by Lloyds Bank and Doteveryone, and used 4000 face-to-face interviews to calculate a national result.

[115] *Ibid*, p. 6.

[116] *Ibid*, p. 30.

[117] See e.g. GTF's free online learning platform, which GTF uses across the Online Centres Network as part of an approach combining face-to-face support and digital learning. GTF, *Learn My Way*, available at https://www.goodthingsfoundation.org/projects/learn-my-way

[118] See https://www.u3a.org.uk/ From its website, it appears that U3A has branches in the West Midlands, Yorkshire and the North West – the three areas GTF identified as "regional hotspots" for digital exclusion (See GTF, *The real digital divide?*, *supra*, note 84).

[119] See e.g. GTF, *How We Change the World* (February 2018), available at https://www.goodthingsfoundation.org/research-publications/how-we-change-world – which emphasises a flexible, person-centred approach.

[120] Lloyds Bank, *UK Consumer Digital Index 2017*, *supra*, note 114, p. 41.

[121] *Ibid*. 18-24 year olds have the highest level of digital capability and over 60s the lowest ("compared to the UK average of 85%"). More broadly, the proportion of those who are not online increases with age, from 18% of those aged 55-64, to 35% of 65-74s and just under half of those aged 75 and over (47%). Ofcom, *Adults' Media Use and Attitudes Report 2018* (25 April 2018), available at https://www.ofcom.org.uk/__data/assets/pdf_file/0011/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf p. 6.

[122] *Ibid*, p. 24: "There is a clear demographic weight towards older people, which is not a new insight … That is not to say that all over 60s are offline – 71% are now using the internet. This is reflected in improved Basic Digital Skills and increased usage of tablets and smartphones (see p. 50) amongst this age group". See also p. 45: people in school, studying or in full time employment are most likely to have Basic Digital Skills. People in retirement are the least likely. According to GTF's analysis of official data (GTF, *The real digital divide?*, *supra*, note 84, p. 4), around 65% of non internet users are over 65, and around 65% of non-users are retired.

[123] Office of National Statistics ("ONS"), *Internet users in the UK: 2017* (19 May 2017), available at https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2017

[124] Lloyds Bank, *UK Consumer Digital Index 2017*, *supra*, note 114, p. 49.

[125] Ofcom, *Adults' Media Use & Attitudes Report 2017* (June 2017), available at https://www.ofcom.org.uk/__data/assets/pdf_file/0020/102755/adults-media-use-attitudes-2017.pdf p. 2.

2.47 Lack of interest and motivation are important barriers to getting people online, though not insurmountable. The 2017 Digital Index observed that "it is becoming increasingly challenging to motivate those who are not yet using the internet. 9% of the UK adult (aged 18+) population are still offline. This has reduced from 11% in 2016, so an encouraging move forward … [But] the remaining 9% are less engaged and less easily persuaded than ever before." On the other hand, it noted that "learning how to use the internet from friends and family is the most popular way to learn, with 45% doing so, suggesting that a peer-to-peer approach could be a solution for the remaining 9%."[126]

2.48 Various sources show that security concerns, lack of interest, and low awareness (both of sources of free help with digital skills and the benefits of the internet) can all affect motivation to get online.[127] Not only are the majority of offline people over 60, this age group is more likely to say that nothing could motivate them to get online.[128]

2.49 However, GTF told us that in its experience, many non-users change their minds after engaging with friendly, community-based digital support. And responding to the 2017 Digital Index, the CEO of Age UK said that "older people often tell us the internet makes life more convenient and enjoyable … That's why the Age UK Network supports older people in a variety of ways, such as drop-in sessions, classes and peer support programmes that are tailored to individual needs".[129] Age UK are "aspirational and positive about the benefits that digital inclusion can bring"; they would like to see older people who can afford to get online supported and encouraged to do so.[130]

2.50 Digital skills and confidence are an enduring problem. Despite the overall trend towards greater digital capability, older people may face greater issues and for those who do not want to use modernised services, paper options must be retained. However, with the proper support, many older people might want to move beyond paper and venture into the online space. Certainly that has been the Traffic Penalty Tribunal's experience as people become more confident about their engagement with the service. Monitoring the uptake of "Assisted Digital channels" and online services by age group will be important.

2.51 In terms of improving both skills and motivation for the digitally excluded, the 2017 Digital Index emphasised the importance of face-to-face and informal skills training, and that offline people "respond most to trusted faces in local places". An example was libraries, which were the best-known source of digital help among the offline (though awareness was low generally).[131] GTF have stressed to us the importance of having a broad range of trusted organisations offering digital training. The Digital Index also strongly suggests to us that improved awareness of existing digital skills training would be very helpful.[132]

2.52 HMCTS' Assisted Digital service will not provide comprehensive digital skills training, but it will provide digital help. Some users will simply want reassurance or reminders how to use certain features. Others will feel more confident if shown where to find the Online Court the first time. Useful insights about older users in particular can and should be collected through their interactions with Assisted Digital services. GTF can also compare the Online Centre's experiences delivering digital skills training to the offline. We note that Online Centres can – and in many cases will – signpost users to digital skills support, sometimes delivered within the Online Centre itself.

2.53 HMCTS should also learn from the experience of organisations focussed on older people, and of Government departments that have already digitised services frequently used by older people – notably, carers' allowance and power of attorney applications.

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[126] Lloyds Bank, *UK Consumer Digital Index 2017*, *supra*, note 114, p. 41 and p .24, and see also pp. 26 and 49.

[127] *Ibid, UK Consumer Digital Index 2017*, note 114, p. 26. See also: Age UK, *Later Life in a Digital World*, *supra*, note 11, pp. 31-32; and C. Martin, S. Hope and S. Zubairi, *The Role of Digital Exclusion* (Carnegie Trust, 2016), pp. 3-4.

[128] *Supra*, note 122, GTF, *The real digital divide?* See also Lloyds Bank, *UK Consumer Digital Index 2017*, *ibid*, p. 26: 68% of those offline said that nothing could motivate them to get online. For over 60s, this figure rose to nearly three-quarters.

[129] *Ibid*, UK *Consumer Digital Index 2017*, p. 24.

[130] Age UK, *Policy Position Paper: Digital Inclusion* (April 2016), available at https://www. ageuk.org.uk/globalassets/age-uk/documents/policy-positions/active-communities/ppp_ digital-_inclusion_uk.pdf p. 2.

[131] Lloyds Bank, *UK Consumer Digital Index 2017*, *supra*, note 114, pp. 3, 5, 29.

[132] *Ibid*, pp. 7, 29.

2.54 It is important to remember that many older people may not have trusted helpers. The Government should be supporting older people, particularly those on lower incomes, to improve digital capability. This is not only about the economy or the workplace. Technology can alleviate demand on stretched public services, and correspondingly, more and more public services are going online.

2.55 Alongside lower skills, motivation and confidence are very significant barriers. It is necessary for HMCTS and academics to collect and analyse a lot of data to understand how this might affect interaction with online justice services, while being as protective of privacy as possible. Concerns about privacy and security of information might disproportionately dissuade the offline from using online justice services. The point of research is to close the digital exclusion gap, not widen it. Overall though, HMCTS should ask questions to gain an accurate picture of digital exclusion. And low response rates would defeat the point. Research suggests that being transparent about the reasons for data collection and usage increases trust.[133] HMCTS and any delivery partner should be transparent, open and candid about why personal information is needed. It is important that people do not feel that they have to answer in order to get Assisted Digital help, though.[134]

Concerns about technology affecting motivation

2.56 Motivation and confidence to go online are particularly important for "offline" users. However, such concerns may be spreading. Internet usage has general implications for privacy and security of data – concerns particularly relevant for justice services, which often involve sensitive personal information.

2.57 For many, the extensive benefits of technology outweigh such concerns (see further **Chapter III**). Indeed for most people of working age, technology is unavoidable: the OECD suggests that virtually all jobs in the modern economy require some digital capability.[135] However, at the time of writing, there are troubling news reports alleging large-scale misuse of personal data by technology companies. We only touch on these complex issues, which go far beyond digital exclusion, noting only that people may have genuine concerns while still using the internet frequently. As virtually everyone who goes online gives up personal information – and given recent scandals – these issues are increasingly a matter of general concern.[136]

Young people

2.58 It may seem surprising to talk about young people at all, because those aged 15-34 generally have extremely high levels of basic digital literacy: 0% of 15-24 year olds, and only 2% of 25-34 year olds, have no digital skills. Further, 95% of 15-34 year olds have basic digital skills.[137] Many young people also use the internet for banking, job-searching, work and education on a weekly basis.[138]

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[133] See e.g. Doteveryone, *People, Power and Technology: the 2018 Digital Attitudes Report*, *supra*, note 56; T. Morey, T. Forbath and A Schoon, *Customer Data: Designing for Transparency and Trust* (May 2005), available at https://hbr.org/2015/05/customer-data-designing-for-transparency-and-trust

[134] HMCTS routinely asked certain "user satisfaction" questions when piloting their online services. However, if the focus is on digitally excluded users, the approach may be different. Behavioural insight research on how to improve response rates may be helpful.

[135] OECD, *Skills for a Digital World* (December 2016), available at https://www.oecd.org/els/emp/Skills-for-a-Digital-World.pdf P. 1 "The use of ICT in the workplace… is now required in all but two occupations in the United States: dishwashing and food cooking. Similarly, in most OECD countries, over 95% of workers in large businesses and 85% in medium-sized businesses have access to and use the internet as part of their jobs. In small businesses the share is at least 65%."

[136] See e.g. Maggie Koreth Baker, *The Trouble With Quitting Facebook Is That We Like Facebook* (27 March 2018), available at https://fivethirtyeight.com/features/the-trouble-with-leaving-facebook-is-that-we-like-facebook/

[137] This represents a mean of the 2017 Digital Index statistics for Basic Digital Skills amongst 15-24-year olds (97%) and 25-34-year olds (93%). See Lloyds Bank, *UK Consumer Digital Index 2017*, *supra*, note 114, p. 41.

[138] Ofcom, *Adults' Media Use and Attitudes 2018*, *supra*, note 121. Ofcom's analysis revealed that more than half of respondents aged 16-24 had used the internet for banking or shopping in the past week alone (p. 78). In the same period, 46% of this age group had gone online to find information for work or education (p. 43).

2.59   However, the very small minority of young people without digital skills are now an extremely disadvantaged cohort. For older people, there are significant levels of digital exclusion across all social classes. For younger people, digital exclusion is concentrated in those on lower incomes.[139] Digitally excluded young people are therefore an extreme example of the interaction between digital and social exclusion.

2.60   The problem of socio-economic disadvantage goes far beyond this report or modernised justice services. However, several general points are clear from a recent GTF analysis of available data:[140]

- Social disadvantage and digital exclusion are related.

- People in social class DE, people who left school aged 16 or younger, and people whose household earns less than £17,499, make up a large share of the offline and people without basic digital skills.

- Education "has a huge influence on whether someone is likely to be [a non-internet] user": of those offline, 80% had left school by 16.

2.61   A recent report by the Carnegie UK Trust looked at the digital exclusion of certain young people: "those who are in the care of the state; whose needs may reflect adverse family circumstances; whose needs reflect features of child development; or who are in receipt of statutory support services."[141] It observed that (on 2016 data), 300,000 young people still lacked basic digital skills. The Carnegie UK Trust report focussed on these young people, who require a great deal of support. We note that young people with similar characteristics are significantly overrepresented in our criminal justice system. Some evidence also suggests that young people may already struggle to find help on legal matters (online, or in person).[142]

2.62   The Carnegie UK Trust report challenged the stereotype that all young people are "digital natives": the "[d]igital support needs of young people, particularly those who are marginalised or vulnerable, are not well understood."[143] We also learned from the organisation Youth Access that though socially excluded young people often have a wide range of problems with possible legal solutions they are less likely to access traditional courts or legal services.[144]

[139] See GTF, *The real digital divide?*, *supra*, note 84, p. 10.

[140] *Ibid*, p. 3.

[141] G. Wilson and A. Grant, *A Digital World for All?*, *Carnegie Trust* (October 2017), available at https://www.carnegieuktrust.org.uk/carnegieuktrust/wp-content/uploads/sites/64/2017/10/NotWithoutMe-2.pdf p. 8.

[142] The Revolving Doors Agency stressed the connection between social exclusion, and contact with criminal justice, for vulnerable young people. We note also that Citizens' Advice research on their face-to-face clients found that, while most of their young clients had basic digital skills, they were less likely to have basic digital skills than the national average: 93% and 83% respectively (the former derives from the 2015 basic digital skills statistics). See *Citizens Advice, Digital Capability*, (August 2016), available at https://www.citizensadvice.org.uk/Global/Public/Impact/Digitalcapabilityreport_final_July%20(3).pdf p. 8 (GRAPH). See also: C. Denvir, N. J. Balmer and P. Pleasence, *Surfing the web – Recreation or resource? Exploring how young people in the UK use the Internet as an advice portal for problems with a legal dimension*, Interacting with Computers 23 (2011) pp. 96–104; and P. Pleasence and N. Balmer, *How People Resolve 'Legal' Problems*, Legal Services Board (2014), p. 10.

[143] G. Wilson and A. Grant, *A Digital World for All?*, *Carnegie Trust, supra*, note 141, p. 9. The authors also talk about other young people being passive consumers of entertainment, p. 23, rather than truly digitally capable.

[144] JUSTICE consultation with Youth Access; Gina Wilson and A. Grant, *A Digital World for All?*, *supra*, note 143, p. 58.

2.63 Interestingly, other recent research has looked at usage of public libraries by age. It showed that 15-24 year olds were the most likely group to visit a library – and over-55s were the least likely.[145] A number of youth focussed third sector organisations have also developed models of support and outreach which build on providing a range of services in other places where young people already congregate or turn for help – "trusted faces in trusted places".

2.64 HMCTS and its AD delivery partner should be alive to existing services as better ways of reaching this particular hard to reach group and should consider ways of working with them. As part of its user information and general research effort HMCTS should investigate which young people are actually accessing *digital* justice, and remain alert both to the needs of the majority of young people and the small, most excluded minority.

Digital helpers and assistive technology

2.65 Many people at risk of digital exclusion benefit from assistance from others – often, these "helpers" assist them to access technology, help them when they run into difficulties, or do it for them. This help may be informal or may be from trusted helpers in community settings, or from formal sources of help.[146] Just a few possible examples of personal "digital helpers" are:

- A younger family member – or a carer – helping an older person to use an online service.

- A trusted neighbour helping out an older person who is offline.

- A person with dementia asking their personal representative to assist with monitoring email correspondence.

- A welfare rights advisor, on behalf of their client who is deaf and blind, calling HMCTS with questions about an online justice service.

- A community organisation volunteer helping a user to get online and keep up to date with progress.

2.66 HMCTS cannot rely on digitally excluded people having personal help outside of AD services. But they can anticipate digital helpers, and not place undue barriers in the way of existing support for the digitally excluded. Keeping digital helpers in mind could facilitate access by those who are otherwise digitally excluded but who have access to sources of help closer at hand and more familiar than the Assisted Digital services. We learned of some specific issues during consultation, illustrative rather than exhaustive. For example, some consultees expressed concern about clients being "timed out" of online services while they were interacting with helpers. Such problems can be exacerbated if people are interacting with helpers remotely. In other cases, we were told that helpers were hampered in accessing Universal Credit online services because of onerous re-authorisation requirements.

2.67 We recognise that personal digital helpers present opportunities and challenges for HMCTS. For modernised justice services, there are legitimate concerns about security and identity. Such requirements will vary from service to service. However, further investigation of users trying services *alongside* their helpers may reveal some barriers to be unnecessary or disproportionate. In particular, it should be possible to recognise an organisation as a helper – not just an individual (Age UK is a good example of an organisation that provides extensive digital support to older people). Some commercial organisations already anticipate online and telephone services being accessed on behalf of someone else and have varying levels of security and consent to take account of this.

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[145] James Peachey, *What does England make of its Public Libraries?, Libraries Taskforce Blog*, (11 April 2017), available at https://librariestaskforce.blog.gov.uk/2017/04/11/what-does-england-make-of-its-public-libraries/ However, we note that another survey showed a closer correspondence between age groups: *DCMS Taking Part Survey* (31 August 2016), available at https://www.gov.uk/guidance/taking-part-survey The DCMS survey also showed that a significantly higher proportion of adults from BAME groups used a library in the year ending September 2015 than adults from white ethnicities (49.3% versus 31.8%, respectively).

[146] In the context of the Reform Programme, people for whom English is a second language ("ESL") merit separate consideration. As JUSTICE's response to the *Transforming justice* consultation pointed out, such applicants are disadvantaged "culturally …technologically, linguistically and legally". (See JUSTICE, *Response to Consultation on Transforming our Justice System* (November 2016), available at https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2016/11/JUSTICE-Transforming-Our-Justice-System-consultation-response.pdf p. 14 para 50). JUSTICE's ongoing Immigration and Asylum Working Party is examining this group in detail. We note that translators/interpreters may also be digital helpers.

2.68 Of course, sometimes "digital helpers" are technologies, not people. In particular, many people with disabilities depend on assistive technologies in everyday life. People with disabilities are a diverse group but, in general, digital exclusion affects them disproportionately. Around one-fifth of adults with a disability have never used the internet.[147] A 2017 report by Ofcom, examining access to products and services, also showed a significant gap in device ownership between "non-disabled" and "disabled" people:[148]

- 80% of non-disabled people owned a smartphone, but only 57% of disabled people,

- 60% of non-disabled people owned a tablet, compared to 46% of disabled people,

- 94% of non-disabled people reported that they had access to internet *anywhere* (including outside their household) – compared to 79% of disabled people.

2.69 People with disabilities are a heterogeneous group, so it is difficult to draw firm or general conclusions.[149] Specific disabilities could make certain Assisted Digital channels wholly impractical. Conversely, remote justice proceedings could be a lifeline for those for whom physical courts are currently inaccessible. It is important that HMCTS and the Government gain a better understanding of the problems that people with disabilities face and how that affects their access to Assisted Digital help.

2.70 In looking at the range of disabilities it is important to also include mental illness and learning disabilities, which can have a profound effect on day-to-day life. People interacting with the legal system (especially in criminal justice) are more likely than average to have mental ill-health.[150] Focussing on digital exclusion, one report found that people without internet access were "twice as likely to have a below average score [for mental health]".[151] And some evidence suggests that requiring people to access services by telephone is especially daunting for people with mental ill-health.[152] HMCTS needs to factor in the accessibility of all channels for people with both physical and mental disabilities. As JUSTICE's recent report on Mental Health and Fair Trial explored, digital services for people with mental ill health might inhibit or enhance their ability to engage, depending on their condition.[153]

2.71 We recognise that, for many disabled people, technology plays an important role in counteracting physical and social barriers and facilitating access to services. For instance, the Royal National Institute for the Blind's website states:

At RNIB, we believe in the power of technology to assist people with sight loss; to be independent, access information, grasp opportunities and to be creative. We recognise the changing landscape as the world we live in becomes increasingly digitalised, and are excited by the potential this holds.[154]

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[147] GTF, *The real digital divide?*, *supra*, note 84, p. 11.

[148] Ofcom, *Access and Inclusion in 2016*, (March 2017) available at https://www.ofcom.org.uk/__data/assets/pdf_file/0030/98508/access-inclusion-report-2016.pdf p. 5 (TABLE).

[149] For example, for older people with disabilities, lack of digital skills generally may be a driving factor behind digital exclusion: in 2014, it was reported that 16% of working age adults had a disability, compared to 45% of pension age adults: Gov.uk, *Disability facts and figures* (January 2014) available at https://www.gov.uk/government/publications/disability-facts-and-figures/disability-facts-and-figures 2017 data shows a relatively small gap in internet use between disabled and non-disabled adults aged 16-24 (2.4 percentage points), but a larger gap between disabled and non-disabled adults aged 75 and over (16 percentage points). ONS, *Internet users in the UK: 2017*, *supra*, note 123.

[150] See generally, JUSTICE, *Mental Health and Fair Trial* (27 November 2017), available at https://justice.org.uk/our-work/areas-of-work/criminal-justice-system/mental-health-fair-trial/

[151] C. Martin, S. Hope and S. Zubairi, *The Role of Digital Exclusion* (Carnegie Trust, 2016), available at https://www.carnegieuktrust.org.uk/wp/wp-content/uploads/sites/64/2016/09/the-role-of-digital-exclusion.pdf p. 15.

[152] See Money and Mental Health Policy Institute, *Briefing Paper*, (April 2017), on the "subscription trap", available at http://www.moneyandmentalhealth.org/wp-content/uploads/2017/04/20170306-Subscription-retail-paper-3.pdf Also, people with mental ill-health are reportedly "significantly less likely to use telephone advice". Public Law Project, *Keys to the Gateway: An Independent Review of the Civil Legal Advice Gateway*, available at http://www.publiclawproject.org.uk/data/resources/199/Keys-to-the-Gateway-An-Independent-Review-of-the-Mandatory-CLA-Gateway.pdf p. 18, paras 3.43 and 3.44.

[153] The JUSTICE Mental Health report (*supra*, note 150) suggests that such vulnerabilities should be identified as early as possible so Assisted Digital support can be made available, particularly for people in detention.

[154] RNIB, *Technology For Life*, available at http://www.rnib.org.uk/practical-help/technology-hub

2.72 However, a problem facing many people with disabilities is the cost of "assistive technologies". Scope's "Extra Costs" campaign estimates that disabled people already face a "financial penalty" of, on average, £570 a month.[155] Not surprisingly then, the combination of disability and low income can create extreme digital exclusion:

When segmenting the [ONS and Ofcom] data based on social class, we can see that social class and disability compound one another. 55.1% of [non internet users] are both disabled and in social class DE – an estimated 2 million people.[156]

2.73 For some disabled people, cheaper technology and basic digital capability could be life changing. For example, one consultee with vision impairments spoke of the immense benefits of voice-enabled digital assistants. Further, he stressed the importance of digital skills training for older and/or disabled people.[157]

2.74 HMCTS should ensure that digital help is accessible for people with various disabilities. Investigating specific needs may be time-consuming, but would also generate useful ideas. For example, finding out how mental ill-health affects uptake of telephone support could make the channel more accessible, and reduce the need for face-to-face help. Some services in the public and private sector employ "call back" services that can be requested online or by text (for example, Amazon's "Click-to-call" service).[158] HMCTS should also learn from outside experts, for example organisations like Ability Net, which sends volunteers to the homes of disabled, and older, people. The service is promoted as "a network of friendly disclosure checked ITCanHelp volunteers who offer free computer support … [they] may be able to help with computer systems, laptops, tablets and even some smartphones."[159] Access to the service is via the website, by email or on a Freephone helpline. This is another example of the importance of outreach services for some disadvantaged groups.

2.75 There may be questions about the affordability and usefulness of different technologies in the context of specific disabilities. But when considering modernised justice services, it is important to compare the accessibility of physical and remote courts. Overall, given the empowering potential of technology, digital exclusion of disabled people is especially problematic. For the Government, this should underscore the importance of digital inclusion strategies targeted at people with disabilities.

2.76 A positive aspect of technology is that it can itself increase the availability of support – for example, video relay services enabling three-way communication between deaf business owners, interpreters and customers.[160] We explore this further in **Chapter III**.

Learning from the varied types of digital exclusion

2.77 HMCTS AD pilots, and the reforms generally, present unique opportunities to bring modernised services to digitally excluded people. HMCTS should monitor use, especially of the Assisted Digital channels, and disseminate learning. Assisted Digital services should include hard-to-reach places and people, for example by outreach to institutional settings.

2.78 We also recommend further investment directed to digital help provided in places that the most digitally excluded cohorts already use, especially those already providing digital skills training and internet access ("trusted faces in trusted places"). As we observed above, access to AD is currently by self-referral. Yet we know from research that the most vulnerable who have legal problems, or who need to respond to legal action such as debt collection or possession proceedings, may be least likely to seek help and advice.[161] By extension this will probably include the likelihood of their seeking help with digital interaction.

[155] Scope, *Extra Costs*, available at https://www.scope.org.uk/campaigns/extra-costs

[156] GTF, *The real digital divide?*, *supra*, note 84, p. 11.

[157] Alexa is a voice-enabled digital assistant that comes with the Amazon Echo device. Such technologies are sometimes called "smart speakers". Amazon Echo is the device; Alexa is the digital helper. Similarly, Apple's IPhone device comes with a digital helper, Siri.

[158] Users signed in to an Amazon account can access the service at https://www.amazon.co.uk/gp/help/contact-us/call-me.html?ie=UTF8&nodeId=502564&skip=true

[159] AbilityNet, *IT Support at Home for Disabled People, and Older People* available at https://www.abilitynet.org.uk/at-home/IT-support-for-disabled-people

[160] Matt Simon, *The remarkable tech bringing deaf and hearing worlds together* (27 June 2016), available at https://www.wired.com/2016/06/remarkable-tech-bringing-deaf-hearing-worlds-together/

[161] See further, by way of comparison: JUSTICE, *Innovations in personally-delivered advice: surveying the landscape* (January 2018), available at https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2018/02/Innovations-in-personally-delivered-advice-report-FINAL-v20-Feb-2018.pdf

2.79 Another overarching theme is that HMCTS needs a better understanding of how the most digitally excluded will behave in this new environment. Further research would help, qualitative and quantitative – and including large-scale studies. It is important to avoid inaccurate generalisations, or infer lack of demand for digital services from lack of use. Nor can anyone be confident, yet, which channel works best for specific cohorts. With proper support, we believe that some digitally excluded cohorts could find online justice services better than other channels.

2.80 Often, digitally excluded users will be visiting an Online Centre for *both* Assisted Digital services and digital skills training. So the pilots, especially of face-to-face digital help, offer rich evidence to the Government. HMCTS and the Government should take advantage of the best evidence about digital help and digital skills training, especially for groups like older people (for whom digital capability remains a challenge).[162]

2.81 It is important to recognise the rate of change in digital exclusion, and fluctuations in barriers. For instance, over a million people gained digital skills in 2016-2017 alone.[163] Even broader problems like infrastructure are changing.[164] HMCTS and the Government should focus on the cohorts who remain at very high risk of digital exclusion. This chapter has identified particular groups are at very high risk of digital exclusion: the most vulnerable, homeless people and detainees. There is not nearly enough up-to-date thinking on these most digitally excluded groups, and how their needs intersect. We recommend that HMCTS and the Government investigate solutions specific to these cohorts.

2.82 Finally, the Government and HMCTS should aspire to fully digitally inclusive services. In this chapter, we acknowledged the presence of digital helpers, and recommended that HMCTS remove barriers to existing digital help. Recognising problems common to a group does not mean consigning the whole group to being offline indefinitely. In some cases, HMCTS is well placed to experiment with different approaches. In other cases, cross-governmental coordination could remove specific practical barriers.

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[162] We note GTF's agreement: "This is a great opportunity both to support the transformation of the UK's justice system, and to help Government learn about how to deliver assisted digital and design a service that works for vulnerable people" GTF and HMCTS, *A handbook for Online Centres*, *supra*, note 60, p. 5.

[163] Lloyds Bank, *UK Consumer Digital Index 2017*, *supra*, note 114.

[164] *Supra*, the Introduction and notes therein.

III. MINIMISING EXCLUSION – TECHNOLOGY AND DESIGN

Introduction

3.1 The previous chapter focussed in detail on difficulties that some face in accessing digital services. It is important to design online services that can be used by as many people as possible, including those at risk of digital exclusion who are seeking access to justice. These people, and those supporting them,[165] especially benefit from continual thinking around inclusive design and technology.

3.2 In implementing modernised services, HMCTS should exploit technology and design to minimise digital exclusion. The groups described in **Chapter II** would be especially disadvantaged by technology that is hard to use or access. So this chapter looks at technologies that are assistive, affordable and available.[166] Next, this chapter looks at inclusive design features. Simple, clear design is especially important for people with limited digital capability.

3.3 Reformers must also be mindful of future proofing. The lens of digital exclusion will help HMCTS to make inclusive, adaptable online justice services. Conversely, catering only for today's users risks built-in obsolescence. For example, in 2017, the National Health Service was the "world's largest purchaser of fax machines" – expensive, unwieldy and much less secure than modern alternatives.[167] Short-sighted investment choices made during the Reform Programme could have implications for decades.

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[165] Either the Assisted Digital help provided by HMCTS or GTF, or the digital helpers already described, *supra*, para 2.65.

[166] We recognise that this is a relative exercise – for some, even a relatively modest sum will be unaffordable.

[167] National Health Executive, *Digital doldrums: NHS remains world's largest purchaser of fax machines* (5 July 2017), available at http://www.nationalhealthexecutive.com/Health-Care-News/digital-doldrums-nhs-remains-worlds-largest-purchaser-of-fax-machines We note also that particular circumstances might impose exclusion in reverse. For example, we suspect that many working-age people were never taught how to use a fax machine precisely because that technology became obsolete some time ago, with the rise of email.

3.4 Finally, the Assisted Digital channels were described earlier in this report. The chapter recommends that justice services should use multiple channels to engage and involve the digitally excluded.[168] The Online Court is referred to for convenience throughout this chapter. But the Social Security and Child Support (SSCS) Tribunal will also be an important testing ground, as its stated aim is to create entirely online hearings for benefits appeals.[169] So we suggest end-to-end pilots of these services (see further below).

Context

3.5 The first chapter recommended that HMCTS should pay specific attention to digitally excluded people. Robust, transparent data collection and critical outside analysis will help the Reform Programme to realise its full potential. External commentators and researchers can use such data to evaluate the Online Court as it progresses. We found the Gov.Uk "Performance Platform" a potentially useful model in this respect.[170] The Platform provides up-to-date information on a variety of Government services, which each have their own webpage and graphics.[171] Important information can be gleaned from the public services that were digitally transformed in 2013-15. These "exemplar services" were wide-ranging, from booking prison visits to making applications for lasting power of attorney.[172] Cross-departmental liaison could help HMCTS to spot opportunities and avoid pitfalls for justice reform.[173]

3.6 We were informed of features of certain exemplar services that could help digitally excluded users. Throughout this chapter, we draw attention to some good design features. Considerable funds have been dedicated to the justice Reform Programme, but the design of the Online Court is not yet set in stone. HMCTS should therefore invest in user-friendly technology and design at the outset, and ensure that user-friendly features are maintained.[174]

Minimising digital exclusion through technology

Mobile technology

3.7 Research shows the increasing importance of mobile technology:[175]

- Many people identify smartphones and tablets as their most important device for accessing the internet.[176] Across all age groups, more people are using smartphones – and they are being used for more activities.[177]

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[168] The multi-channel approach is especially important for fully online justice services, i.e. end-to-end.

[169] MoJ, *Transforming our justice system: summary of reforms and consultation* (Cm 9321, 2016), available at https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/supporting_documents/consultationpaper.pdf p. 10. The idea is replacing case management hearings with continuous messaging, and determinations with an appropriate mix of online questioning and virtual hearings, including telephone and video-conferences.

[170] See the Introduction, paras 1.11-1.12 (and footnotes 22-24) for discussion of the digital exemplar services.

[171] However, the data provided is not uniform. The amount of useful information available seems to vary from service to service. See Gov.UK, *Services Data,* available at https://www.gov.uk/performance/services

[172] See brief descriptions of exemplar services in the Introduction, para 1.12.

[173] We note that the Government Digital Service has previously supported public sector digital projects, see also the Introduction.

[174] The Home Office process for online visa applications is an example of the importance of maintaining user-friendly features. One of the original "exemplar services" allowed people in China to apply online to visit the UK. (See Gov.UK, *Exemplar 21: Visas*, available at https://www.gov.uk/government/publications/gds-transformation-programme-2013-to-2015/exemplar-21-visas).

When this service was first introduced in 2014, it had several useful features for users, such as being able to view the form in simplified Chinese. (See GDS, *Incorporating translation into the Home Office Visas exemplar* (26 November 2016), available at https://designnotes.blog.gov.uk/2014/11/26/incorporating-translation-into-the-home-office-visas-exemplar/) However, in 2017, news reports claimed that the Home Office would be contracting out the visa support service. It has been claimed that the contractor "will charge £5.48 per email sent, change opening hours and reduce the number of languages services are available in". (See Caroline Mortimer, *UK visa service to charge £5.48 to send them a single email from overseas, The Independent* (30 May 2017), available at https://www.independent.co.uk/news/uk/politics/ukvisa-tourists-charges-fees-email-overseas-cost-home-office-sitel-uk-a7763776.html)

[175] For these purposes we treat computers and laptops as one category, and tablets and smartphones as "mobile technology".

[176] Ofcom, *Adults' Media Use and Attitudes Report 2018* (25 April 2018), available at https://www.ofcom.org.uk/__data/assets/pdf_file/0011/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf p. 2.

[177] *Ibid*. This could be partly thanks to the rise of well-designed, intuitive mobile applications. Smartphone users were more likely than in 2017 than in 2015 to have used their phones for transactional purposes (p. 81).

- Around one-quarter of all adults are *solely* reliant on devices other than computers to go online. This figure has increased by eight percentage points since 2015. Importantly, the proportion of such users was higher than average among people aged 16-34 and households in social class DE.[178]

- Between 2014 and 2016, the use of computers to access the internet "decreased by ten percentage points – from 81% to 71%".[179] Upfront costs may differ significantly between computers and mobiles.[180]

3.8 While by no means a complete answer, mobile technology offers HMCTS an opportunity to make people *less* digitally excluded.[181] For instance, young people at risk like those discussed in the last chapter might go to a public library, or borrow a friend's computer – but a high-quality mobile application could reduce the need for them to do so. Further, apps are often simpler and more streamlined.[182] Our consultation suggested that these design features could be particularly beneficial for some people with disabilities.[183] We return to inclusive design later in this chapter.

3.9 Given all this, we recommend that HMCTS create intuitive mobile applications for accessing justice services. The focus should be on digitally excluded people for whom mobile devices provide a vital internet access point. The Online Court should cater for the most affordable and ubiquitous modes of digital interaction, and HMCTS should look to mobile technology both for minimising digital exclusion and future-proofing.[184]

New technological solutions to improve user experience

3.10 As discussed earlier in this report, the potential of technology to overcome digital exclusion is higher for certain users. People with disabilities for which specialist tools are necessary and expensive stand to benefit greatly from the "mainstreaming" of assistive technologies.[185] Technology aids now commonplace were foreshadowed by solutions for people with disabilities. Before instant messaging and email, there was "textphone" for people with hearing impairments. Text-to-speech tools used by people with visual impairments or dyslexia might eventually be supplanted by voice-enabled digital assistants. Millions of people in the UK alone own "smart speakers" – a number set to rise exponentially.[186]

3.11 We are conscious of the "future proofing" concern and the limits of our own technical expertise. We do not single out any one technology. Instead, we recommend that the Government and HMCTS apply the beneficial possibilities of the most up-to-date, user-friendly technological solutions.

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[178] Ofcom, *Adults' Media Use and Attitudes Report 2018* (25 April 2018), available at https://www.ofcom.org.uk/__data/assets/pdf_file/0011/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf p. 20; pp. 37-8. See Chapter II, paras 2.60-2.64 on young people and social exclusion.

[179] Ofcom, '*Smartphone by default' internet users: A qualitative research report* (11 May 2016), available at https://www.ofcom.org.uk/__data/assets/pdf_file/0028/62929/smarphone_by_default_2016.pdf p. 5.

[180] *Supra*, note 175. On the Argos website, for example, the cheapest laptop was £144 more expensive than the cheapest smartphone (£179.99 and £34.99 respectively, as of 30 April 2018). See http://www.argos.co.uk/

[181] For the avoidance of doubt, we are not suggesting that mobile apps avoid the need for other devices entirely. But they would improve digital access to the Online Court for some. To take just one example from the private sector, many people benefit from very intuitive online banking on their smartphones. A good banking app and internet access makes it quicker and easier to view account balances and keep track of transactions. Digitally-excluded people with mobile banking apps might still need a computer, phone or personal support sometimes. But where they cannot access these, at least for routine tasks, mobile devices could prevent *total* digital exclusion. See para 3.7.

[182] Ofcom, '*Smartphone by default' internet users: A qualitative research report*, *supra*, note 179, p. 2.

[183] AbilityNet noted that designing for smaller screens forces ruthless re-questioning of what information is essential, and how to present it. We reiterate the importance of user-friendly design in general, later in the Chapter (see "Minimising digital exclusion through design", paras 3.18-3.38).

[184] See generally Ofcom, *Adults' Media Use and Attitudes Report 2018*, *supra*, note 178; Ofcom, '*Smartphone by default' internet users: A qualitative research report*, *supra*, note 182; and Ofcom, *Communications Market Report* (3 August 2017), available at https://www.ofcom.org.uk/__data/assets/pdf_file/0017/105074/cmr-2017-uk.pdf p. 1.

[185] See generally House of Commons Work and Pensions Committee, *Assistive technology* (10th report of Session 2017-19), available at https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/673/67302.htm

[186] Bret Kinsella, *9 Percent of UK Households Own Amazon Echo Today, 40 percent in 2018* (5 June 2017), available at https://www.voicebot.ai/2017/06/05/9-percent-uk-households-amazon-echo-today-40-percent-2018/

3.12 Already, HMCTS have begun work on useful technical solutions for Assisted Digital (such as live webchat and screen sharing).[187] Various other ideas for consideration were mentioned during our work, such as chatbots pre-populated with frequently asked questions, natural language processing, and biological login methods.[188] Some organisations are already anticipating changing technology patterns as well – for example, web services that cater for voice-enabled digital assistants.

3.13 As the contrast between textphone and internet messaging shows, newer technological solutions can do the same thing better – quicker, easier and at lower cost. These considerations are particularly important for digitally excluded users.[189] However, HMCTS must ensure that the Online Court is compatible with a range of options, and should not assume that everybody has the most up-to-date devices and software. In the last chapter, we recommended that users' participation should be tested alongside their support mechanisms – this should also include their assistive technologies.

Multi-channel approach

3.14 Technology makes facilitating inclusion and choice less difficult than in the past. For example, webchat can pop up automatically to re-engage users who get "stuck". The Traffic Penalty Tribunal's system identifies where people have not finalised their appeal, so its support staff can text or phone offering help. Nor does there need to be a binary choice between channels: users can start off using paper or telephone, and move to online services, or vice-versa.

3.15 Many existing internet-based organisations illustrate these points. In daily life, most people get delivery updates, appointment reminders and other helpful information by text or email. In many cases such text/email services can be automated.[190] The NHS increasingly uses text notification and multiple reminders of appointments and has recently introduced a text facilitated service to enable people to access an earlier appointment available because of a cancellation.[191] It should be possible to help service users move across multiple channels, to aid their access to the courts. Several "exemplar services", the HMCTS' early SSCS "Track My Appeal" service, and the Track My Crime system all exemplify the multi-channel approach as well.[192] Automated prompts could be very useful for the digitally excluded.

3.16 Of course, technology does not replace the need for personal contact. As described earlier in this report, Assisted Digital support will come in various forms. Call handlers in the CTSCs should be able to talk users through digital processes and call-back features should be offered (as mentioned in the last chapter, this could be particularly important for some disabled people). The Online Court could also learn from the Traffic Penalty Tribunal, where" proxy users" complete the online process for those who are offline and have phoned up, or posted in a form. Finally, we believe that the benefits of online developments should be shared offline so far as possible. The data gathered on digital services should be used to inform and improve the paper and face-to-face channels, and vice-versa. For example, hundreds of questions were removed from the Carer's Allowance online application form because the design team challenged their necessity.[193]

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[187] Screen sharing is common practice in various IT support contexts. When someone is phoning for technical support, it allows the call-handler to see the user's screen and provide better guidance.

[188] For example, we understand that the Citizens' Advice website uses NLP: available at https://www.citizensadvice.org.uk/

[189] See Chapter II, paras 2.68-2.76.

[190] See e.g. Gov.UK, *Renew or replace your adult passport*, available at https://www.gov.uk/renew-adult-passport/renew and GDS, *Exemplar 17: Your tax account* (1 June 2013), available at https://www.gov.uk/government/publications/gds-transformation-programme-2013-to-2015/exemplar-17-your-tax-account

[191] Drdoctor, *Getting seen sooner with notifications about earlier appointments*, available at https://drdoctor.zendesk.com/hc/en-gb/articles/204175081-Getting-seen-sooner-with-notifications-about-earlier-appointments

[192] See Track My Crime website, available at https://trackmycrime.police.uk/help/ and Robin Marchant, *Sometimes it makes sense to start in the middle, HMCTS blog* (3 February 2017), available at https://insidehmcts.blog.gov.uk/2017/02/03/sometimes-it-makes-sense-to-start-in-the-middle/

[193] For the redesign of the Carers' Allowance process, see e.g. Simon Hurst, *How we recruited people with low/no digital skills on Carer's Allowance* (13 February 2015), available at https://userresearch.blog.gov.uk/2015/02/13/how-we-recruited-people-with-lowno-digital-skills-on-carers-allowance/ and Charlotte Jee, *Carer's Allowance eighth digital exemplar to go live, ComputerWorldUK* (2 December 2014), available at https://www.computerworlduk.com/applications/carers-allowance-eighth-digital-exemplar-go-live-3589357/

3.17 Overall, we recommend that HMCTS fully exploit the Assisted Digital multi-channel approach. This includes enabling users to move between channels with ease once they have started the process and ensuring that offline processes mirror online developments. The multi-channel approach should cater for users' preferences so far as reasonably possible, for example providing reminders via text message or email.

Using design to reduce digital exclusion and reliance on digital helpers

3.18 The first half of this report explored problems facing various groups. For some of these, the barriers they face will prevent online access entirely. For others, who are currently offline, the right intervention or opportunity may be enough to encourage them to go online. For example, several consultees described people deciding to "go digital" because relatives had given them devices like tablets and laptops or they had been able to access these through community organisations.[194] However, if new users seeking to improve their digital capability find online services clunky, unintuitive or generally off-putting they are likely to give up. Badly designed services are disempowering, and increase reliance on digital helpers. That is why user feedback both from those using the Online Court directly and from Assisted Digital services, is so important. It is also important to recognise that well-designed digital services help with signposting and reassuring the digitally confident in presenting their case, and engaging appropriately and in time, with the court or tribunal and its processes. The more they can do this, the less they will take up the services of Assisted Digital, preserving them for those with the greatest need. Below, we highlight just some design features to illustrate how justice services should focus on those who struggle with digital – and then make overall recommendations.[195]

Some illustrative helpful design features for the Online Court

3.19 Our work identified the following as potentially helpful, inclusive features for digitally excluded people:

- Allowing time for thought: for example facilities to save, edit and return to forms, and not timing out people when they are struggling,

- User control: for example, making it easy to enlarge font and change the colour of a webpage,[196]

- Reassurance: for example, allowing users to see progress at a glance, making next steps readily apparent, confirming submission of forms, and pop-up information,

- Lack of clutter: for example using lots of white space and removing (or hiding)[197] unnecessary information,

- Avoiding repetition: for example, only entering one's address once.

3.20 Our consultation revealed that user customisation could be crucial for those at risk of digital exclusion. Though many devices have in-built customisation features already, the Online Court should make customisability prominent and obvious. For example,[198] the organisation "Diversity and Ability" has a large toolbar at the top of the screen to change the colour of the webpage. This may be particularly relevant for those with older or cheaper devices.

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[194] Evidence from Age UK and Lewisham Council. We note also the work of various organisations for older people. See e.g. this Age UK partnership with a technology company to provide tablets: https://www.ageuk.org.uk/latest-news/archive/age-uk-and-breezie-to-help-older-people-get-online/ The organisation "Friends of the Elderly" also provides grants to older people specifically to buy devices and the internet: http://www.fote.org.uk/our-charity-work/grants/

[195] Many such features are already referred to in the comprehensive technical guidance already available, see e.g. the Web Content Accessibility Guidelines ("WCAG"), available at https://www.w3.org/TR/WCAG21/

[196] We learned in consultation that larger font size and customisable colour are particularly important for people with vision impairments.

[197] Web services allow information to be hidden for some, but available for others – for example, clicking on a small question mark to make further information pop-up. By contrast, with paper forms, users have to comb through information that might not be relevant to them.

[198] See DnA website, available at https://www.dnamatters.co.uk

3.21 As discussed earlier in this chapter, the Carer's Allowance online service designers removed hundreds of questions from the paper form. At the end of each part, the form "ticks off" the sections that have been completed. A progress bar at the top of the page indicates to users their progress through the form. Also, at various stages in the form, summaries of previous answers are provided, providing reassurance and a chance to review. Applicants are given the option of email confirmation.[199]

3.22 For Lasting Power of Attorney applications, the designers of the online service were keen to avoid repetitious form-filling. A design feature pre-populates associated forms on the basis of those already filled in. This means that the online service creates associated forms automatically.[200] The Lasting Power of Attorney process also allows four weeks for people to change their minds after their application has been submitted.[201] In this mandatory 4-week "cooling off" period, users can amend the form.[202]

3.23 The HMCTS Tax Appeal Online service, which first went live in 2017, [203] allows users to submit an appeal to the tax tribunal online against certain decisions taken by HMRC. There is "save and return" functionality, and the service allows users to lodge their appeal and receive an acknowledgement number in a one-step process.

3.24 Various websites illustrate other good design features. Notably, many webpages use lots of clean space. This approach is demonstrated by the website of "Ability Net", an organisation with expertise in disability and technology (see further **Figure 4**, below).[204]

3.25 HMCTS should be designing justice services that even the "computer challenged"[205] find easy to use – which will improve the experience for everybody. HMCTS should keep digital exclusion at the forefront in the design process, and ensure that web offerings are simple, intuitive and accessible. We recommend therefore that HMCTS comply with the highest possible standards for accessible design. Comprehensive technical guidance on accessible design is already available, and includes many features that are good practice (for example, being able to save and edit online forms).[206]

Simplifying presentation and communication via online services

3.26 We turn now to the importance of presenting and communicating information as simply and clearly as possible: this includes making greater use of visual information.

3.27 For those already struggling with digital services, like those new users described above, it is really important that web services are intuitive, interactive and attention-grabbing, helping them to engage. In addition, online services and all Assisted Digital channels should use clear, simple language expressed in the language of everyday life.[207]

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[199] See the Introduction, paras 1.11-1.12 (and footnotes 22-24) for discussion of the digital exemplar services.

[200] *Ibid*.

[201] MoJ, *New online application service for Lasting Powers of Attorney (LPA)*, (2 July 2013), available at https://www.gov.uk/government/news/new-online-application-service-for-lasting-powers-of-attorney-lpa

[202] Dementia UK, *Lasting power of attorney – Planning for the future* (August 2017), available at https://www.dementiauk.org/wp-content/uploads/2017/09/Lasting-Power-of-Attorney.pdf p. 9.

[203] HMCTS, *HMCTS Tax Appeal Online service is made available to the public* (29 June 2017), available at https://www.gov.uk/government/news/hmcts-tax-appeal-online-service-is-made-available-to-the-public

[204] See AbilityNet website, available at https://www.abilitynet.org.uk and Resolver website, available at https://www.resolver.co.uk/

[205] Briggs LJ, *Civil Courts Structure Review: Final Report* (2016), available at https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf p. 40, para 6.17.

[206] Consultees referred us specifically to WCAG, *supra*, note 195. See also the AbilityNet website, *supra*, note 204, for guidance on good practice in the public and private sectors.

[207] Easy read has been developed to help people with language difficulties understand information more easily, using short, simple sentences and pictures, lowering the 'readability level'. Little research has been carried out to understand whether it is an effective strategy, with that research giving mixed results, although more research is being conducted. This may explain the small range of easy read documents available in the justice system, and the lack of requirement to provide them. However, simple, written and pictorial information is likely to help clarify the process better than nothing at all, see examples cited at JUSTICE, *Mental Health and Fair Trial* (2017), available at https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2017/11/JUSTICE-Mental-Health-and-Fair-Trial-Report-2.pdf para 2.33.

3.28 Strategies exist to minimise digital exclusion through ways of providing information. Dr Tkacukova, an academic member of our Working Party, has written about the importance of short sentences, using clear layout to replace grammatical and syntactical complexities, and replacing complex legal terms with plain language.[208] We also considered recent research by Harvard Law School. Its "Access to Justice Lab" investigated how best to present information to unrepresented people.[209] The Stanford "Legal Design Lab" also conducts research into complex communication, including in law, science and healthcare. Their "driving hypothesis" is that visual design improves laypeople's understanding of complex information.[210] Finally, the UK Behavioural Insights Team has conducted a variety of studies on improving the presentation and communication of information from departments to lay people.[211]

Presenting information

3.29 Moving services online offers real opportunities for better, simpler presentation of information – particularly helpful for people learning digital skills and for the "computer challenged" generally.[212]

3.30 There are obvious limits to what court forms and other "static" content can offer. Good web services do a lot more than placing text online. Rather, they use interactive multi-media approaches. For example, for many people, finding and reading leaflets about going to court is challenging. Law for Life in its presentation to us suggested a bright and lively design that helps create the feeling that any citizen can use and manage the process, with high quality supporting resources in different formats such as film, diagrams, easy read, and the provision of tools such as a statement builder. The British Columbia Civil Resolution Tribunal is an exemplar of all these recommendations with its colour, clear symbols, lots of white text and not too much text, and encouraging feel.[213] Closer to home, the video on the website of the Traffic Penalty Tribunal is an excellent example of an interesting, clear explanation of what happens in that jurisdiction.[214]

3.31 Some websites offering legal help to LIPs demonstrate the importance of good presentation as well – for example, the Resolver website, which uses graphics and lots of white space (see **Figure 3**). Resolver also illustrates the importance of future-proofing: its service is adaptable, continuously reviewed and regularly tested. On interactivity, the 30-minute video on the Advicenow website is a good example. It guides people step by step through the current incredibly complicated Form E – the financial statement in divorce proceedings.[215]

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[208] T. Tkacukova, 'Communication in family court: Financial order proceedings from the perspective of litigants in person', *Journal of Social Welfare and Family Law*, (2016), pp. 430-449.

[209] Harvard Access to Justice Lab website, available at http://a2jlab.org/ Specifically, they looked at improving response rates by defendants to debt collection lawsuits. The context was that most of these defendants lost by default because they failed to respond to the lawsuit.

[210] See Legal Design Lab, *How can we craft legal communications that engage and empower people?*, available at http://www.legaltechdesign.com/communication-design/

[211] See e.g. UK Behavioural Insights Team, *Tax*, available at http://www.behaviouralinsights.co.uk/category/tax/

[212] We have not looked at low literacy during our work – it is a huge challenge in itself. However, we suggest that people with only basic literacy levels could be empowered by videos and pictures. In that respect, multi-media approaches might facilitate inclusion more generally. The relationship between lacking literacy, and lacking digital literacy, is complicated. Most offline users are older people, for whom general literacy may not be a problem. On the other hand, many offline users have lower education levels (school-leavers aged 16 or under). So at the very least the two types of illiteracy probably compound each other.

[213] See British Columbia Civil Disupute Tribunal website, available at https://civilresolutionbc.ca/

[214] See Traffic Penalty Tribunal website, available at https://www.trafficpenaltytribunal.gov.uk

[215] AdviceNow, *How to fill in your financial statement (Form E) – film*, available at https://www.advicenow.org.uk/guides/how-fill-your-financial-statement-form-e-film

Figure 3 – Image from Resolver website[216]
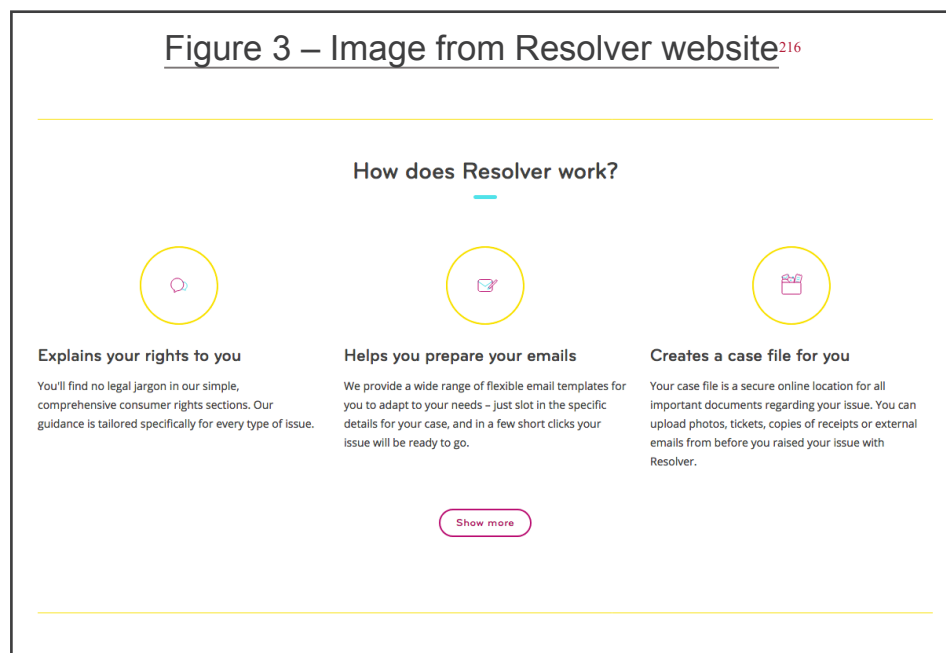
3.32 As **Chapter II**, digital exclusion is a broad category. In particular, people with disabilities are a varied group. So accessible design presents quandaries for HMCTS. For example, some people with visual impairments rely on older screen-readers or Braille – images and videos might be inaccessible for such people. On the other hand, digitally challenged ESL people would probably find visuals really helpful. We repeat our recommendation that HMCTS follow the best available technical standards and the best practice, which deal in detail with accessibility, including matters like screen readers. [217] There is no one-size-fits-all answer.

3.33 Therefore, we believe that HMCTS should try to present information in a variety of ways. An accessible online service need not use text to convey all information, and sometimes newer technology offers simple workarounds. For example, though we noted above that images were not compatible with "traditional" assistive solutions, sometimes newer techniques overcome this.[218] And some blind people now use more up-to-date assistive technology, which can "read" images.[219] In particular, to help people with limited digital skills, the entry point to the service needs to be both clear and eye-catching. The website of the organisation Ability Net is a great example. This organisation has expertise around technology and disability, including the technical guidelines that we have endorsed. The first page of its website uses simple, clear pictorial information.

Figure 4 – Image from AbilityNet website[220]

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[216] See Resolver website, *supra*, note 204.

[217] See WCAG website, *supra*, note 195.
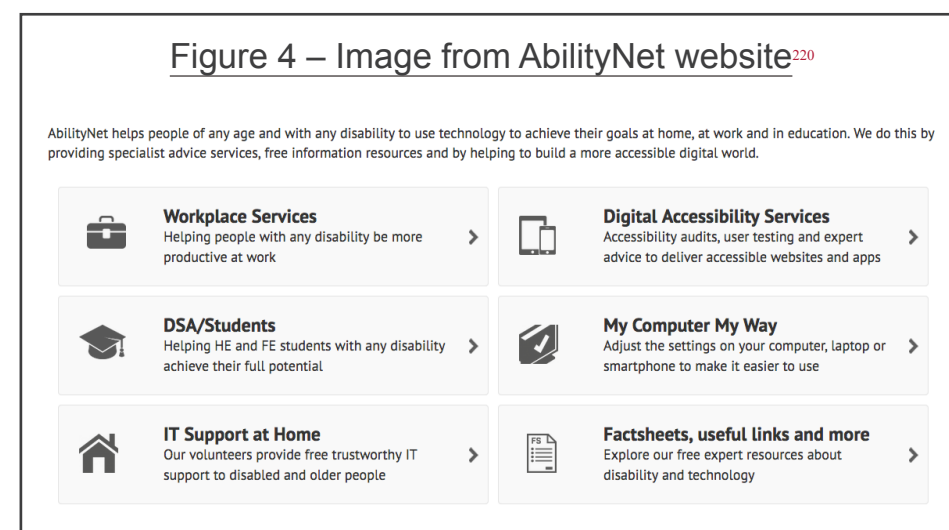
[218] See e.g. Mel Finerock, *Making Web Images Accessible to People who are Blind, Conscious Style Guide* (7 February 2017), available at

[219] E.g.: Toby Meyjes, *Facebook uses AI to let blind people 'see' its pictures, The Metro* (5 April 2016), http://metro.co.uk/2016/04/05/facebook-uses-ai-to-let-blind-people-see-its-pictures-5796140/

[220] AbilityNet website, *supra*, note 204.

Simplifying language

3.34 Communicating complex concepts is a huge challenge. Efforts by organisations like Advicenow show that simplifying language takes considerable time and effort.[221] Sometimes efforts to remove complexity end up changing meaning, introducing errors or reducing clarity. In addition, legal language is arcane and technical. As Law for Life – who run the Advicenow site – told us, its experience helping LIPs has demonstrated the need for unfamiliar terminology to be explained when it is first encountered, for concepts to be unpacked, and professional vocabulary avoided. [222]

3.35 HMCTS' research to precede the online divorce application project suggested that users struggled to understand technical jargon, faced "information overload" and made multiple errors with form-filling.[223] To its credit, HMCTS is trying to replace and simplify legal terminology across a range of online services. The CMC (**Figure 2** in the Introduction) uses simpler language like "money claim". But HMCTS also still include terms that are incomprehensible to a non-lawyer and are not explained until later in the process. Rendering legal concepts and processes in clear, everyday language is a challenge. HMCTS should gather expertise from a range of organisations with this experience and – with the help of the advice sector, public legal information providers and linguistic experts – simplify information and avoid complicated legal terminology.[224]

Constitutional independence

3.36 The UK Supreme Court demonstrates its independence from government by its own unique website which is notably different from the current "Gov.UK" style of the newly public Civil Money Claims service.[226] The website of the Courts and Tribunals Judiciary,[227] although hosted on Gov.UK, has a completely different design style from the Ministry of Justice website, for example.[228] We have significant concerns about the front page of the Online Court, and future online courts or tribunals, being identical to all Gov.UK sites. It blurs the visible independence of the courts.

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[221] See e.g. AdviceNow, *What sort of language is most appropriate?*, available at https://www.advicenow.org.uk/articles/what-sort-language-most-appropriate

[222] Lawforlife, *How to write good legal information*, available at http://www.lawforlife.org.uk/tools-and-materials/ple-materials/write-good-legal-information/

[223] HMCTS information supplied to JUSTICE.

[224] We note the experience of the Personal Support Unit. Though they are not lawyers and do not provide legal advice, their volunteers often help LIPs to understand complex legal terminology.

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[225] UK Supreme Court website, available at https://www.supremecourt.uk/

[226] See Introduction para 1.28; Gov.UK, *Make a court claim for money*, available at https://www.gov.uk/make-court-claim-for-money Indeed the site is reached though Gov.Uk via Home, Business and self-employed, Business debt and bankruptcy

[227] Courts and Tribunals Judiciary, *About the judiciary*, available at https://www.judiciary.gov.uk/about-the-judiciary/

[228] Ministry of Justice website, available at https://www.gov.uk/government/organisations/ministry-of-justice

3.37 Many who come into contact with the modernised court system may be facing a State party – for example in the SSCS Tribunal. We were informed by HMCTS that the private beta phase of the Social Security Tribunal has had to put a note on its first page to reassure users that the tribunal is independent of government. Of course, HMCTS justice services are independent from the Government. But we are concerned that the Gov.UK appearance of the Online Court will look just the same as the organisations people are appealing from and could make people reluctant to use online justice services.[229] **Chapter II** described how mistrust and lack of motivation may contribute to digital exclusion. Some offline people are concerned about security, privacy and data protection. In addition, people's confidence is enhanced by image and design as well as by text. We understand that the Government Digital Service does not insist on all online services looking the same. Rather, they have design guidelines, and the Gov.UK black and white style appears to be the normal way of meeting those guidelines. But if there is a clear user need for a different or unique "look and feel" that should be possible, provided that other accessibility standards are met.

3.38 Given these considerations, we recommend that all online justice services have a different design from other Government websites, as befits their independent constitutional status. We hope that Ministry of Justice and HMCTS will consider urgently how to create a truly independent look and feel for the Online Court and for online tribunals.

Cross-cutting issues

Avoiding pitfalls of online justice

3.39 Consultees expressed concern about the ease with which users of the Online Court could take important decisions without fully understanding the implications. HMCTS should recognise that ease of online court interaction may diminish the sense of importance of decisions that can be taken "with a click" and take steps to communicate the gravity of such decisions to unrepresented users. To take just one example where consequences are also very important, in online banking it is not possible for a user to make a large transfer with just one click. Several steps are added to encourage deliberateness and care.

3.40 The paradigm example of an online process with important consequences is the online guilty plea procedure for certain minor criminal offences.[230] Some stakeholders have expressed similar concerns to ours in this context:

- The Bar Council warned that online guilty pleas "risk trivializing [the] serious consequences" of a conviction;[231]

- The Criminal Justice Alliance were "supportive of the principle of implementing an automatic online conviction process". However, it recommended that there should be "a cooling-off" period for users after they submitted their plea.[232]

3.41 Several useful options could help to ensure users take their time: "cooling-down" periods, drawing on the comparison with the Power of Attorney process;[233] repetition of important information for users; and facilitating access to lawyers, e.g. duty solicitors in a virtual waiting room (see below, cross-cutting issues).

3.42 There is a possible tension between communicating the gravity of consequences of certain steps, and good design standards, which are often premised on minimal amounts of text. But online justice also offers the opportunity to flag up information before steps are taken and to require acknowledgement that the information has been read. It could even flag up when somebody has clicked through too quickly. HMCTS should gather detailed input from lawyers at every stage of designing online processes in order to identify these important points in the process and build in suitable safeguards. It will be important to assess how Assisted Digital helpers are able to support people without intervening at these important decision points, and this would repay particular attention as the pilot proceeds.

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[229] See Chapter II, paras 2.43-2.57.

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[230] HMCTS, *Online plea – from development to live* (30 November 2016), available at https://insidehmcts.blog.gov.uk/2016/11/30/online-plea-from-development-to-live/

[231] Bar Council, *Bar Council Cautions over Online Guilty Pleas* (21 June 2017), available at http://www.barcouncil.org.uk/media-centre/news-and-press-releases/2017/june/bar-council-cautions-over-online-guilty-pleas/

[232] Criminal Justice Alliance, *Prisons and Courts Bill* (Commons Second Reading, 20 March 2017), available at http://criminaljusticealliance.org/wp-content/uploads/2017/03/CJA-Prisons-and-Courts-Bill-2R-200317.pdf p. 2. The Criminal Justice Alliance has argued in favour of "adequate – straightforward and 'plain English' – mechanisms", as well as suggesting a "cooling-off" period within which an online guilty plea could be withdrawn.

[233] See para 3.22, above.

3.43 Importantly, in the last chapter we recommended specific testing of, and learning from, how digitally excluded people access online services and the various Assisted Digital channels. For example, JUSTICE's recent report on mental health pointed to the multiple vulnerabilities that criminal defendants often face. It recommended that online processes should be avoided for defendants with mental health and/or learning disabilities. However, we recognise that the initial proposals for criminal justice will digitise current paper procedures, and for all the reasons set out above, offer an opportunity to increase understanding and engagement with the justice system.

3.44 Finally, we are concerned that the process of "agile development" means that new online processes are being tested out in discrete blocks, mainly concentrating on the front end or application and response stage of processes. And yet it is only when the end of a litigation journey is reached that it becomes obvious that if things had been done differently at the beginning, the path might have been simpler and quicker. We therefore recommend the development of end-to-end pilots of online justice services, for one or two relatively simple and swift pathways to learn from the end of the pathway what needs to be done better at the start. The entire end-to- end system and processes should be designed on the principles of the 'user stories' of all participants in the process. The user 'stories' of all these groups of users should be captured at workshops, and adjusted as the project progresses and experience is gained of how the different users interact with one another.

Preserving existing sources of legal help in the online environment

3.45 We recognised in the Introduction that lack of legal advice is a huge problem, particularly in civil justice. We noted recent reports touching on this issue from JUSTICE, Lord Justice Briggs, and the Bach Commission.[234] The digitally excluded must be able to access online justice. More generally, the following points could help ensure that online justice services facilitate, rather than stymie, existing sources of legal help:

- HMCTS should develop methods of signposting users from its services to existing sources of independent, authoritative legal information and advice such as the Citizens' Advice website and Advicenow (e.g. from the latter, materials commissioned by the Civil Justice and Family Justice Councils). Signposting from HMCTS online services will provide a better opportunity for people to engage with legal information and assistance than through the current paper justice system procedures. HMCTS should also work with independent third parties providing legal help to support portability of information from existing, helpful online advice and information tools into the Online Court. Examples of such existing tools are the RCJ Advice's CourtNav, and Advicenow's PIP Mandatory Reconsideration Request tool.[235]

- HMCTS and the Government should investigate how current sources of legal assistance and other help in the physical courtroom environment – notably duty solicitor schemes and witness support – can be replicated in a virtual and online environment. [236]

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[234] See Introduction, paras 1.29-1.32.

[235] AdviceNow, *PIP Mandatory Reconsideration Request Letter Tool*, available at https://www.advicenow.org.uk/pip-tool; RCJ Advice, *Courtnav*, available at http://www.courtnav.org.uk/ The content of the latter is reviewed by lawyers before the LIP can print off the relevant forms (JUSTICE Consultation with RCJ Advice). We do not mean "portability" in any technical/rigid sense. At its crudest, portability could refer to "copy and paste", but simpler/more sophisticated technological possibilities may exist. The idea is to make it simple for a LIP to lift the "product" of a third-party's advice tool – e.g. transferring information produced by the Courtnav tool (with the assistance of legal professionals) into the "Online Court". At present, such online tools may result in a paper (rather than electronic) court form.

[236] For example, Citizens Advice Manchester are using technology to facilitate remote assistance through Skype, Whatsapp and other services. See Citizens Advice Manchester, *Skype Advice Service*, available at https://www.citizensadvicemanchester.org.uk/skype/ An equivalent service also exists in Brighton – see Advice Brighton and Hove, Webcam Advice and Online Booking Pilot – Evaluation, available at http://www.advicebrighton-hove.org.uk/social-policy/webcam-advice-and-online-booking-pilot-evaluation/

- Finally, in our recent Innovative Advice report, JUSTICE pointed out the importance of co-location of services. Assisted Digital face-to-face services should be co-located with legal support so far as practicable. For example, in many cases local libraries will host Assisted Digital helpers. Many libraries also host other services such as Local Citizens Advice sessions. Having those services on the same day of the week would obviously be very helpful. Lessons from JUSTICE's Innovative Advice report demonstrate how legal advice providers are finding new ways of reaching the hardest to reach. This approach should be mirrored by the AD provision, building on what is already known about the problems of supporting the most vulnerable and using the AD pilot phase to find out more, including new and better methods of engagement and support.

IV. CONCLUSION AND RECOMMENDATIONS

4.1 Overall, we advise that special attention must be paid to digitally excluded groups, and that thoughtful design and technology could minimise digital exclusion from online justice services. Digital exclusion affects many groups. However, certain people are disproportionately prejudiced by lack of access or lack of skills or a combination of both. The most excluded should receive specific attention, and best efforts should be made to ensure that digital support reaches them.

4.2 The possible advantages of technology are unevenly distributed as well. As discussed in relation to people with disabilities, paradoxically, some groups currently at high risk of digital exclusion may especially benefit from modernised justice services (e.g. because of difficulties accessing physical courts). As such, non-digital channels (while very important) are not a complete answer by themselves. Our recommendations focus on additional ways to address the needs of the most digitally excluded. Further support and evidence is needed for and about hard-to-reach cohorts – and with sufficient digital support and investment HMCTS should make modernised justice as inclusive as possible. This report also underlines the Government's responsibility to reduce digital exclusion.

4.3 We also recommend that HMCTS play a vital coordinating role for review of developments, which must be properly funded. HMCTS and external experts should do more research and analysis of digitally excluded users, and use of various Assisted Digital channels. Both qualitative and quantitative research is needed, including large-scale studies. Further, HMCTS should make as much data as possible publicly available. External experts – like academics – rely on HMCTS' cooperation and data to analyse digital exclusion.

4.4 Having discussed the importance of minimising digital exclusion through design and technology, this report recommends that the Online Court use up-to-date assistive technological solutions. HMCTS should also comply with the highest possible design and technical standards. This report canvassed just a few possibilities, but there is extensive design guidance available already.[237] We suggested that courts learn lessons from good practice elsewhere, including expert organisations and other, recently modernised public services. However, we believe that justice has unique features. Online courts should have the look and feel of an independent court, i.e. visibly independent and different from the Gov.UK format – as befits their constitutional status.

4.5 The Reform Programme faces many and varied objections. The focus for ameliorating digital exclusion should be to see whether and how users are accessing modernised justice. Without targeted strategies, like outreach, some may not benefit from Assisted Digital. We also suggest end-to-end pilots of some justice services to aid HMCTS' efforts – the benefit of looking at the whole pathway of a group of cases is that it could show that something needs to be changed at the beginning.

4.6 Finally, it is important that online services do not remove existing sources of help for self-represented people. But we recognise that the problem of lack of legal advice goes beyond digital exclusion: indeed, it has preoccupied several authoritative reports in the last three years, some of which we described in the Introduction.

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[237] See, for example, WCAG guidelines, *supra*, note 195, and GDS, *Digital Service Standard,* available at https://www.gov.uk/service-manual/service-standard

RECOMMENDATIONS

Digitally excluded cohorts

1. HMCTS and the Government should dedicate further investment to digital skills training and support in venues that the most digitally excluded cohorts are likely to use and that provide free access to technology and the internet (i.e. trusted faces and places). This includes, but is not limited to, community organisations and libraries.

2. HMCTS and the Government should take advantage of the best evidence about digital assistance and digital skills training and look at features that make it effective, especially for older people.

3. HMCTS should collect and make available the widest range of data possible. HMCTS and external experts should conduct more research (including qualitative research) about how people behave in an online environment and on choices between various "Assisted Digital" channels.

4. HMCTS should consider the specific challenges of providing support to the wide range of digitally excluded cohorts – especially those who are hard to reach. We recommend that, at the earliest opportunity:

   • Assisted Digital services should be tested in regions where internet access is still difficult and support services may be difficult to access.

   • Assisted Digital services should be tested with those providing support mechanisms for the most excluded people, as well as with litigants in persons themselves.

   • Assisted Digital should be tested in institutional settings, e.g. care homes.

5. Homeless people are at high risk of digital exclusion, so HMCTS and the Government should investigate specific solutions for this cohort.

6. Detainees are at high risk of digital exclusion. HMCTS and the Government should investigate solutions specific to this cohort.

7. Technology offers both real opportunities and difficult challenges for other cohorts, including people with disabilities. HMCTS and the Government should recognise that digital exclusion affects all demographic groups, and aspire to full digital inclusion.

8. HMCTS should also enable users to have recourse so far as possible to informal and formal support in addition to the provision of contracted Assisted Digital support.

Technology and design

9. The Online Court, **and all other justice services**, should have the look and feel of an independent court: i.e. visibly independent and different from the Gov.UK format, as befits their constitutional status.

10. HMCTS should design for the most affordable and most ubiquitous mode of digital interaction – mobile technology.

11. HMCTS should fully utilise the multi-channel approach, allowing users to move between channels once they have started the process, and ensuring that offline processes mirror online developments. A multi-channel approach should also, so far as possible, cater for user preferences e.g. about methods of contact.

12. HMCTS should future proof justice services, including the Online Court, to prevent built-in obsolescence.

13. HMCTS should comply with the highest possible technical and design standards. It should exploit possibilities of design and technology to: improve user experience and accessibility, simplify communication of information, and make digital services so good that people prefer to use them.

14. HMCTS should conduct end-to-end pilots of online justice services and investigate outcomes, including the varied experiences of claimants, defendants and witnesses. They should learn from hearing and enforcement stages what is required at earlier stages.

15. HMCTS should investigate methods to ensure that litigants in person understand the consequences of submitting online forms – recognising that ease of online court interaction may diminish the sense of importance of decisions taken "with a click".

Cross-cutting issues

16. HMCTS should ensure that face-to-face digital support be co-located with legal services so far as possible.

17. HMCTS should develop methods of signposting users from its services to existing providers of independent, authoritative legal information and advice (such as the Citizens Advice and Advicenow websites).

18. HMCTS should work with third parties to ensure portability of information from existing online information and advice tools into the Online Court.

19. The Government and HMCTS should investigate how to replicate current sources of help in the physical courtroom environment in a virtual/ online environment (e.g. a virtual duty solicitor scheme).

Amanda Finlay CBE
April 2018

POSTSCRIPT FROM THE CHAIR

Amanda Finlay CBE

Help with the Court elements of the Online Court

1. The focus of this report has been the need for Digital Assistance with the Online Court to ensure that those who are digitally excluded are not also excluded from access to justice. As we have remarked earlier, the need for assistance with digital processes is not necessarily confined to those who might be classed as the digitally excluded, who will be predominantly the most vulnerable members of society and also those who experience the most problems and are the heaviest users of public services. Many people, even those who are normally confident with digital interaction, when faced with a justiciable issue – that is a problem that could be taken to a court or tribunal, or where the individual needs to respond to a court case- may be situationally vulnerable and may feel the need for assistance, often driven by concerns about the complexity, impenetrability, and importance of the court process itself.

2. Some of this is nervousness generated by the importance of what is at stake. That is one of the reasons why we have applauded the HMCTS multi channel approach as this allows people to move from independent online to assisted online, to phone assistance from the Court and Tribunal Service Centres, and even, if necessary, to paper. But time and again, as we have taken evidence from individuals and organisations, they have raised with us the need to provide help with the substantive, legal element of the Online Court, not just with the digital element.

3. We have been told repeatedly and know from Professor Dame Hazel Genn's Paths to Justice and subsequent survey findings[1] that potential litigants will require assistance with understanding that their problem is an issue that could be resolved by a court or tribunal. They will need help before they go to court in understanding the possible options for action and the consequences of their choices. And once they start their claim, their defence or their appeal, they will need help in understanding how to frame it, what information is required and the potential consequences of any choices they may make.

4. So the development of the Online Court and the concept of Assisted Digital need to encompass not just assistance with the **Online** element, but also the necessary assistance with the **Court** element, using not just the digital interface but also the full resources of the reformed courts and tribunals service.

5. More importantly the Online Court needs to reflect the full vision of Lord Justice Briggs (as he then was) in his Civil Courts Structure Report which is to move away from "an adversarial court designed by lawyers for lawyers"[2] to an Online Court that would be "a new, more investigative court designed for navigation without lawyers". In particular it needs to have a more informative, and proactive role in which the court – in either its virtual or its human manifestation – ensures that litigants:

    • Understand what they are doing;

    • Know how to provide the information that is needed to decide their case justly; and

    • Fully comprehend the consequences of any choices they may make along the way.

6. This approach has been advocated in a long run of reports, starting with the Low Commission Report[3] which recommended a more inquisitorial system, and expanded by the JUSTICE working party report *Delivering Justice in an Age of Austerity*[4] which recommended an inquisitorial system supported by legally qualified registrars who would take on the responsibility of knowing the law, the procedure and the "rules of the game" and would proactively elicit from the parties the information that the judge would require to decide the case. The JUSTICE Report acknowledged the needs of the most vulnerable for face to face or rather "personally delivered "services, which could exploit technological help such as Skype. The system would be supported by the development of an integrated digital and telephone platform which should be able to deal with a significant proportion of the current demand for information and advice services and would free up the providers of personally delivered services to focus on those who require a greater level of assistance.

7. The concept of the inquisitorial court was further developed in the Report on Online Dispute Resolution by Professor Richard Susskind for the Civil Justice Council[5] which recommended a three-tier service of Online Evaluation, Facilitation and finally Adjudication. "Online Evaluation will help users with a grievance to classify and categorize their problem, to be aware of their rights and obligations, and to understand the options and remedies available to them."

8. Lord Justice Briggs' Report explored and developed these ideas for a new form of court in a creative and comprehensive way. He set out a blueprint for an Online Court[6] which also adopted a tripartite approach:

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[1] H. Genn, *Paths to Justice: What People Do and Think About Going to Law* (Hart Publishing, 1999); N. Balmer, English and Welsh Civil and Social Justice Panel Survey Wave 2 (Legal Services Commission, 2013), available at http://doc.ukdataservice.ac.uk/doc/7643/mrdoc/pdf/7643_csjps_wave_two_summary_findings.pdf; see also LawforLife, *LSRC Research: 'Knowledge, capability and experience of rights problems'*, available at http://www.lawforlife.org.uk/research-and-theory/lsrc-research-knowledge-capability-and-experience-of-rights-problems/

[2] Briggs LJ, *Civil Courts Structure Review: Interim Report*, (2016), available at https://www.judiciary.gov.uk/wp-content/uploads/2016/01/ccsr-interim-report-dec-15-final1.pdf para 5.14, developed in the final report: Briggs LJ, *Civil Courts Structure Review: Final Report*, (2016), available at https://www.judiciary.gov.uk/wp-content/uploads/2016/01/ccsr-interim-report-dec-15-final1.pdf

[3] Low Commission, *Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales* (LAG, 2014), available at https://www.lowcommission.org.uk/dyn/1389221772932/Low-Commission-Report-FINAL-VERSION.pdf p. 44, Recommendation 28: "The judiciary should consider changes that might be valuable in enabling courts to deal justly with cases involving one or more litigants in person, in particular the extent to which more inquisitorial processes might be helpful."

[4] JUSTICE, *Delivering Justice in an Age of Austerity* (2015) ("the Austerity Report"), available at https://justice.org.uk/justice-age-austerity-2/ Chapter III.

[5] Online Dispute Resolution Advisory Group, *Online Dispute Resolution For Low Value Civil Claims* (Civil Justice Council, 2014), available at https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf

[6] *Civil Courts Structure Review: Final Report*, *supra*, note 1, para 6.4.

- An automated online triage stage designed to help litigants without lawyers articulate their claim in a form which the court can resolve, and to upload their key documents and evidence;

- A conciliation stage handled by a Case Officer; and

- A determination stage, where those disputed cases which cannot be settled are determined by a Judge, by whichever of a face to face trial, video or telephone hearing or determination on the documents is the most appropriate.

9. Lord Justice Briggs also recognised the need for a Stage 0 or Stage 0.5[7]: "Stage 0 will have to include for claimant and (perhaps) for defendant, all those pieces of vital guidance about treating litigation as a last resort, about the sources of affordable or free advice, and perhaps some commoditised summaries of the essential legal principles."

10. He recommended designing all the IT for use on smartphones or tablets.[8] He pressed for funding for Assisted Digital and the engagement in that exercise of "the existing advice and support agencies who already have the skills best suited to providing face to face assistance to the computer challenged."[9] He also highlighted the need for public legal education:

    It would in my view be quite wrong to think that the support needed for would–be users of the Online Court is limited to Assisted Digital, with all the rest of the assistance simply being provided online, as part of the three stage process explained above, once the user has received the help needed to get online. On the contrary, I consider that the level of the success of the new court in extending access to justice will depend critically upon parallel progress being made with public legal education generally.[10]

11. He recognised the need for affordable early legal advice on the merits and set out the case for making "the obtaining of this advice, from a qualified lawyer, an element of fixed recoverable costs on proceedings in the Online Court", and also the provision for some fixed recoverable cost in respect of some legal representation at some trials.[11]

12. He highlighted "the solid advantage of concentrating civil Case Officers in as small a number of large teams as possible" because "the underlying law has now become so complex that it is quite unrealistic to expect (them) to become experts across even the whole civil field"[12] and providing "face to face supervision by judges as an essential requirement".[13]

13. Lord Justice Briggs recognised that the strength of the Online Court that he proposed was that it brought together all the elements that were being delivered in other jurisdictions. Its main novel feature would be its Stage 1 interactive triage process "which (if it works) would provide a quantum leap in the navigability of the civil courts by those without lawyers on a full litigation retainer. Without it, the blank sheet (or blank screen) approach would leave the court as un-navigable as before"[14]. He considered that "[t]he design and ongoing maintenance of stage 1 of the Online Court is not solely, or even mainly, an IT challenge. It is primarily an exercise in knowledge engineering."[15] This should include "online commoditised explanations of the basic legal principles relevant to particular case types." He recognised that it was "the hardest and most time consuming part of the process to design and test". [16]

14. Looking at the current online arrangements for the Online Court, they do not yet match up to the ambitious remit which Lord Briggs articulated in the Civil Courts Structure report. In part this may be because the current approach of HMCTS is that the digital interface cannot contain legal advice. But in part, it may be because they are at the beginning of a journey. Certainly recent comments by senior judges suggest that there is a willingness to learn from users' experiences in a way which is encouraging.

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[7] *Ibid*, para 6.108.

[8] *Ibid*, para 6.18.

[9] *Ibid*, para 6.19.

[10] *Ibid*, para 6.116.

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[11] *Ibid*, paras 6.38 and 6.39.

[12] *Ibid*, para 7.16.

[13] *Ibid*, para 7.21.

[14] *Ibid*, para 6.61.

[15] *Ibid*, paras 6.61 and 6.62.

[16] *Ibid*, paras 6.64 and 6.68.

15. While I recognise that the fully automated software envisaged by Lord Briggs is an ambition for the future and not achievable in one fell swoop, I consider that the minimalist approach of digitising existing processes, offering only "a blank screen" to be filled in, and avoiding anything that could be construed as "legal advice" would be a missed opportunity. It would also fail to deliver the full potential improvement of a reformed system as set out by Briggs, Susskind and JUSTICE in which the inquisitorial role at Stage 2 is able to rely on the early information about the case that has already been extracted at Stage 1. The more sophisticated the triage at Stage 1, the more focussed can be the Case Officer or Judge at Stage 2.

16. The Civil Justice Council ODR Advisory Group in its response to the Briggs Interim Report[17] highlighted the difficulty of a fully automated Stage 1 Online Court and the need in the interim to continue to support the range of legal websites, such as Advicenow, Citizens Advice and Shelter which enable users to browse and understand legal issues:

    We continue to see great promise in online tools that can help users to identify their entitlements and obligations, to understand the options available to them, and to guide them in making or defending their cases. However, we believe that the development of these systems is more technically challenging than you allow. For example, to deliver what you have in mind would require the development, amongst other tools, of a suite of 'diagnostic rule-based expert systems'. We know from experience that these systems are time-consuming and often difficult to engineer.

    In our view, your (ie Briggs') conception of Stage 1 would need to be supported by at least three sets of facilities. The first should be a range of legal websites, to help users browse and understand broad sets of legal issues, such as the sites provided by Advicenow, Citizens Advice, and Shelter. The websites that you and we envisage go beyond providing information to offering guidance. Second, there should be a generic diagnostic tool that assists users in understanding what kind of legal problem they have (a kind of legal problem classifier) and what options (for example, dispute resolution facilities) are open to them. The third should be more specific diagnostic systems that guide users on particular legal problems. Clearly it would be too large a job to develop this third class of system for all conceivable legal problems but we could have a suite of these for the most recurrent everyday legal difficulties.

17. At present, as the CJC response indicates, much of the information and guidance that would be useful at both the pre-court stage and once cases get to court is available on independent websites such as Citizens Advice which refers on to Advicenow, in particular the suite of materials developed for the Civil Justice Council by Advicenow[18] and the Royal Courts of Justice CAB – Going to Court without a Lawyer. [19] These websites, in common with the website envisaged by the 2015 JUSTICE working party report, do not give legal advice. They provide comprehensive **information**, including the possibilities of alternative routes to resolving a dispute, and then detailed step by step **practical** not legal **guidance** on how to take a claim/defence forward at each stage, including explanations of the **legal and procedural issues** a litigant needs to be aware of.

18. If this sort of information and practical guidance – NOT legal advice – could be built into the Online Court, step by step, it would make the law more intuitively obvious online. It would promote trust and confidence, help people to work out what to do (without **telling** them what to do) and help them know how to do it. And it would do so in a schematised way – always allowing for exceptions – that would assist mediation and negotiation, early neutral evaluation and, when necessary, the next stage of case management. I accept that this is a long-term ambition but hope that an early start can be made with tools to help users classify and categorise their problem, as an exemplar of what might be achieved.

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[17] Available at https://www.judiciary.gov.uk/wp-content/uploads/2016/04/cjc-odr-advisory-group-response-to-lj-briggs-report.pdf paras 6 and 7.

[18] AdviceNow, *Going to court or tribunal without the help of a lawyer*, available at https://www.advicenow.org.uk/content/going-court-or-tribunal-without-help-lawyer

[19] Citizens Advice, *Going to court without a solicitor or barrister*, available at https://www.citizensadvice.org.uk/law-and-courts/legal-system/taking-legal-action/going-to-court-without-a-solicitor-or-barrister/

19. One possibility would be for the online template to allow the user to identify by tick-boxes against common issues the nature of their case, and then to provide suggestions concerning what sort of evidence is likely to be of assistance to the court. With regard to small claims, for many years the Part 26 Practice Direction of the Civil Procedure Rules has provided this sort of evidential guidance in relation to a limited number of case types, and it should be relatively simple to develop a more elaborated scheme for the online court. The Judiciary website already contains a range of guidance for Litigants in Person, including the resources developed for the Advicenow website under the auspices of the Family Justice Council,[20] the Civil Justice Council Guide to Bringing a Small Claim,[21] some Practice Directions and some guides written by Judges for LIPs in specific courts.[22] So the concept of the court providing guidance has already been accepted. The challenge is to provide it in the context of the Online Court in an accessible and comprehensible way at the relevant stages on the litigant's journey. In a non-court setting, the Resolver website[23] provides a free online tool for consumer complaints and claims. It uses successive decision trees which, combined with contextual rights guides, help to increase the accuracy of a consumer's decision on who to complain to and how.

20. I am encouraged that HMCTS is committed to learning from its interaction with callers what the most common problems are and to developing better ways to enable these "pain points" to be dealt with online. What I suggest is a significant extension of that, but one which would have considerable benefits both for Online Court users and for the Courts and Tribunals Service Centres.

21. The Master of the Rolls, Sir Terence Etherton, in his Conkerton lecture on Civil Justice after Jackson, reviewing the experience of Money Claims Online so far, highlighted the need for procedural assistance even from the self-selecting group who were using the system in private beta mode:[24]

*Just under a quarter of users in the pilot have required some form of assisted digital help- much lower than expected perhaps because those choosing to make an application online are more likely to have good digital skills. The pilot is also showing that the type of assistance called for is **predominantly procedural** – 75% of queries related to procedure. Only 12% were wholly IT related. The remainder were a combination of procedure and IT. Moreover, just half of all assistance then given took the form of reassurance. In a third of cases light guidance was given. Only in 10 % of cases was significant assistance needed.*

22. The Master of the Rolls suggests[25] that "[i]f the majority of assisted digital queries are procedural and not IT related, we can start to consider what changes need to be made to the procedures to eliminate the source of these queries. We need to learn from the feedback and adapt our system in the light of it."

23. Lord Justice Ryder, the Senior President of Tribunals, made a similar point in a recent lecture.[26] "The aim is a system where there are no complex rules or rule books to master, but rather easy to use web pages which guide litigants through the litigation process". In talking about the testing of the systems of Assisted Digital, he says "we are learning from the feedback we are receiving to tailor the system" so that AD is a means by which the system itself can learn. These comments by the senior judiciary are encouraging and I hope to see early evidence of learning from feedback to improve the system as they suggest.

24. The judiciary are playing a key role at every level in the Online Court from strategic leadership to the involvement of the judiciary in a supervisory capacity with the Case Officers and others in the Service Centres, as recommended by Lord Briggs. This would allow ready access to authoritative oversight in the development of information, guidance, simple checklists and "commoditised explanations" for the most common types of cases and those where litigants are most likely to seek help from Service Centres, and may most need to be referred to Case Officers, or more likely, to advice and law centres in the community. I would expect that as Case Officers under judicial supervision develop more in depth knowledge of common problem types they will be able to schematise and standardise questions and information to go online so that there is a constant process of incremental development in the information and guidance materials available to potential litigants.

[20] See Courts and Tribunals Judiciary, *FJC guidance on a variety of topics*, available at https://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/fjc/guidance/

[21] See Civil Justice Council, *A Guide to Bringing and Defending a Small Claim* (April 2013), available at https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CJC/Publications/Other+papers/Small+Claims+Guide+for+web+FINAL.pdf

[22] For example, Courts and Tribunals Judiciary, *Advice for Litigants in Person*, available at https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/advice-for-lips/

[23] See https://www.resolver.co.uk/

[24] Sir Terence Etherton MR, *Civil Justice After Jackson, Conkerton Memorial Lecture 2018* (15 March 2018), available at https://www.judiciary.gov.uk/wp-content/uploads/2018/03/speech-mor-civil-justice-after-jackson-conkerton-lecture-2018.pdf para 42.

[25] *Ibid*, para 43.

[26] Sir Ernest Ryder, *Assisting Access to Justice* (15 March 2018), available at https://www.judiciary.gov.uk/wp-content/uploads/2018/03/speech-ryder-spt-keele-uni-march2018.pdf paras 21-28.

25. This would allow the Service Centres to provide a more integrated service to those telephoning and seeking their help as they would be able to draw on a body of "engineered knowledge". In that way the people within the system would be able to give more help to users of the system and reduce the need for referral to either Digital Assistance or to advice and law centres for those who, in fact, need only some fairly standard information and guidance. At the same time, those responsible for providing Digital Assistance would also have access to the information and guidance and, with suitable training, would also be able to provide a more integrated service. It was just such an integrated web and telephony service that JUSTICE recommended in *Delivering Justice in an Age of Austerity*, albeit to be developed jointly with other stakeholders such as advice centres and law firms and with the important addition that it recognised the need for "personally delivered" advice and assistance for some users.[27]

26. The example of the British Columbia Civil Resolution Tribunal[28] is helpful and is referred to by both the Briggs and Susskind Reports. The British Columbia early triage stage – the Solutions Explorer – sets out seven of the most common problem types found in its Small Claims jurisdiction and gives further information about the possibilities of action, often for each of the types of party likely to be involved e.g. landlord or tenant. By setting out the main likely headings and the sub-headings in this way, potential litigants are helped to frame the issue that they want to resolve – something that we know from research that people find very difficult. The CRT website narrows down the issue, sets out what is relevant information to resolve it, and manages expectations on the results. It seems to us that this would be a useful model for HMCTS to have in mind as the Online Court is developed. The Tribunal also regards public legal education websites which provide additional information, guidance and support such as MyLawBC[29] as complementary to the public justice process.

27. Possible approaches for further development by HMCTS might include:

- Utilising ALL the resources of the Online Court – Judges, Case Officers and Courts and Tribunal Service Centre call handlers to respond to requests for help with the "Court" as well as the "Online" aspects of the case they are starting or responding to, so as to use the human resources of the system to help the people using the system.

- As soon as possible endeavouring to move away from the "blank screen" for the claim or defence and provide a simple taxonomy of disputes similar to the British Columbia Civil Resolution Tribunal Solution Explorer, providing the "commoditised explanations" recommended by Lord Briggs.

- Learning from continuing analysis of calls to the Courts and Tribunals Service Centres, and queries raised with Case Officers and Judges, and identifying those issues that generate the greatest need for help and commissioning information, guidance and checklists to help potential litigants.

- Taking advantage of emerging technologies such as Q&A/AI, machine learning, document analysis, and case prediction and moving towards the automated online triage envisaged by Lord Briggs. An early start might be tools to help users classify and categorise their problem and then focussing on a document automation approach to the first tier that generates good drafts of claims, defences and appeals.

- Recognising the importance of parallel progress with public legal education alongside the development of the Online Court[30] as highlighted by Lord Briggs and should continue to provide support to third sector websites which make up the deficit in this area.

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[27] JUSTICE, *The Austerity Report*, *supra*, note 4, Chapter III.

[28] See British Columbia Civil Resolution Tribunal, available at https://civilresolutionbc.ca/, and also S. Salter and D. Thompson, 'Public-Centred Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal', *McGill Journal of Dispute Resolution, Vol. 3* (2016-2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2955796

[29] See http://www.mylawbc.com/

[30] Briggs Report, *supra*, para 6.116.