



**Civil Justice Council response to
MoJ consultation paper: Transforming our Justice System**

November 2016

The CJC welcomes the development of more accessible online court services. It also welcomes the Government's commitment to assisted digital. As the consultation paper states 'Everyone must be able to use our services'.

Designed and executed well, these developments have the potential to make a significant contribution to a transformation of our justice system. They are however a huge undertaking and the scale and challenge of that undertaking should not be underestimated. Achieving a transformation requires other areas to be addressed too: examples include increasing public legal education, the availability of legal advice, improving publicly funded legal assistance and addressing the impact of court fees.

We regard it as critical that pilots are undertaken, both for online processes and for the assisted digital service developed to support them.

Fundamental to all these points must be a recognition of the importance of the legal system to everyone.

It is appreciated that at this relatively early stage of the court modernisation programme, the consultation is about the principle of assisted digital rather than the detail or the precise nature, beyond some broad headings of the means by which it is to be achieved. It is hoped that there will be further consultation as we move towards a clearer picture of how services will operate.

An important point to be made at the outset is the scale of digital exclusion, and the Government has (understandably) used the estimates made in the national digital strategy. This estimated that 18% of the population were 'digitally excluded' – those who cannot or choose not to access IT facilities or lack basic skills or confidence.

The CJC considers that while 18% may be an accurate estimate for the population as a whole, the figure rises in terms of court users, as there are disproportionately higher numbers of people on low incomes, the elderly and people for whom English is not their first language in the system. The material published in the Equalities statement in the paper's impact assessment confirms this, and it illustrates the importance of trying to calculate the need as part of planning the level of service that will meet it.

HM Courts and Tribunals Service is taking a commendable approach to user engagement and testing in the run-up to the modernisation process, and it is assumed that the assisted digital services and processes will be tested and piloted alongside the IT systems that will facilitate online court processes.

The level of provision will be critical, but it is understood that for now the focus is on the principle and the outline structure.

Responses to individual questions

Question 1: Do you agree that the channels outlined (telephone, webchat, face-to-face and paper) are the right ones to enable people to interact with HMCTS in a meaningful and effective manner?

Yes, broadly. However some of the narrative of the consultation paper appears focused on the stages of starting and reaching an agreed conclusion of a legal process. In relation to assisted digital, and transformation generally, it is important to examine and enable every stage of the process, and address stages before the process is initiated.

Assisted digital will need to come in various forms and relate to a wide range of factors – for example familiarity with and confidence in using IT, whether English is a first language, familiarity and confidence in legal or formal processes, access to family or friends who can help, access to legal advice, the legal process and the stage in the legal process, and so forth.

Just as needs are varied, so a range of provision is needed to ensure assistance is provided with access to justice. As with digital, so with assisted digital, it may be necessary to take things in parts and stages to ensure successful development.

Some people will always need face to face assistance from another person; many may need it at some point in the process. Some will be able to get the level of guidance they need at a particular stage from, for example, a dedicated, reliable and accessible telephone help service to ‘talk them through’ the elements they are unsure of.

Even though it may be possible to provide high quality legal information, the service is not itself also providing legal advice and assistance and care must be taken to guard against an assumption by users that it is. Court staff and Personal Support Unit staff now cannot offer legal advice (just explain the process and how forms are to be completed etc). Assisted digital will have its limits too. It will, however, be able to signpost people to and integrate with the provision of legal advice. This needs to be an integral part of the design of all the services.

Question 2: Do you believe that any channels are particularly well suited to certain types of HMCTS service?

Yes, inevitably face to face assistance will be needed either for particular groups in the population (for example those whose language or confidence skills are not suitable for telephone advice), or for particular types of case – for example housing repossession claims.

The general approach should perhaps be to see the channels as options – with web chat or online advice for the most confident and comfortable, through to face to face for those who really need it. This is also reflected in the cost and resource required for the different channels.

(Questions 3-8: These questions fall outside the CJC's remit)

Question 9: Do you agree that we have correctly identified the range of impacts, as set out in the accompanying Impact Assessments, resulting from these proposals?

Question 10: What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please state your reasons.

Question 11: Do you agree that we have correctly identified the range of equalities impacts, as set out in the accompanying Equalities Impact Assessments, resulting from these proposals?

Save for an overarching point on impact, yes.

The overarching point on impact is this. Involvement or potential involvement in the legal system is a major episode in anyone's life. It may be one thing to start a process and another to manage its continuation. Defending a process has its own challenges. A combination of stress from what is at stake or from unfamiliarity, the intellectual demand, and sometimes unavoidable complexity, detail or intricacy can mean that those otherwise able to handle technology (or paper) cannot do so successfully in the circumstances they find themselves in. In these circumstances the number requiring assistance will be higher than in other areas.

As to equalities, the broad summary of different protected characteristic groups identifies the potential impacts which assisted digital needs to address.

However, the section on race (para 3.3.1) probably underestimates the problems for people whose first language is not English – those using online services may not be using English language ones, and court/legal English is more formal and difficult. As with age (para 3.3.6), research may well find the position is more nuanced – for example whether there is access to family and friends with a better command of digital skills or English.

The equality considerations also ignore income levels across protected characteristic groups, as this will have an impact on access to digital services, and increase needs for assistance – for example some people may need access to terminals in court or other suitable buildings to file claims.

In terms of disability (para 3.3.3), the most recent ONS bulletin¹ records that a quarter of adults with disabilities had not used the internet in the previous three months, and recent Nuffield Foundation research² points to higher success rates for disabled court and tribunal users who have oral hearings as opposed to paper-based decisions. This underlines that for people with disabilities the issues on access to justice are not just about assistance with navigating systems, but the importance of human interaction.

¹ <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2016>

² http://www.nuffieldfoundation.org/sites/default/files/files/Tribunal_decision_making_vFINAL.pdf