UCL

ASSISTED DIGITAL SUPPORT FOR CIVIL JUSTICE SYSTEM USERS
Demand, Design, & Implementation

Final Research Report
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UCL CENTRE FOR
ACCESS TO JUSTICE

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About the Centre for Access to Justice

Located within the UCL Faculty of Laws, the Centre for Access to Justice combines innovative teaching and research-based learning with the provision of pro-bono legal advice to local communities. For the last 20 years, the Faculty's ground-breaking research has had significant impact on access to justice policies and the delivery of legal services both in the UK and abroad. Building on this history, the Centre continues to produce research, which aims to stimulate debate and inform policy around access to justice issues.

## About the Civil Justice Council

The Civil Justice Council (CJC) is an advisory Public Body, which was established under the Civil Procedure Act 1997 with responsibility for overseeing and co-ordinating the modernisation of the civil justice system. The statutory functions of the Council include:

a.   keeping the civil justice system under review,

b.   considering how to make the civil justice system more accessible, fair and efficient,

c.   advising the Lord Chancellor and the judiciary on the development of the civil justice system,

d.   referring proposals for changes in the civil justice system to the Lord Chancellor and the Civil Procedure Rule Committee, and

e.   making proposals for research.

EXECUTIVE SUMMARY

Background to the Study

In September 2016, the Lord Chancellor, Lord Chief Justice and the Senior President of Tribunals released a joint vision for 'Transforming our Courts and Tribunals'. Central to this vision was the development of a series of new online courts and court services to form part of a £700 million reform package intended to deliver a system that was just, proportionate and accessible.[1]

GDS ESTIMATES

14% No Access

7% Lack Digital Skills

79% Access & Capability
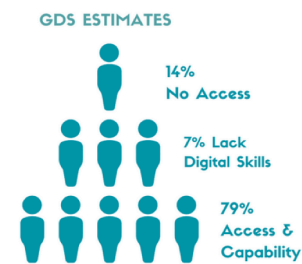
Recent proposals emerging from within Government acknowledge that not everyone will be able to engage with digital processes, with the Government Digital Service (GDS) estimating that 14% of the UK population does not have access to the Internet, whilst 7% of those with access, do not use the Internet in a way that benefits them day-to-day.[2] Nevertheless, users are expected to adapt to digital-by-default modes of delivery using 'Assisted Digital Support' (ADS) where required. A number of Departments have rolled-out ADS services to complement the delivery of specific online services, but to date, there has been little done to draw together information that might inform ADS development, including information about the rate of ADS take-up and the appropriateness of various forms of ADS delivery.

This report was commissioned by the Civil Justice Council to examine the ADS needs that may arise as a result of Court and Tribunal services becoming largely digitised. It is intended to inform those within Her Majesty's Courts and Tribunals (HMCTS) charged with designing and planning ADS services intended to accompany the roll-out of digital courts/tribunals, and to provide greater insight into the digital capabilities of those users who are likely to come into contact with these systems.

Structure

The report adopts the following structure:

Section 1   Examines the policy context in which digital courts have arisen.

Section 2   Explores the ways in which 'Assisted Digital Support' has been defined across government.

Section 3   Estimates the digital needs of those who report civil justice problems and those who are actual and potential Court/Tribunal/Alternative Dispute Resolution users.

Section 4   Examines ADS implementation and considers the impact of mode of ADS delivery.

Section 5   Draws together a number of lessons observed in the process of implementing Online Services and ADS both in and outside of HMCTS.

Section 6   Considers the measures that might be used to evaluate and monitor ADS services.

Section 7   Concludes with a series of recommendations for research and policy.

Methodology

This report uses published data drawn from a number of sources, including the Office of National Statistics (ONS), the Oxford Internet Institute Survey (OxIS), the OfCom Media Literacy Study, GoOnUK's Digital Literacy surveys, the GDS and CV2 Digital Mapping study, GDS Service Performance Data Dashboards, and GDS performance assessments.

Most significantly, statistical analysis was conducted using data from the 2014-2015 Legal Problem and Resolution Survey (LPRS). This telephone survey of the experience of, and response to a broad range civil, administrative and family legal problems captured information from 10,058 adults in England and Wales. Franklyn et al[3] provides a broad overview of findings, while technical details and survey data are available online at the UK Data Service.[4] The survey included a number of questions on internet use and access, and responses to these questions are discussed in greater detail in Section 3 with model output provided in Appendix A.

For the Service Evaluation component of the study, the research team coded 239 GDS service assessments and 12 HMCTS/MoJ self-assessments undertaken to evaluate services on the basis of their adherence to the Government Digital Service Standard (26-point and 18-point versions). These assessments date from December 2013 to February 2017.[5] Findings are discussed briefly in Section 6 and further reported upon in Appendix B.

This report also presents information from a wide-ranging literature review, drawing extensively on academic and policy material, and examining in excess of 150 documents. General material of relevance to the development of online courts but outside the scope of this report is provided in Appendix C.

Key Findings

Defining Assisted Digital Support (ADS)

MoJ/HMCTS view ADS as comprising support to access digital services, as well as support to use these services.[6] The scope of this support is limited to a focus on digital rather than legal capability. Whilst this report focuses primarily on issues of digital capability, the level of legal capability required to make use of digital MoJ/HMCTS services is routinely underestimated in digital service assessments. A more realistic appraisal of the level of legal capability required to perform certain civil justice tasks (online or offline) is a critical component in the development of information and guidance that appropriately supports task completion. For this reason ADS must be understood within the context of the task that is being completed; failure to do so risks the development of an online system that is accessible in principle but not in practice.

Estimating ADS Take-Up

Estimates of ADS take-up have previously been based on an analysis of the level of Internet access, willingness to engage with digital services and the digital capability of service users, with figures ranging considerably between Government Departments. At the higher end, Her Majesty's Revenue and Customs (HMRC) estimates that 15% of its users lack Internet access and capability, 1% lack access, and 23% have access but lack

capability.[7] The Department of Work and Pensions (DWP) has placed the figure far lower with an estimated 5% of those applying for Universal Credit (UC) expected to require ADS[8], and this has informed the level of capped funding made available to Local Authorities for the purpose of ADS provision.

Findings from the LPRS indicate that 5% of those with a civil justice problem will lack Internet access. As a result of this lack of access, these individuals will also likely struggle to demonstrate the capability needed to independently interact with online government services.

More than half of LPRS respondents reported Internet use for the purpose of completing government transactional services (67%). However, awareness of services, or inclination to turn to the Internet, in preference to other sources of advice or information, still remains low. So whilst there is some evidence of willingness to engage with government services online, translating user 'willingness' to 'actual use' will require MoJ/HMCTS conduct awareness-raising activities in respect of particular services.
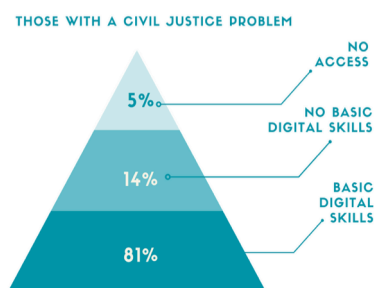
Two measures of online capability were developed for the purpose of this study, drawing on data available within the LPRS. The first 'Basic Online Skills' relates only to the range of activity undertaken online, whilst 'Basic Digital Skills' relates to diversity of online activity and respondents' confidence in identifying reputable sources of information online.

On the basis of these measures, 6% of those with civil justice problems lack 'Basic Online Skills' and 14% lack 'Basic Digital Skills'. For actual/potential court and tribunal users, the figures indicate that 4% will lack access and 11% will lack 'Basic Digital Skills'. It is important to recognise that 'Basic Online Skills' and 'Basic Digital Skills' represent a very narrow definition of 'online capability' for reasons that are explained further in Sections 2 and 3.

Overall, those reporting a civil justice problem tend to report higher rates of Internet access, willingness and capability than those not reporting a civil justice problem, whilst court and tribunal users report higher rates still. However, these findings should be approached with caution. Among those with a problem, certain socio-demographic characteristics were associated with higher rates of digital
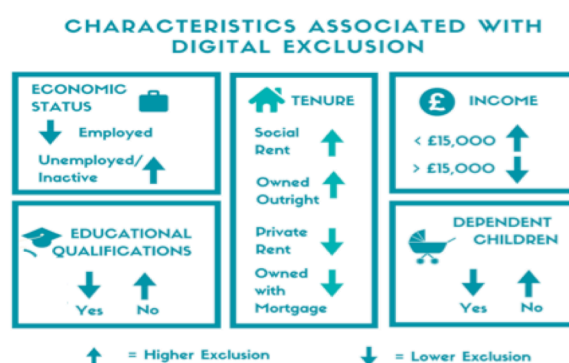
exclusion. Notably, those reporting an income of less than £15,000 a year, those living in social housing, older respondents, those in receipt of benefits, and those with physical or mental ill-health reported higher rates of digital exclusion and/or lower levels of capability than the average rates reported by those with a civil justice problem.

Delivery Models

The most common form of ADS that Departments intend to implement is telephone assistance, though there have been two trials of face-to-face assistance. The first undertaken by the Office of National Statistics (ONS) employed an appointment model in local libraries. The other, piloted by the Home Office in respect of Passport Renewal Applications, employed a walk-in model situated at a passport photo-shop. Findings indicate that co-location of support is advantageous, suggesting that community based legal advice providers may offer a favourable environment within which to host ADS services. Any face-to-face provision will need to offer users appropriate language support, privacy, and sufficient time to complete online services. Telephone provision will need to consider issues of call cost, noting that even call back services can dissuade users if an initial (cost-incurring) call is made. Further consideration must be given to additional call delays incurred as a result of language translation.

ADS Implementation

Although only one ADS evaluation has been conducted to date, a number of other lessons have emerged from the literature that should inform the design of ADS provision. These include the need to:
1. Ensure users are clear as to what ADS is and what it is not, so as to minimise the risk of higher rates of take-up by users who are seeking legal rather than digital assistance;
2. Provide users with appropriate technical information tailored to that service and appropriate legal information tailored to the relevant area of law so as to minimise demand for help and to ensure users understand what they are 'signing up for' when opting to use digital services;
3. Ensure adequate funding for ADS Services and training for ADS staff;
4. Support service up-take by ensuring that the design of digital services are not seen as inferior to the design of physical services;
5. Keep users informed as to the progress of their claim/application.

ADS Evaluation

Prior to mid-2015, ADS designed to accompany the launch of a new digital service was evaluated against the 26-point Government Digital Service Standard at the alpha, beta and live launch stages. This 26-point standard made specific reference to the appropriateness and sustainability of planned ADS services. A review of service assessments conducted under this standard reveals that the vast majority of assessment failures could be attributed to a Department's inability to demonstrate that they had 'Put in Place Assisted Digital Support' in readiness for the service going live.

In 2015 the 26-point standard was replaced with an 18-point standard. This makes no specific reference to ADS provision, although it might reasonably be expected that ADS would form a dimension of the 'Understand User Needs' criterion. There has been a slight increase in the number of services passing first time since the shift occurred (79% passing under the 18-point standard compared to 71% passing under the 26 point standard).

It is not clear whether sponsoring Departments are under an obligation to continue monitoring ADS once it has been rolled-out. Nor is it clear whether services are

independently assessed against the Web Content Accessibility Guidelines (WCAG) 2.0. These guidelines, developed to make content more accessible to a wider range of people with disabilities, are expected to apply to all Government digital services, though it is not obvious when or if such assessments take place. More clarity around these issues are required and further research must be conducted to test the appropriateness and efficacy of different types of ADS provision. Further work also needs to be undertaken to determine the criteria that will inform ongoing ADS evaluation, about which, little has been said to date.

Conclusion

This report finds varying rates of Internet access and capability amongst those who experience civil justice problems and those who are potential/actual court, tribunal and mediation users. The estimates contained within this report are not intended to take the place of further primary research designed to answer key research questions relating to the level of digital exclusion and capability reported by users of the civil justice system. Importantly digital capability as measured in this and in other studies operates as a proxy for the breadth of activity undertaken online and self-reported online confidence. It is a blunt tool for measurement. *That users undertake a range of activities online is not to say that they have the capability to undertake legal processes online.* Digital capability is not the same as legal capability and both forms of capability are likely to be required to successfully navigate an online court. It is strongly recommended that further research take place to collect data that can more accurately quantify ADS need and to ensure piloting and independent evaluation of ADS services. Any framework designed to underpin service monitoring in the long term must go beyond simple usage metrics, to incorporate dimensions of service sustainability and user experience, particularly the seamlessness and efficacy of the services deployed.

1.   POLICY CONTEXT

Since its establishment in 2011, the Government Digital Service (GDS)[9] has overseen a wide-scale programme of cross-government digital change, as detailed in the 2013 UK Government Digital Strategy [10] and the more recent 2017 UK Government Transformation Strategy.[11] This has led to the creation of a 'Digital Service Standard' and a 'Technology Code of Practice' intended to promote a more cohesive approach to service design and to govern the development of new services. The work of GDS has also involved promoting a cross-government commitment to the 'digital-by-default' strategy in transactional public services announced in 2012[12], and assessing the services that arise in fulfilment of this commitment.

Significant effort has gone into ensuring that the changes implemented by Departments in pursuit of the digital-by-default agenda accord with a series of agreed GDS design principles. These design principles reiterate the importance of adopting a user-centric focus, iterative change, concurrent modes of delivery (at least in the interim) and the provision of Assisted Digital Support (ADS) for those who may struggle as a consequence of the shift to digital delivery. The GDS approach emphasises 'agile' service design methods, which, in contrast to traditional 'waterfall' methods, focus on piecemeal development of digital services. Unlike the 'Big Bang' approach of waterfall methods, agile development is intended to be iterative, exposing designs to user feedback at an earlier stage of development.[13]

In order to obtain GDS approval to go **Live**, each digital service must pass through the **Discovery** (user needs are researched and identified), **Alpha** (core service is built to meet the main user needs) and **Beta** (the service is improved, then tested in private and public) stages. At each stage, services are assessed as to the extent to which they adhere to the GDS 'Digital Service Standard', part of which requires evaluation of the assisted digital support intended to accompany the service. Online transactional services expected to handle more than 100,000 transactions per year are subject to a review by the GDS itself, while the sponsoring Department directly assesses services handling less than 100,000 transactions per year.[14]

Whilst standard-setting is top-down, the responsibility for implementing digital services and assisted digital support is devolved to individual Departments/Agencies. Departments are responsible for preparing their own service transformation in light of the digital-by-default commitment and delivering on these plans.

To this end, in September 2016 the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals released a joint vision for the future of Courts and Tribunals, declaring an intention to deliver a system that was just, proportionate, and accessible. Central to this was the development of a series of new online courts and court services to form part of a £700 million courts and tribunals reform package.[15]

Included among the reforms was a series of proposals relating to the use of digital technologies in the civil justice space, encompassing:
• The introduction of virtual hearings
• A shift to a greater number of decisions 'on the papers'
• Digitisation of the probate system
• Digitisation of the process of making an application for divorce

- Full digitisation of applications for Lasting Powers of Attorney
- The introduction of court video-link into the Police station
- A new online process for resolving civil claims
- Digitisation of the Social Security and Child Support Tribunal

Whilst the scale of the transformation is new, a number of the proposals reflect iterations on existing ideas and delivery models. The basis for the new online civil claims service arose out of Money Claim Online first launched in 2007. Video plea and directions-hearings for Crown Court matters were previously piloted in 2006[16], whilst a 'possession claim online scheme' to enable individuals to instigate possession proceedings for residential properties for non-payment of rent or mortgage was initially proposed in 2006.[17]

Central to these changes has been an emphasis on encouraging that disputants avail of ADR in preference to going to court, amounting to what Genn describes as 'a wholesale shift in the resolution of civil and family disputes out of the public realm into private settlement and to private dispute resolution services'.[18] The 'privatisation of disputes' has remained a constant theme in successive efforts to reform the civil justice system, motivated, at least in part, by the desire to save judicial resources for all but the most intractable disputes.[19]

For some, the significance of recent 'digital court' developments lie in the extent to which Alternative Dispute Resolution (ADR), notably 'Online Dispute Resolution' processes, are to be incorporated into the online Court system.[20] This development distinguishes the online court model proposed by HMCTS from suggestions that have gone before, including international comparators such as 'Rechtweijzer'. The recent discontinuation of Rechtweijzer, attributed (in part) to the fact that it remained voluntary and existed outside of the court system, reinforces the significance of efforts to embed ADR as an intrinsic part of the planned digital court system. The effect is to render ADR less 'alternative' and more 'mainstream'.

The Government Digital Service commenced the digital transformation with 23 exemplar services, of these, four involved MoJ and its Executive Agencies. HMCTS have led on Civil Claims (starting with accelerated property possession claims), and applying to an Employment Tribunal. HM Prisons have led on the Prison Visit Booking Service, and the Office of the Public Guardian led on applications for Lasting Power of Attorney.[21] It is reported that these services were selected because of demands on the service and the potential for transaction savings arising from a channel shift, rather than necessarily being appropriate digital service use cases.[22]

As of March 2018, online services are available for:
- Divorce Proceedings[23]
- Online Probate Applications
- Money Claim Online for small civil claims (MCOL)
- Applications for Personal Bankruptcy
- Online Tax Tribunal Appeals
- Employment Tribunal Claims
- Online Plea for Traffic Offences
- Landlord Possession Claims (PCOL)

Added to which have been a number of 'back office' transformations. This includes the development of the Common IT Platform intended to provide a single electronic case management system for use throughout the Crown Court and magistrates' courts; the introduction of e-Bundles into higher criminal courts; and, the piloting of procedures to allow witnesses to prerecord their cross-examination and avoid the trauma of a live hearing at Liverpool, Leeds and Kingston-upon-Thames crown courts.

Electronic delivery of government services has always been framed as a means by which to promote 'self-service[24], nevertheless there has been continued recognition that there are those for whom electronic access is not realistic, and this recognition has sustained the argument for maintaining channel plurality.[25] As a result of the shift to digital-by-default and concerns regarding digital exclusion, the Government has identified the need for substantial investment in digital skills training. This includes the establishment of Future Digital Inclusion and Widening Digital Participation programmes, the creation of the Digital Training and Support Framework and the establishment of a Council for Digital Inclusion.[26]

Whilst recent proposals acknowledge that not everyone will be able to engage with digital processes, it has been made clear that users are expected to adapt to new modes of delivery using 'Assisted Digital Support' (ADS) where required. As defined somewhat vaguely by MoJ, ADS represents the support accompanying the rollout of digital services, provided "to those people who need it..."[27]. Departments/Agencies are responsible for determining the nature and scope of assisted digital support and the likely take-up rate for these services. ADS may be delivered internally or by external suppliers procured via the cross-government 'Digital Marketplace'.

2.   ASSISTED DIGITAL SUPPORT (ADS)

The government approach to digital assistance is defined by a focus on helping a user interact with an online system, with proxy completion of tasks and forms on a user's behalf retained only as a last resort.[28] As part of the ADS process, it is expected that assistance will include a training element so as to encourage the user to undertake future transactions independently.

The GDS broadly defines the ADS target audience as those who need to use a digital service, but lack the skills or access to do so independently.[29] This includes people who are offline, and those who are 'online but have limited digital capability' as a result of 'low experience, skills, confidence, ability and/or motivation'[30]. The Government service standards do not speak of user need purely in the sense of 'digital' needs. Rather, 'User needs' are outcome-based: they are seen as the "needs that a user has of a service" and that must be satisfied so as "to get the right outcome."[31]

From this starting point, Departments have produced their own definition as to what ADS should incorporate. The Department of Work and Pensions, have adopted a broad view of ADS as reflecting part 'digital coaching' and part 'needs identification', as well as a potential intervention point by which to promote the broader advantages of digital engagement (such as to find work), rather than a mechanism by which to force a channel shift among those who are unwilling. [32]

This contrasts with the seemingly more restrictive approach adopted by MoJ in which ADS is viewed as a method of 'helping users who are not online to access services they're entitled to'. Unlike the broader GDS vision, this perspective tends to overlook those who are online but who may still struggle to use the proposed services.[33]

HMCTS appears to adopt a more expansive interpretation, recognising a need to 'provid[e] people with greater access to online services', as well as recognising the importance of supporting individual needs, even among those who may be confident and familiar with websites.[34] The extent to which broader capability issues are considered in addition to digital access/capability appears to vary by Department. In contrast to other departments, HMCTS has also made clear that online (proxy) form completion by face-to-face service centre staff is prohibited and that the ADS service provided is not intended as a digital inclusion pilot.[35]

User Typologies

Whilst the scope of ADS is open to some interpretation by individual Departments, the GDS User-Scale forms a cross-government benchmark against which services are assessed and against which the accessibility and complexity of an online service is evaluated. This 'User scale', maps the range of potential users, from those at the bottom who exhibit no willingness to engage with online services (Level 1- Never Have and Never Will), to those who exhibit willingness but lack ability (Level 3 – Willing and Unable), right through to those who might be considered 'expert' users (Level 9).[36] Assisted digital support must be provided to users who are below the level required to use the digital service, that is, the level at which that service has been assessed.[37]
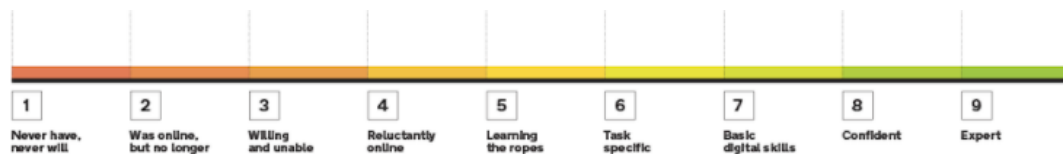
Figure 1. GDS Digital Skill Scale[38]

Other departments have adopted different market segmentation exercises intended to align more closely to the needs of their customer base. For example DWP identifies digital service users as belonging to one of four categories[39], Unaware[40] Unready[41], Uninterested[42], or Unable.[43] Whilst HMRC has adopted an ADS user-centric segmentation, focusing on delineating between those least likely to need ADS ('AD Friends and Family'), those for whom demand for ADS will be service specific (AD Other), those who require ADS to enable access but not completion (AD Confident), and those who have little prospect of being able to use online services and who require general rather than digital support ('AD Unable').[44]

In 2012, MoJ produced an 'Understanding our Customers' segmentation focusing on problem experience and Internet access with segments aligning to age groups, as shown in Figure 2.[45]

Younger, mainly single			Young and mid-aged			Older			
1	2	3	4	5	6	7	8	9	10
Free but challenged	Comfortable aspirers	Struggling singles	Diverse urbanites	Parents getting by	Comfortable parents	Mature and pressed	Mature and comfortable	Older diverse urbanites	Aging and alone
13%	8%	5%	6%	14%	7%	19%	14%	6%	7%

Figure 2. MoJ 'Understanding our Customers' Segmentation Chart

The exercise concentrated on Internet access and Internet use as a marker of digital capability, rather than considering digital capability in the context of legal tasks. Despite this narrow focus, MoJ concluded that most of those who need justice services have some level of digital capability and engagement; "the focus for digital transformation is therefore on providing better services, but also encouraging those who already use the Internet to extend their online activity to usage of government digital services." [46]

Required Skills

GDS has graded 23 digital services against the User Digital Inclusion Scale, including four services that fall under the remit of MoJ:
• Civil Courts (commencing with possession claims online)
• Apply to an Employment Tribunal
• Prison Visit Booking, and
• Lasting Power of Attorney.[47]

Key features of the assessments for MoJ services are detailed below in Table 1. This shows all but one service (prison visit booking) classified at 8. It should be noted that across all 23 exemplar services evaluated, none were classified as requiring 'expertise' (9).[48] From the information provided, it is difficult to see how Prison Visit Booking could be graded so similarly to Civil Claims and Employment Tribunal Digital Services

given the extent of the differences between services. This would suggest that the increments between points on the scale are not equal or the rating system itself is somewhat crude.

Table 1. GDS Assessments for four exemplar MoJ Digital Services

	Civil Claims	Employment Tribunal	Prison Booking	Lasting P.O.A
Rating	8	8	7	8
User	Someone acting as a landlord or on their behalf wishing to evict tenants	Someone taking an employer to a employment related tribunal	Someone visiting a prisoner	Someone making a lasting power of attorney application
Time	7-45 minutes	30 minutes	5 minutes	60-90 minutes
Required	Tenancy agreement, TDS reference number and the notice provided to tenants	ACAS reference number, employment details, earnings information and payment details	Prisoner's name, date of birth, prisoner number and prison location.	Personal details of the donor and certificate provider, printer, credit/debit card
Specialist Knowledge	Some legal knowledge beneficial, not essential	Some legal knowledge beneficial, not essential	None	Some legal knowledge beneficial, not essential
Phone	Difficult	Moderate	Easy	Difficult

The view that a civil claim or employment tribunal claim could be initiated without legal knowledge is a matter of some debate, whilst downplaying knowledge of the law in the context of making an application for Lasting Power of Attorney is highly problematic. Possession Claim Online (PCOL) applicants must provide particulars of the claim, identify the nature of the breach and identify anti-social behavior where it is alleged. Information provided on the PCOL website encourages users to familiarise themselves with the Civil Procedure Rules Practice Direction prior to submitting a claim.[49] Similar requirements are expected of Money Claim Online (MCOL) users. Those lodging in the Employment Tribunal are required to understand the legal dimensions of unfair dismissal and discrimination. Further, all systems require that Users understand that the provision of false information renders them liable for contempt of court. In these circumstances it is difficult to see how legal knowledge is considered merely 'beneficial' rather than 'essential'.

It has previously been observed that the public exhibit poor knowledge of the law, struggle to conceive of problems as being 'legal' in nature, and often fail to distinguish between legal rights, and normative, moral, or ethical standards.[50] Although digital services do not demand any greater or lesser legal capability than paper equivalents, there does appear to be a failure to distinguish between digital and legal capability in the task assessments described in Table 1 above.

It is important not to conflate digital and legal capability as this risks two possible outcomes. The first is that the legal complexity of the system is not adequately addressed and this represents a missed opportunity to develop a digital system that is truly responsive to user needs and to promote access to justice. The second is that advising the public that they do not need legal knowledge to complete a digital service risks users taking that instruction at face value, with consequences that may range from rejection of their claim (and several hundred pounds lost in administrative fees), through to contempt

of court, or the inadvertent signing away of rights. More generally, it constitutes a bold assumption that legal knowledge and therefore legal advice or representation is of no great importance.

Money Claim Online (MCOL) reinforces these risks, advising users that claims are not checked by court staff prior to issue. MCOL's accompanying guidance indicates that the court cannot be held responsible for the content of an applicant's claim. As such "Amendments after issue will require a District Judge or a court appointed legal advisor's permission, which can be time consuming and will incur further fees."[51] For those who fail to read or understand the pre-action protocols and Civil Procedure Rules prior to lodging a claim (both of which are written for a professional audience) there is an obvious risk that incorrect applications will be submitted and rejected for errors both small and large. Where this rejection occurs without the user being given specific feedback as to the cause of the error (particularly where an unrepresented applicant is claiming against a represented party) it is likely to increase user frustration and claim abandonment.

It is also important to note that MCOL does not permit third parties to submit claims on behalf of others unless registered as a legal representative/solicitor.[52] This is also the case with regards to online guilty pleas, where access to the system by friends or family members has been specifically vetoed.[53] This may make it difficult for some to avail of digital assistance from family and friends. Whilst it is recognised that PCOL and Employment tribunal applicants have already self-identified as having a legal issue, and will already have been through some legal processes, that is not true of MCOL, nor will it be true of any other online service developed to provide initial access to the Courts.

Importantly, the exemplars identified above concern services designed to handle a discrete part of the litigation process. Court proceedings typically involve the exchange of information between parties and the compilation of court bundles. Both PCOL and MCOL digitise only a small segment of the overall justice journey. These services are of relevance only after an individual has identified their legal problem and decided to initiate a claim, and cease to be of relevance if the matter cannot be handled within the confines of the system as it is presently designed (e.g. if one party does not have access to the internet, or if a party decides to contest the matter at which point a reversion to paper systems is instigated). As a result these services avoid some of the more difficult digital engagement challenges that an end-to-end court system must necessarily address, including dimensions of digital capability that relate to scanning documents and compiling court bundles. To date nothing has been said about the role of ADS in relation to assisting users with scanning documents or the compilation of court materials. It may be that changes to civil procedure do away with the need for bundles in litigation that takes place online, though this (and the implications of this) remains to be seen.

There do not appear to have been any further efforts by MoJ or HMCTS to segment users on the basis of criteria other than access and general patterns of use. This may arise, at least in part because it is difficult to obtain specific data on how individuals use online legal services.[54] Qualitative studies of MCOL and quantitative studies of Prison Visit booking line users reveal some insights that help shape the likely uptake and appropriate implementation of ADS, and these studies are discussed in further detail below. Whilst it is clear that more data is needed, it is also possible to glean some insights as to possible ADS take-up by the analysis of data collected in the 2014-15 Legal Problem Resolution Survey (LPRS).

3. ESTIMATING ADS DEMAND

Despite the large number of exemplar services having gone live since 2013, only two examples of actual ADS take-up rates have been published with only one of these relating to a digital exemplar. The first example is drawn from a 2017 Office of National Statistics (ONS) census trial, in which the Isle of Wight was selected as a trial location for ADS. 8,000 respondents were invited to participate in the online census, with 2,653 completing the census. Of these 139 (5%) took up the offer of face-to-face assisted digital support at partner libraries.[55] The second is drawn from the implementation of the Rural Payments online system in which 37% of 13,000 claimants made a request for ADS as a result of the service shifting online.[56] These differences may reflect the interplay between digital and other forms of capability.

As a consequence of this type of variation, need is not a trivial matter to assess. Estimates have tended to range considerably across services, with seemingly little consistency with regards to the measures used to determine ADS need. A survey conducted in respect of the Prison Booking service concluded that 6% of users are likely to have digital access needs, and 14% of users are likely to have assisted digital needs in respect of that service.[57] Elsewhere, DWP has estimated that 5% of those applying for Universal Credit will require ADS in order to complete forms.[58] HMRC estimates are much higher, with 15% lacking both access and capability, 1% lacking access, and 23% with access but without the requisite capability.[59] The Student Loans Company's estimate of 7.5% based on a survey, falls somewhere in the middle.[60]

Estimating demand for ADS involves consideration of the characteristics of the target user-group of the service, notably Internet access and the barriers to access, their willingness to go online and their level of digital capability. Additionally task-related capability must be considered, which in the context of legal tasks necessitates engagement with matters of legal capability. We consider each of these dimensions in turn, drawing on published findings from the OxIS study, ONS, the GDS CV2 digital landscape study, as well as new analysis of data from the 2014-2015 Legal Problem Resolution Survey.

Access

As Internet access continues to grow, the impact of the first digital divide has diminished in severity.[61] Findings from the 2003, 2009 and 2011 Oxford Internet Institute Survey reveal a steady increase in the number of individuals with access to the Internet, and the proportion of users with multiple devices through which they can access the Internet.[62] ONS data reveals that 90% of households had Internet access in 2017 - a 4% increase from 2016.[63]

Nevertheless, Internet access is still unevenly distributed and there remains a strong and statistically significant association between the social disadvantage and digital exclusion.[64] Individuals identified as non-users of Internet services, have been said to be amongst Society's most disadvantaged.[65] Those earning under £12,500 a year are less likely to report Internet access at home and are more likely to rely on access at a friend or family member's home, on a mobile device or at a public library. Disabled people are also more at risk of digital exclusion owing to structural barriers such as affordability, ineffective technology and/or poor design of assistive technologies.[66]

The LPRS asked respondents whether they had access to the Internet for personal use at Home or elsewhere. As the LPRS conceivably includes those with access to the Internet for personal use outside of the home (e.g. at school, work and university) it offers a slightly broader conceptualisation of Internet access than ONS data, which looks specifically at access within the home via mobile broadband or fixed broadband. As such, estimates of Internet access reported in the LPRS are likely to be on average higher than the figures reported by the ONS.

Overall, 8,964 of 10,052 LPRS respondents (89%) had access to the Internet (at home or elsewhere for personal use)[67], very similar to the rate of access reported by ONS in 2016 (90%). This represents an increase on the rate of access reported by respondents to Wave 2 of the 2010-2012 Civil and Social Justice Panel Survey (CSJPS)(a more detailed predecessor to the LPRS) which was recorded at 79% for all respondents and 85% for those with a civil justice problem. Although Internet access has been increasing year on year, it is also important to recognise that subtle differences in the way that respondents were asked about their Internet access, may also account for differences in the rates reported.[68]

Of those LPRS respondents with access to the Internet, 81% used it daily, compared to 78% in ONS findings.[69] Table 2 reports the level of digital exclusion (lack of Internet access) reported, by reference to a range of respondent socio-demographics.

Table 2. Proportion of LPRS respondents without Internet Access

		All	No Problems	1+ Problem/s
		%	%	%
Average		11	14	5
Gender	Male^	10	12	4
	Female	12	15	6
Age	18-24^	1	2	1
	25-44*	2	2	1
	45-64*	7	8	6
	65-74*	23	24	19
	75+*	47	49	55
Educational Qualifications	No^	34	37	24
	Yes*	5	7	3
Tenure	Owned outright^	19	21	9
	Owned with mortgage*	2	3	1
	Social rented*	24	31	14
	Private rented	5	8	3
	Other	6	7	4
Economic Status	In employment^	3	3	2
	Unemployed*	10	11	8
	Inactive*	25	28	15
Ethnicity	BME^	6	8	3
	Non-BME*	11	14	5
Dependent Children	No^	15	17	8
	Yes*	2	2	2
Income	Under £15,000^	21	26	13
	£15,000-£32,000*	9	12	4
	£32,000-£60,000*	2	3	1

	£60,000 or above*	1	1	1
On Means-Tested Benefits	No^	11	13	4
	Yes	13	16	9
Physical or Mental Ill-Health	No^	8	10	3
	Yes	18	23	10
Civil Justice Problem Type	No problem of that type^	-	-	-
	Consumer*	-		4
	Employment	-		2
	Neighbours	-		8
	Owned Housing	-		5
	Rented Housing	-		5
	Debt	-		6
	Money	-		4
	Welfare	-		4
	Relationship Breakdown	-		1
	School Education	-		3
	Injury or Illness	-		6

* Denotes results that were statistically significant when compared to the reference group (^) at the p<0.05 level

Table 2 reveals that there are some modest differences across groups in relation to digital exclusion. These differences were explored further through the application of a binary logistic regression model predicting Internet access on the basis of a range of socio-demographic characteristics and problem-type. Output from the model is detailed in full in Table A.1 (Appendix A).

Overall, those who reported 1 or more civil justice problem were less likely to report digital exclusion, with the exception of those aged 75 or older. However, those reporting civil justice problems in respect of Debt, Injury/Illness and Neighbours reported higher levels of digital exclusion, though statistical significances between those who did and those who did not report each problem type were observed only in relation to Consumer matters.

Generally access was observed to decline as age increased with all age groups showing statistically significant decreases in their rates of access when compared to 18-24 year olds (the reference group). Digital exclusion was also shown to increase as income decreased. Those earning more than £15,000 a year demonstrated higher rates of Internet access when compared to those earning less than £15,000 a year. The same was true of those in employment when compared to those who reported being unemployed or economically inactive.

Statistically significant differences were also observed with respect to tenure, with those in social housing reporting higher levels of digital exclusion when compared with the reference group (owned outright) Conversely, those with a mortgage reported lower levels of digital exclusion compared to those who owned outright. Other tenure types did not demonstrate significant differences when compared to the reference group.

Significant differences were also shown in respect of those with/without dependent children and those with/without educational qualifications. In both the cases, the 'have nots' reported higher rates of exclusion when compared to the 'haves'.

The raw data revealed very small differences by Gender, with women reporting slightly higher levels of digital exclusion, corresponding with findings in other studies[70] (12% v 10% as shown in Table 2 above), though differences did not reach statistical significance. In contrast to other studies[71], BME respondents were associated with lower levels of digital exclusion, though again this did not reach significance.

Importantly, issues of access are not restricted only to the Internet. An online court in which litigation is digital from end-to-end may also demand the uploading of documents (specifically a court bundle) in an electronic format. Little has been said about the potential challenges that this may present to users or the fact that users may require access to a scanner and scanning software. At present systems such as MCOL appear to circumvent the need for users to have access to a scanner by constraining input to the online form and the particulars of claim. It is not clear whether a claimant or defendant can include additional electronic material by way of scanned copies of correspondence between parties or receipts. It does not appear to be the case that MCOL administrators scan documents into the system on behalf of users, so it may be that any case in which supplementary material has been received by post, is automatically 'exited' from the electronic system.

The LPRS, CSJS and CSJPS do not provide any insight into the rate at which users have access to scanners. Although mobile phone applications are increasingly able to create 'scanned' versions of documents from phone cameras, e-bundles are subject to evidentiary requirements and must include page numbering, hyperlinks, indexing and document compilation.[72] Digital exclusion must be conceptualised as extending beyond just Internet exclusion/capability, so as to include exclusion to the software or hardware (such as scanning tools and PDF compilation software) required to interact with an end-to-end digital court system. Though the extent and nature of the exclusion that may arise can only be fully understood once HMCTS/MoJ publishes further details regarding proposed systems (and their integration).

Addressing Issues of Access

Efforts to address digital exclusion must principally focus on those aged 65+, low-income earners, those living in social housing and those without educational qualifications. These are the groups for whom reliable, sustained and ongoing Internet access is less easily secured and who may benefit from service points where access and support can be obtained. Findings point to exclusion particularly amongst those 75+ reporting a civil justice problem. This was the only instance in which a group reporting a civil justice problem had higher levels of exclusion than those of the same age who did not report a problem. For these reasons, this group will be especially vulnerable to the impact of digitisation in the courts and may require specific support.

HMCTS has outlined plans to provide support access points (SAPs) for those without Internet access. They intend to supply face-to-face assisted digital support in appropriate local settings, such as libraries and community hubs, in preference to court and tribunal hearing centres. SAPs are to be delivered by Good Things Foundation via their Online Centres network.[73]

It is not clear how 'appropriate local settings' are to be defined, although the LPRS allows for examination of the sources of help/information used by respondents for all problems reported in the survey (Figure 3).[74] As shown, for problems where the

respondent reported no access to the Internet at home or elsewhere for personal use, a variety of other sources of help were used.[75]

*refers to Citizen's Advice, a Trade Union, Shelter, the Money Advice Service

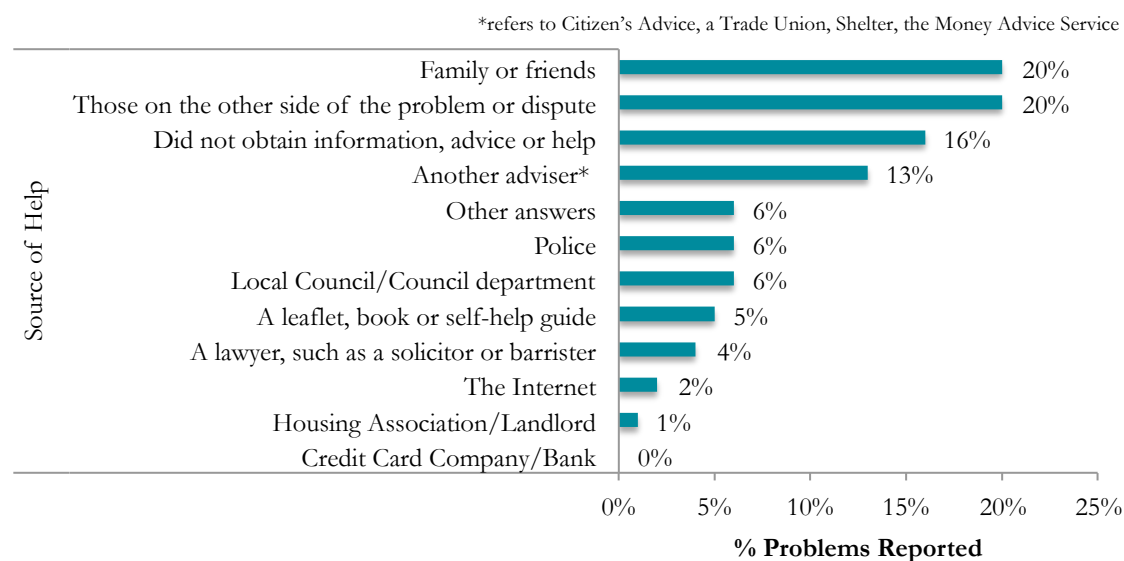| Source of Help	%
Family or friends	20%
Those on the other side of the problem or dispute	20%
Did not obtain information, advice or help	16%
Another adviser*	13%
Other answers	6%
Police	6%
Local Council/Council department	6%
A leaflet, book or self-help guide	5%
A lawyer, such as a solicitor or barrister	4%
The Internet	2%
Housing Association/Landlord	1%
Credit Card Company/Bank	0%

Figure 3. Sources of Information/Help for all problems experienced by those without Internet Access

Figure 3 reveals that family and friends are a common source of help. Assuming these family/friends have access to the Internet in their home then they may be able to make use of access via third parties as has been previously suggested. Nevertheless it is worth exercising caution; findings from a Job Centre Plus Digital service study in 2011 observed that "encouraging claimants to seek support from their immediate social networks does not preclude the need for further support." Issues such as the sensitivity of the topic, or the skill level of friends and family may ultimately inhibit access via these networks.[76] More suitable locations as shown in Figure 3 might include 'other advisors' such as Citizen's Advice, Shelter, Law Centres and other third sector providers.

Similarly, whilst home broadband access is not the only route to online connectivity, access via smart phones has implications for service design, with many of the exemplar services proving 'difficult' to complete via smart phone.[77] GDS data drawn from the period 26 Feb to 4 March 2018, demonstrates that gov.uk is most commonly accessed via desktop (46%) followed by access via mobile (44%) and Tablet (11%).[78] However, findings from specific services demonstrate the way in which method of access is related to task, with simple browsing or appointment booking services accessed more often via mobile than lengthy pro-forma. For example, the Prison Visit Booking Service exhibits much higher rates of access from Mobile phones (72%) whereas the lasting power of Attorney service is far more commonly accessed via Desktop (79.7%) and Tablet (12.3%), with 60.7% of Employment Tribunal applications lodged via Desktop.[79] Thus in respect of digital court services, it is important not to assume that those without Internet access but with mobile access will be insulated from digital exclusion. The wording of the LPRS and the inability to distinguish between the way in which respondents access the Internet, suggest that in practice, digital exclusion may well exceed the 5% average reported by those with a civil justice problem.

For access to scanning hardware and software the picture is substantially more complex, particularly where an end-to-end digital system is envisaged and e-bundles or uploading

of evidence is required. E-Bundles are a relatively new addition to the Courts in England and Wales. At present applicants and respondents are able to upload their own electronic bundles provided that these conform with the relevant practice directions in respect of e-bundling. Some courts have entered into agreements with specific vendors to provide an e-bundle platform with the Crown Court and Supreme Court using Caselines. This system charges users a per-page document hosting fee, and additionally where files are not provided electronically, a per page scanning and compilation fee.[80] It is not clear whether a user-pays system would be enforced in the eventual online court roll-out or the extent to which ADS will facilitate access to scanning hardware and software. Given the relationship between Internet access and income, we might expect that at least some of the demand for ADS will increase as a result of the need to provide the court with evidence or material in electronic form.

Willingness

Willingness to use digital services has typically been considered a function of access – the presumption being that those who do not use the Internet do so primarily because they cannot afford to access the Internet. However, although LPRS data reveals greater levels of digital exclusion amongst with those lower incomes, GDS research points to only 42% of non-users indicating that cost is a factor in their lack of access.[81] Evidently some people remain willingly offline even in instances where they could afford access, and some of those with access may not consider use of the Internet for government transactional services. As such, it is important to consider the other factors that may impact take-up of online services, as these are issues that are unlikely to be resolved merely by the provision of digital service access points or via ADS.

Over the last decade the Internet has played an increasingly important role in the resolution strategies of many of those facing 'civil justice problems'. Over the course of the final CSJS, use of the Internet for advice or information for rights problems had increased from 14.1 per cent in 2006 (267 of 1,892) to 15.6 per cent in 2007 (343 of 2,200) and 17.7 per cent in 2008 (358 of 2,024)[82]. Figures from the 2010 English and Welsh Civil and Social Justice Panel Survey found continued growth, with respondents having tried the Internet for 348 of 1,828 problems (19%).[83] Data published on the MoJ/HMCTS digital service performance dashboards, also reveal services attracting an increasing number of users year-on-year.[84]

Nevertheless, LPRS findings suggest that when respondents are asked to indicate where they would seek help in relation to a hypothetical legal problem (a hypothetical allowing data to be captured from all LPRS respondents, not only those with a problem), the Internet is rarely mentioned. Only 6% of respondents indicated they would seek help from the Internet or a website in response to a money dispute. Far greater numbers would turn to a lawyer (35%), a Citizen's Advice Bureau (40%), friend or family (24%), or a public authority (11%). For divorce, a similar pattern emerges, with 67% indicating they would seek help from a lawyer, 23.4% from a citizen's advice bureau, 20% from friends/family, and only 4% suggesting the internet/a website.

Of the 8964 respondents with Internet access, 67% (n = 6026) indicated that they used the Internet to undertake transactional government activities with 'online banking and managing finances' (72%), 'buying goods or services' (85%), and 'email' (92%) more common uses. Data revealed that problem experience and use of government

transactional websites were not independent. Transactional digital government service use was 10% higher among those reporting a civil justice problem. [85]

Users' lack of awareness of particular services continues to present a barrier to digital channel shift in other studies[86], though it is not clear if lack of awareness accounts for LPRS findings. Data drawn from CV2's Digital Landscape Research undertaken on behalf of GDS, reveals the extent to which non-use of government digital services might be attributable to a lack of awareness.[87] Findings drawn from the raw data in respect of the court fines service (the only HMCTS service specifically asked about) reveal a recognition rate of 12% among survey respondents. Awareness of online services in other departments such as DWP have also been shown to be lower than expected in other studies.[88]

Clearly awareness plays a role in non-use, but the CV2 data also speaks to willingness. Of those who had visited a government services offline or online for the purpose of Court fines (n=29), 56% obtained information from a website, yet only 36% of these went on to compete their transaction online. Those who visited a government service offline more often used the same mode to complete their transaction.[89]

Other studies have observed the importance of keeping users in an 'online state of mind'[90] so as to reduce their tendency to shift back and forth between online to offline services, yet it is also clear that digital-only provision does have an impact on take-up. The 2017 ONS Census Survey trial in the Isle of White observed that response rates for those who were provided with online-only completion peaked at 23%. For those who were given the option of a paper questionnaire (either on request or in the field), substantially higher response rates of 43% were recorded.[91] These findings, suggest that caution should be exercised in shifting to digital-only service delivery in an effort to force take-up.

In order to sustain an end-to-end digital court, both sides of a dispute must be willing to engage with digital processes. At present electronic small claims instigated through MCOL are easily referred back to the physical courts in instances where one party does not wish to engage digitally. However it is not clear how HMCTS intends to resolve non-participation in the event that digital by default systems mandate online engagement. This is an issue that has been observed in respect of mediation (both online and offline) though how an electronic court might enforce participation, or sanction non-participation is less clear. There are concerns where sanction arises as a result of incapacity, and conversely, there are concerns where alleged lack of capacity is used to frustrate the civil justice process. Though such instances cannot be quantified, they will inevitably delay proceedings and likely increase ADS demand.

Addressing Issues of Willingness

Addressing issues of willingness merits consideration of how a channel shift can be incentivised. Analysis of CV2 data reveals that the public responds better to positive incentives, with discounts on certain transactions (42%), quicker processing times (39%) and well-designed services that are easy to navigate (33%), more often identified as factors that would encourage a user to 'channel shift', in comparison to making it more difficult or time-consuming to complete services offline (26%) or having knowledge of how much the non-digital service was costing (17%).[92] Addressing issues of willingness also require HMCTS consider how wider online court rollout intended to promote the

engagement of both parties and avoid non-participation by one party. In so far as this is concerned, there is a lack of evidence to inform policy-making.

Digital Capability

There is no universal definition of what constitutes 'digital capability'. The GDS inclusion matrix as shown in Figure 1 was developed on the basis of a BBC/GoOnUk study[93] and a segmentation study carried out by 2CV[94]. It refers to 'Basic Digital Skills' (Level 7) which describes users with ability to interact with digital government, though 'Basic Digital Skills' is a relatively new conceptualisation, applied from 2015 onwards.

Prior to 2015, GoOnUK measured 'Basic Online Skills' - a reference to the number of tasks for which the Internet was used by someone.[95] Those who completed all four of the following activities (94% in 2014) were said to demonstrate 'Basic Online Skills':
• Sending emails (Communicating)
• General surfing/browsing (Managing Information)
• Using a search engine (Managing Information)
• Complete online application forms, which include personal details (Creating).

In 2015, GoOnUK amended the definition of 'Basic Online Skills' and also added a new definition, referred to as 'Basic Digital Skills'. Those who have 'Basic Online Skills' (81% of the UK population as of 2015) report the ability to complete all of the following tasks[96]:
• Searching/Retrieving Information (Managing Information)
• Sending Emails/Tweeting/Blogging (Communicating)
• Buying Items from a Website (Transacting)
• Complete online application forms, which include personal details (Creating)

In addition, those who present with 'Basic Online Skills' _and_ the ability to 'verify sources of information found online (Problem Solving)' are said to demonstrate 'Basic Digital Skills'. This amounted to 77% of the population in 2015. It should be noted that differing ways of calculating access and capability have led to different estimates being produced, with GDS previously reporting that 14% of people do not have access, 7% do not use the internet in a way that benefits them, leaving 79% with access and capability.[97]

The LPRS asked respondents to indicate the number of activities they engaged in online, from the following:
• Completing transactional government services online
• Buying goods or services
• Email
• Social Media/Blogging
• Online Banking and Managing Finances
The LPRS also asked respondents about their level of confidence in verifying information online.[98]

It is not possible to directly map the aforementioned definitions of 'Basic Online Skills' and 'Basic Digital Skills' to the LPRS data as the questions asked are not the same. The LPRS did not ask respondents about 'managing information/search engine use/browsing. Additionally, with the exception of 'emailing', the activities listed in the

LPRS (Online Banking/Government Transactions/ Blogging/Buying Goods & Services), demonstrate both an element of 'Transacting' dimension and of 'Creating'. However, it is possible to arrive as a proxy measure broadly comparable to the dimensions of use that 'Basic Online Skills' and 'Basic Digital Skills' are designed to capture.

In order to promote simplicity, the following analysis devises two proxy measures of 'Basic Online Skills' and 'Basic Digital Skills'. LPRS Respondents are classed as exhibiting 'Basic Online Skills' (BOS) if they report using the Internet for email[99] and for *one or more* of the following activities:
• Completing transactional government services online
• Buying goods or services
• Social Media/Blogging
• Online Banking and Managing Finances.

Those who are categorised as having 'Basic Online Skills' *and* who also report that they are very or fairly confident in their ability to tell whether the information they find online is accurate, are categorised as having 'Basic Digital Skills' (BOS)

Table 3. Percentage of LPRS respondents without Basic Online Skills (BOS) and percentage with Basic Digital Skills (BDS)

		% Lacking Basic Online Skills		% Lacking Basic Digital Skills	
		All	*With Problems*	*All*	*With Problems*
Average		10	6	17	14
Gender	Male^	10	7	16	14
	Female	10	6	17	14
Age	18-24^	4	5	9	11
	25-44*	5	3	11	10
	45--64*	12	9	20	18
	65-74*	17	12	26	22
	75+*	18	14	23	23
Educational Qualifications	No^	18	16	25	23
	Yes*	8	5	15	13
Tenure	Owned ^	15	10	22	20
	Mortgage	6	3	12	10
	Social rented*	15	13	23	23
	Private rented	5	3	12	10
	Other	7	5	12	11
Ethnicity	BME^	7	5	17	17
	Non-BME*	10	7	17	14
Dependent Children	No^	11	7	18	15
	Yes	7	4	14	12
Income*	Under £15,000^	13	10	21	20
	£15,000-£32,000*	11	5	18	13
	£32,000-£60,000*	7	4	12	11
	£60,000 or above*	3	2	7	6
On Means-Tested Benefits	No^	9	6	16	13
	Yes*	14	10	24	22
Physical or Mental Ill-Health	No^	9	5	15	12
	Yes	13	8	20	18

Table 3 reports on the rate at which LPRS respondents lacked 'Basic Online Skills' (BOS) or 'Basic Digital Skills' (BDS) in reference to a range of socio-demographic characteristics. As can be seen, there was some evidence of variations in capability. These differences were explored further through the application of a binary logistic regression model predicting Basic Digital Skills (BDS) (the higher of the two standards) on the basis of a range of socio-demographic characteristics and problem-type. Output from the model is detailed in Table A.2 (Appendix A).

Overall, those reporting a civil justice problem tended to report higher levels of digital capability. As with Internet Access, older respondents demonstrated greater levels of digital exclusion on the basis of capability, with the number of respondents lacking BOS and BDS increasing as age increased. These findings were statistically significant in respect of BDS when comparing all older age groups to those aged 18-24 (the reference category). Again, as with Internet access, the rate at which respondents exhibited BOS and BDS increased alongside income; those earning <£15000 reported lower levels of BDS than higher income earners with differences reaching statistical significance. Similarly, those with educational qualifications reported BDS at a higher rate compared to those without qualifications and this was also a significant finding.

Lacking BOS or BDS was more common among those living in social housing, with differences between rates of BDS reported by those in Owned Housing and those in social housing reaching significance. Higher numbers of those with owned housing, personal injury, and debt problems lacked BOS and BDS. Employment, owned housing, debt, school education and illness/injury problems were also associated with lower rates of BDS, with the latter difference reaching significance. Conversely, consumer and welfare problems were associated with higher rates of capability and again, these reached significance when compared to those who did not report these problems.

There was no evidence to suggest that those who initiated court/tribunal proceedings had a higher level of digital capability than those who were respondents to a proceeding initiated by the other side. The data also failed to reveal any clear differences in the level of digital capability exhibited by those respondents who reported using an online dispute resolution system compared to those who did not. However it is important to exercise cautious in reading too much into these findings, given that numbers are small and that the survey was not designed to explore matters such as these specifically. Figures 4 -7 below detail the level of Basic Digital Capability with reference to broad problem categorisation and Court/Tribunal/ADR use. Owing to small numbers of respondents actually using Court/Tribunal/ADR services, it includes responses from actual Court/Tribunal/Mediation users as well as potential users (those who indicated that they had considered using one or more of the aforementioned).
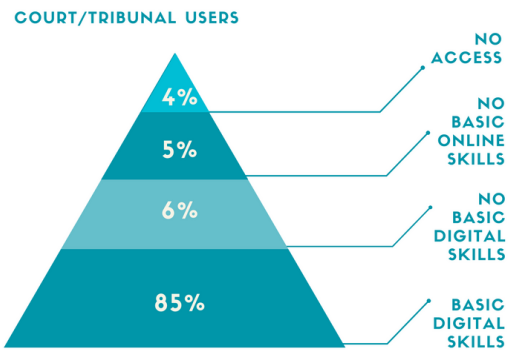
COURT/TRIBUNAL USERS

- 4% — NO ACCESS
- 5% — NO BASIC ONLINE SKILLS
- 6% — NO BASIC DIGITAL SKILLS
- 85% — BASIC DIGITAL SKILLS

Figure 4. Internet Access & Capability for Actual & Potential Court/Tribunal Users

ADR USERS

- 3% — NO ACCESS
- 6% — NO BASIC ONLINE SKILLS
- 8% — NO BASIC DIGITAL SKILLS
- 83% — BASIC DIGITAL SKILLS
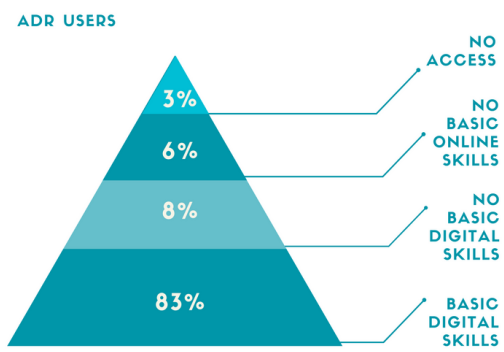
Figure 5. Internet Access & Capability for Actual/Potential ADR Users

ADMINISTRATIVE JUSTICE PROBLEM

- 3% — NO ACCESS
- 6% — NO BASIC ONLINE SKILLS
- 8% — NO BASIC DIGITAL SKILLS
- 83% — BASIC DIGITAL SKILLS
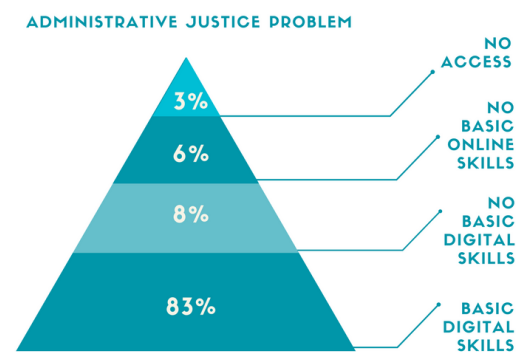
Figure 6. Internet Access & Capability for Those Reporting Administrative Justice Problems

CIVIL JUSTICE PROBLEM

- 5% — NO ACCESS
- 6% — NO BASIC ONLINE SKILLS
- 8% — NO BASIC DIGITAL SKILLS
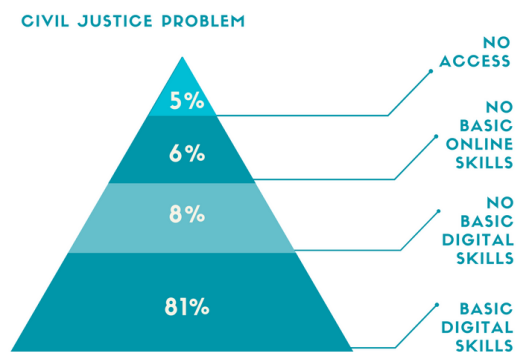- 81% — BASIC DIGITAL SKILLS

Figure 7. Internet Access & Capability for Those Reporting Civil Justice Problems

As shown in Figures 4-7, (potential or actual) ADR users reported slightly lower levels of digital capability and higher levels lacking Internet access. Those with administrative legal problems tended to have higher rates of Internet access and 'Basic Digital Skills' compared to those reporting civil justice problems, although the differences between groups were small and not statistically significant.

As will be noted above, definitions of digital capability do not extend to tasks such as scanning documents, collating and compiling materials, or indexing, paginating and hyperlinking bundles. Further, there is no data to inform our understanding of the level at which the general population, and those with legal problems, might be able to undertake tasks of this nature. This is of relevance in relation to online courts more so than other areas of digital government due to the need to provide supporting material and evidence in relation to a legal claim. Were the definition of 'Basic Digital Skills' expanded to incorporate skills of this nature, the resulting level of exclusion is likely to be substantially higher than that estimated above.

Physical Capability

It is important to consider that it is not just lack of access or lack of experience using the Internet that may act as a barrier to digital service use. To date, little has been said about the role that ADS will play in helping people with other sorts of difficulties who may not be able to engage with systems as they are currently designed. These conditions might include:

- Single or Multiple disabilities: someone who is deaf or has low vision might benefit from captions for audio, but only if these captions have adjustable size and colour;
- Health conditions: some users may experience fatigue, pain, or other symptoms that could have an impact on the duration or extent of their use of the web;
- Changing abilities: the same user may have recurring/differing impairments which requires them to have access to particular accessibility features on one day, but not on another;
- Temporary impairments: such as those that occur due to an accident, surgery, or medication. They may not know how to use accessibility features/which features are available to them;
- Situational limitations: loud environments may make it difficult to hear audio, bright sunlight may make it difficult to view a screen.

Some users may have access to the Internet, but be unable to afford certain assistive (adaptive) technologies. If design of services does not take into account these issues, then these users are likely to have a greater need for ADS services.

LPRS findings demonstrate that 11% of problem justice experience relates to personal injury. The proportion of LPRS respondents in receipt of disability allowance is higher amongst those who reported a problem compared to those who did not report a problem (11% versus 8%). Further, 30% of people with a civil justice problem have physical or mental health conditions that reduce their ability to carry out daily activities 'a lot'. It should be expected that ADS is responsive to the needs of such groups.

In addition, at least some of those who meet the BOS and BDS criteria may nevertheless require other forms of support that necessitate engagement with ADS. For example, 26% (n= 255) of those who meet the Online Digital Skills criteria and who report having experienced a civil justice problem *also* report having a physical or mental health condition that reduces their ability to carry out daily activities. Although MoJ/HMCTS purport to abide by the W3C WAI Web Content Accessibility Guidelines (WCAG) 1.0, which ensures that websites are sensitively designed for those with adaptive needs, there are examples where compliance does not appear to have been met (discussed further in Section 7). Ensuring compliance with this and higher standards will be of critical importance in ensuring all can access online services, as well as ensuring that signposting towards ADS services is accessible.

Legal Capability

Engaging with online legal services requires more than just the ability to fill in forms, respond to emails, or browse a website. Quantitative findings from the CSJS/CSJPS, observations drawn from online experimental studies, and qualitative research on litigants in person, all tell a similar story. It is not difficult to find information online but using this information is often highly problematic.[100] Use requires the ability to distinguish between reputable sources of information, understand the significance of jurisdiction, have an awareness of legal processes, and to assess the appropriate action to take.[101] In other words, resolving a problem online requires legal capability as much as digital capability.

Although a number of definitions of legal capability exist, the concept remains contested. Pleasence et al have observed that it "requires consideration of what capabilities are

required for an individual to have an effective opportunity to make a decision about whether and how to make use of the justice system to try to resolve a problem".[102] This may require multiple aspects or domains of legal confidence and capability. It has not been until relatively recently that a scale of legal capability has been developed that has undergone rigorous assessment of coherence, validity and reliability.[103] This legal capability scale developed by Pleasence and Balmer, incorporates measures of legal confidence (including general legal confidence, legal self-efficacy and legal anxiety) and attitudes to law (including inaccessibility of justice, and perceived inequality of justice).

Findings drawn from a baseline studying employing this scale reveal that legal capability and attitudes to law are socially patterned. Higher general legal confidence (GLC) is expressed by male respondents, with personal experience and the experience of friends and family also proving influential in either raising or diminishing confidence depending on the experience. Most tellingly, positive experiences with the law or legal processes were associated with far higher confidence and negative experience significantly lower scores. Legal self-efficacy (LEF) is typically lower amongst those reporting illness or disability and amongst those without academic qualifications, whilst Legal Anxiety (LAX) is higher in women, those reporting illness or disability, and those without qualifications. Crucially, GLC, LEF are shown to be higher and LAX shown to be lower amongst respondents who report having someone to rely on when faced with a problem, with personal experience and the experiences of friends and family influencing confidence and attitudes to the law.[104] Again, scores are strongly linked to whether experiences with the law are positive or negative.

As has been observed elsewhere, the perceived accessibility of justice and the perceived fairness of legal outcomes plays a key role in shaping the legal norms that govern public behavior and frame the informal resolution of legal problems via settlement.[105] This gives rise to the risk of perception driving reality. Where ODR or Online Court systems are perceived as barriers by the public, this will undermine legal confidence and self-efficacy, and heighten the anxiety of users. Perceptions of inaccessibility are also likely to influence settlement practices as settlement is underpinned by the threat of 'going to court'.[106] This threat may be read as being 'empty' or present as substantially more coercive if there are digital inequalities between the parties. These issues suggest there is merit in further exploring how digital capability might appropriately integrate dimensions of legal capability for the purpose of identifying those with ADS needs.

As yet we do not have a clear indication of the legal capability of online service users, though the LPRS offers some insight into the capability of those in the court system. Of those respondents to the LPRS involved in divorce or dissolution proceedings (n=108), 56.3% (n=62) were involved in filing court papers. Of those involved in filing papers: 70.6% (n=44) received help in making these filings and 28% (n=17) completed proceedings independently. Of those completing filings independently, the majority (n = 11) reported that completing forms was 'very easy' or 'fairly easy'. A smaller number indicated that completing the paperwork was 'fairly difficult' or 'very difficult' (n=5).[107]

For those who obtained help in completing the court paperwork (n=44), assistance was most often obtained from a solicitor (n =37) with fewer respondents obtaining help from a relative/friend/colleague (n=7), or someone else (n=2). The majority (53.4%) of those who obtained help indicated that they would have had difficulties completing the paperwork without assistance, with a smaller proportion indicating that they would have had no difficulties (42%).

Studies of 'Litigants in Person' afford greater qualitative insight into the capabilities of those who make it to court, but there are few studies exploring the experiences of those using HMCTS online court systems. Findings from MCOL reveal the claim filing process is often straightforward, yet "those with less knowledge of completing official forms and first time users of the process were more likely to feel intimidated by the form. A number of participants reported difficulties in being able to find guidance to help them complete the form, both on paper and online."[108] Findings from Canada also identify that the literacy requirements of courts document present a substantial and often unacknowledged barrier to access to justice.[109]

The completion rates associated with particular services may also hint at the complexity of certain digital processes and distinguish between those processes thought to require legal and digital capability, and those processes requiring only digital capability. Examples of the former include the Lasting Power of Attorney Service, which has a 56.5% completion rate, whilst the last recorded completion rate figures from the Civil Courts accelerated possession service online (PCOL) are from the period 19th the 25th September 2016 reach only 36%. For services requiring only digital knowledge, such as the Prison Visit Booking Service, much higher completions rates of 76% are observed.[110]

The digital strategy guiding MoJ/HMCTS online service development presents a singular focus on *digital* capability. Little mention is made of the complexity that certain process introduce into the digital service construct. Arguably, an electronic form does not necessitate any greater legal capability than a paper form. In some cases it may require less capability and this should be welcomed. The development of an online form for help with fees was intended, at least in part, to make incorrect completion more difficult and to reduce the 375,000 incorrectly completed paper forms (75% of total) submitted each year. The redesign of both the court fees form and the employment tribunal online has been built on the need to remove legal jargon and reduce the evidence required from users.[111]

Nevertheless, this artificial distinction between digital and legal capability becomes more difficult to sustain where the intention is not to replicate existing processes, but, as a number of policy statements have made clear, to redesign processes so as to deliver on the promise of a more 'proportionate' and 'accessible' legal system. If the basis of the court reforms are, as suggested by Sir Oliver Heald MP, intended to "enable those with the right skills to pursue their case online and without legal advice, with the software encouraging litigants to set out the facts in a way that made the dispute easier to resolve" then legal capability must be seen as occupying equal (if not greater) importance than digital capability.[112]

4.   DELIVERY MODELS

The Government Digital Service states ADS can be provided by the Department running the service, through private organisations, or by working with charities/public sector organisations. They identify phone, web-chat, face-to-face appointments whilst avoiding use of paper solutions in general[113]. GDS encourages service developers to implement a triage service to establish if ADS is actually required[114], and to determine the type of ADS required.

HMCTS has identified a number of ADS options including: face-to-face assistance; telephone help; web chat; and access to paper channels for those who require it. The Online Plea Service has a call centre, but users require an internet-enabled device to facilitate online completion. For the Help with Fees online service, Personal Support Units (PSUs) located inside courts were used as access points for the ADS in, from which few details have been published.

From March 2018 to August 2019 the Online Centres Network has partnered with HMCTS to evaluate face-to-face services across all services currently available[115] and it is expected that this will shape the future ADS offering provided (or procured) by HMCTS. It is presently envisaged that the HMCTS telephone support made available through Customer Telephone Service Centres will dovetail with online support offered by the Good Things Foundation Online Centre Network. Here, face-to-face support will be tested in a number of pilot locations (Swansea, Sunderland, Liverpool, St Helens, Doncaster, Birmingham and London) through to September 2019.[116]

Examples of ADS delivery models drawn from elsewhere in Government are detailed in Box 1 through Box 6 below.

Box 1. DWP Assisted Digital Support Services

For those needing to complete an online application for Universal credit, **DWP** directs users to a point of access which might include Citizens Advice Bureaus, JobCentres[117] and local libraries with extended opening hours. [118] If the user is unable to access services via these methods, then they may be given the opportunity to make a claim over phone, or arrange for a home visit[119]. For capability issues, users are offered coaching over the phone capped at 40 minutes, with a call-back appointment scheme to ensure that users do not incur phone charges.

The Digital Strategy released by DWP in March 2017 suggests that those who require assisted digital must enter through a mandatory telephone gateway. It also indicates that users without Internet access are "oriented to the locally available public terminals."[120] Although DWP funds User Services (US) (e.g. Local Authorities, Citizen's Advice, Credit Unions, Local Charities) to provide ADS, it is not clear whether this extends to access. The 2012 Strategy affords no further insight, indicating only that "Staff are helping claimants to find free Internet access in their local area."[121] If support for Internet access is considered an issue of referral to other service providers (such as libraries, CABs, JobCentres) then the sustainability of this approach must be considered in light of demand, particularly where specific funding from DWP to support access, is not made available.

Box 2. Rural Payments Agency Assisted Digital Support Services

In 2015 the **Rural Payments Agency** implemented a shift to online claims for Rural Payments.[122] In advance of the transition, the Agency sent letters out to those who had not used online service before, providing a telephone number for those who required help going online. Those who had online access but refused to complete the online form were considered ineligible for ADS. Those who needed assistance going online were assessed to determine if there were any means of access via Friends or family; Business partners; Intermediaries in the local area providing IT training or access to the Internet; or, an agent they chose to use for professional support.

Those answering 'no' were given an appointment to attend a Support Centre where they would be given access to a computer and broadband and help with their online transaction. Intervention was limited so that "Unless there was a complex barrier that prevented a customer from using a computer, the customer would do as much as possible of the transaction themselves."[123] Whilst the ADS support was lauded, the actual implementation was marred by a lack of integration between the digital front end and back-end system of the Common Agricultural Policy IT system, this ultimately resulted in a reversion to pen and paper form completion.[124] A 2016 Public Accounts Committee Report concluded that "GDS introduced a level of innovation and risk to the programme, without assessing whether the Department was capable of managing the changes, and did not provide sufficient support during implementation."[125]

Box 3. ONS Assisted Digital Support Services

As part of the **ONS Online Census Pilot**, the Isle of Wight was selected as the only area where people were not able to request a paper census form. Unlike the full census, there was no statutory obligation to compete the census. Residents without Internet access were advised by letter to seek access at one of four local libraries.[126] Trained staff at library contact points supported residents and where necessary, residents could book 1-to-1 training sessions, though it does not appear that additional support was made available to those who had Internet access but who lacked capability.

Box 4. Home Office Assisted Digital Support Services

The **Home Office's** UK Visa and Immigration service maintains three ways for users to obtain help with immigration applications. For telephone support applicants are referred to a Migrant Help UK advisor. For face to face support applicants can book time with library staff at one of 32 libraries[127] across the UK, Wales and Scotland), or arrange a home visit from 'We Are Digital.' This support is available only to those applying within the UK.[128] A trial of Walk in face-to-face ADS support was conducted in 2015 with good feedback as to the convenience of the service. Though, some privacy concerns were observed as a result of lack of private space and the personal information being entered by users.[129]

Box 5. HMRC Assisted Digital Pilot[130]

The **HMRC** Assisted Digital pilot was conducted in 2016. It involved the HMRC Tax Credits renewal service as a vehicle for the trial. Fifty advisors were recruited to provide assistance and given in-depth training. This was complemented with access to a specific AD microsite through which information and updates could be pushed out. Advisors were required to ascertain if the customer had tried to use the digital service, and if so, to

offer to help or support the user in their use of the digital service. Failing that, signposting to sources of support was offered, and only if these two options were rejected, would paper or phone completion alternatives be provided. The users involved in the pilot all had differing needs, however they were all offered the same level of support.

The pilot observed that once they were contacted to an advisor the user was often in an offline state of mind, and their interest became simply completing the transaction as quickly as possible. As a result "On the call, participants were supported to complete the transaction, but in most cases any digital support needs did not seem to have been clearly identified nor addressed. Advisers had typically completed the transaction for participants on the phone, thereby meeting their immediate needs and priorities at that point"[131] Additionally, advisors saw their role as raising awareness of the service rather than supporting its user, and raised a number of issues that made it hard for them to deliver the AD support required, via the general HMRC helpline.

The following recommendations emerged:
- Improving publicity and awareness of digital service;
- Improving the Verify system which caused a number of customers to call the service despite being otherwise digitally capable
- Providing the capability to interact with customers within online space (e.g. via webchat), so users do not leave the digital service and remain in an 'online' mind set.

Box 6. International Examples of Support given to Online Legal Service Users

A number of overseas examples demonstrate the response of service providers to issues of geography (rather than to digital-by-default services). Nonetheless they are informative in regards to the different models that have been implemented to deal with lack of access.

In Ventura County, California, the **Legal Services Corporation** promotes digital access through the provision of a 'Mobile self-help Centre'. This 35-foot motor home is equipped with two PCs + self-help videos + written materials to provide assistance those with legal needs. [132]

Australia's welfare benefits delivery agent, **Centrelink**, provides self-service terminals at Agent and Access Points, for those in rural, regional and remote Australia who require internet access. Some assistance is also provided for the completion of forms at Centrelink Centres. [133]

LawAccess New South Wales in Australia provides access to legal information and advice, supplementing internet-based advice and information with telephone and face-to-face services primarily intended for those who have difficulty accessing traditional services due to their geography.

Considerations of Mode

Where assistance is provided face to face, it is necessary to consider how user needs might dictate the environment in which face-to-face support is provided. Users applying online for Carer's Allowance[134] reported greater need for accessible and flexible room layouts for face-to-face assistance, due to personal and financial information being discussed and a dedicated phone line within this room to enable calls to other organisations. Whilst findings from a JobCentre Plus study observed that those who regularly visited the offices, preferred PCs in JobCentre Plus offices, rather than at job

points, due to perceived privacy benefits.[135] For these users, accessing the Internet via smartphones was generally found to be too expensive to be a realistic prospect for pay-as-you-go users.[136] It is reassuring therefore, to note that in the HMCTS ADS pilot, customers are able to indicate their preference for a private room, although it is not clear whether this preference will be guaranteed.[137]

It is also relevant to note that Libraries are not always seen as a feasible setting for Internet access. Respondents to a Walthamstow Council study felt that accessing the Internet via public libraries was relatively limiting, and expressed frustration with the time limits imposed on them, especially when they had longer tasks to undertake (e.g. job applications). For these residents, greater public Wi-Fi and equipment loans were seen as a preferable method of obtaining access. [138]

Similarly, booking face-to-face appointments has been said to impose additional costs on the service provider, as well as running the risk of no-shows. An assisted digital evaluation of face to face walk-in services undertaken by the Passport Office in relation to online passport renewal services demonstrated good results from a trial of face-to-face ADS walk-in support located in Newbry's Max Spielmann photo centre shop and Henley-on-Thames ArtHive shop (where users might also obtain passport photos),[139] highlighting the benefits of service co-location. Though it is difficult to see how such an example might be scalable in the civil justice space when set against the reduction of HMCTS's physical estate.

The ADS face-to-face pilot instigated by HMCTS in 2018 reveals that face-to-face advice will be provided in locations other than the court setting. Further, whilst the proposed pilot accommodates referred and walk-in customers, it is not clear whether walk-in customers will be provided with same day assistance, or whether they are required to book an appointment to return on a specific date/time. From the handbook prepared to assist online centres in delivery, it appears that same-day appointments will turn on issues of availability, as well as the customer having presented to the centre with the correct documentation. Efforts to reduce the costs of no-shows are addressed via an appointment reminder service that service providers are encouraged (though seemingly not required) to implement.[140]

The Social Security Advisory Committee study on the use of telephony in HMRC and DWS[141] has previously observed difficulties in accessing telephone support due to costs and long delays. It was suggested that these problems should be addressed via call-backs offered systematically and proactively at the beginning of calls, or a shift to a Freephone number. Similar concerns were expressed in the CLA Mandatory Telephone Gateway review, as using mobile phones to contact the non-geographic number could incur high cost calls. Study interviewees noted that although the 'call back' option could address this, users were observed to be less likely to call in the first place if they had to pay for the call.[142]

Language may present as an additional barrier for users accessing digital-by-default HMCTS services. Australia's Centrelink service provides information in other languages and offers a multilingual phone service to speak with skilled bilingual service officers.[143] It is interesting to note that the UKVI online visa applications must be completed in English and there is no evidence of language support available for those who might require it. Proposals to rely on Language Line services to deliver bilingual ADS should heed the warnings arising from the CLA Gateway Study. Quality of the service was said

to be highly dependent on the (often variable) quality of the translator, added to which, in some cases users could still not be understood due to speaking a specific dialect or speaking a combination of English and their native language. The report also observed that using LanguageLine added significant time to telephone interactions, with flow-on administrative costs.[144]

It is not clear yet how many government agencies have implemented ADS in a format other than telephone and face-to-face. If telephone support acts as a mandatory gateway to face-to-face support then this is likely to disadvantage those with speech impediments or those on lower incomes. The HMCTS face-to-face pilot intends to accommodate both call-centre referral and self-referral to the service, though does require that Online Centres call the HMCTS customer telephone service Centre (CTSC) to acquire a customer number before booking an ADS appointment.[145] Similarly, web-chat may be prohibitive for users with physical disabilities where they fail to comply with WCAG guidelines. Separately HMRC has observed the challenges of providing 'offline' assistance to users who may have access but lack capability, and the impact of this approach on keeping customers in an 'online' mind set.[146] This points to the potential advantages of ADS methods that interact with customers in the online space, following the example of British Columbia's Small Claims platform which provides a virtual assistant who explains the sites facilities, and helps users with queries.

5.   LESSONS FROM ADS IMPLEMENTATION

Whilst there have been few studies of ADS provision to date, a number of other studies have observed the limitations of particular modes of access, the relevance of signposting and the importance of clear user guidance. This section brings together the key lessons emerging from this literature, so as to inform ADS design and implementation.

[A] Make it clear what ADS is and what it is not.

The general public is unlikely to understand the distinction between ADS and general advice services even where this distinction is made clear. User research conducted by the Department of Work and Pension's in respect of online Carer's Allowance applications found that "'assisted digital' is not a phrase understood by the public."[147] Testing alternative wording such as 'get help here applying for Carer's Allowance online', "was often understood to point to a general advice service and not necessarily help with the digital service."[148] Such findings underline the difficulty of conveying to the public the scope of digital assistance. DWP concluded that "there is more work to do to make this messaging clearer whilst the service continues to improve the digital offering and reduce the demand for benefits advice as part of assisted digital support."[149]

MoJ has made clear that "Assisted digital services will not remove users' right to representation: they are put in place to help unrepresented appellants and LIPs successfully navigate digital processes only and will not be providing legal assistance."[150] Yet the inability of the public to distinguish between general and digital advice is likely to lead to additional demand on ADS services. A review of the Civil Legal Advice Mandatory Gateway in 2014 found that user expectations affected their experience of using the Gateway service and the staff experience of delivering it. Of specific note were the report's findings regarding users confusion as to what the service was able to deliver.[151] Users expected Operators to be legally trained and offer legal advice, even although a pre-recorded introductory message informed users to the contrary.

Findings from a MCOL study has also revealed a key call centre frustration as "the inability of staff to offer advice and frustrations around what constitutes 'advice' as opposed to 'legal advice'" As a result, some participants felt that "the staff did not differentiate between the two and more often than not decided to give no advice rather than risk mistakenly giving legal advice".[152] Moreover, users have previously reported being unsure as to whom they are calling when they call the MCOL helpline, with some assuming that they would be transferred to the court handling their matter.

Advanced information will not have the effect of remedying the misconceptions of all users, though it may have an impact in reducing the number of ineligible contacts made to a service. This was shown to be the case following the introduction of an online Prison Visit Booking Service, which resulted in a substantial number of enquires being lodged via the technical contact form for non-technical queries. Careful rewording of the contact form reduced the number of contact queries, but did not eliminate the problem entirely.[153]

Triaging and appropriate signposting will be an important part of distinguishing queries that are inside/outside of the scope of ADS. The Mandatory Gateway evaluation demonstrated evidence of inappropriate signposting including one instance in which a Citizens Advice Bureau (CAB) had automatically redirected all of its out of hours calls to

the CLA service, leaving callers frustrated when it transpired that they had reached the CLA, and not the CAB office."[154] These findings point to the importance of messaging, among users themselves and among those in the legal advice sector who may refer users on for ADS.

The ADS pilot that HMCTS is running in 2018/19 addresses at least some of these issues, encouraging service providers (Online Service Centres affiliated to the Good Things Foundation) to appropriately refer customers for legal advice and making clear the distinction between ADS and legal assistance. Findings from the pilot will help inform whether the distinction is understood in practice and the extent to which the separation between legal and digital advice the service intends to maintain, is in fact maintainable. [155]

HMCTS must do more to consider how digital capability may take on specific meanings in the context of digital courts. The developments detailed above represent only the first in a long line of changes that are intended to bring about an end-to-end digital court system. However, the form that this digital court will take has not yet been defined. Civil litigation is unlike other 'transactional' government services. If end-to-end digital court systems require users have access to scanning software and hardware in order to effectively participate, then digital capability and *ipso facto* ADS, must be conceptualised by HMCTS more broadly than it is at present. A number of unanswered questions with regards to how HMCTS intend to handle ADS in the context of court bundles and civil procedures remain.

[B] Provide Users with Appropriate Information

ADS contact is likely to increase where service related information (as opposed to ADS-related information) is poor. Research by the Student Loans Service in respect of the earlier DirectGov website found that the language, navigation and presentation on the site were often unclear, that questions were disjointed, there were simply too many of them and often they were irrelevant to the applicant; there were also many inconsistencies across the site, as well as error messages. Attending to these discrepancies reduced the need for users to contact the service via phone.[156] To date, little has been said about the triaging process MoJ/HMCTS intends to implement for online courts, the information and guidance that will precede entry to the online court system and to what degree it might emulate the triaging and diagnosis suggestions made in the CJC's Online Dispute Resolution Report.[157] This remains a priority for future research particularly with regards to triaging on the basis of legal and digital needs and supporting users accordingly.

It is also important users are aware of what they are signing up for in respect of digital services. Lessons from a study of Alternative Dispute Resolution (ADR) in the SSCT reveals that wordy forms and information promoted disengagement, with some users opting in to ADR without understanding what they were opting in to.[158] Clear guidance will be required for users, and this presents a departure from the guidance currently offered to users of MCOL and PCOL where detailed assistance comes in the form of a separate, downloadable PDF guide, and hyperlinks to the Civil Court Practice Directions Handbook written for an audience of practitioners.

[C] Ensure the Adequacy of ADS Funding and Staff Training

Repeat demand for assistance is also likely to arise where the original provision of assistance is constrained. Findings from a JobCentre plus study examining channel shift observed that the time allocated for consultation, the familiarity of staff with the various platforms; technical and legal restrictions; and the need for clarity about the evolving advisory role all impeded advisors ability to offer support. It is somewhat reassuring that although the assessment of Universal Credit applications are said to take 20-40 minutes on average[159], funding is provided for up to an hour's worth of assistance. Though, it should be noted that funding does not appear to be given in line with ADS take-up, but rather in line with DWP estimates of take up. Should actual demand be higher, it is not clear who will be responsible for the shortfall (DWP or Local Authorities).[160] It is also relevant to note that an expected increase in the per-hour rate in 2017 did not eventuate. Payment caps have remained the same since 2012-13 (£25.66 per hour) in spite of increased in inflation.[161]

HMCTS has previously indicated that ADS will include a telephone helpline manned by HMCTS staff.[162] The broader procurement framework for assisted digital instituted by GDS demands external procurement in all but exceptional cases. There is certainly a case to be made that digital courts are an exceptional case and that telephone staff must be sufficiently familiar with court processes (and arguably, have legal expertise); the question is whether HMCTS intends to make that claim, or whether telephone advice will ultimately be provided externally by technical (IT) advisors. Such an approach may be contrary to the idea of providing appropriate and adequate information. GDS also permits cross-service provision: there is no obligation to provide assisted digital support if another digital service meets the needs of your target users. It is worth considering the extent to which users are likely to benefit from ADS delivered by HMCTS staff and the relevance of staff having specific training on each of the online tools. This is particularly pertinent given that HMCTS instigated a process of consolidating their telephone advice help for divorce in 2017.[163]

The HMCTS full economic assessment included an unidentified sum for the cost of web chat support, but did not specifically calculate the cost of telephone support, instead indicating that the costs of telephone services will be incorporated into 'business as usual' jurisdictional support. The estimated £5-9 million per annum running costs of ADS relate to: (1) a data entry and scanning process for those who cannot engage with the online process, even with ADS; (2) the cost of providing face-to-face ADS; and (3) the cost of advertising ADS services.[164] It is clear that more information is required in order to critically assess the sustainability of ADS provision and the potential impact for users and court staff.

If it is expected that court staff are to take-on the role of providing ADS support in addition to other duties, this is likely to have ramifications for workload and increase the administrative burden borne. Where this burden is unsustainable, it may trigger automatic referrals to face-to-face services (particularly if those services are outsourced) and this will act to inflate per annum face-to-face running costs. It is imperative that 'sustainability' (that is, meeting estimated budgets) is not achieved at the expense of accessibility or public awareness of the service. Advertising and service signposting must be considered a priority. Moreover, it is important that referrals to face-to-face services are not capped, as is intended in the HMCTS ADS pilot. The pilot makes allowance to support up to 100 people over the 6-8 month pilot period, at a maximum cost of £70 per

person (for the maximum 60 minute appointment). There is no mention made of what face-to-face support will be available in the event that the number of individuals requiring ADS exceeds 100. [165]

Clarity also needs to be provided in respect of the cost of appointment rebooking. HMCTS guidance to online ADS pilot providers makes clear the circumstances in which the cost of further appointments will be funded by HMCTS. However, in two instances the cost of an additional appointment is not covered by HMCTS. These instances include when online centre staff/volunteers are not available and when online centre IT does not work. The guidance provided by HMCTS simply indicates that HMCTS will not fund additional appointments in these instances, though does not make clear that the service centre itself is obligated to absorb the cost of these additional appointments. This raises the risk that users may be advised that 'no additional appointments' can be provided for free.[166]

[D] Enhance the Usability of Systems

It is important that the online format does not disadvantage those who opt to use it, particularly where multiple modes of access exist, or where businesses lodging bulk claims are given access to enterprise systems that are not functionally equivalent to the systems provided to individual users. This has arisen in respect of MCOL as the character text input limitations of the online form, have resulted in a view that the paper form is often preferred.[167] This is particularly true when taking action against financial institutions, as this is said to give these institutions scope to assert that a claim issued online has not been fully particularised as a result of this character limit. [168]

GDS User Research has also noted the importance of addressing user mistrust issues that arise out of questions asked within digital forms. This means the avoidance of intimidating or overly legalistic language so as to ensure that the wording of forms does not cause users to fear for the implications of answering without certainty, or being bound by terms and conditions that they do not fully understand.[169] Many of those seeking help for Carer's Allowance Online claims did not need ADS, but rather had called to ensure they didn't complete the form incorrectly, given the consequences of doing so. For appeal processes, simple adaptions such as using the terminology 'You've won your appeal' rather than 'allowed' or 'dismissed' have been shown to reduce user confusion and ipso facto, the need for (erroneous) ADS contact.[170]

Making online services user-friendly does not automatically lead to an increase in vexatious claims, or challenges. The introduction of an online appeals service in the Traffic Parking Tribunal did not, as expected, lead to a large surge in the number of claims made.[171] These findings reinforce the importance of designing services around user needs. It is reassuring to note that this is embedded within the GDS service standard and to note that HMCTS is making a concerted effort to develop services that minimise the risk of incorrect applications being submitted, though publishing findings from user research would help substantiate this claim.

Part of enhancing the usability of systems also requires consideration as to how each elements of the system knit together to produce a seamless experience for all users (i.e. all of those stakeholders who may interact with the system). This involves designers having a detailed understanding of civil litigation processes from both the perspective of claimants, respondents and those involved in the adjudication of justice. Unlike PCOL

and MCOL, which are orientated around single form submission, litigation is a process in which users may have multiple interactions and contact points with a system in order to fulfill different procedural requirements. Ensuring that end-to-end processes are seamless, functional, consistent and efficient is a key challenge for both digital court services and for the assisted digital support services intended to accompany rollout. GDS requires that service designers consider ADS in relation to a specific service but there appears less emphasis on the ADS journey across 'linked' services. The agile methodology employed by GDS and the emphasis on a piecemeal approach to service/system development risks fragmentation of the ADS intended to support these services. Given that users may engage with more than one system (or one element of a system) at once, siloing of ADS will likely pose a substantial barrier to access to justice and an ongoing source of user frustration that must be avoided.

[E] Keep Users Informed as to the Progress of their Claim upon Lodgment

Job Centre Plus research revealed that telephone call volumes for transactions are twice as high when respondents are not told what will happen next or kept up to date with progress and are nearly three times as high when they are not given clear timings.[172] This was also found in relation to MCOL users, who expressed frustration that staff were unable to track the progress of a claim[173] and the Traffic Penalty Tribunal, where it has been said that "people were more accepting of a decision if it was made in a number of weeks; delays only increased frustration and reluctance to accept the determination."[174] It is encouraging to note therefore, that HMCTS has started to roll out 'track-my-claim' functionality for some services.[175]

Similarly, findings from a HMRC report into why users make avoidable calls to the Tax Credit helpline observed that the submission acknowledgement page was not clear enough for customers who often misunderstood the purpose of the page or the information it contained. As a result, users called the helpline to check their renewal had been received. Customers suggested that clearly setting out the purpose of the page and providing an option to save, print or email the confirmation would have gone some way in allaying their fears. Additionally, advising users as to the length of processing would have avoided 'chasing calls' by users who assumed that the processing for an online form would be quicker than for a paper form. These issues were compounded by the fact that it was a new system, and users had some degree of anxiety as to whether it was working properly, anxiety that could have been addressed through providing users with options to receive updates either by email or through an online account.[176]

6. SERVICE EVALUATION

Although there has been much comment regarding the importance of designing around user need and conducting user research[177], very little of this research appears to make it into the public domain. The Government Publication Protocol (revised after the introduction of the 'digital-by-default' policy) specifically excludes 'User Research where the output is iterative and so not deemed appropriate for publication'.[178]

Whilst Beta services, such as the Online Plea Service provide built-in evaluation to enable users to submit satisfaction scores and feedback, the data collected is minimal.[179] Glimpses of the research undertaken can be seen in a number of GDS, HMCTS and MoJ blog posts, though they provide no scope to evaluate the quality or reliability of the research conducted, nor the strength of the conclusions reached. At least one user Research study revealed that users recruited at Personal Support Unit's at Courts (PSU's) in relation to user testing for the Help with Fees service, were a number of points lower on the digital inclusion scale than users recruited via an agency (a more common recruitment approach).[180]

From March 2018 to August 2019 the Online Centres Network has partnered with HMCTS to evaluate face-to-face services.[181] A number of measures have been identified on which the success of the pilot service is to be measured. though the majority of these measures are focused upon adherence to internal timeframes, which speaks to service efficiency rather than customer experience.[182] Further, although GDS encourages 'User Research' incorporates users with a range of assisted digital needs[183], there has not been anything further said by MoJ or HMCTS as to how the ADS they intend to deliver will address issues of physical or cognitive disability experienced by those who otherwise report a high level of digital capability (that is to say, proficiency with computers).

Frameworks in Use

Government digital services adhere to two evaluation standards: the GDS Service Standard and the Web Content Accessibility Guidelines (WCAG) 2.0. MoJ purports to adhere to the WCAG 1.0 requirements and it is not clear if they have moved to the more comprehensive WCAG 2.0 framework.

The WCAG standard requires service developers consider how the adaptive needs of users can be addressed through sensitive system design. Web platforms should aim to be as inclusive as possible. WCAG 1.0 requires that websites are:
- Clear, comprehensive, accurate and relevant
- Appropriate to the reader or user of the information
- Proportionate to the subject matter
- Targeted and timely
- Accessible to all customers

The extent to which online services provided by MoJ/HMCTS meet the WCAG standard has not been evaluated. Nor is it clear if there are consequences for failing to adhere to the standard. Preliminary analysis on a number MoJ websites noted the absence of:
- Font size and colour adjust
- Sign language options on video content

- Voice dictation for users who have physical disabilities
- Form input assistance (which helps users avoid mistakes and speeds up the search process)
- For users of assistive software, certain pages do not appear fully accessible

All of which would render those pages non-compliant.

As part of the GDS standard, all services are required to undergo a Service Assessment prior to being approved to transition from each of the alpha, beta and live stages. These assessments evaluate the service against 26 Digital-by-Default Service Standard Criteria detailed in Appendix B.

As is discussed in more detail in Appendix B, the GDS service assessment standards that originally made reference to design/delivery of ADS were removed in mid-2015. The much broader criteria now makes no specific reference to needing to put in place appropriate digital support. It does however require that services identify performance indicators and report on those indicators on the performance dashboard. As has previously been noted, the range of data collected tends to vary from service to service.

Overall, the pass rate for services assessed under the 18-point scale (mid-2015 onwards) was 79% (n=79) with 21% (n=21) of services failing. This compares to 25% (n=35) of services failing under the 26-point scale (2013-mid 2015), 71% (n=99) passing, 1% (n=1) passing having provided additional information and 3% passing with conditions (n=4).

The single most common reason for failure to pass the 26-point assessment was an inability to meet the 'Put in place Assisted Digital Support' criteria. Under the 18-point assessment (in which specific references to ADS in the criteria were removed), failure stemmed most often from an inability to sufficiently demonstrate service designers 'Understand User Needs' 86% (n=18).

Of the 139 services assessed under the 26-point standard, 12 related to services falling under the MoJ/HMCTS ambit. Of these, only 1 failed (the Civil Claims Public Beta Assessment). This compares to 5 out of 15 MoJ/HMCTS services failing their assessment under the 18-point scale. A further 6 self-assessments were conducted by MoJ in relation to online services under development, with only one failure.

GDS provides some additional information in respect of the evidence services will need to show to demonstrate that they have adequately considered ADS needs. However, the performance measures chosen are left largely to the supporting Department/Agency to specify.[184] It appears that most services themselves are evaluated with reference to take-up, completion rates and user satisfaction data. It is not clear how ADS might be evaluated, although evaluation that focuses exclusively on usage metrics should be avoided. These metrics tend to support a service cost-reduction agenda rather than a user satisfaction agenda.

More appropriate measures might a combination of the metrics presented in Table 4.[185] These measure are more specifically directed at the extent to which ADS is meeting user needs, supporting a channel shift and remains sustainable. Nevertheless, models for service evaluation would benefit from additional exploratory research and testing.

Table 4. Possible Service Evaluation Metrics

Usage Metrics*				
Call waiting times	Expected users versus actual users	Number of aborted calls	Number of calls unanswered	Repeat Contacts
Outcome-Based Data				
Whether all user queries are resolved within the scope of the call – this will be of particular importance if the duration of telephone advice is capped		The number of users indicating willingness to use similar services independently in the future	The number who express willingness to navigate the whole system online (when end to end digital courts are introduced in full) and the number who go on to do so	
Integration of the ADS journey across linked services, ensuing a seamless user experience				
The extent to which the advisor is able to keep the user in an online state of mind (as evidenced by the user's willingness to persist with digital completion)			Measuring the change – asking what the user's next steps are*	
Assessing what clients might have done were the service not provided*		Follow-up studies that measure digital confidence amongst service users		
Logging broad categories of issues that service users are facing so as to feed into iterative design of the online service itself*		Where ADS is provided under a 'business as usual model' it is crucial that Court staff are included in evaluation so as to ensure the sustainability of the service.		

PRIORITIES FOR RESEARCH & POLICY

Analysis of LPRS data indicates that the level of digital exclusion is lower amongst those reporting a civil justice problem than across the general population, though it is clear that some groups report disproportionately higher levels of digital exclusion, and these are the groups for whom delivery of ADS will be key.

Findings from this study point to 19% of those reporting civil justice problems requiring ADS support, though only 5% of those users are likely to need access to the Internet itself. Figures for potential/actual ADR users are slightly higher (20%), and slightly lower for potential or Court/Tribunal users (15%). It is clear that those aged 65 or older will be more likely to require assistance, and will likely require the most assistance with accessing and using digital services, with the same true of those in social housing, those who report an income of less than £15,000 a year, and those without educational qualifications. However, owing to how basic Online and Digital Capability has been defined in this and in other studies, it should be recognised that these figures are likely to underestimate demand for support. Such figures fail to take into account ADS service contact that may arise as a result of: legal rather than digital capability needs; a lack of facilities by which to scan relevant documents; and, failure to adequately integrate online services for a seamless experience.

From a service delivery and design perspective, the distinction MoJ/HMCTS maintains between digital and legal capability is not sustainable. Findings drawn from other studies suggest that the public will struggle to understand the limited scope of ADS and this may result in higher use of ADS services by those who are ineligible. Careful planning and implementation will be required so as to ensure that the frustrations expressed by MCOL users are not replicated in the provision of ADS and to ensure that ADS provision is integrated across services.

This report and the estimates contained within it are not intended to take the place of further data collection designed to answer key research questions relating to the level of digital exclusion and capability reported by users of the civil justice system. Key priorities include:

- Further empirical research to gather data that can more accurately quantify ADS need. This report has relied on LPRS data, though it must be recognised that this is a blunt instrument for identifying digital capability;
- Continuing empirical research on legal need, the intersection between legal need and online service use, and legal need and digital capability;
- Research evaluating piloting of ADS services, including publication of results;
- Research directed at developing a more nuanced framework for evaluating ADS services, focusing on dimensions of service delivery that speak to the sustainability of the service as well as to user experience.

In addition it is recommended that MoJ/HMCTS address a number of key issues with regards to policy transparency, by prioritising the provision of:

- More specific policy detail around how HMCTS intends to define those in need of/eligible for ADS, the impact of this definition on Court operations, the extent to which Courts will be charged with determining eligibility, the way in which digital service design will meet the WCAG 2.0 requirements, and the rationale for adopting a particular ADS mode;

- Increased transparency around how ADS services will be funded over the longer term and a feasibility assessment of the sustainability of this approach, including specific details as to the potential impact upon court administrative services and an evaluation of how this aligns with projected reductions in court funding/staff numbers;
- More information with respect to how the current services deployed will map together to create a seamless online civil justice experience;
- A more consistent approach to publishing service metrics on the performance dashboard, including rates of incomplete or erroneous digital form completion.

APPENDIX A – STATISTICAL MODELS

This appendix presents output from the two binary logistic regression models that formed the focus of discussion in Section 3. Logistic regression is covered in a broad range of statistical tests covering multivariate analysis and readers are encouraged to refer to these texts for a guide to interpretation.[186]

Table A.1. Predicting Internet Access on the basis of a range of socio-demographic characteristics and problem type

		B	S.E.	Wald	df	Sig.	Exp(B)
	Constant	3.78	0.43	79.00	1	0.000	43.91
Gender	Male						
	Female	-0.05	0.09	0.26	1	0.613	0.96
Age	18-24			235.18	4	0.000	
	25-44	-1.62	0.40	16.45	1	0.000	0.20
	45-64	-2.87	0.38	56.55	1	0.000	0.06
	65-74	-3.47	0.39	78.36	1	0.000	0.03
	75+	-4.44	0.39	126.91	1	0.000	0.01
Educational Qualifications	No						
	Yes	1.03	0.09	121.39	1	0.000	2.81
Tenure	Owned outright			43.39	4	0.000	
	Owned with mortgage	0.41	0.17	5.65	1	0.017	1.51
	Social rented	-0.72	0.14	27.30	1	0.000	0.49
	Private rented	-0.35	0.18	3.64	1	0.057	0.71
	Other	-0.36	0.22	2.75	1	0.097	0.70
Economic Status	In employment			10.16	2	0.006	
	Unemployed	-0.55	0.22	6.42	1	0.011	0.57
	Inactive	-0.40	0.15	7.31	1	0.007	0.67
Ethnicity	BME						
	Non-BME	0.27	0.18	2.24	1	0.135	1.30
Dependent Children	No						
	Yes	0.85	0.20	17.40	1	0.000	2.33
Income	Under £15,000			136.85	3	0.000	
	£15,000-£32,000	0.77	0.11	54.22	1	0.000	2.16
	£32,000-£60,000	1.61	0.16	102.92	1	0.000	5.00
	£60,000 or above	1.94	0.30	42.83	1	0.000	6.93
On Means-Tested Benefits	No						
	Yes	-0.09	0.17	0.25	1	0.615	0.92
Physical or Mental Ill-Health	No						
	Yes	0.01	0.10	0.01	1	0.909	1.01
Civil Justice Problem Type	Consumer	0.76	0.24	9.75	1	0.002	2.13
	Employment	0.18	0.33	0.32	1	0.574	1.20
	Neighbours	-0.34	0.18	3.40	1	0.065	0.71

		B	S.E.	Wald	df	Sig.	Exp(B)
	Owned Housing	-0.05	0.37	0.02	1	0.891	0.95
	Rented Housing	0.41	0.28	2.17	1	0.141	1.51
	Debt	0.08	0.25	0.10	1	0.747	1.09
	Money	0.29	0.25	1.32	1	0.250	1.33
	Welfare	0.55	0.36	2.41	1	0.120	1.74
	Relationship Breakdown	1.57	1.14	1.89	1	0.169	4.82
	School Education	-0.85	0.50	2.88	1	0.090	0.43
	Injury or Illness	0.13	0.31	0.18	1	0.676	1.14

Table A.2. Predicting Basic Digital Capability on the basis of socio-demographic characteristics and problem type

		B	S.E.	Wald	df	Sig.	Exp(B)
	Constant	1.4	0.2	43.1	1	0.000	4.0
Gender	Male						
	Female	0.0	0.1	0.5	1	0.498	1.0
Age	18-24			138.3	4	0.000	
	25-44	-0.5	0.2	11.3	1	0.001	0.6
	45-64	-1.3	0.2	64.3	1	0.000	0.3
	65-74	-1.5	0.2	69.3	1	0.000	0.2
	75+	-1.9	0.2	96.2	1	0.000	0.1
Educational Qualifications	No						
	Yes	0.6	0.1	62.9	1	0.000	1.9
Tenure	Owned outright			14.1	4	0.007	
	Owned with mortgage	0.1	0.1	0.7	1	0.405	1.1
	Social rented	-0.2	0.1	4.0	1	0.045	0.8
	Private rented	0.2	0.1	3.4	1	0.064	1.3
	Other	0.1	0.2	0.9	1	0.352	1.2
Economic Status	In employment			2.4	2	0.300	
	Unemployed	0.2	0.1	1.8	1	0.180	1.2
	Inactive	0.0	0.1	0.2	1	0.656	1.0
Ethnicity	BME						
	Non-BME	0.2	0.1	3.8	1	0.050	1.2
Dependent Children	No						
	Yes	-0.1	0.1	0.6	1	0.435	0.9
Income	Under £15,000			128.4	3	0.000	
	£15,000-£32,000	0.4	0.1	25.3	1	0.000	1.6
	£32,000-£60,000	0.9	0.1	76.1	1	0.000	2.4
	£60,000 or above	1.5	0.1	108.6	1	0.000	4.4
On Means-Tested Benefits	No						
	Yes	-0.2	0.1	4.3	1	0.038	0.8
Physical or	No						

Mental Ill-Health	Yes	-0.1	0.1	0.7	1	0.389	0.9
Civil Justice Problem Type	Consumer	0.3	0.1	6.5	1	0.011	1.4
	Employment	-0.1	0.1	0.5	1	0.486	0.9
	Neighbours	0.0	0.1	0.0	1	0.887	1.0
	Owned Housing	-0.3	0.2	2.1	1	0.144	0.8
	Rented Housing	0.0	0.2	0.0	1	0.957	1.0
	Debt	0.1	0.1	0.3	1	0.616	1.1
	Money	-0.1	0.1	0.7	1	0.389	0.9
	Welfare	0.4	0.2	4.4	1	0.036	1.5
	Relationship Breakdown	0.2	0.3	0.4	1	0.538	1.2
	School Education	-0.1	0.2	0.3	1	0.594	0.9
	Injury or Illness	-0.3	0.2	4.4	1	0.036	0.7

APPENDIX B – ANALYSIS OF GDS SERVICE ASSESSMENTS

The following section summarises findings from an evaluation exercise of published GDS Service Assessments.

Online Services are assessed as they transition through the Alpha, Beta and Live stages on the basis of the Government Digital Standard. The 26-point standard was applied until mid 2015, and was then replaced with an 18-point standard. The items that make up the standard are detailed in Table B.1 below.

Table B.1. Criteria Constituting the 26 and 18-point Government Service Standards

26 Point Standard 2013- mid 2015	18-Point Standard mid 2015-Current
1. Understand user needs. 2. Put in place a sustainable multidisciplinary team 3. Evaluate what user data and information the service will be providing 4. Evaluate the privacy risk 5. Evaluate what tools and systems will be used to build 6. Build the service using the agile 7. Establish performance benchmarks 8. Analyse the prototype service's success, 9. Create a service that is simple and intuitive 10. Put in place appropriate assisted digital support 11. Plan (with GDS) for the phasing out of any existing alternative channels 12. Integrate the service with any non-digital sections required for legal reasons. 13. Build a service consistent with the user experience of the rest of GOV.UK 14. Make sure that you have the capacity and technical flexibility to update and improve the service on a very frequent basis. 15. Make all new source code open and reusable, 16. Use open standards and common government platforms (eg GOV.UK Verify) where available. 17. Be able to test the end-to-end service in an environment identical to that of the live version 18. Use analytics tools that collect performance data. 19. Build a service that can be iterated on a frequent basis 20. Put a plan in place for ongoing user research 21. Establish a benchmark for user satisfaction across the digital and assisted digital service. 22. Establish a benchmark for completion rates across the digital and assisted digital service. 23. Make a plan (with supporting evidence) to achieve a low cost per transaction across the digital and assisted digital service. 24. Make a plan (with supporting evidence) to	1. Understand user needs 2. Do on-going research 3. Have a multidisciplinary team 4. Use agile methods 5. Iterate and improve frequently 6. Evaluate tools and systems 7. Understand security and privacy issues 8. Make all new source code open 9. Use open standards and common platforms 10. Test the end-to-end service 11. Make a plan for being offline 12. Make sure users succeed first time 13. Make User experience consistent with GOV.UK 14. Encourage use of the digital service 15. Collect performance data 16. Identify performance indicators 17. Report performance data on the Performance Platform 18. Test with the minister

achieve a high digital take-up and assisted digital support for users who really need it. 25. Make a plan for the event of the service being taken temporarily offline. 26. Test the service from beginning to end with the minister responsible for it.	

As can be seen, many of the 26 point items were carried across to the 18-point scale. Rather than specifying specific performance benchmarks as in the 26-point scale, the 18-point scale instead refers to a need to identify performance indicators and report performance data. As a result, a number of items relating to ADS, channel shift, and success measurement were removed, including:

- Analyse the prototype service's success,
- Create a service that is simple and intuitive
- Put appropriate assisted digital support
- Plan (with GDS) for the phasing out of any existing alternative channels
- Integrate the service with any non-digital sections required for legal reasons.
- Make sure that you have the capacity and technical flexibility to update and improve the service on a very frequent basis.
- Make a plan (with supporting evidence) to achieve a low cost per transaction across the digital and assisted digital service.
- Establish a benchmark for user satisfaction across the digital and assisted digital service.

The pass rate for services assessed under the 18-point scale was 79% (n=79) with 21% (n=21) of services failing. 18% (n=14) of services passing were re-assessments and 81% (n=65) were initial assessments. There were no reassessments that failed. One-third of assessments in relation to MoJ/HMCTS failed (5/15). The most common reason for failure was an inability to demonstrate that the service made sure that 'users succeed the first time' (n=4).

This compares to 25% (n=35) of services failing under the 26 point scale, 71% (n=99) passing, 1% (n=1) passing having provided additional information and 3% passing with conditions (n=4). 23% (n=19) of services passing were reassessments, with 77% (n=80) original assessments. Only one service failed both the original assessment and the reassessment. Of these, 12 related to services falling under the MoJ/HMCTS ambit, and only 1 of these services failed – the Civil Claims Public Beta Assessment.

In addition, 6 self-assessments were completed by MOJ (generally reserved for services where there is expected to be <100,000 transactions per year). Only one of these services (an online reporting tool for the management of client financial affairs by a Deputy appointed by the Court of Protection) failed the assessment. It subsequently passed on reassessment. The reasons for the original failure could not be ascertained.

Table B.2 shows the top 5 criteria on which service assessments failed. Worryingly, the single most common reason for failure to pass the 26-point assessment was a failure to meet the 'Put in place Assisted Digital Support' criteria. This accounted for 82% (n =29) service assessment failures. This is followed by 'Create a Service that is

Simple and Intuitive' with 77% (n= 27) services assessments failing to meet this standard. 'Understand User Need' was also a common source of failure (60% n=21). Under the 18-point assessment, 86% (n=18) of assessment failure were associated with a lack of engagement with the first Criteria 'Understand User Needs'.

Table B.2. Top 5 Criteria on which Service Assessments Failed

26-Point Standard	N	%
Criteria 10. Put in place appropriate Assisted Digital Support	29	83
Criteria 9. Create a service that is simple and intuitive	27	77
Criteria 2. Put in place a sustainable multidisciplinary team	23	66
Criteria 13. Build a service consistent with the user experience of the rest of GOV.UK	22	63
Criteria 1. Understand user needs.	21	60
18-Point Standard	N	%
Criteria 1. Understand user Needs	18	86
Criteria 12.Make sure users succeed first time	17	81
Criteria 3. Have a multidisciplinary team	15	71
Criteria 2. Do ongoing research	12	57
Criteria 6. Evaluate tools and systems	7	33

APPENDIX C – ONLINE COURTS – LESSONS FROM RESEARCH

As detailed in HMCTS's 'Transforming Our Justice System' Joint Statement[187], it is intended that over the coming years, a number of court and tribunal process will shift to digital-by-default delivery. Online dispute resolution processes will be integrated into online court processes, in the same way that pre-action protocols are integrated into current civil procedures for oral hearings. Both online courts and online dispute resolution procedures may incorporate the use of video hearings, telephone hearings, decision-making 'on the papers' with outcomes communicated via email, with the potential for new technologies to introduce automated decision making or facilitate automated settlement.

The potential benefits purported to arise as a result of these changes have been discussed elsewhere.[188] This document does not intend to revisit those discussions, but rather to highlight, in brief, some of the issues emerging from the research that must be considered when digitising the adjudication of disputes, in whole or in part. Where appropriate, implications for ADS delivery have been noted. As the research below reveals, there are limitations to all modes of delivery, thereby reaffirming the importance of developing services in light of these limitations rather than in ignorance of them.

Online Dispute Resolution

ODR constitutes an online implementation of existing ADR practices.[189] It may be implemented in a number of ways:

1. **One-stop system** that replaces the need for users to 'go to court'. One such example is the well-know Dutch Rechtwijzer system for family law disputes. Rechtwijzer provided an interface for parties to make agreements about their life post-separation and divorce.[190] Were this system not subsidised by the Dutch Legal Aid Board, it might more appropriately be considered a private ODR system (as detailed in 3 below). As with all systems that exist outside of the mainstream court infrastructure, compelling both sides of a dispute to participate is not always easy. The consensual nature of ODR means party autonomy is maintained, though has also been said to diminish the perceive legitimacy of the process and the use of ODR in preference to settlement via court. Courts address non-participation through the ability to make decisions by default. This is at least one of the reasons why HiLL and the Dutch Legal Aid Board decided to end their cooperation around Rechtwijzer.[191] Any implementation of ODR as a pre-requisite to accessing an online court, must consider how to handle non-participation. It must also consider the way in which removing the 'alternative' from 'alternative dispute resolution' will impact the legitimacy of the process itself, which has typically been seen as voluntary.

2. **Part of the pre-trial procedure** and integrated into court systems. Here, parties proceed through ODR in an effort to resolve their dispute before proceeding to the court. This holds the allure of lower implementation costs whilst still having the potential to lessen the burden on courts, though there is a risk that parties will not take the process seriously,[192] or authoritatively enough, and inequality of bargaining power may lead to unfair or unsatisfactory outcomes.[193]

3. **A private platform** completely separate but parallel to the courts. Examples include the PayPal dispute resolution platform, which first encourages the buyer and the seller to come to an agreement themselves and if that is not possible, enables them to proceed with a claim that PayPal resolves as a private arbitrator. A similar option is to have various ODR systems operating in a marketplace, as proposed by the European Commission for consumer dispute resolution. This encourages ODR providers to put forward the most competitive and quality platform and gives consumers the most choice. However, there is a risk of striving for profit rather than providing justice, and this model assumes that the parties are able to agree on which provider to select to resolve their dispute.

The form of delivery of ODR may also differ between platforms to include:

- **Synchronous ODR** where parties communicate in real time through Skype/Messenger. This requires sustained access to the Internet and use of a computer on which video chat can be conducted. This may require additional hardware and software, and a level of privacy to enable participants to speak freely. This would make it difficult for parties to access these facilities in Public spaces and this is something that must be considered in light of ADR provision.

- **Asynchronous ODR** where parties do not communicate simultaneously instead using e-mail or a dedicated chat platform. Asynchronous mechanisms allow parties to work through the process more flexibility and at their own pace. This may be more suitable for those who struggle to obtain extended access to the Internet (e.g. at Libraries where sessions are time limited). Conversely, asynchronous forms of ODR require regular access to the Internet, and this may be problematic for those who are reliant on access via third parties (e.g family and friends).

- **Automated ODR** where blind bidding systems attempt to negate the need for mediation, and instead reach a settlement as quickly as possible. Interestingly, Gabuthy et al in their theoretical experiment on automated negotiation with incomplete information/blind bidding found that in some cases this process promotes disagreement by making parties adopt more aggressive bargaining positions than they would if they did not bid blindly.[194]

Telephone Hearings

A study of the Traffic Penalty Tribunal (TPT)[195] has previously observed that the highest understanding of the TPT process was when a telephone hearing was conducted. This has benefits over face-to-face in that there were no unfamiliar surroundings. This was preferred to appeals in writing as there was the ability to ask questions and better engage in two-way dialogue. It has also been observed in respect of the SSAC that oral evidence is more beneficial in determining appeals, particularly where claimants have physical/mental health conditions.

Nevertheless, it has also been noted that much communication is nonverbal, and face-to-face communication has been seen to be better for building rapport, minimizing conflict and focusing on needs and this may encourage the use of video conferencing rather than telephone conferencing. There is also evidence drawn from the imposition of a mandatory telephone gateway that call into question the cost benefits of telephone versus

face-to-face, particularly where additional information such as original documentation needs to be supplied via post in order for the matter to proceed.[196] Separately, it must also be considered how evidentiary requirements will translate to digital courts, and how current legal requirements (such as wet ink signatures) will be modified for the digital dispute resolution space.

Where telephone hearings are intended to occur within a digital court framework, logistical issues will need to be considered in instances where a user is expected to log into a digital court system whilst on a telephone conference. In these instances a user will not be able to avail of ADS via telephone. Any scenario in which users have to simultaneously juggle a telephone conference, along with telephone ADS support, along with navigating an online court system is likely to lead to significant disruption in the process and this necessitates some segregation of the telephone and digital parts of the process.

Video Hearings

Although video hearings forgo the need for court infrastructure, they may also operate to import many of the negative features of the traditional face-to-face adjudication process, whilst simultaneously imposing a digital burden. This is particularly the case where self-represented litigants are expected to participate in online face-to-face hearings. It has previously been observed by Sela that even when self-represented litigants have an understanding of claims and defenses (having received some advice or assistance from lawyers, for example) the typical dynamic of the judicial process leads to their systematic silencing.[197] Sela notes that Judges have previously described the difficulty of explaining legal issues and processes in a manner accessible to self-represented litigants and maintaining control over their compliance with court rules.[198] It is unlikely that video conferencing will resolve these issues, and may (in light of research that emphasises the challenges the video introduces into interpersonal communications) only serve to exacerbate them.

Nevertheless, Rich Media Theory and Social-Presence theory would tend to support the use of video in favour of email in the adjudicative space even though email or text based communication may mitigate the 'silencing' effect experienced by litigants in person in judicial proceedings. Results from Sela's novel experimental demonstrate that different forms of asynchronous interaction may be required, with judges and self-represented litigants using different modes. Findings from this study in which participants were acting as defendants resolving a charge of violating their University Honor Code, revealed that self-represented litigants reported higher rates of procedural justice satisfaction when they received video messages from a judge and communicated in return via text. Nevertheless, it remains to be seen whether these findings translate to two party disputes in which the applicant, defendant or claimant has to engage with the other party and a judge/adjudicator.[199]

Another key issue that demands consideration is whether video hearings will require participants attend a video-conference Centre, or whether online courts will be developed so as to include a video conferencing platform accessible to those with a computer and web camera. This also requires consideration as to how ADS will facilitate access to hardware in the event that it is not available. None of the major Internet use studies quantify the number of respondents with web cameras and the need for hardware such as this will dictate the level of ADS demand. For this reason, the feasibility of video

conferencing and the impact of this mode on the likely demand for ADS requires further research.

Decision Making 'on the Papers'

In England and Wales, Benefits, and Immigration and Asylum Tribunals allow claimants to elect whether to have a decision in relation to an appeal made on the papers, or by oral hearing. HMRC implements a triage system for tax appeals, with certain appeal types (Basic, Standard and Complex) allowing for oral hearings, whilst other appeals are deemed 'Default Paper'. [200] In the criminal justice system, the Automatic Online Conviction Procedure is intended to replace magistrates having to decide cases 'on the papers' where a defendant is over 18, pleads guilty, provides no mitigating circumstances and has committed an eligible offence.[201] England and Wales is not unique in this respect, paper hearings are used in other jurisdictions, with Australia's Fair Work Commission moving to a paper hearings model for all uncontested Protected Industrial Action Ballot applications submitted for approval by a Commission member. In cases where an employer contests the application, a telephone hearing is conducted to establish the basis of the objection. In the US, Social Security Disability Appeals are twice conducted on the paper, with oral hearings reserved for appeal to Administrative Law Judges (ALJs).[202] Paper hearings are also how the Canadian Human Rights Commission screens complaints, with a decision as to whether a dispute should go to tribunal, solely based on written submissions.[203]

A number of previous studies have observed differences in success rates between cases decided following an oral hearing and cases decided on the papers. In immigration and asylum appeals 73% of oral appeals were allowed, compared to 38% of paper appeals.[204] This might of course be related to appellants self-selecting a particular mode depending on the perceived strength of their case. Yet Thomas and Genn's 2013 study on Disability Living Allowance Appeals controlled for this possibility, finding in line with other studies, a clear difference in success rates depending on the mode of hearing with 46% of claimants successful after an oral hearing, compared with 17% when the appeal is decided on the papers alone.[205] This came down to the additional information that could be provided in the context of an oral hearing, with the authors stating that paper cases and oral hearings can result in similar outcomes if the Case Submission contains the same information that could be extracted from an oral hearing."[206] This led the authors to suggest that the claim form via which an appeal is lodged is" inadequate for providing fair and sound decision-making at the first tier decision-making level at DWP" and that "tribunal panels deciding appeals on the papers alone which include little more than the claim form information are also at a disadvantage."[207]

Some have advanced the view that paper hearings are more appropriate in relation to administrative decisions, and less appropriate in the context of civil justice.[208] Others have viewed the increase of paper hearings (as a response to mass adjudication arising out of administrative decision-making) as part of the problem rather than a solution. The trend in civil justice echoes the trends observed in criminal justice under New Labour. An actuarial approach to policing increased criminalisation of activities, which in turn increased the costs of criminal justice adjudication. Managerial approaches were introduced to deal with less serious crime more cost effectively. Sanders argues that this "approach was characterised by regulatory and preventive strategies: that is, speed, economy and effectiveness (in the crime control sense), rather than quality of service, proportionality, safeguards and justice".[209] In this context, it is relevant to question

whether decision making 'on the papers' is simply an effort to accommodate the actuarial agenda of other Departments charged with reducing the welfare budget, or limiting net immigration.

Taken together, this research, suggests that digital systems intended to support judicial decision-making 'on the papers' must provide ample scope for applicants/claimants to provide evidence to support their claim. That MCOL limits the character inputs for claims is concerning. There is clearly a balance to be had in encouraging submission of relevant and appropriate information. More needs to be done to explore how the design of systems might best elucidate relevant information from users, particularly users who may lack legal capability, and therefore may have no clear understanding of what material is and is not relevant to their case. Similarly, more needs to be done to consider whether claim pro-forma intended to reduce the bureaucratic burden within Departments, are effectively hampering first tier Departmental decision-making, resulting in flow-on costs to HMCTS.

The Limitations of the Online Environment

Digital courts must be seen by users to be as serious as physical courts. It is not easy to translate these perceptions to an online environment, particularly when users often ignore legal dimensions of online interactions.[210] So, whilst the law has adopted a technological equivalence approach – a belief that laws and rules should be equivalent in online and offline spaces, this does not always correspond with user perceptions. The disinhibiting effect of the Internet often leads to users demonstrating an online/offline cognitive divide in which the consequences of actions in the online world are not always seen as translating to the offline world.[211] This reinforces the importance of users actively 'opting-in' to proceedings and conveying to users an understanding that decisions made will bind them 'in the real world'.

There are also structural challenges in that the online environment may reduce the perception of the mediator to the parties to the point where they feel insignificant or intangible, this may adversely impact parties' trust in the process. Therefore, successful online mediation needs to establish the trust of the parties and this may be a more intensive task online that it would be offline.

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[42] Typically long-term unemployed; older claimants nearing state pension age; and those with health problems. Possessed minimal Internet experience, and no interest in learning about the internet.

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TV. Where as the LPRS asked respondents, 'Do you have access to the Internet at home
or elsewhere for personal use? [Yes/No]'. It is possible that this phrasing prompted
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help/information used by those reporting problems. Where more than one problem was
reported, the survey captured the four most recent problems.

[75] This includes, somewhat counter-intuitively, the Internet. This might be explained by
reference to the fact that respondents are asked about strategy in relation to problems
experienced in the last 18 months, but are asked about their Internet access at the point
at which the LPRS was conducted. It is possible that this group represents those who did
have access, but who no longer do, or those who have only sporadic access (e.g. when
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[97] Cabinet Office & GDS *supra* note. 2

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