



# Digitisation and the tribunal user experience in the modernised tribunal service

A report by the Administrative Justice Council  
February 2024

## 1. Foreword

In 2022, the Administrative Justice Council asked me to chair a working group formed to examine the impact of ‘digitisation’ on tribunals. Rather than spend time discussing the difference between digitisation and digitalisation the working group decided to approach their task by considering the impact of the HMCTS reform programme, and the digital initiatives in particular, on the different types of users of the HMCTS tribunals.

At the start of the project the group decided to adopt ‘user experience’ (UX) methodology. UX design is a human-centred approach to product and service design, which aims to identify solutions to problems and enhance satisfaction for the users. The group agreed to look at the UX of the different types of user, not just the parties. The feedback obtained from the various users would suggest service improvements and be the basis of recommendations.

We have now decided that it is timely to issue this interim report. The HMCTS reform programme will draw to a close at the end of March 2025. From then onwards the work of the different HMCTS jurisdictions, including tribunals, will revert to ‘business as usual’. But this will not mean that the reform initiatives will stand still. It is the very nature of digital transformation that change has become the new normal. HMCTS are committed to strive for continuous improvement and we are assured that they will continue to introduce digital and service enhancements as well as undertake in depth research projects. It is clear to us that our initial findings and recommendations should be most helpful to HMCTS now when they are planning the next transitional phase for tribunals. Also, bearing in mind the current work of the Online Procedure Rules Committee, now is the time to report some of the problems with digitisation that may need to be resolved by changes to the procedural rules.

While the overarching project is concerned with all the tribunals in HMCTS we recognised that the most effective way to apply the UX methodology was to focus initially on one of the tribunal Chambers. Because we were told that the reforms of the Social Security and Child Support Tribunal (SSCS) were nearly complete, and of all the tribunals it has the largest case load and number of users, we decided to focus our initial fieldwork on users of that tribunal. We note that on 5 February 2024 the HMCTS Reform project published its most recent [Fact Sheet](#) setting out technical transformation (i.e. digitisation) in SSCS: “Fact sheet: Social security and child support tribunals”. This report was prepared before the Fact Sheet was published and we took a slightly different approach. Digitisation is not simply about enabling online access to the tribunal. Digital transformation applies to the whole end-to-end process, starting with the online application and reaching across all the tribunal processes to the provision of remote hearings and the issuing of the final determination.

In particular, the introduction of video hearings and ensuring that they are as effective as an in-person hearing for the appellants and their representatives, is a significant and challenging aspect of the reform programme. We also highlight the importance of providing helpful and appropriate information and communications to guide users, especially appellants, through the reformed processes.

From the outset we have included those tribunal users who have difficulties using or are reluctant to engage with online functionality. It is critical that the tribunal digital reforms

include suitable and readily accessible support and channels for those users who are not using the online forms. One of the fundamental principles of any digital transformation programme is that sufficient resources, saved because of digitisation, are dedicated to supporting those who cannot benefit from the transformation. Our fieldwork has emphasised these needs.

In planning interviews and surveys across the SSCS tribunal, we recognised that the work of our voluntary group can only survey a small sample of each category of tribunal user. The findings are therefore a snapshot of the UX of the different groups of tribunal users. We are nonetheless satisfied that the feedback we report is a sound foundation for our recommendations and suggestions for design and service improvements in SSCS. The same issues echoed loudly across the different user groups.

We have made provisional recommendations, which arise from our focus on SSCS. Many of them, however, for example those concerning remote hearings, will equally apply to the other tribunals.

It was never our intention for this to be an academic project, but we are mindful of the extensive academic literature together with reports produced not only by HMCTS, but also the National Audit Office dealing with many of the issues consistently raised by the users we interviewed. We therefore hope that this report will provoke further research and more rigorous data collection. I take this opportunity to thank Gowling WLG, in particular Andrea McMahon and her team, for their invaluable work reviewing relevant literature as we progress through the project. We have also appreciated Gowling's generous hosting of the group's meetings.

It is inevitable in dispute resolution processes such as tribunals, that the satisfaction of those users who are parties to the dispute is coloured by the case outcome and their treatment by the tribunal. They may not readily differentiate between the process they navigate in making and presenting their case and the final decision including their impression of the hearing. I must emphasise that this project is concerned with how the different users engage with the tribunal processes and systems rather than the judicial functions and legal considerations.

In approaching the fieldwork, we were mindful that people rarely comment on, or even notice, technical processes that work seamlessly. People complain about hitches, glitches and being unable to do what they wish to do. We also note that the administrators and judicial users have developed workarounds that are becoming embedded into the processes.

We recognise that some of the issues raised by users, especially by the appellants and their advisors, mirror the findings of the work of the AJC working group on mental health and the administrative justice system. This commonality supports our decision to produce this report and recommendations at this stage.

This report is the product of enthusiasm and commitment on the part of many members of the group, especially those who have undertaken the fieldwork, designing surveys, organising and leading focus groups and writing up their findings. While the project is still

ongoing, I will nevertheless take this opportunity to thank those who have dedicated so much of their time and energy so far. The group is fortunate to include Nic Dillon of Nous Group, International Management Consultants as member. He has provided a fresh approach and distinct structure that is fitting to our UX design approach. Finally, I must record that we are particularly indebted to Heidi Bancroft and Sally Hunt of the AJC Secretariat for their invaluable support and contribution.

We very much look forward to the next phase of the 'digitisation' project.

Caroline Sheppard,

January 2024

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## **2. Executive Summary**

### **Digitisation has been a partial success**

Digitisation can provide substantial benefits to all parts of the justice system. Much of this work to achieve this is underway but more is needed to both substantially improve the digital experience and to make it more equitable.

The MoJ, HMCTS, individual judges, and a wide range of others inside and beyond government have done a lot of useful work to endeavour to make digital justice work for all parts of the administrative justice system and promote a formally fair and substantively equitable experience. The Covid-19 pandemic accelerated elements of this, but digitisation activity preceded the pandemic and continues post-pandemic. But there is more to do to translate high aspirations into practical success for all parts of the justice system.

In SSCS, many significant milestones in the reform programme have been reached. The development of the online appeal process is a success with submit your appeal having a take-up rate of close to 90% across all benefit types. The paper route has been preserved for those who cannot appeal online with most appeals being made digital through the bulk scan process. The new digital case management system has made significant savings in photocopying and transporting of files and means that judicial office holders can work on appeals at any location rather than having to be co-located with paper files or copies of tribunal papers as in the past. Digital decision notices, especially for personal independence payment appeals, have resulted in greater accuracy and consistency. The Department for Work and Pensions have immediate access to decisions and directions issued by the tribunal again leading to greater efficiencies.

### **Competing goals for digitisation create ambiguity**

Leaders throughout the system must also remember that the digitisation programme needs to serve multiple goals. Efficient use of taxpayer funds will always be important but efficiency in one part of government can push the costs of compliance onto other parts of government or onto members of the public who need to use the judicial system. The enduring goals of fair, equitable and accessible justice also inform HMCTS' digitisation journey. Digitisation does not solve these problems – and solving for one party can exacerbate the experience of others. An open accounting of how leaders have balanced these, at times contradictory, imperatives will help to make a fairer assessment of how to further improve digitisation and whether we have a sufficiently shared understanding of what improvement looks like.

### **Digitisation requires both better technology and new support**

Digitisation cannot however be a purely technical solution. Appellants, especially in areas such as social security, can face a triple barrier – dealing with socio-economic stressors, unequal technology and a judicial system that, despite the best efforts of many, remains intimidating. Improved formal access through digital systems does not mitigate broader inequalities. Judges may be legal experts but they are not necessarily digitally savvy. Enhancing digital access can lead to a more divergent user experience for all types of users. This can make managing hearings more complicated for judges.

We need broader changes to our support systems to make digital justice work for the broad range of participants in the justice system. Many solutions will sit with HMCTS, but wider engagement is also needed. The advice sector will play an important role in supporting people to enable their equitable engagement in the system. MoJ can further enhance guidance (including signposting to guidance provided by external organisations such as Advicenow) to help people engage well – this will support both efficiency and a higher quality experience. Creative collaboration with local authority initiatives can provide substantive access to digital technology that lets people engage with the system well.

**The Interim Report takes a limited view, with the Final Report providing broader and deeper recommendations and findings**

This document is the Working Group’s Interim Report. We have focused our work to date on the Social Security and Child Support Tribunal, though many of our initial findings will apply across the system.

We have sought to provide reflections and insights to inform policy change, drawing on existing literature and engaging directly with users to understand how parts of the administrative justice system currently works. Our focus has been on the understanding of pain points for the broad range of users.

**3. Recommendations**

**Our recommendations focus on technology and fairness, equity and asymmetry, and evaluation and improvement**

The Interim Report makes three overarching recommendations, with accompanying actions. They are:

***Recommendation 1: Technology and fairness***

HMCTS should develop its systems to meet user needs and ensure equality in the user experience.

HMCTS’ digital systems, software and equipment do not consistently meet user needs whilst generally working sufficiently well to enable appeals to be decided. This has two distinct outcomes. First, it can lead to a poor experience for users – parties, representatives, administration, and judiciary. This wastes time and can contribute to a sense of frustration and exclusion as well as unprofessionalism. Secondly, systems can ‘bake in’ inequalities, leading expert users or people with privileged access to have a structurally better experience.

***Recommendation 2: Equity and asymmetry***

HMCTS should collaborate across the administrative justice system and provide appropriate support to appellants so that online justice is part of an equitable solution to the inherent power and resource imbalance between appellants and the tribunal.

The justice system is complex and the need for consistency and nuance mean that certain

elements will remain complex and often difficult to understand. The transition to greater digitisation has mitigated this for some while exacerbating it for others. Our system needs both formal and substantive fairness and so mitigations should be in place to ensure fairness for all users.

### ***Recommendation 3: Evaluation and improvement***

HMCTS should more actively develop and share data assets to enable internal and external evaluation and assurance.

HMCTS' digitisation programme is hard to understand. This makes it hard to assess what works well and what needs to improve. It also makes it hard to identify course corrections and programme improvements.

### **A suite of actions will enable these recommendations**

HMCTS and its partners can take a series of actions in each of these recommendation areas. The Working Group separates these opportunities into three categories:

1. Quick wins are actions that HMCTS or others could do immediately to solve a problem. They are quick solutions with enduring benefits.
2. Immediate mitigations are actions that HMCTS or others could take to reduce the impact of a problem as it develops longer-term solutions or deepens its understanding of the problem. They do not solve the problem, but they improve the situation while an enduring solution can be provided.
3. Longer-term priorities are actions that HMCTS or others could take which will either have a long lead time or need substantial preparatory work. They may either be clear activities or require more work to scope out the most appropriate solution. The Working Group will continue to engage with the longer-term priorities for the Final Report to provide further advice. HMCTS and others can however very easily start taking steps on these before the Final Report.

More information about actions within each recommendation are below:

### ***Recommendation 1: Technology and fairness***

The Interim Report identifies two immediate mitigations, and two longer-term priorities in Technology and Fairness. They are:

#### ***Immediate mitigations***

- a) HMCTS should upgrade some hearing centre rooms where remote hearings are conducted, so that they have consistently high-quality computer systems and screens as well as telephone services, microphones and cameras that can focus individually on panel members. This could be achieved by upgrading some hearing rooms and leaving some solely for in-person hearings. HMCTS need a plan to future-proof hardware in venues so that screens and other kit can be replaced as needed.



- b) HMCTS should review digital notifications, including the clarity of content, frequency, and ensuring all relevant users are notified when late submissions are uploaded.
- c) HMCTS should engage with DWP as a matter of urgency to establish a process whereby HMCTS enables online appellants and their advisors to view the digital DWP bundle, the DWP informing the appellant and their advisors where and how to view the respondent evidence. The design of the screen with the links to the evidence can make it clear whether the evidence was provided by the DWP or the appellant.

#### *Longer-term priorities*

- d) HMCTS should review Video Hearing System (VHS), make the necessary enhancements and fully implement the system including the webchat and breakout room functionalities.
- a) HMCTS should develop its digital hearing platforms to include or improve document manipulation, highlighting, speech recognition, video recording and digital transcription.
- b) HMCTS should enhance the functionality of 'Manage Your Appeal' in SSCS by using user-centred design principles to meet the needs of parties and their advisers. In particular, appellants and representatives should be able to access and view the digital bundle through Manage Your Appeal.

#### ***Recommendation 2: Equity and asymmetry***

The Interim Report identifies four quick wins, three immediate mitigations, and five longer-term priorities in Equity and Asymmetry. They are:

##### *Quick wins*

- a) MoJ should develop and make widely accessible guidance (in text, image and video formats) to help appellants choose the hearing mode that will work best for them.
- b) HMCTS should develop and make widely accessible explainer documents (in text, image and video formats) to help appellants better understand what happens on the day of the hearing. They should apply the principles and tools in the report Designing for Inclusion, which included HMCTS as a partner (see p15).
- c) HMCTS should signpost to the existing suite of resources on disability and other benefit appeals which help claimants to understand how to appeal and the types of evidence that will assist decision-making and how to access them<sup>1</sup>. It should also ensure that deadlines for evidence are more clearly explained, and signpost to

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<sup>1</sup> Such as to the Advicenow guidance: <https://www.advicenow.org.uk/tags/sickness-and-disability-benefits?term=Sickness%2Band%2Bdisability%2Bbenefits>

guidance on what to do if deadlines are missed. This will reduce the documentary burden for appellants and facilitate more efficient decision making.

- d) We Are Digital's partner organisations who provide frontline digital support should be allowed to triage clients for eligibility; they should not have to interrupt client consultations for the client to undergo a telephone triage with an HMCTS contact centre.

#### *Immediate mitigations*

- e) HMCTS should make all staff aware of the common IT challenges that appellants face in hearings and how to address them when a quick solution exists.
- f) HMCTS should work with local councils and advice organisations to improve access to appropriate venues and equipment so that otherwise digitally excluded individuals can take part in digital hearings
- g) HMCTS should set up a working party with DWP to improve the index to the digital bundle to make it more useful and accessible for all users. This should include relevant players from the advice sector.

#### *Longer-term priorities*

- h) HMCTS and MoJ should further simplify language and use it consistently when they talk about online justice. This must be in collaboration with DWP and judicial office holders and third sector organisations assisting appellants.
- i) The DWP should make both paper and digital bundles available for appellants and representatives. The Tribunal Procedure Committee should support this through reform to the Rules to make this unambiguously possible. This could be done in collaboration with HMCTS through developing Manage Your Appeal (see recommendation 1 above).
- j) MoJ and HMCTS should collaborate more closely with advice services to enable equitable and efficient access to online justice and a process of continuous improvement.
- k) HMCTS should expand funding for the digital support service to include all online justice interactions, including end-to-end online processes which are not yet in scope for digital support, discrete online interactions which are not part of end-to-end reformed online processes, and remote hearings in any tribunal or court.

### **Recommendation 3: Evaluation and improvement**

The Interim Report identifies one quick win, one immediate mitigation and one longer-term priority in Evaluation and Improvement. They are:

#### *Quick wins*

- a) MoJ should include the advice sector in their evaluation of those who provide a voice to vulnerable users of the system who are more likely to be digitally excluded.

#### *Immediate mitigations*

- b) MoJ and HMCTS should take advantage of the breadth of existing work to inform their activities and course corrections. This includes academic work and work that they have procured or funded.

#### *Longer-term priorities*

- c) HMCTS should collect and publish data on the number of cases by hearing mode and their success rate to help establish whether the mode of hearing has an impact on the final outcome.

## **4. Introduction**

The working group (“the group”) was convened by the Administrative Justice Council in December 2022 in response to a presentation at the AJC full council meeting in July 2022 by His Majesty’s Court and Tribunal Service (HMCTS) and the Ministry of Justice (MoJ) on the progress of the reform programme. The overall aim of the group is to review the ‘user experience’ of tribunal users in the light of the HMCTS Tribunals modernisation programme. The outcome of the review was intended to contribute to the development, evaluation and enhancement of the user experience of the different tribunal users and assess the impact of the reforms on stakeholders as well as the parties.

The group is focussing on enhancing the experience of those users who engage with the online processes, addressing issues of accessibility, usability and trust in the process. This includes appellants, respondents, representatives and judicial office holders. The group is focussing on the end-to-end process from making a digital appeal to the tribunal through to the final outcome, with or without a remote hearing. The aim is to identify any touch points or areas for improvements to ensure a fair, accessible and effective process, and address perceptions of barriers to online engagement.

The group is also exploring the issues that concern more vulnerable users, particularly those who are at risk of digital exclusion, examining the effectiveness of the digital support service, We Are Digital, to ensure users are receiving the level of support needed to make an effective digital appeal.

The working group has the following objectives:

- To review the impact of the modernisation programme on tribunal users applying including drawing on existing research and by engaging with users to get insight into their experience;
- To identify jurisdictions that require the most attention;
- To recommend best practice solutions from other jurisdictions and the private sector;

- To identify pressure points and drop-off points in the end-to-end process;
- To work with HMCTS to identify gaps in research which will assist in the evaluation process; and
- To ensure that the modernisation programme is improved by HMCTS to ensure it is accessible to all users.

### Approach

The group included a range of expertise in the area of digitisation and included representatives from the judiciary, the private sector, advice organisations, academics and government departments. A full list of members is included at **Appendix A**. The group met on seven occasions from December 2022 to January 2024 to discuss the scope of the project, fieldwork findings and to offer their expertise on digitisation. The group was further divided into three sub-groups to focus on the different tribunal user groups and undertook research with a small sample of users to gather evidence on the existing benefits and challenges to digitisation. Primarily two small-scale surveys were sent to advice sector representatives who assist appellants with SSCS appeals, to understand the barriers to both appellants and representatives accessing the online process; and the second was conducted by a Law Centre in London with their clients.<sup>2</sup> The aim of the surveys was to provide a snapshot of the barriers to accessing the online process. Members also hosted focus groups to explore the themes arising out of the advice sector organisation's surveys and to hear the views from a group of judicial office holders from across England and Wales.<sup>3</sup> Members also visited two processing centres to hear the experiences of staff and judges; visited a social security hearing centre to observe a range of social security hearings and attended tribunal user groups hosted by the judiciary in two different regions.

This interim report provides the findings of the group's desk-based research and fieldwork undertaken in the Social Security and Child Support Tribunal between January 2023-January 2024. A follow-up full report which will explore the findings in more detail and provide some comparative work with other tribunal jurisdictions, will be produced in 2025. This interim report will be presented to the AJC full Council and HMCTS/MoJ for consideration and published on the AJC website.

## **5. Background**

### **HMCTS Courts and Tribunals Reform Programme**

The original business case for the reform programme was approved in 2015 and it commenced in 2016 with the aim of delivering a modern justice system using new technologies and ways of working to create a more effective system for all users of the justice system. In its February 2023 progress report, the National Audit Office noted that "Our previous reports explained that by 2019, HMCTS had extended its reform programme timetable twice, and amended its scope several times, leading to a reduction in expected benefits. It made these changes largely to decrease delivery risk. After these early resets, it planned to complete the programme by December 2023, more than three years later than

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<sup>2</sup> 47 responses were received from advice sector organisations and 28 appellants

<sup>3</sup> Five focus groups were conducted - two with the advice sector organisations (n=9); and three with judicial office holders (n=19), chaired by members of the working group.

originally planned.”<sup>4</sup> In that report the latest position concerning planned elements of the programme concerning tribunals was stated to be:

Social Security and Child Support (SSCS)	An online service to allow users to submit, track and manage appeals against DWP decisions on certain benefits.
Immigration and Asylum Chamber (IAC)	An online service which enables users to manage appeals against Home Office decisions
Special tribunals (ST) i.e. other jurisdictions within the First-tier Tribunal which include: the War Pensions and Armed Forces Compensation Chamber; Asylum Support; Criminal Injuries Compensation; The Health, Education and Social Care Chamber (e.g. mental health, special educational needs and disability, care standards); The General Regulatory Chamber; Tax Chamber; and Property Chamber.	The project was to introduce an online service to include users from other government departments. Nine out of ten of the special tribunals are not currently going to be reformed. Reform on the specials (except Criminal Injuries Compensation) has been postponed.
Employment Tribunals (ET)	An online service to manage and present cases at employment tribunals (business case budget shared with “Specials”)

The programme also included development of services intended to be shared by courts and tribunals, such as bulk scanning and printing, - these are known as “common components” - around 30 pieces of digital functionality including essential functions such as Scheduling and Listing.

A key element of the reform programme business case was “estate rationalisation” i.e. the closure and sale of certain court/tribunal sites. Between 2016-17 and 22-23, HMCTS raised £223 million in one-off savings from 118 property sales. Courts and Tribunal Service Centres (of which five have been opened) were planned to centralise administration and provide public communication. Rationalisation has resulted in tribunal hearings taking place in magistrates courts in some locations.

On 20 March 2023, adjustments to the programme in the remaining time available were announced<sup>5</sup>. Reform of ET, IAT and SSCS tribunals was to be completed; a scheduling and listing tool (ListAssist) currently under development (and being piloted in SSCS Cardiff) was

<sup>4</sup> Progress on the courts and tribunals reform programme, National Audit Office 23 February 2023, p14. 1.4

<sup>5</sup> HMCTS reform: achievements, challenges and next steps, 20th March 2023:

<https://insidehmcts.blog.gov.uk/2023/03/20/hmcts-reform-achievements-challenges-and-next-steps/>

to be integrated with the relevant tribunal case management systems and work continues on the development of a Video Hearings Service (VHS) due to be rolled out in 2024. VHS is a tailored videoconferencing package for courts and tribunals developed as a replacement for CVP, a generic videoconferencing package introduced during the Covid pandemic as an interim measure<sup>6</sup>. A new digital service was to be introduced for the Criminal Injuries Compensation Tribunal but work on all other 'special' tribunals was to be postponed.

At the time of drafting this interim report, the working group understands that work on the scheduling and listing tool is not now expected to be complete before the formal end of the programme and that no timetable for national SSCS rollout as yet, has been set.

### HMCTS Reform Evaluation Framework

In May 2021, the Ministry of Justice published an '[HMCTS Reform Evaluation Framework](#)<sup>7</sup>.' This set out a framework for the evaluation of the reform programme with a view to ensuring that the effects of reform can be identified and assessed. A theory of change model was developed for the purpose, describing the main components of the reform programme and their intended effects. The listed components were:

- adding new channels and redesigning existing channels around user needs (the services to be redesigned, offering multiple channel options included SSCS, IAC, "Special" tribunals and the Upper Tribunal)
- using audio and video technology in more hearings
- consolidating court estate and workforce (reducing the number of court buildings and the size of the workforce) investing in courts infrastructure and workforce (to include a new organisational design for the staff and Courts and Tribunals and the introduction of a scheduling and listing process)
- introducing new support services (opening Courts and Tribunal Service Centres; third-party support provided through Digital Support/Assisted Digital; additional support in tribunals with preparing cases (caseworkers))
- reducing the number of IT platforms, simplifying case management and data process

## **6. Working Group Findings**

In the context of the above, the working group set out to explore the challenges that arise from the reform programme. Before conducting field work, a review of some of the literature on the HMCTS reform programme, the digitisation of tribunals and the experiences of those working in and using the system, was commissioned and conducted by Gowling WLG. Both pre and post COVID-19 reports and research identify a number of concerns with the reform programme. Progress towards addressing these concerns has been slow and so the risk of digital exclusion remains high. HMCTS/MoJ should review all published reports on the reform programme as part of their evaluation project, identifying which of the recommendations it accepts and can progress and evaluating the risk of not

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<sup>6</sup> Natalie Byrom, Sarah Beardon, Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges, Legal Education Foundation 2021

<sup>7</sup> HMCTS service reform evaluation framework, 7 May 2021

progressing others. The literature review and list of recommendations from published reports can be found at **Appendix B**.

HMCTS itself has commissioned work and partnered with external stakeholders to produce guidance to improve the online appeals process which has not yet been fully utilised. This includes guidance films produced by the [Supporting Online Justice Project](#) on how appellants can participate in an online hearing; and guidance to front line organisations on communicating with clients in the report *Designing for Inclusion: How to produce inclusive materials for advice sector clients*.<sup>8</sup> The MoJ has also funded Advicenow to support Litigants in Person by providing resources such as online tools and step by step guidance such as helping people attending remote hearings by video or phone.<sup>9</sup> HMCTS should fully utilise, signpost and make accessible guidance where they partnered with the authors to improve the online process for appellants or where MoJ has funded resources.

We, nonetheless, recognise the good work that is being undertaken by HMCTS to understand the user experience which is referenced in their [Assessing Access to Justice in HMCTS Services - Summary Report](#). We also welcome the evaluation work on the reform programme which is being carried out by the MoJ and hope that the feedback from appellants is taken onboard. In addition, we will follow closely the user engagement groups that have been convened in the four tribunal jurisdictions (SSCS, AIT, ET and war pensions) and hope they lead to some positive outcomes.

In this interim report, we have gathered our own evidence and have suggested initial areas for HMCTS to consider, some which align with other reports and some which are on specific elements of the reform programme. Further, more refined recommendations will be made in our final report, reflecting the additional work that will be conducted.

The existing challenges and barriers to accessing the digital process in SSCS were explored by three subgroups/individual members: a) tribunal staff and judiciary; b) advice organisations; and c) appellants (including the provision of digital support services). The group has attempted to engage with the Department for Work and Pensions but have not had any success up until the production of the interim report. The report has been divided into the responses from each user group to help us understand the barriers for each group.

#### **a) Tribunal staff and judiciary**

##### **Judicial focus groups-overview**

Group members made site visits to two tribunal processing centres in the north and south of England<sup>10</sup> and the Upper Tribunal in London; and held three online focus groups with

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<sup>8</sup> Supporting Online Justice: Enhancing Accessibility, Participation, and Procedural Fairness and Designing for Inclusion', 2023 Tsalapatanis and Mulcahy, University of Oxford, Centre of Socio-Legal Studies

<sup>9</sup> AdviceNow Guides: <https://www.advicenow.org.uk/advicenow-guides> and <https://www.advicenow.org.uk/know-hows/court-and-tribunal-hearings-video-or-phone-call>

<sup>10</sup> North - Five interviews with a total of four salaried tribunal judges (one of whom was a Regional Tribunal Judge), three medically qualified members and one disability qualified members; South – four salaried judges (one Regional Tribunal judge). Discussions were also had with members of the operations team.

judicial office holders from across England and Wales.<sup>11</sup> The focus groups provided the experiences of a mixture of salaried and fee paid judges, and non-legal panel members. The views expressed in this report does not claim to be representative of all SSCS judicial members but does provides some helpful feedback which is consistent with previous more extensive research<sup>12</sup> and the feedback from other user groups. It should be taken into consideration by HMCTS, alongside reports from other stakeholders and their own evaluation. In phase two of the project, we will seek the views of judicial office holders in other jurisdictions.

### **Administrative challenges**

Inevitably some administrative challenges have been generated by the modernisation programme.

According to the HMCTS evaluation model for the modernisation programme, reformed support services (the introduction of Courts and Tribunal Service Centres) would result in: a smaller, smarter and more effective workforce predicated on improved staff training and organisation; a single point of contact for users, providing an easy-to-use and streamlined service; centralised processes intended to remove duplication and enhance efficiency.

Slippage in the original implementation timetable has resulted in a 'transition phase' in the SSCS jurisdiction in which the new Core Case Data (CCD) has been introduced while retaining the legacy GAPS for listing purposes while adaptation of the successor system for listing (ListAssist) for tribunal purposes (e.g. to take account of the mix of salaried and fee paid judiciary and the frequent use of interpreters in some regions) is being completed. During the transition phase tribunal staff are operating the two systems side-by-side on separate screens and various short-term workarounds to transfer data between the two systems are in place. Whilst we understand this is necessary due to the "agile" method of project delivery adopted by the Reform Programme, this can generate extra work and the complexity of interim arrangements present managerial challenges in identifying the source of problems when they arise. Although it was announced in March 2023 that digitisation of the SSCS jurisdiction would be complete by the end of the modernisation programme timetable i.e. by March 2024 at the latest (while digitisation of some other tribunal jurisdictions has been put on hold indefinitely) it has become clear that this objective will not be achieved. The efficiency gains anticipated by key components of the reformed system, such as new scheduling and listing functionality will not be achievable for some time. From the feedback received in our focus groups, it is apparent that making premature

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<sup>11</sup> Participants in the online focus groups covered SSCS tribunals in Wales; south-west, south-east, north-west, north-east England; There were held as follows:

- 8th November 2023 (eight non-legal panel members including one financial expert, one disability expert and six medical experts);
- 13th November 2023 (two fee paid judges, one fee paid tribunal member and one salaried judge);
- 16<sup>th</sup> November 2023 (six fee paid and salaried judges and one medical member).

<sup>12</sup> Such as: Natalie Byrom, Sarah Beardon, Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges, Legal Education Foundation 2021



savings to staff numbers in the absence of the anticipated efficiency gains is having a negative impact on the service to users.

During a visit to a hearing centre in June 2023 it was observed that some hearings that month were having to be cancelled due to an insufficient number of clerks being available.

### **Mode of hearing in SCS Appeals**

According to a Guidance Note<sup>13</sup> issued by the Chamber President, First-tier Tribunal, Social Entitlement Chamber on 18 October 2021, the general position in appeals (subject to particular guidance concerning certain categories of appeal and any supplementary guidance issued by Regional Tribunal Judges to take account of local circumstances) is that:

- the appeal form asks appellants to indicate all suitable hearing options. If an appellant has ticked only one option, that option should be listed accordingly.
- If an appellant has ticked more than one option the case should be listed to be heard by way of the ticked option which is highest in the following priority order: 1. face-to-face; 2. Video; or 3. Telephone.
- judicial control over listing is maintained by the power of a judge or tribunal legal officer on referral by the administration, and review by a judge of a tribunal caseworker decision, on other interlocutory consideration by a judge or tribunal caseworker, or by a judge at the hearing, to make or change the decision as to mode of hearing.

The Guidance also states that all hearings must be conducted from a tribunal venue, with panels sitting together, save in exceptional or unavoidable circumstances (which may include health/well-being considerations and availability of a suitable hearing room or adequate equipment).

Appellants also have the option to elect for a 'paper hearing' i.e. for a decision to be made on the basis of the documents that had been submitted alone. This was a cause of some concern for some judicial office holders as people with mental health conditions or anxiety disorders may find face-to-face or online hearings stressful and therefore opt for a paper hearing which may not serve their best interests. The judiciary can direct appellants to a face-to-face hearing after considering the papers, if they think it is in the best interests of justice, but this can cause further delays. Appellants are often unaware that a paper hearing makes it more difficult to provide further evidence e.g. in response to questions from the panel which may assist their case. Empirical evidence supports the concern that paper hearings produce worse outcomes for social security tribunal appellants.<sup>14</sup>

The views of the judicial officer holders we spoke to reflect the majority of concerns identified by Byrom and Beardson in their research for the Senior President of Tribunals on

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<sup>13</sup> Chamber President's Guidance Note No. 5 - Mode of hearing in social security and child support appeals, 18th October 2021

<sup>14</sup> C. Thomas and H. Genn, Understanding tribunal decision-making A foundational empirical study (2013, London: Nuffield Foundation)

the impact of digital hearings on judges during the pandemic.<sup>15</sup> Many of the judicial office holders indicated that they preferred an oral hearing, especially in disability cases, so they could see the appellant and generally interact better with them. They also noted that some appellants prefer a face-to-face hearing as they want the panel to witness the mobility or other issues that they experience. Judicial office holders have stated that video hearings do not save any judicial time but on the contrary they take longer than an in-person hearing. Video hearings cannot replicate the structure and relative formality of an in-person hearing and the tribunal has become used to muddling through when arrangements are not ideal e.g. unsuitable backgrounds, the use of mobile phones to conduct the hearing, the intrusion of family pets into the proceedings etc. Online hearings also reduce the degree of control over the proceedings for example concerning the presence of third parties in the room with the appellant. One judicial office holder described a case in which an angry husband had continually interrupted an online hearing. In another case a DWP presenting officer participated in a case with a toddler in the background. Sometimes appellants forget they have a hearing so attempt to participate by mobile phone while travelling or in an unsuitable location e.g. on the school run, sitting on a park bench.

It was noted that video hearings can however be advantageous in some circumstances, for example in child support hearings, where there may be animosity between the parties or risk of intimidation of one party by the other in the waiting area. This observation was also made in the report *Remote hearings in the family court post-pandemic*: "Many felt that remote hearings provided a greater sense of safety for applicants who were not at risk from meeting the respondent and made it easier to enforce safety measures. However, there were some respondents, including parents, who felt that seeing the person responsible for the abuse on a screen in your own home was more unsettling for applicants than being in a court."<sup>16</sup>

As has been noted in the literature to date, there are a range of potential technical problems which may limit the effectiveness of a video or telephone hearing<sup>17</sup>. The availability of suitable equipment varies from one tribunal venue to another: some sites may not have equipment for video hearings or a suitable spider conference phone for a telephone hearing. The siting of a camera can be problematic for video hearings, for example where only a side view of the panel is possible. Ideally, a participant in a video hearing using an electronic bundle of documents will have two screens: one for the hearing itself and the other for the bundle.

As reported in the focus groups, access to suitable equipment can be a significant barrier for appellants also. Many do not have access to a laptop or desktop computer and participating

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<sup>15</sup> Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges - Dr Natalie Byrom, Sarah Beardon (for the Legal Education Foundation)

<sup>16</sup> Remote hearings in the family court post-pandemic (2021), London: Nuffield Family Justice, p29

<sup>17</sup> See Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges - Dr Natalie Byrom, Sarah Beardon (for the Legal Education Foundation); Remote hearings continue to confuse – The Law Society, 22nd March 2022: [Remote hearings continue to confuse | News | Law Gazette](#); and Remodelling Social Security Appeals (Again): The Advent of Online Tribunals – Joe Tomlinson and Robert Thomas, Journal of Social Security Law.

in a hearing using a mobile phone is much less satisfactory. Connectivity and sound problems are also regularly encountered, impacted upon by quality of mobile reception and location of equipment etc. Some judicial office holders reported a valuable practice by some tribunal clerks of contacting appellants the day prior to the hearing to identify any issues arising from equipment or connectivity.

Interpreters are regularly used in appeal hearings and the involvement of interpreters generates an additional layer of complexity for online hearings as noted in HMCTS' First-tier Tribunal (Immigration and Asylum Chamber) Reform - Interim process evaluation.<sup>18</sup> As raised in the focus groups, it is generally preferable for the appellant and interpreter to be in the same location although if an interpreter is required at the last minute it is sometimes preferable to proceed with the hearing rather than adjourn. The quality of interpretation presents challenges for judicial office holders. A majority of SSCS cases concerned people with illness (including mental health issues) or disability, and the assessment by judicial office holders looks at the impact of this on their daily lives. Interpreters understandably want to help the appellant to answer questions from the tribunal and to help the tribunal understand the appellant's answers.

### **Mode of hearing: data**

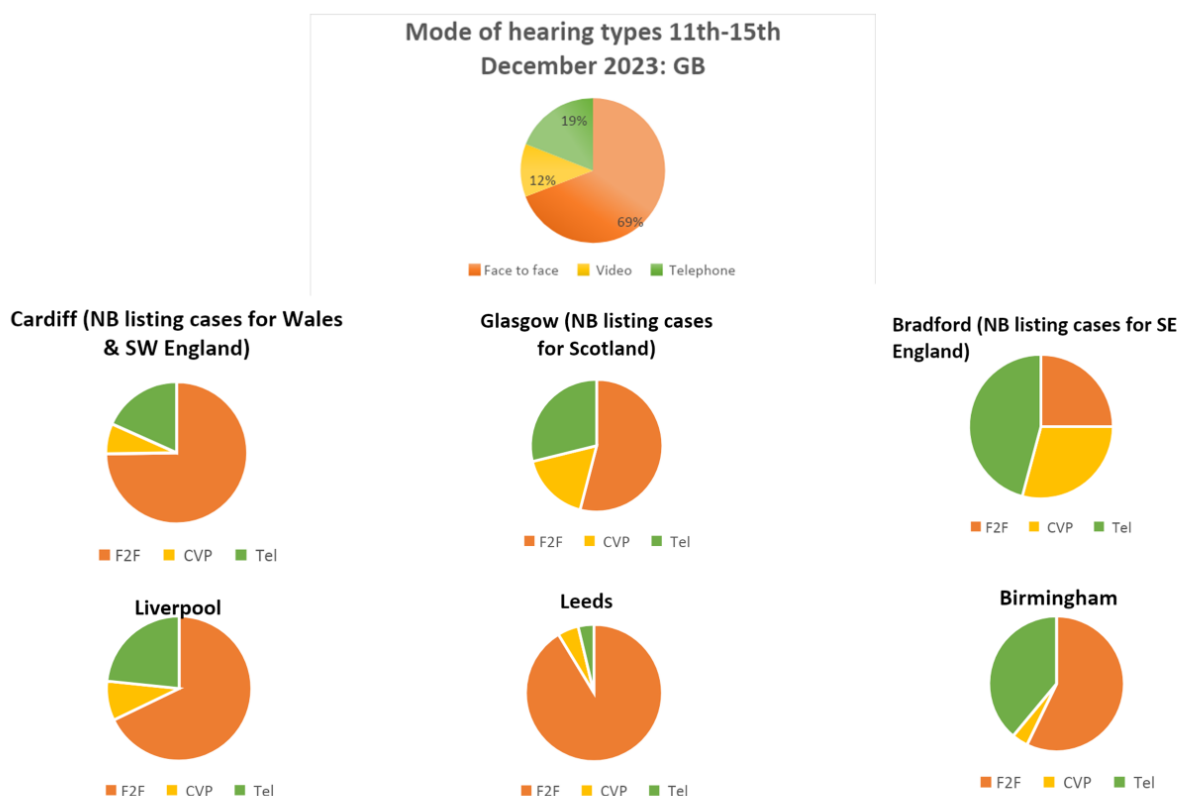
HMCTS does not currently publish data concerning the relative proportion of the different modes of hearing being adopted. For the purpose of this interim report, a snapshot was taken of the modes of hearing shown on SSCS hearing lists in England, Scotland and Wales in the week commencing 11<sup>th</sup> December 2023 from the hearing lists published daily by HMCTS. According to the published lists 1,277 SSCS hearings took place in that week in England, Scotland and Wales. Of these, 883 were face to face hearings, 151 were video hearings and 243 telephone hearings (see figure 1 below for a breakdown) The snapshot of hearings over one week in December shows that face to face to hearings were the predominant mode followed by telephone hearings and last video hearings. There were significant variations in the balance of modes of hearing between regions. It is not possible to fully disaggregate data from Wales and southwest England as for some telephone hearings the venue is listed as 'Remote hearings' and no hearing centre is identified. Lists for the London area are generated by the Sutton HMCTS office and lists for south-east England are generated by the Bradford office.

It does show that collection and publication of statistics on use and success rates of the different modes of appeal hearings is required and we urge HMCTS to collect this data and to provide further analysis.

*Figure 1: Data on the Mode of hearing*

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<sup>18</sup> First-tier Tribunal (Immigration and Asylum Chamber) Reform - Interim process evaluation, HMCTS 4th October 2022



## Digital bundles - practicalities

SSCS tribunal judicial office holders now use digital bundles of documents in virtually all cases. The 2021 report by Byrom and Beardon<sup>19</sup> has identified some of the advantages of this system for tribunal judges, along with recommendations on how the use of digital bundles could be improved. Many of the issues raised in that report are reflected in our discussions with SSCS judges. A Media Viewer to access the bundles is provided as part of the system. According to the judicial office holders we spoke to, this reform has delivered a number of significant benefits: there is improved data security as sensitive information is no longer sent by post; all documentation is together in one place; well in advance of the hearing so there is time to rectify problems; the search function can be helpful in finding something quickly; audio-visual material can be played without the need of a DVD player; the reduction in the volume of paper used is more environmentally friendly and the old bundles were heavy to carry.

However, the judges noted that there are still practical problems with the new electronic bundles which need to be resolved. Documents have sometimes been poorly scanned and key evidence can be illegible. Sometimes documents have been scanned twice, which increases the size of bundles and throws out page numbering. Page numbering can also

<sup>19</sup> Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges - Dr Natalie Byrom, Sarah Beardon

differ from the paper bundles used by appellants, and documents in the bundle are not necessarily in a logical order.

We were told that problems can also arise in ensuring panels are aware of late evidence. Additional evidence is sent to the Courts and Tribunal Service Centre (CTSC) and must be uploaded onto the system used by judicial office holders. Problems can arise if the CTSC has a backlog and new evidence is not uploaded or if judicial office holders do not check for new evidence supplementary to the 'stitched' bundle they have already received. A notification from CTSC would help to alert judicial office holders and parties to the new evidence and would result in less adjournments, as everyone has had the opportunity to read it before the hearing. The format of additional evidence (additional document attachments which may not have meaningful filenames) can make the material difficult to navigate.

There is a practice where DWP is supposed to advise the CTSC that the bundle is over 300 pages and this should then be referred to the Legal Officer to read and advise if the case is sufficiently complex to require listing with additional time for the hearing. This generally works well but there is no facility to refer to an already listed case for re-listing with additional time when late additional evidence has been submitted by the appellant.

Judicial office holders informed us that they must also rely on the online accessibility of electronic bundles as they are instructed not to download the bundles locally to their own PC/ laptop which can cause accessibility issues if there are broadband connectivity issues. In addition, the number of steps necessary to log onto the online system makes it a cumbersome process and poor Wi-Fi quality in some venues sometimes means that accessing bundles can be slow or problematic.

A separate screen for viewing electronic bundles is valuable, if not essential, for video hearings but no equipment is currently provided by HMCTS for fee paid judges. Focus group participants have suggested that they should be provided with a secure laptop with antivirus software installed. 'All in one' PCs have been provided for judicial office holders in hearing centres as part of the modernisation programme, but it has been asserted that in some locations there are not sufficient devices. It is also of concern that the AiO devices are no longer supported, and that there is no plan to replace them as and when they stop working. A laptop screen is too small to enable a judicial user to work efficiently with viewing digital bundles and the case management system, their notes or a draft decision notice.

### **Digital bundles – bundle size**

Interlocutors reported that since the recent reforms there has been a huge increase in the size of tribunal bundles which are sometimes around 500-750 pages. This is a significant consideration taking account of the amount of preparation time allowed. The size of the bundle is unknown prior to the start of preparation so it can be difficult to anticipate the amount of preparation time that will be required.

Unrepresented appellants sometimes upload large amounts of often irrelevant material. Judicial office holders who also sit in the IAT have contrasted this development with steps that have been taken in that jurisdiction (in which both parties are typically represented) to narrow the issues in advance of the hearing.

## Upper Tribunal Administrative Appeals Chamber

The Upper Tribunal uses an off-the-shelf case management package also used by the High Court and case papers are transferred between the First-tier Tribunal (FTT) and the Upper Tribunal by email. It does not use the Media Viewer used by the FTT but in any event, as the Upper Tribunal does not have a fact-finding function and is only concerned with errors of law, it does not encounter the same challenges relating to the electronic bundle. Only a limited number of documents will be relevant to an appeal: typically, the first instance decision, the grounds for appeal and any representations made by the respondent. Hearings are requested in relatively few SSCS cases (less than 5%) and the appellants have the option of a video hearing. We were informed by an upper tribunal judge that feedback about the experience of video hearings from stakeholder groups was generally positive and there appeared to be fewer technological problems in comparison to the FTT: appellants normally had access to a quiet room for the hearing and to a laptop computer.

### **b) Advice Sector Organisations**

Feedback was collected from advice sector organisations via a survey, two focus groups and attendance at two tribunal user groups.

#### **Survey**

The survey was sent out to advice providers through our network of stakeholders and 45 responses were received over a one-month period during September 2023. Respondents mainly came from non-law specific advice services and towns, work in small teams and support a limited number of appeals each month.

Some of the key findings about online hearings will be discussed in four themes, (1) Representatives' perspectives on online appeals; (2) Challenges with technology; (3) How advisers use the system; and (4) Mode of hearing: Choosing the right hearing type. We underline again that this is a small study and is not representative of the range of advisor experiences, but it does reinforce some of the existing research findings on the experiences of tribunal users and the specific issues faced by their advisors<sup>20</sup>.

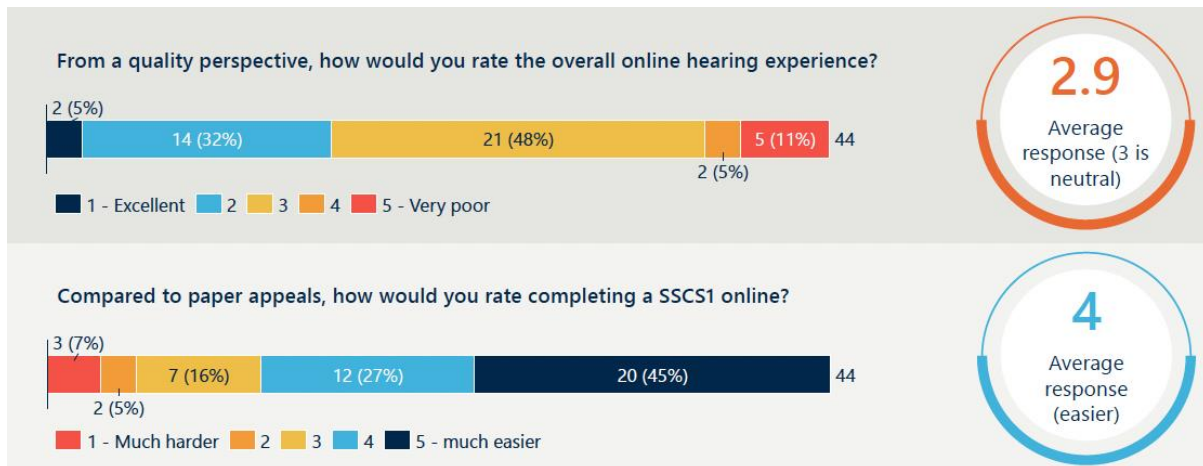
#### **(1) Representatives' perspectives on online appeals**

Overall, representatives were more positive than negative about online hearings; and the majority found the online SSCS1 form easier to complete online.

*Figure 2: online and paper appeals*

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<sup>20</sup> See, for example, Creutzfeldt, N. and Sechi, D. (2021) 'Welfare benefit advice provision during the pandemic'; Burton, M (2021) 'Remote hearings in the social security tribunal: should we be worried?'; Creutzfeldt, N., Kyprianides, A., Bancroft, H., Bradford, B. and Jackson, J. (2023) 'How has the pandemic changed the way people access justice? Digitalisation and reform in the areas of housing and SEND'; and 'Welfare Benefit Provision During the Pandemic', Administrative Justice Council.



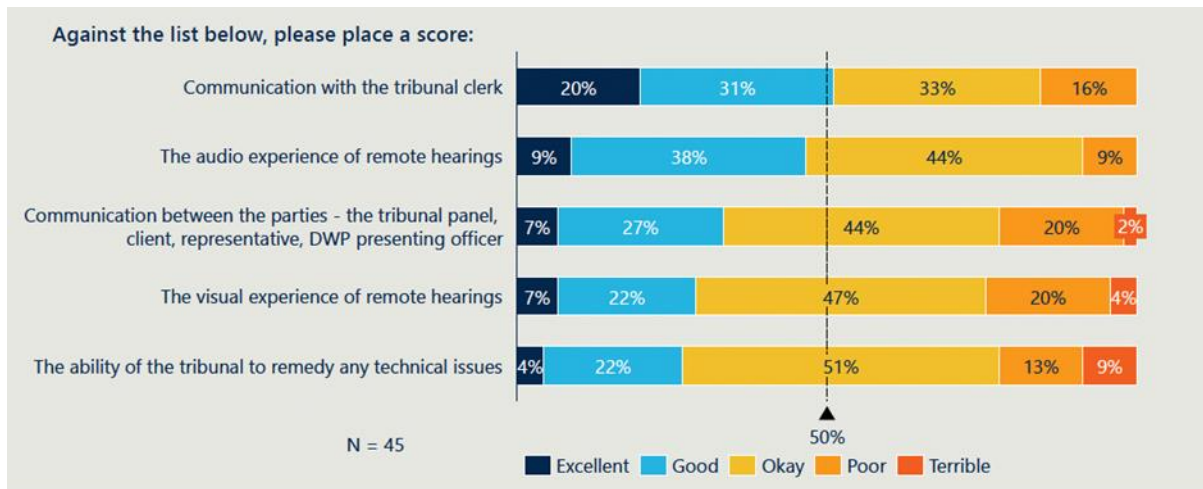
Over 50% of the respondents commented on the okay / poor / terrible audio experience, quality of communication, visual experience and the ability of the tribunal to remedy technical issues. This means that although respondents were slightly more positive about online hearings in figure 3 below, there were some problems with aspects of the online process. One respondent commented that:

“Virtual hearings add a significant amount of stress to what is already a stressful situation. Communication is poor so when I have participated I've often sat for 25+ minutes hearing the recorded 'waiting for the conference host to join' message on a loop. The vast majority of virtual hearings I've had ended up becoming telephone hearings when the technology failed. They also are incredibly difficult for those with communication problems to access - eg the clerks don't have access to interpreters so if there are any technical difficulties they are unable to communicate this to clients with communication needs.”

Another reported that:

“The on-line process as intended is an excellent step forward and I look forward to being able to use it fully. The availability of telephone hearings has diminished significantly since COVID restrictions came to an end, but for some clients such as those with mental health issues - most of my clients - having such a facility -despite the problems they face with only having a phone and inadequate data coverage for it- gives them an alternative which they appreciate very much. It strikes me we are still in a bit of a hiatus, caught between still operating off paper and via on-line as an organisation. The provision of a good training video regarding on-line submissions of appeals and associated documents that we could share with clients to help them would be a real step forward I feel and push us harder in the direction of using on-line as much as possible . Electronic provision of bundles for reps would be a real boon - as long as we can access them”

*Figure 3: experience of the system*



## (2) Challenges with technology

63% of the representatives reported that they occasionally had difficulties with connection to a remote hearing, where 19% reported regular difficulties and 19% had never had difficulties. Further, respondents had mixed views about the system's ease of use for uploading documents and evidence.

The data shows that advisers overwhelmingly reported difficulties for their clients with technology.

Figure 4: challenges for clients joining remote hearings

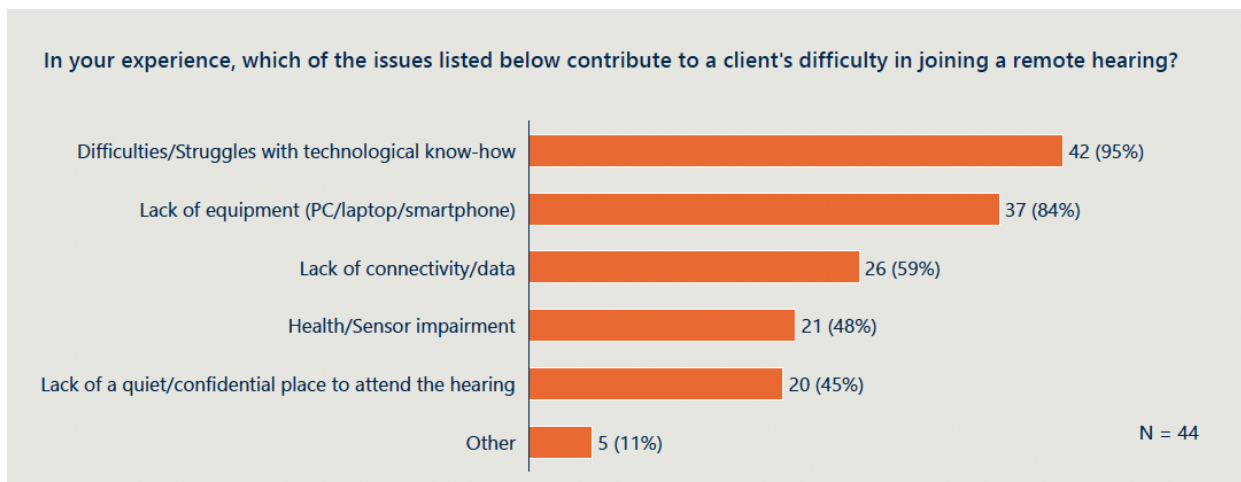
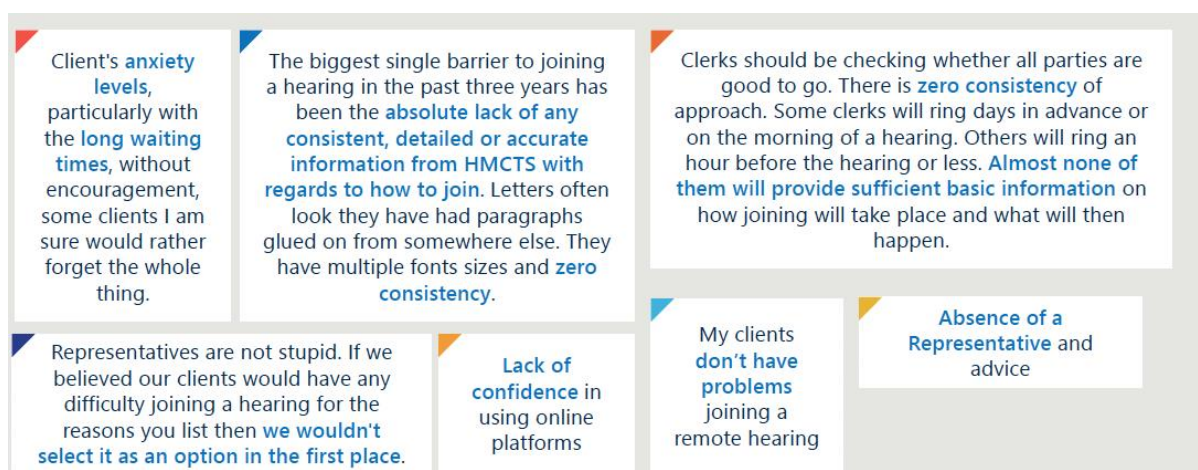


Figure 4 shows that 95% of the respondents reported that their clients had difficulties with technological know-how. These difficulties were discussed in the focus group in more detail (p27). 84% reported that the lack of equipment contributed to their clients having difficulty joining a remote hearing. Further, the limited understanding of the whole process is reported as the major challenge for online hearings. Some of the issues are in figure 5 below.



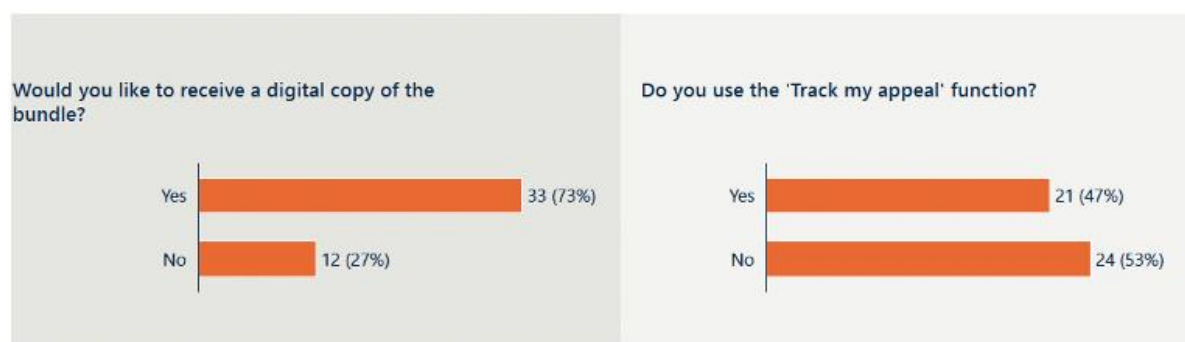
Figure 5: examples of barriers to the online hearings



### (3) How advisers use the system

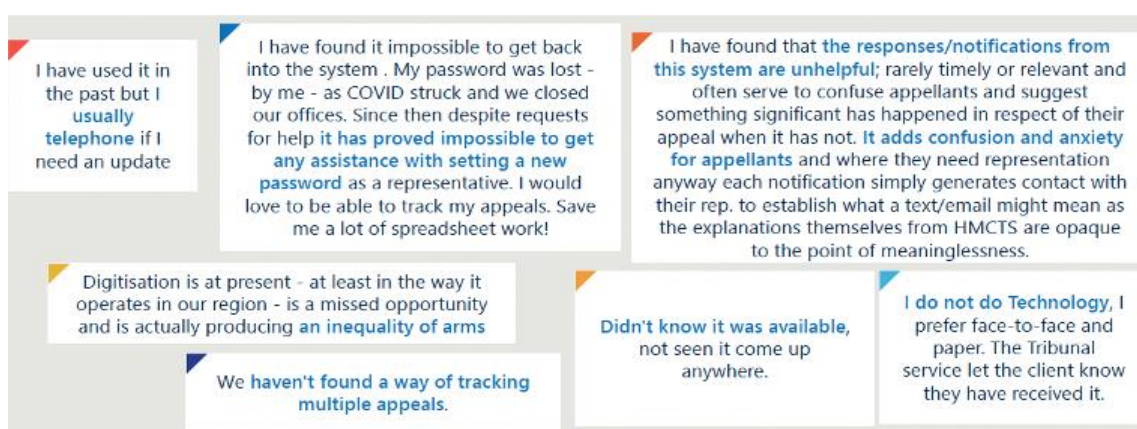
The representatives overwhelmingly want to receive a digital copy of the bundle (explored later in our focus group). The majority of survey respondents also do not use the digital tool 'track my appeal' (figure 6).

Figure 6: track my appeal function



Some of the reasons that were given for not using the 'track my appeal' function are in figure 7 below.

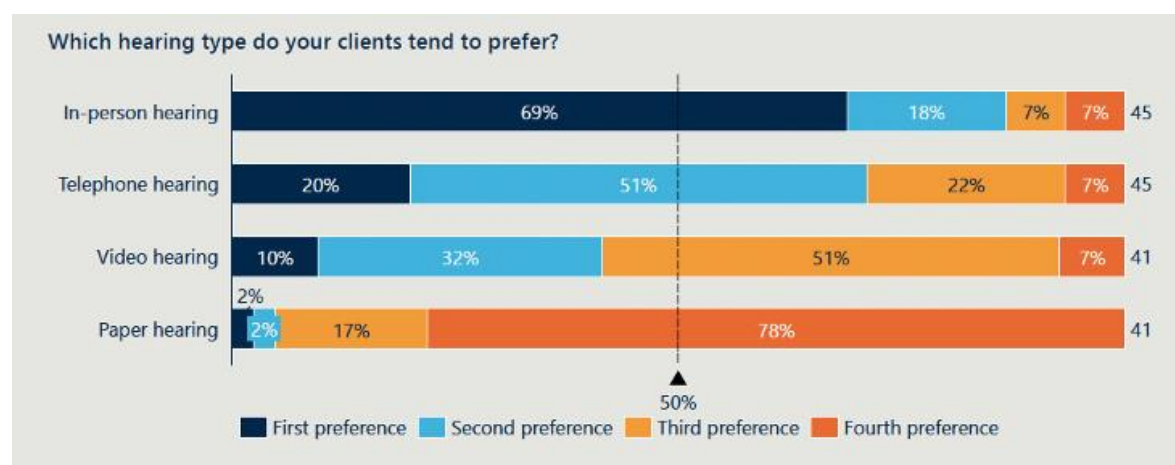
Figure 7: Reasons for not using track your appeal



#### (4) Mode of hearing: Choosing the right hearing type

As observed in the judicial office holder focus groups, the survey respondents were also concerned that their clients don't receive enough information about hearing types (73%). Video hearings were the third favourite hearing type (with in-person and telephone being first and second preference, respectively) with only 10% saying that it is their preferred choice and 51% indicating that it was their third choice (figure 8)

Figure 8: client's preferences in hearing type



Although in-person was the preferred option for survey respondents, reasons provided for appellant's choosing other modes of hearing were due to their client's anxiety and this was therefore their strongest driver to their choice of hearing type (figure 9).

Figure 9: anxiety as driver of hearing type choice



As a consequence, these barriers lead to limited confidence that clients could manage their online hearings without support (figure 10).

Figure 10: clients manage online hearings



Overall, the survey results demonstrated that there are aspects of digitisation that were viewed positively, including the ease of the online form and the communication with tribunal clerks. There were reports of technological difficulties in at least some of the online hearings and barriers to access tended to be around clients not having the technological know-how and not having the right equipment to join a video call. The majority of representatives would like a copy of the digital bundle, yet in the main representatives do not use the digital tool 'track your appeal'. For the mode of hearing, representatives felt that more information is needed on the different hearing type, and that anxiety is a driving factor in their preferred choice of hearing mode. Overwhelmingly, clients would not be able to manage an online hearing without the help of a representative.

### **Focus groups**

Following the responses from the survey, two focus groups with a total of nine advice providers were held to explore the emerging themes from the survey.<sup>21</sup> They provided insights into supporting clients with accessing and managing the online process and online / telephone hearings. The insights are grouped into: (1) mode of hearing; (2) positives of digitisation; (3) challenges; (4) bundles; (5) manage my appeal / track my appeal; and (6) suggested improvements. In addition to building on the survey insights, the discussions also surface similar issues that have been identified in existing research.

#### **(1) Mode of hearing**

As mentioned above, there are several options available to choose from in relation to the mode of hearing: in-person, video, paper based or telephone; and appellants can choose their preferred option on the online form. The representatives explained that there are

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<sup>21</sup> **20<sup>th</sup> October** – 5 advice organisations (Kings College London Law School, North East Suffolk CAB, Jigsaw Homes, Bridport Cab, Epping Forest District, CAB) / **9<sup>th</sup> November** – 4 advice organisations (Hounslow CAB, Greater Manchester Law Centre, Welfare Rights and Debt Service, Greater Manchester, Welfare Rights Advisor, Kent Count Council)

benefits and challenges for each of these hearing types; they explain the differences to their clients and suggest the most appropriate for their circumstances. However, without this guidance, it is unlikely that an individual would know which option to choose as no guidance is provided by HMCTS. Representatives in the focus group reported that clients opt for a paper hearing, due to feelings of anxiety relating to other options, although advisors suggest that there is a likely reduction in success rate due to appellants not being able to provide oral evidence to support their appeal. As existing research has continued to make clear, different modes of hearing are preferable depending on the circumstances of the client (e.g. anxiety, ability to travel etc.).<sup>22</sup> The representatives agreed, however, that the in-person hearing was the most effective choice for disability cases, for example, as the appellants' anxiety and disability are visible and they would advise them to choose this mode due to the better prospects of success. Representatives further thought that a video-hearing might make the appellant too relaxed and possibly omit to share important information or get easily distracted by other people in the room. On the other hand, online hearings will save travel cost and time spent getting to a court, but clients were less likely to choose this mode. The representatives shared their experiences with technology being unreliable, the courts not providing backup plans and cases being adjourned – causing more anxiety and extending the process.

## (2) Positives

The focus group participants identified some of the positives for digitisation that they had encountered. In their experience, it was quicker to get a hearing date for remote hearings, as there were more delays for in-person hearings. Further, they felt that there was more consistency with the digital process in relation to the content of correspondence; it was quicker to submit an appeal digitally because the form can be filled in over the phone with the client, the evidence can be uploaded and there is an instant notification. Another positive is that this online engagement produces an automatic audit trail of cases.

## (3) Challenges

Representatives highlighted that there were many people who are digitally less able and digitally excluded<sup>23</sup>, and they could not manage the online process on their own.<sup>24</sup> Representatives reported that clients were often scared of engaging with a simple website and their anxiety inhibits their ability to navigate through the online process, even when they are well educated. An example was provided from a university law clinic where their

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<sup>22</sup> See for example, Westminster Government Civil Society Shadow Report - Inclusion London; Remote hearings –The Law Society; Denvir and Selvarajah; Remote Justice?; Virtual benefits tribunals and disabled clients - Islington People's Rights; Achieving Digital Equity in Access to Justice - Kate MMurray; Digital Support for HMCTS Reformed Services: What we know and what we need to know - Public Law Project; Creutzfeldt, N. and Sechi, D. (2021) 'Social welfare [law] advice provision during the pandemic in England and Wales: a conceptual framework' *Journal of Social Welfare and Family Law* 43(2): 152– 174

<sup>23</sup> Digitally excluded refers to people who cannot participate adequately when services are digital due to, for example, not having sufficient data to go online, not having sufficient technological knowledge to navigate through the system or not having the technological equipment such as a computer or smartphone

<sup>24</sup> The research on this clearly corroborates this view. See for example, Creutzfeldt, N., Kyprianides, A., Bancroft, H., Bradford, B. and Jackson, J. (2023) 'How has the pandemic changed the way people access justice? Digitalisation and reform in the areas of housing and SEND'

clients (university students) find the stress of submitting an online appeal affects their ability to participate in the process. Further, as already portrayed through the survey, a lack of appropriate devices can form a barrier to accessing the online process. For example, using a mobile phone for the online appeal (which is not appropriate to fill out forms or to attend a video hearing) and/or no broadband (many only have pay as go phones and can't afford broadband).

#### (4) Bundles

The representatives reported that the digital bundles were not made easily available for them, and this causes delays due to the back and forth between representatives and respondents – sometimes they don't receive the bundle in time for the hearing.

Further, as also raised by judicial office holders, the quality of appeal papers and not being able to read the information is a real concern as well as frequent issues with pagination (with different page numbers in the digital version compared to the paper one). If an appellant needs the document in large print, representatives stated that clerks often missed the request and DWP are not notified. DWP do not send the paper version of the bundle for the representatives and when they are sent, they frequently end up at a wrong address. Representatives noted that the low number of clerks, and the under-resourcing could impact on some of the administrative problems. Byrom and Beardon, as well as the Report by various parties for the All-Party Parliamentary Group for Legal and Constitutional Affairs, have noted the absence of training for HMCTS staff to manage technological difficulties. This issue was also raised in our focus groups by advisers concerned that clerks are not trained in technology so are unable to help if there is a technology issue in the hearing. Representatives commented that the provision of an online technology assistant could help solve this.

#### (5) Manage Your Appeal

In relation to Manage Your Appeal,<sup>25</sup> participants noted a series of concerns. Clients often opt out due to the deluge of information (sometimes 10 notifications in one day) which are often incorrect or meaningless. For example, further evidence may be requested even though all the evidence available has already been submitted. Representatives in the focus group thought that they could only get access to the system via their client's email address and suggested that tracking by appeal number instead would make the system more accessible for them. We have been informed by HMCTS that representatives can create their account by using their email, but this information does not seem to have been filtered down. The representatives also commented on information not being clear on the system. For example, representatives reported that after the evidence has been uploaded a notification often reports that the DWP hasn't changed their decision, which has been interpreted by their clients as meaning the appeal isn't going ahead.

#### (6) Suggested improvements

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<sup>25</sup> **Manage Your Appeal** allows the appellant to upload further evidence to their appeal, track its progress, receive text and email updates and make supporting statements about the grounds of their appeal, which are also automatically uploaded to Core Case Data (CCD).



The focus group made the following suggestions for improvement, many of which echo the recommendations from research on this issue<sup>26</sup>:

- **Communication:** better communication to manage expectations of the process;
- **Technology:** webchat facility to assist with technological difficulties;
- **Functionality:** a breakout room in a video call to enable advisors and clients to communicate privately during the hearing; Track Your Appeal to provide up-to-date and relevant information including an indication of the hearing date;
- **Bundles:** Changing procedural rules so that bundles come straight from HMCTS;
- **Equipment:** Computers available in council offices or the provision of funding for equipment at advice organisations (even if they are not providing advice); and
- **Evaluation:** consulting with advisors on the reform programme.

### **Tribunal User Group meetings (TUGs)**

Working Group members attended a tribunal user group meetings<sup>27</sup> in two different regions (North West and South East England). The meetings were hosted by a mixture of district judges from the regions; attendees were representatives (mainly from local authority advice services). Issues related to digitisation largely reflected those reported in the above focus groups: (a) mode of hearings; and (b) bundles. We recognise that the issues raised in these meetings may not be national ones and may have been temporary in nature.

#### **(a) Mode of Hearings**

Regarding the choice of hearings, representatives mirrored the views presented above that the appeal form needs to be revised to make preferences clearer. Representatives thought that better communication was required on the options.

Challenges about each mode of hearings were as follows:

Video hearings:

- The position of the camera in hearing centres so online participants cannot see the panel's faces;
- the room layout at a hearing centre could make a video call impractical (as identified in the JOH focus groups);
- Clients find video hearings difficult due to lack of skill, equipment or their broadband

Telephone hearings:

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<sup>26</sup> See for example, Achieving Digital Equity in Access to Justice - Kate M Murray; Remote Justice? Virtual benefits tribunals and disabled clients - Islington People's Rights; Supporting Online Justice - Professor Linda Mulcahy.

<sup>27</sup> North West Tribunal User Group, 28<sup>th</sup> March 2023 and South East England, 28<sup>th</sup> March 2023

- Clients prefer telephone hearings to video hearings; there are also less technological problems
- Clients choose telephone hearing rather than in-person as they think it will be quicker

In-person:

- There were concerns about the venue for some in-person hearings including magistrates courts that could exacerbate appellants' anxiety due to the nature of the type of proceedings at a magistrate court.

#### (b) Bundles

As identified by other groups, attendees reported inconsistencies with pagination and poor quality of scanned evidence.

Whilst it is reassuring that similar issues were raised at the TUGs as the focus groups, the group questioned how the feedback is fed back and implemented by HMCTS.

### **C. Appellants**

To accompany the surveys and focus groups for representatives, surveys with 28 appellants who had been advised or represented by a London based Law Centre were carried out. The aim of these surveys was to provide a voice for users and also to identify issues for staff and end service users when dealing with the justice system. The survey questions were read out to clients by a solicitor from the Law Centre.

#### **Terminology**

Whilst the data collected is as anticipated, there were some very interesting findings and observations not related to the statistics.

The language generally used when discussing digital services would have acted as a barrier to effectively collect data and responses during the interview were it not for careful explanation of the terms.

For example, the terms 'online', 'digital' and 'internet' needed to be explained to people. Also, some people did not understand what a smartphone was even though they may have had one.

It was clear in many cases that people were actually accessing online services even if they thought they weren't. For instance, many were in receipt of Universal Credit which requires a person to create an online account (or this may have been created for them).

In terms of smartphones, when asked this question, the majority would say they didn't know whether their phone was a smartphone or not. Thus, showing that the language used

around digital and online services is not universally understood even if in reality and practically, people are actually making use of these services.

### Dealing with correspondence

Over half of the respondents (57%) were unable to or had difficulty dealing with general correspondence; that is, opening letters, understanding the content of letters and being able to respond. This was for a variety of reasons including health, stress and language barriers (figure 11).

Figure 11: Dealing with correspondence



Of note is that whilst most interviewees felt that English was not a particular problem, when it came to dealing with, what may be perceived as stressful correspondence, the language barrier became an obstacle.

### Dealing with legal issues and interaction with health

The majority of respondents (71.4%) reported that their health problems impacted on their ability to deal with the court or tribunal services – whether online or otherwise. Respondents noted how they were unable to deal with issues alone and needed assistance with what they saw as complicated processes. They identified how they were frustrated at trying to understand the decisions that were under challenge and their fear of being misunderstood. Responses are included in figure 12.



Figure 12: How health problems impact on participation

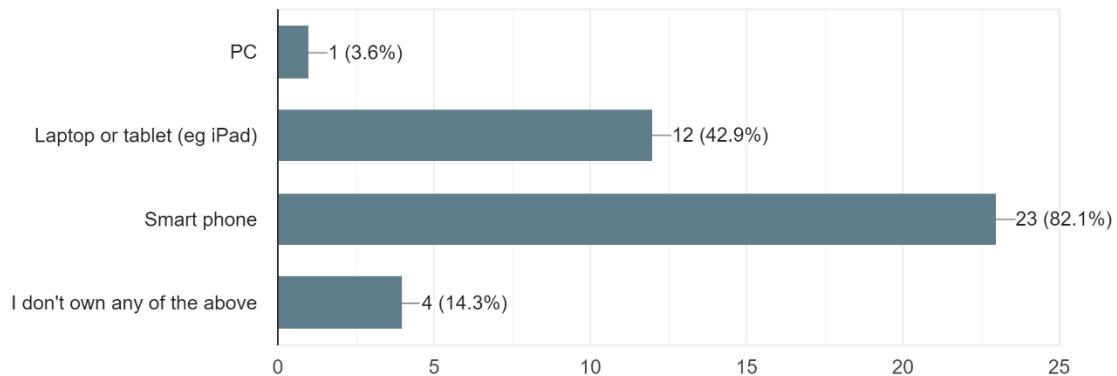


## Online services

The majority of people owned either a laptop (43%) or smartphone (82%), see figure 13. There were though a proportion of people who didn't own any of these but they did know where to go to access such services via family or friends.

Figure 13: Devices

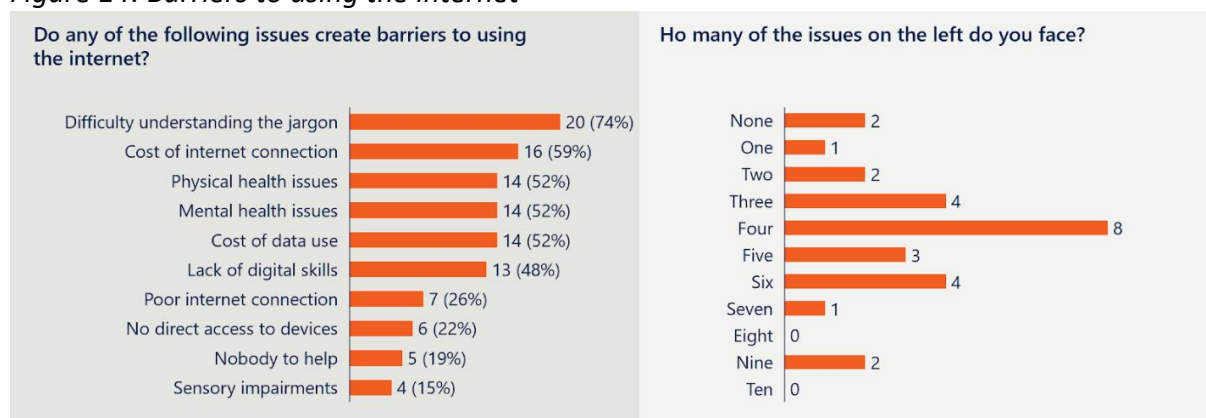
Do you own any of the following items: (tick as many as you own)  
28 responses



Use of the internet varied but for those who used it, many also did their banking on-line and used Google. There was also a high percentage of people using the internet to access their benefits (UC) although some of these didn't realise that they were using online services or the internet. Confidence in using the internet was around 50% with most people saying they were somewhat confident.

Barriers to using the internet varied. Many were health related but a lot of people suspected that if something was not right (for instance, pressing 'next' on a page may lead to uncertainty) this would unsettle them and they would lose confidence. Stress also came across as a pertinent factor. 74% reported that they have difficulty understanding the jargon and the cost of internet connection was a major factor in accessing the internet. Many faced multiple challenges from the list in figure 14.

Figure 14: Barriers to using the internet



Appellants reported the reasons for the barriers to accessing the internet are shown in figure 15.

Figure 15: Reasons for barriers to using the internet



The majority of interviewees had not used online justice services. This perhaps is unsurprising. Online justice is relatively new and in a person's lifetime, they may not be involved in a justiciable issue very often. That being said, many of the interviewees had attended the law centre for help with an online social security appeal.

### The need for assistance

All interviewees were asked 'without assistance, how would you deal with this issue – online or otherwise?' The responses are included below:



From the responses, there is a clear indication that many people when faced with a justice problem, in the absence of receiving support and assistance, would give up or not pursue their rights.

Although this was a small-scale undertaking, there were common themes which highlights the following:

- The use of language and terminology when considering online justice does need to be kept simple and articulated in a manner which is accessible.
- The safety net of friends and family would certainly be needed in terms of assistance and support to deal with online justice. Although many do have access to internet services and feel relatively confident using the internet, in reality, when faced with a legal problem, stress and anxiety would escalate and still be exacerbated when faced with barriers such as health problems, lack of confidence and perceived complexity.
- The importance of advice services to assist people, especially where there are existing health problems, cannot be overstated, whether for online assistance or otherwise.

#### **D. Digital Support**

The working group explored the provision of digital support for unrepresented appellants less able to participate in the digital process through meetings with a digital support partner and HMCTS to understand what services are currently provided. Again, research has identified many of these issues and these will be covered along with further findings in our final report.

People can be digitally excluded because they do not have the connectivity, the hardware, or the confidence to participate in online processes.<sup>28</sup> For those who are severely digitally excluded, maintaining paper channels is critical. However, there are some who can, with support, participate effectively in a digital process. Whilst some will receive that support from friends or family, many will not. For such people, HMCTS has recognised the need for, and committed to providing, digital support.

HMCTS initially funded The Good Things Foundation to conduct an “Assisted Digital” pilot in 2019, and subsequently awarded a contract to We Are Digital in 2021. We Are Digital and HMCTS’s “Digital Support” service has been running since June 2022, partnering with delivery organisations across the country, which are a mix of community organisations and law centres and numbering over 100 nationwide. The digital support on offer covers the following processes which have been digitised: SSCS benefits appeals, the single justice procedure (criminal), online money claims, divorce, probate and help with fees.

Digital support can be accessed by contacting We Are Digital directly, or through a referral from an HMCTS call centre. When contact is made, the individual will be triaged for their

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<sup>28</sup> JUSTICE, [Preventing Digital Exclusion in Online Justice](#) (2018)

eligibility. Eligibility is based on whether the individual lacks confidence, lacks the ability to use digital processes, and/or does not have access to necessary hardware or connectivity. For those who are eligible, the method of support received is mixed depending on what the delivery partner organisations can offer, but it can be in person (usually at the organisation's community location, however some at home visits are available) or by telephone. Telephone appointments in which the supporting organisation proxy fills in the form are only available for SSCS.

The working group has begun to have discussions with some delivery partner organisations to hear about how the service is working, and we will discuss more in the second phase of the project. Unlike the rest of the stakeholder engagement for this interim report, this did not focus solely on SSCS appeals but rather asked organisations about their experience of providing digital support for a variety of different online tribunal and court processes. The following preliminary findings are subject to further conversations taking place with more partner organisations in the coming months.

1. **Digital support is “very vital”.** We heard that: *“The lack of digital confidence is very common – we see it a lot. But it is also usually not on its own. There are a lot of people without the means to get online. [...] For those who the cost of living [crisis] is impacting the most – they have no laptops at home, they do everything through the phone anyway. But now [we are seeing] many people who have been unable to keep up with phone bills and their phones are being cut off.”*<sup>29</sup> - Service Manager, Support Through Court
2. **Digital support is rarely the only support someone needs;** it often forms part of a holistic support appointment which also provides practical, emotional, and/or legal support. Therefore, digital support alongside advice is a good model for many appellants. We welcome that HMCTS has taken onboard feedback about the need for advice alongside digital support and we will explore the latter phases of the project how well this is working.
3. **Changes to the triage process would improve the user journey.** Currently delivery partner organisations are not permitted to triage and assess eligibility; it must be done on a triage call with HMCTS. In practice, however, this is clunky. Individuals often approach organisations directly in the community, and it becomes obvious during that organisation's onboarding that the client is eligible for digital support. Having to pause the consultation, while the client calls HMCTS to be triaged and deemed eligible, to then be referred to the organisation they have already accessed, was described to us as “stressful” for the client and “really interrupted the support session”<sup>30</sup>. While we are aware that there has been an initiative in 2023 to reduce the time of such calls to 5 minutes, rather than the usual circa 15 minutes for a triage call, we still consider the user journey would be significantly improved if the delivery partner organisation could conduct the triage itself.

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<sup>29</sup> Meeting with Support Through Court, 14 March 2023

<sup>30</sup> Meeting with Support Through Court, 14 March 2023

4. **Not all processes which have been taken online by HMCTS are covered by the scheme:** We are concerned that gaps in digital support will leave those struggling to access online services even further excluded. We are minded to recommend that all online activities and processes, be they a single online form or an end-to-end reformed service, should be covered by the Digital Support Scheme.
5. **Support with video hearings is not currently covered by the scheme.** Video hearings continue to be provided in cases in which litigants in person are experiencing some level of digital exclusion (although they are given the option on the mode of hearing in SSCS). We spoke to a delivery partner organisation which was regularly providing digital support for hearings, providing clients with a computer, a room, and a supporter to take notes. None of this support with video hearings is covered by the scheme: it supports online form filling and other preparatory tasks ahead of a hearing, but not the hearing itself even if it takes place online.

The reasons for video hearings taking place when there is some level of digital exclusion present are complex: we understand sometimes the individual may become digitally excluded during proceedings (e.g. their Wi-Fi contract at home becomes unaffordable); some may not feel confident to speak up in a previous hearing to explain difficulties with a video hearing; some may miss or misunderstand the part of the form which asks about mode of hearing; or sometimes they agree to a video hearing wrongly thinking it will be achievable on their phone.

Despite the digital exclusion these people experience, it may be that a video hearing is the best mode of hearing for these people and may be better than an in-person hearing or a telephone hearing, *if they can access digital support with it*. For example, many appellants in SSCS seek to avoid the stress, expense and for some physical difficulties of travel to their tribunal centre to appear in person. For those people, some may prefer to appear by video than telephone, so the tribunal can see them, and they can see the tribunal, and they can join from their home or a local community centre they are familiar with. However, without any eligibility for digital support, many will opt for telephone, a paper-based hearing, or struggle to appear in person. We therefore question whether support with video hearings should be part of the WAD and HMCTS digital support scheme, as part of a wider priority to provide tribunal users facing multiple barriers to participation with choice about how they can best participate in hearings.

### Next Steps

In May 2024, the working group will move on to phase 2 of the project. The first meeting will decide the scope of the second phase of the project but the overall aim will be to look at other jurisdictions including the asylum and immigration tribunal and the special tribunals to identify barriers and to learn from best practice. A further literature review will be conducted to help the group draw on existing research and further fieldwork will be undertaken. The group will also draw on the evaluation work being undertaken by HMCTS and the MoJ and follow-up on the recommendations made in this report.

Whilst we anticipate that the work from this work will be ongoing, a final report on our findings and recommendations will be published in Autumn 2024.

## APPENDIX A: Working Group members

**Caroline Sheppard OBE** (Chair), Former Chief Traffic Penalty Tribunal Adjudicator

**Ray Burningham**, Consultant

**Professor Naomi Creutzfeldt**, Professor of Law and Society and Co-Director of Research, Kent University

**Professor Grainne McKeever**, Professor of Law and Social Justice and Co-Director of the Ulster University Law Clinic, Ulster University

**Amanda Finlay CBE**, Advisory Consultant, Advisory Consultant and former Chair Law for Life & Council member, JUSTICE

**Judge Verity Jones**, Regional Tribunal Judge, SSCS, Social Entitlement Chamber

**Brian Thompson**, Retired/Visiting Fellow, Liverpool University

**Ellen Lefley**, Lawyer, JUSTICE

**Nicholas Dillon**, Consultant, Nous

**Moira Clarke**, Director of the Henley Centre for Customer Management, Henley Business School

**Diane Sechi**, Senior Solicitor, South West London Law Centre and Simmons & Simmons

**Luc Altmann** (observer), Head of Insight, HMCTS

**Ramona Franklyn** (observer), Head of HMCTS Reform Evaluation, MoJ

**Professor Maurice Sunkin KC**, Professor of Socio-Legal Studies, Essex University

**Heidi Bancroft**, Secretary to the AJC, Administrative Justice Council (project lead and secretariat)

**Sally Hunt**, AJC Co-ordinator, Administrative Justice Council (secretariat)

# RESEARCH PAPER

ON BEHALF OF THE ADMINISTRATIVE JUSTICE COUNCIL

ANNIE O'SULLIVAN  
CAITLIN COONEY  
JACK QUALTROUGH

## 1 CHRONOLOGY OF REVIEW

In order to support the Administrative Justice Council ("**AJC**") (Tribunal user experience in the modernised HMCTs) Working Group ("**WG**") we have been asked to provide a review of publicly available material which reports on the various issues surrounding digitisation of Tribunal Services. In particular we are asked to draw out material identifying the impact of HMCTs modernisation programme on users, including stakeholders as well as parties, throughout the end to end process of making a digital appeal to the tribunal through to the final outcome. We understand that the focus of the WG will initially be on Social Security Tribunal users and we have therefore drawn out impacts on users of the SST particularly but have considered other Tribunal jurisdictions.

In doing so we have considered all of the reports and research papers which have been notified to us by the AJC and we have also conducted our own searches for any additional publicly available material which may be relevant to the work of the WG. Please see the table at Annex A setting out the reports which have been reviewed alongside a short note of their broad contents and any relevant findings/recommendations. We have attempted to identify whether such recommendations have since been met or whether they remain outstanding.

There are a number of pre and post-Covid-19 reports and articles which track progress relating to digital reform by HMCTs. Reports dating back to 2018 have been reviewed, as transition to digital reform, in particular online hearings, was under consideration before the pandemic. However, the need to adapt to remote services in light of the unprecedented global health crisis caused by Covid-19 accelerated planned reforms, as well as introducing novel concerns. We have reviewed reports chronologically in an attempt to demonstrate the trajectory of progress and we have highlighted key concerns which appear to remain unresolved.

## 2 USER GROUPS

In light of the request from the AJC that we highlighted any specific issues which may create digital exclusion, we divided our review by reference to different user groups, namely those with disabilities and mental health conditions; those from a lower socio-economic background; those who do not speak English as their primary language; and those with other protected characteristics. Some research we came across related to other stakeholders, such as legal representatives but was less relevant to the key issues as it was narrower in focus. It became apparent from the review of material, that whilst vulnerabilities are wide and varied (ranging from neurodiversity and mental health conditions, to physical disabilities), some reports tended to categorise users as 'vulnerable' without specific breakdowns to capture the differences between vulnerabilities.

## 3 CONCERNS AND ASSOCIATED RECOMMENDATIONS

### 3.1 ACCESSIBILITY

#### (a) Technology

Earlier research found that many advisory organisations had the necessary software to move to remote delivery of welfare advice provision during the pandemic but some did not.<sup>1</sup> Of those which were not well placed to delivery advice remotely, insufficient or inadequate technology

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<sup>1</sup> *Welfare Benefit Provision During the Pandemic - Administrative Justice Council (23 March 2021)*



was a recurring issue amongst those unprepared for switching to remote delivery.<sup>2</sup> Access to a wide range of equipment is required for hearings to be conducted effectively such as second screens, laptops and headsets.<sup>3</sup> This issue has a direct read across to socioeconomic status as equipment is costly and the need to have access to equipment can disadvantage applicants who cannot afford it.<sup>4</sup> Internet access will vary across different communities with rural communities struggling in particular,<sup>5</sup> as well as particularly high numbers of those aged 65 and over lacking internet access.<sup>6</sup> Without access to reliable broadband, some users are digitally excluded,<sup>7</sup> and this can be extremely detrimental to the ability to participate fully in the remote tribunal process from the outset, not just at the point of remote hearings. This is a concern which has also attracted attention amongst policymakers and others, with the Mayor of London's office launching the 'Digital Inclusion Service' pilot in July 2022, with the aim of reducing the number of Londoners experiencing digital exclusion<sup>8</sup>. As part of an initial report into this area, the scheme has identified 6 key challenges for digital inclusion in the context of London, which include securing access to affordable broadband for residents, as well as meeting the scale of need amongst the community for devices<sup>9</sup>, with an estimated 270,000 Londoners having no access to the internet or digital access at all<sup>10</sup>. This initiative is however, limited geographically to those who live in London.

(b) Digital literacy of users

The ability and confidence of users when engaging with remote tribunals directly correlated to the user experience, leading to a more positive outcome for those comfortable with technology.<sup>11</sup> However, vulnerable users are likely to lack confidence and the digital skills to enable full and confident engagement. Applicants often require digital assistance<sup>12</sup> to aid with their understanding of technology. This concern interacts with the concept of intersectionality; the idea that some social categories (such as race, gender and socio-economic status), interact with other categories, which for some tribunal users who straddle multiple categories, may amplify negative consequences.<sup>13</sup> By way of example, an applicant with neurodiversity may struggle to identify and respond to non-verbal cues provided by a video feed of a remote

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<sup>2</sup> *Welfare Benefit Provision During the Pandemic - Administrative Justice Council (23 March 2021)*

<sup>3</sup> *Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges - Dr Natalie Byrom, Sarah Beardon for the Legal Education Foundation (2 June 2021)*

<sup>4</sup> *Achieving Digital Equity in Access to Justice - Kate M Murray (Lead Researcher for the Achieving Digital Equity Project) (October 2021)*

<sup>5</sup> *Westminster Government Civil Society Shadow Report - Inclusion London (25 March 2022)*

<sup>6</sup> *Safeguarding Access to Justice in the Age of the Online Court – Denvir and Selvarajah (Modern Law Review, Volume 85, Issue 1, Pages 25-68) (January 2022)*

<sup>7</sup> *Digital Inclusion in London - Loti Digital Inclusion Innovation Programme - Mayor of London (July 2022)*

<sup>8</sup> *Mayor of London bids to get 75,000 digitally excluded Londoners online*, Mayor of London <https://www.london.gov.uk/press-releases/mayoral/mayor-to-get-digitally-excluded-londoners-online>

<sup>9</sup> *Digital Inclusion in London*, The LOTI Digital Inclusion Programme, July 2022

<sup>10</sup> *Mayor of London bids to get 75,000 digitally excluded Londoners online*, Mayor of London <https://www.london.gov.uk/press-releases/mayoral/mayor-to-get-digitally-excluded-londoners-online>

<sup>11</sup> *First-tier Tribunal (Immigration and Asylum Chamber) Reform: interim process evaluation – HMCTS (4 October 2022)*

<sup>12</sup> *Digitisation and Access to Justice in the Community - Administrative Justice Council (April 2022)*

<sup>13</sup> *Exclusion in the interests of inclusion: who should stay offline in the emerging world of online justice?* – Mulcahy & Tsalapatinis (Journal of Social Welfare and Family Law) (26 October 2022)

tribunal<sup>14</sup>, which can then be exacerbated if they are also in a lower socio-economic group, which itself may present digital barriers such as slower broadband or a lack of access to devices. This intersectionality needs to be considered when software for remote hearings is first designed, when information about the process is shared and when training is delivered so that it is appropriate for disabled users.<sup>15</sup>

As highlighted above, many of the reports do not necessarily make distinctions between different vulnerabilities but there are some clear references within the research that those who have neurodiversity conditions (ADHD, dyslexia, ASD, dyspraxia) and who are most impacted by digital reforms<sup>16</sup>. However, the research in this regard appeared limited to the impact of participation in online hearings rather than the impact of the entire process from the outset (e.g. completing digital appeal forms online). Furthermore, the range of vulnerabilities, while varied, all impact users' abilities to engage with remote systems and levels of digital literacy.

### 3.2 SCRUTINY OF THE REFORM PROGRAMME AND OUTCOMES

Many of the reports emphasised the importance of implementing an increased level of scrutiny into the reform programme, which had seemingly been 'conducted behind the closed doors of the MoJ and HMCTS'<sup>17</sup>. Additionally, there have been calls for further independent reviews to assess how effective the interventions of digital support services have been for users<sup>18</sup>. Another important area of consideration highlighted was planning and strategic oversight, with some noting the manner in which there seems to have been a haphazard approach to the implementation of technology within HCMTS, as well as the abandonment of approaches such as continuous online resolution 'with little ceremony and less discussion about what went wrong and why'<sup>19</sup>. Linked to this is a recommendation to carry out detailed research and assessments to evaluate outcomes and identify barriers to effective justice and best practices<sup>20</sup>. To address this shortcoming, it may be helpful, to address this shortcoming if further work could differentiate between user groups (e.g. applicants and legal professionals) and could also helpfully be divided into differences in vulnerability to assist with specific and in-depth data collection (discussed below).

### 3.3 DATA COLLECTION

At the outset of the HCMTS reform program, research such as that produced by Dr Natalie Byrom for the Legal Education Foundation emphasised the importance of constructing robust systems of data collection and analysis, in order to identify and track the journey of applicants

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<sup>14</sup> Supporting Online Justice: Enhancing Accessibility, Participation, and Procedural Fairness - Professor Linda Mulcahy, Dr Emma Rowden, Dr Anna Tsalapatanis, page 16 (22 March 2022)

<sup>15</sup> *Exclusion in the interests of inclusion: who should stay offline in the emerging world of online justice?* – Mulcahy & Tsalapatinis (Journal of Social Welfare and Family Law, 26 October 2022)

<sup>16</sup> *Supporting Online Justice: Enhancing Accessibility, Participation, and Procedural Fairness* - Professor Linda Mulcahy, Dr Emma Rowden, Dr Anna Tsalapatanis (22 March 2022)

<sup>17</sup> *Remodelling Social Security Appeals (Again): The Advent of Online Tribunals* – Joe Tomlinson and Robert Thomas, Journal of Social Security Law, 25 (2). pp. 84-101 (2018)

<sup>18</sup> *Digitisation and Access to Justice in the Community* - Administrative Justice Council (April 2022)

<sup>19</sup> *Remote Hearings in the Social Security Tribunal: Should we be worried?* – Dr Marie Burton *Journal of Social Security Law*, 28 (1) . Pages 36-53 (2021)

<sup>20</sup> *The Digitalisation of Tribunals: What we know and what we need to know* - Public Law Project; *Welfare Benefit Provision During the Pandemic* - Administrative Justice Council (5 April 2018)

through the tribunal process, as well as identifying potentially vulnerable or digitally excluded users who may require further support<sup>21</sup>. As part of this work, the LEF report identified the minimum amount of data that HMCTS should look to obtain, in order to identify the potential vulnerability of parties<sup>22</sup>, which seems to have been partly taken up by HMCTS, as demonstrated in their 'Protected Characteristics Questionnaire'. However, there is a widespread view that the steps taken by HMCTS in this area have been far from sufficient, with a 2022 report by the House of Commons Justice Committee concluding that HMCTS had failed to incorporate appropriate data collection steps during the reform process, and recommending that the Ministry of Justice ring-fences funding in order to provide the significant investment and focus required in order to bring this area of the service to an appropriate standard<sup>23</sup>.

### 3.4 DIGITAL SUPPORT FOR APPLICANTS

Reports often recommended supporting applicants through provision of resources and information.<sup>24</sup> One such example of this kind of support was the series of videos published via the HMCTS YouTube account to prepare applicants for the process of an online tribunal, considered in the work of Mulcahy et al in March 2022.<sup>25</sup> This report concluded that whilst the resources produced had been keenly received, there were still many other areas where similar work was also required<sup>26</sup>. One report noted that more resources have been produced of late, with HMCTS starting to publish videos explaining the processes, one of which is specifically used in the SSCS but is limited to online hearings.<sup>27</sup> Taking steps to increase the availability of legal representation<sup>28</sup> was also suggested alongside digital assistance and/or skills training, however this may not be enough for people requiring ongoing physical, mental or cognitive support<sup>29</sup>. Furthermore, as we are aware, it appears unlikely that significant changes will be made to schemes such as Legal Aid, to broaden this availability<sup>30</sup>.

Overall it was concluded that further work is needed in the area of digital support. One area of success has been the further funding provided for digital design toolkits<sup>31</sup> and this has built in

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<sup>21</sup> *Digital Justice: HMCTS data strategy and delivering access to justice – report and recommendations* – The Legal Education Foundation (October 2019)

<sup>22</sup> *Ibid*, page 7

<sup>23</sup> *Sixth Report of Session 2021-2022* – House of Commons Justice Committee (27 April 2022)

<sup>24</sup> *Remote Justice? Virtual benefits tribunals and disabled clients* - Islington People's Rights; *Achieving Digital Equity in Access to Justice* - Kate M Murray (Lead Researcher for the Achieving Digital Equity Project) (November 2021)

<sup>25</sup> *Supporting Online Justice: Enhancing Accessibility, Participation, and Procedural Fairness* - Professor Linda Mulcahy, Dr Emma Rowden, Dr Anna Tsalapatanis, page 16 (22 March 2022)

<sup>26</sup> *Supporting Online Justice: Enhancing Accessibility, Participation, and Procedural Fairness* - Professor Linda Mulcahy, Dr Emma Rowden, Dr Anna Tsalapatanis (22 March 2022)

<sup>27</sup> *Supporting Online Justice: Enhancing Accessibility, Participation, and Procedural Fairness* - Professor Linda Mulcahy, Dr Emma Rowden, Dr Anna Tsalapatanis (22 March 2022)

<sup>28</sup> *Safeguarding Access to Justice in the Age of the Online Court* – Denvir and Selvarajah (Modern Law Review, Volume 85, Issue 1, Pages 25-68) (January 2022)

<sup>29</sup> *Westminster Government Civil Society Shadow Report* - Inclusion London (25 March 2022)

<sup>30</sup> *Social Welfare Law Cases: Legal Aid*, Hansard, 1 February 2022 <https://hansard.parliament.uk/Lords/2022-02-01/debates/6E1A45AC-5A55-4DAF-B752-4DD30353C576/SocialWelfareLawCasesLegalAid>

<sup>31</sup> *Supporting Online Justice: Enhancing Accessibility, Participation, and Procedural Fairness* - Professor Linda Mulcahy, Dr Emma Rowden, Dr Anna Tsalapatanis (22 March 2022)

considerations of the variety of vulnerable users, taking account of neurodiversity and visual and hearing impairments.

As well as supporting applicants, a number of the reports recommended further guidance and support for judges<sup>32</sup> and office holders on how to conduct remote hearings to take into account the diversity of users.<sup>33</sup> The research suggests that this will be key to ensuring that judges are able to appropriately deal with tribunals, given that the transition to remote hearings has also been found to increase the burden upon judicial office holders, who have felt that the reduction in available administrative support has often required them to adopt a 'constant posture of vigilance, which increased their cognitive burden during hearings'<sup>34</sup>. So far the Equal Treatment Bench Book has been a step in the right direction, but it is considered that more must be done.<sup>35</sup>

Much of the reporting and reviews of the digital support services operated in conjunction with the HMCTS reforms are connected to the pilot scheme, previously operated by the Good Things Foundation via a network of individual contact centres<sup>36</sup>. At the conclusion of the scheme, it was noted by the Foundation that whilst some successes had been delivered, there did remain areas of best practice and learnings which would benefit subsequent iterations of the service<sup>37</sup>. The format of the Digital Support service has been subsequently updated, and is operated by We Are Digital. Unlike its predecessor, the new service operates nationally, via a mix of telephone and online sources<sup>38</sup>. From our research however, there does seem to be a lack of publically available independent research on the ongoing operations of the service, and the level of assistance being provided to users, which is something that has been recommended on multiple occasions by researchers in this area<sup>39</sup>.

### 3.5 FORMAT OF SYSTEMS

Further recommendations for the actual format of the hearings were hybrid systems,<sup>40</sup> the number of platforms standardised across different courts,<sup>41</sup> or a choice of format for applicants

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<sup>32</sup> *Exclusion in the interests of inclusion: who should stay offline in the emerging world of online justice?* – Mulcahy & Tsalapatinis Journal of Social Welfare and Family Law, (26 October 2022)

<sup>33</sup> *Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges* - Dr Natalie Byrom, Sarah Beardon (for the Legal Education Foundation) (2 June 2021)

<sup>34</sup> *Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges* - Dr Natalie Byrom, Sarah Beardon (for the Legal Education Foundation), page 92, (2 June 2021)

<sup>35</sup> *Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges* - Dr Natalie Byrom, Sarah Beardon (for the Legal Education Foundation) (2 June 2021)

<sup>36</sup> *HMCTS Digital Support Service: Implementation Review* – The Good Things Foundation (September 2020)

<sup>37</sup> *HMCTS Digital Support Service: Implementation Review* – The Good Things Foundation (September 2020) (pp. 35, 48 and 52)

<sup>38</sup> <https://www.gov.uk/government/news/access-to-justice-improved-with-hmcts-national-digital-support-service>, HMCTS, published 12 October 2021

<sup>39</sup> *Digital Support for HMCTS Reformed Services: What we know and what we need to know*, Public Law Project (May 2021), p.13

<sup>40</sup> *Welfare Benefit Provision During the Pandemic - Administrative Justice Council* (23 March 2021)

<sup>41</sup> *Access to justice during the COVID-19 pandemic in the UK - Report by various parties for the All Party Parliamentary Group for Legal and Constitutional Affairs* (April 2022)

to choose their preferred method.<sup>42</sup> Note for this final recommendation that applicants should be fully informed of what each method entails so they can make an educated decision.<sup>43</sup> This is an approach that has been followed in other jurisdictions such as Canada and Denmark, with a focus upon ensuring that appellants are guided towards resolving their issues via the most appropriate method to their needs and requirements<sup>44</sup>.

#### 4 JURISDICTIONAL ISSUES

The research that we have reported on focuses social security in the context of the move to remote provision of advice provided by legal services and organisations. However, we have also noted where similar issues arise in other jurisdictions. For example, efforts to introduce digital tribunals in British Columbia encountered issues with rural users, who did not have access to reliable broadband, a problem which is exacerbated by the combination of rural living and low income households<sup>45</sup>. As noted above however, this was an issue, like in Denmark, which the authorities sought to mitigate by providing appellants with the opportunity for their matter to be heard as part of a physical tribunal, instead of digitally<sup>46</sup>. The availability of multiple channels has been a point emphasised in multiple pieces of research in 2022<sup>47</sup>, and it will be useful to keep a watching brief to see if similar provisions are produced in the forthcoming Courts and Tribunals (Online Procedure) Bill, or are somehow addressed through the Online Procedure Rules and any related guidance. As an alternative point of best practice, it was noted that in the SEND jurisdiction, there are dedicated support teams to provide appellants with guidance and support ahead of their remote hearing, which was suggested as being a useful service that should be extended to other jurisdictions as well<sup>48</sup>.

#### 5 CONCLUSION

In conclusion, from the research that we have seen, there were a number of concerns identified by reports both pre and post COVID-19. As set out above whilst some sensible solutions were posited, there has been a slow progress towards implementing these. Many later reports highlight the same concerns and repeat the same recommendations showing progress is not being made quickly enough to prevent digital exclusion.

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<sup>42</sup> *Remote Justice? Virtual benefits tribunals and disabled clients - Islington People's Rights; Achieving Digital Equity in Access to Justice* - Kate M Murray (Lead Researcher for the Achieving Digital Equity Project) (November 2021)

<sup>43</sup> *Remote Justice? Virtual benefits tribunals and disabled clients - Islington People's Rights; Achieving Digital Equity in Access to Justice* - Kate M Murray (Lead Researcher for the Achieving Digital Equity Project) (November 2021)

<sup>44</sup> *Digital Support for HMCTS Reformed Services: What we know and what we need to know*, Public Law Project (May 2021)

<sup>45</sup> *Achieving Digital Equity in Access to Justice*, Kate M. Murray (October 2021)

<sup>46</sup> *Digital Support for HMCTS Reformed Services: What we know and what we need to know*, Public Law Project (May 2021)

1. <sup>47</sup> *Exclusion in the interests of inclusion: who should stay offline in the emerging world of online justice?* – Mulcahy & Tsalapatinis *Journal of Social Welfare and Family Law*, (26 October 2022); *Safeguarding Access to Justice in the Age of the Online Court* – Denvir and Selvarajah (*Modern Law Review*, Volume 85, Issue 1, Pages 25-68) (January 2022)

<sup>48</sup> *Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges* - Dr Natalie Byrom, Sarah Beardson (for the Legal Education Foundation), page 92, (2 June 2021)

## Annex A

Key code:

***[Digital assistance]***

***[Disabilities and mental health conditions]***

***[Socio-economic status]***

***[Non-English speakers]***

***[Protected characteristic]***

***[Users of the reformed/digital HMCTS service]***

***[Public observers of the Court of Protection]***

Please note, where a tag applies across an entire document, we have inserted the relevant tag in the 'Title' column. Where tags apply to individual statements, we have inserted these at the end of the relevant statement.

Date	Title	Jurisdiction / groups	Scope	Overall Findings / key concernspage	Any recommendations	Comments/Progress
Mar-18	<p><i>Remodelling Social Security Appeals (Again): The Advent of Online Tribunals</i> – Joe Tomlinson and Robert Thomas, Journal of Social Security Law</p> <p><b>[Disabilities and mental health conditions]</b></p>	<p>Department for Work and Pensions. Vulnerable appellants with mental health conditions.</p> <p>Other jurisdictions, such as the US and Canada, have made increasing use of video link for live evidence (for further information: M Federman, 'On the Media Effects of Immigration and Refugee Board Hearings via Videoconference' (2006) and IV Eagly, 'Remote Adjudication In Immigration' (2015)</p>	<p>The introduction of online tribunal processes in social security appeals in response to budget cuts and austerity. In particular, it considers the changing landscape of social security decision-making, how online tribunals have been developed, and how online processes will differ to traditional tribunal appeals. The article also surveys the key issues raised by the introduction of online tribunals.</p>	<p>Announcing a wide-ranging set of reforms without much detail has prompted concern about the scale of the reforms and how they will work in practice. Little public scrutiny, all behind closed doors of MoJ and HMCTS.</p> <p>Combined concerns about restricted legal aid and in trying to be more cost efficient, the access to justice of the tribunal process will be compromised.</p> <p>Concerns about claimants' digital capability.</p> <p>Oral evidence via video risks unfairness for appellants or reduce the ability of the other parties to test such evidence. Judges collecting evidence and witness creditability often depends on non-verbal communication, and live evidence at a hearing is subject to a degree of formality and supervision by the tribunal.</p>	<p>MoJ and HMCTS to publish detailed plans about which reforms to take forward and their practical operation.</p> <p>Increased scrutiny of MoJ and HMCTS decisions.</p> <p>Place emphasis on data system design.</p>	<p>For scrutiny, the fact that there have since been many more reports (the below articles as an example), this shows the recommendations being addressed slightly. The system has also now been shifted again due to Covid-19, and this has attracted it's own scrutiny.</p> <p>The issue of digital capability amongst claimants is an ongoing issue.</p>

				"Social security appeals operate in the context of an imbalance of power between the state in the form of the DWP and, on the whole, vulnerable claimants. Any system of online appeals must compensate for this imbalance in such a way that weaker parties continue to be assisted by the tribunal."		
Apr-18	<i>The Digitalisation of Tribunals: What we know and what we need to know</i> - Public Law Project	The report aimed to review, and provide guidance upon, the reform and digitalisation process being embarked upon by HMCTS and the MOJ.	<p>This report sought to cover 4 key areas:</p> <p>a) The context for the introduction of online tribunals</p> <p>b) What is already known about what tribunal procedures will look like</p> <p>c) What the key issues and questions will be going forward</p> <p>d) How do the developments in the UK fit within wider international developments</p>	<p>In the specific context of user experience, the report identified the following 'key research questions':</p> <p>What are the views and experiences of people using video link hearings and continuous online hearings?</p> <p>How will online processes influence the behaviours and understandings of users?</p> <p>Will representation affect outcomes in online tribunals?</p> <p>How does the experience and effects of representation in online tribunals differ from conventional tribunals?</p>	<p>It will be crucial to establish a clear agenda regarding research of online tribunals, in order to both support and assess the design and implementation.</p> <p>Furthermore, it also raises the possibility of international parties sharing thoughts on common issues, and best practices to resolve them.</p>	The consideration of international perspectives was provided further in the PLP's subsequent paper concerning the impact of Digital Support in 2021. The major insight developed from this are areas of best practice and learning opportunities that have come from these different applications of the digitisation process.



				<p>To what extent do online procedures facilitate the hearing and determination of appeals?</p> <p>How will online procedures impact upon the judicial role?</p>		
Mar-19	<p><i>Access to Justice - implications of court and tribunal reforms - Revolving Doors</i></p> <p><b>[Socio-economic status]</b></p>	<p>Vulnerable parties, which may include people who are homeless, have issues with their mental health, or are inside the prison system. For these reasons, these parties may encounter the 'revolving door' of personal crisis and crime.</p>	<p>Revolving Doors are a charity working to improve services for people stuck in the 'revolving door'.</p> <p>The purpose of this report was a response to a consultation by the Justice Select Committee, regarding the potential impact of digitisation on the parties being supported by the charity.</p>	<p>"In our survey of 30 people with lived experience of 'revolving door', we found a heavy reliance on informal information and support networks made up of friends and family in identifying legal aid eligibility. With the exception of one person who took part, participants did not know about digital services such as the government's own legal aid entitlement checker and said they were not likely to use online services to find out about their eligibility"</p>	<p>"...we recommend major systematic reviews or academic research that goes alongside the pilot sites to evaluate outcomes of Reform programme, particularly looking at the outcomes of digital court and tribunal proceedings to be commissioned urgently."</p>	<p>In the Public Law Project's 2021 research concerning the pilot of the Digital Support pilot, a notable area of concern was that particularly vulnerable groups such as "homeless people, elderly people and immigration detainees" had not been targeted by the pilot. As such, this has been an area where the recommendations of this report have not been followed, potentially to the detriment of vulnerable parties.</p>

Oct-19	<p><i>Digital Justice: HMCTS data strategy and delivering access to justice - Report and recommendations</i> - Dr Natalie Byrom</p> <p><b>[Protected characteristic]</b></p>	Data collection by HMCTS across the entire reformed courts and tribunal system.	The report aimed to provide a series of key learning points and approaches to shape a data strategy that should be adopted by HMCTS, in order to ensure its court reforms provided sufficient access to justice.	<p>As part of the discussions between stakeholders, the report was able to identify an 'irreducible minimum' of access to justice, which consisted of:</p> <ol style="list-style-type: none"> <li>1. Access to the formal legal system</li> <li>2. Access to an effective hearing</li> <li>3. Access to a decision in accordance with substantive law</li> <li>4. Access to remedy</li> </ol>	The report produced a list of key areas of data that courts should look to assess appellants on, in order to determine whether they required extra support as a result of being a) vulnerable; b) at risk of digital exclusion; or c) subject to a protected characteristic under the EA 2010. (full table provided on page 18).	<p>In 'data in the courts and tribunal system' published in dec. 21, HMCTS advised that "We have built the collection of protected characteristics data into the Probate, Online Civil Money Claims (OCMC), Divorce and Social Security and Child Support (SSCS) services through the design of a common process for our services. To date, over 150,000 people have answered the protected characteristic questionnaire, and the response rate is approximately 50%.</p> <p>We are collecting essential data on initiation channels (paper/digital) across different services and using it internally to inform access to justice analysis on our reformed services and</p>
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						<p>adding case flags that indicate whether a user has legal representation. This is being considered as part of our access to justice assessments in reformed services."It should be noted however that Dr Byrom later went on to strongly criticise the data strategy pursued by HMCTS in subsequent evidence given to the Justice Committee, whose findings were published in April 2022, and detailed below.</p>
Apr-20	<p><i>Digitisation and Access to Justice in the Community</i> - Administrative Justice Council</p> <p><b><i>[Digital assistance]</i></b></p>	Vulnerable parties, Digitally excluded parties	The report sought to identify the effect of digitisation upon access to justice, and more specifically, to identify any barriers that had been created which impeded parties' ability to navigate the tribunal or court system, as a result of digitalisation.	There is a high level of need for digital assistance. Of the responses taken from the respondent organisations, the findings indicated that 'between 35% and 50% of users [of the services] require digital assistance'. (p.32).	HMCTS should urgently arrange for an independent review to assess the effectiveness of 'assisted digital' support services, as well as continuing to monitor/collect data to measure the extent of digital exclusion.	In 2021, HMCTS signed a contract with a new service provider, to deliver digital support services nationally, as opposed to a smaller scale network of individual centres. At the conclusion of the pilot programme with the

				<p>Barriers are preventing front line advice providers from meeting demand for digital assistance. Amongst the respondents, the key barriers to providing this assistance were, in order of priority: lack of staff, time constraints, lack of IT equipment, other priorities, lack of space and lack of specialist knowledge,</p> <p>Lack of funding was preventing respondent orgs. from scaling up digital assistance offerings and face to face advice. The respondents were drawn from a broad selection of organisations, the largest percentage of which were made up of AdviceUK centres, libraries, charities, citizens advice bureaux and law centres.</p> <p>Respondent orgs. were unable to meet demand for services across all levels of social welfare law. In a survey of advice organisations, the main areas under social welfare law include welfare benefits, housing, debt, employment and mental health law (full details on p.22).</p>	<p>HMCTS should carry out research with front line advisers to identify existing barriers preventing the delivery of digital assistance, and then remove them</p> <p>The MoJ should set a national strategy to provide a sustainable framework with increased investment for the delivery of basic social welfare advice and legal support across all sectors providing front line advice services to members of the public.</p> <p>HMCTS should commit to collecting data and evaluating the level of demand for digital assistance across all areas of social welfare law with an aim of assessing the impact on the provision of advice services created by increased digital demand on front line service providers as digital justice processes advance across the various stages of the justice system".</p>	<p>previous provider, the Good Things Foundation, an end of pilot was produced (by the Foundation), which outlined areas where the service had performed well, and what lessons had been learnt (detailed further below).</p>
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Mar-21	<p><i>Welfare Benefit Provision During the Pandemic - Administrative Justice Council</i></p> <p><b>[Protected characteristic]</b></p>	<p>This report focuses on advice providers of welfare benefits across England and Wales, being stakeholders with direct contact with people requesting assistance with a social welfare problem.</p>	<p>This report looks at how organisations providing advice in the field of welfare benefits and adjacent areas of law and the challenges that social welfare advice providers and their clients faced during the pandemic.</p> <p>The results of the Pandemic Survey (being the basis of the report) only relate to the first national lockdown.</p>	<p>81% of organisations felt that they had the software to provide remote services but 19% lacked the requisite technology. The provision of "remote services" is not confined to legal services, as the stakeholders who responded to the Pandemic Survey were a mix of different organisations, including but not limited to, Citizens Advice, Health Service, Housing Association, Law centre/ solicitor, local authority, university/ law clinic and other voluntary organisations.</p> <p>68.% of respondents believe that despite the problems faced in delivering advice remotely, they were able to produce a fairly effective service, with 21% rating their service as very effective and only 2 respondents rating their service and not effective at all.</p> <p>Concerns include funding, training, digital literacy, physical limitations in home work spaces and client confidentiality when working from home.</p> <p>Remote services have become reliant on the telephone with advice</p>	<p>Comprehensive support must be provided to the advice sector.</p> <p>There should be proper funding for advice providers.</p> <p>A hybrid system to cater for all clients' needs should be implemented. A hybrid system would include a combination of telephone calls, virtual digital appointments and in person appointments. The thought behind this idea is that a hybrid system would accommodate clients who are more technologically capable without excluding those most vulnerable.</p> <p>Further research into best practices in the sector may also prove useful during this changing time.</p>	<p>This report contrasted the Digitisation report discussed above. The Digitisation survey suggested that many providers were concerned about the lack of preparedness for coping with the digitisation of the courts and advice however this report suggests a greater level of preparedness and that providers were proud of how well they had coped with adapting to remove provision during the pandemic. This would suggest that between April 2020 and March 2021, there has been a significant improvement in the ability of providers to provide remote services to clients.</p> <p>Some organisations have adapted to ensure their vulnerable clients can be reached, whereas others have</p>
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				<p>providers insufficiently prepared for providing online services, notwithstanding the majority of respondents thinking that they were prepare to switch to the remote delivery.</p> <p>Other issues include gathering information from clients, filling in forms, obtaining documentation and engaging with vulnerable clients and those lacking digital literacy skills. Any workarounds found have been expensive. Some clients have difficulty understanding advice in a remote setting.</p> <p>A minority of respondents believed that remote provision of advice allowed clients direct contact with advisers via telephone, increasing availability and efficiency and removing the need to travel for appointments. However the majority of respondents thought the remote delivery of services negatively impacted the advisor-client relationship.</p> <p>Vulnerable clients, such as those with mental health conditions,</p>		<p>been resigned to those who require face-to-face contact being excluded from services.</p> <p>Notwithstanding, systemic problems were prevalent and issues relating to funding, training and digital literacy were common across both reports.</p> <p>Advice provider's felt that some clients with mental health conditions, learning difficulties, and sensory impairment and language issues had issues understanding the advice delivered remotely. Some advice providers adopted workarounds and extra-organisational support, for instance nursing staff or relatives of clients, which meant they were better able to ensure</p>
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				<p>learning difficulties or at risk of homelessness, were deemed to be worst affected by remote delivery, with one response to the survey highlighting 'Autistic individuals found to rely on face to face appointments and struggle with telephone consultations, which take more time.'</p> <p>The most vulnerable and elderly clients were reported to have limited digital skills and struggled to navigate online forms and other clients lacked access to IT equipment to facilitate remote contact.</p>		advice had been understood.
Apr-21	<i>Remote Hearings in the Social Security Tribunal: Should we be worried? – Dr Marie Burton</i>	Social Entitlement Chamber of First-Tier Tribunal, social security hearings.	Focuses on communication, emotional engagement, practicalities and appellant vulnerability.	Oral hearings appear to have a successful outcome more often than paper applications, which may be due to the larger volumes of information at the tribunal's disposal in hard copy, compared to what is provided online. Focuses on communication, emotional engagement, practicalities and appellant vulnerability using evidence from 'Rapid Reviews' of the impact of Covid-19 on the civil and family justice systems.	<p>Increased planning and strategic oversight. Pre-consider the implementation and impact before changes are made.</p> <p>Provide vulnerable applicants with representation in the social security tribunal, through a duty scheme arrangement or publicly funded legal presentation for social security appeals.</p>	The research of Mulcahy in 2022 has provided an indication that parties with vulnerable characteristics were provided with the opportunity to revert to in-person hearings. However, maintaining this access has also been highlighted as a key priority in

				<p>Remote hearings are likely to have an adverse effect on the appeals process, negatively impacting social security applicants. Whilst they may be appropriate/sufficient for procedural hearings involving legal professionals, they can be detrimental for unrepresented litigants, fact-finding hearings and witness evidence. As such, this presents a risk in the long-term that the appeals process for social security more difficult, therefore forming a barrier to justice.</p> <p><b><i>[Disabilities and mental health conditions]</i></b></p>	<p>Prioritise appellants with vulnerable characteristics for face-to-face oral appeals when in-person hearings return.</p>	<p>subsequent research following the pandemic.</p>
May-21	<p><i>Digital Support for HMCTS Reformed Services: What we know and what we need to know</i> - Public Law Project</p> <p><b><i>[Digital assistance]</i></b></p>	<p>Overall review of digital support, and its impact upon digitally excluded users.</p> <p>Denmark and Canada</p>	<p>As with the PLP's previous work, this report sought to provide a research and assessment framework for the HMCTS digital support programme,</p>	<p>"In the shorter term, questions remain about whether the ultimate objective of Digital Support is to assist all digitally excluded court users to use online services, or whether it is envisaged that there will always be some individuals who cannot use online services. At present, HMCTS has committed to maintaining the paper channel for those who require it. However, concerns have been raised about how these parallel paper channels will be sufficiently resourced to</p>	<p>"Given the importance of a successful Digital Support Programme, the gap in empirical research into Digital Support should be urgently addressed."</p> <p>"Significantly more work also needs to be undertaken to identify the group envisaged to require Digital Support and understand how they might approach a legal problem. Importantly, individuals who</p>	<p>Subsequent pieces of research such as those carried out by Mulcahy and Denvir (both in 2022) have also emphasised the importance of maintaining adequate resources for hearings to be made accessible via both digital or in-person formats, for parties presenting either</p>



				<p>avoid them becoming a secondary, poorer quality alternative and how they will operate in conjunction with their digital counterparts"</p> <p>In terms of an international context, the report identifies ongoing work carried out in both Denmark and Canada.</p> <p>In Denmark, nearly all court proceedings are managed and heard through an online claim portal. Individuals who fulfil criteria (such as lacking digital skills or being homeless) can then be exempted from the digital portal</p> <p>In Canada, one of the main successes has been in the Civil Resolution Tribunal, which covers relatively minor matters, with an emphasis upon avoidance of litigation.</p>	<p>need legal advice for their legal problem may not need Digital Support, as their advice provider can complete necessary online tasks on their behalf. Consequently, it is reasonable to assume that the group in need of Digital Support are those who do not require (or cannot access) legal advice, but do either struggle with accessing the hardware necessary to complete online tasks in respect of their legal problem, or lack the digital skills or confidence to do so"</p>	<p>vulnerabilities or a lack of basic digital skills.</p>
Jun-21	<i>Understanding the impact of COVID-19 on tribunals - The experience of tribunal judges - Dr Natalie Byrom, Sarah Beardon (for the Legal</i>	Tribunal judges (rather than appellants) as a user group	This report presents the findings from a survey on the impact of remote hearings changes on the experience of the tribunals' judiciary. The focus is on the impact of judges themselves, though there is some	Access to significant amounts of equipment are required to conduct video hearings effectively. Laptops require updating so the webcam has a sufficient quality and headsets and second screens were commonly reported to be	Improvements in the guidance and support offered to judicial office holders, training on the video platform and how to conduct remote hearings properly. It was recommended that a dedicated support team	Steps taken to overcome the limitations are: 2 salaried judges acting as video hearing leads to engage with hospital trusts, communication

	Education Foundation)		discussion about users of the tribunals as well.	<p>imperative, as well as access to high-speed broadband.</p> <p><b><i>[Digital assistance]</i></b></p> <p>Over one third of respondents reported that hearings proceeded without access to technical support to address IT issues. Experience with administrative and IT support (where it was provided) varied across chambers.</p> <p><b><i>[Digital assistance]</i></b></p> <p>There were serious issues reported around accessing papers and this has led to applications to appeal.</p> <p>One challenge is the effect of remote hearings on vulnerable tribunal users, including those who have hearings in the mental health jurisdiction of the Health, Education and Social Care chamber. There has been a balancing act between maintaining access to justice for vulnerable users and also protecting judicial office holders from covid-19 and managing public</p>	<p>(which has already been implemented in the SEND jurisdiction) should be provide to appellants in other jurisdictions with guidance and report to prepare them for their remote hearing.</p>	<p>strategies to encourage investment in equipment and explain practice and procedure, discussing with MIND and the Royal College of Psychiatrists the potential difficulties and mitigation techniques, and gathering feedback from users and patients.</p> <p>Equal Treatment Bench Book</p>
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				health restrictions on hospital visitation.  <b><i>[Disabilities and mental health conditions]</i></b>		
Jul-21	<i>Reforming Benefits Decision-Making</i> - Justice and the Administrative Justice Council  <b><i>[Socio-economic status]</i></b>	Individuals in receipt of benefits.	This report explores concerns with the benefits system particularly focusing on benefits decision making and barriers to challenging those decisions when they have been wrongly made.	<p>The benefits system is not working as well as it should, in particular for those with health conditions and disabilities, especially mental health conditions and fluctuating conditions.</p> <p>Many claimants are incorrectly denied the benefits that they are entitled to, demonstrated by the high success rates of appeals. This is due to a lack of knowledge regarding entitlements, decision making processes that are confusing, inaccessible and time-consuming and barriers and inefficiencies caused by inflexible digital systems.</p> <p>A significant cohort of benefits claimants are digitally excluded due to an inability to access the internet or digital devices, a lack of digital skills or a lack of confidence using the internet and digital services. This is a concern in</p>	<p>It would be helpful if more elements of the benefits system were automated, to make it easier for claimants.</p> <p>DWP should publish information on how and when automation is used in the benefits decision-making processes and how it feeds into the final decision made by the decision-maker.</p> <p>Claimants who are digitally excluded face difficulties making and managing their Universal Credit claims due to its digital by default nature.</p> <p>As with the digital system, there should be the option of a fully paper-based or telephone-based system, including the application process and a paper and telephone alternative to the</p>	The 2018 AJC Working Party report, Preventing Digital Exclusion from Online Justice made several recommendations for online justice services to be assistive, accessible and affordable to users. These principles apply equally to the processes for claiming and managing benefits. The availability of non-digital methods was found by the working party to be essential for a process to be accessible to all. In respect of AJC recommendations, there is already a range of information available online for appellants about what to expect at their appeal including, but not limited to,

				regards to benefits because benefits appeals are held in the First—tier Tribunal (Social Security and Child Support) where the digital tribunal reform is expanding.	online journal for ongoing engagement with work coaches. Similarly, digital support should be offered to people to make use of the online journal to maintain their claims.	knowing what to expect when joining a telephone or video hearing guide. This would suggest that progress is already being made.
Jul-21	<p><i>Public Law Project roundtable: Preventing exclusion in an age of digitalisation</i> - Public Law Project</p> <p><b>[Digital assistance]</b></p>	Expert Group for Digital Support	This report explores the four key themes of Digital Support – delivery, funding, additional support and objectives. Digital Support is a service through which HMCTS is addressing the risk of excluding individuals who lack the skills, confidence or hardware to engage with the justice system.	<p>There is strong support for delivering digital advice alongside legal advice, allowing users to move between different types and levels of advice smoothly.</p> <p>Face-to-face service was particularly important to some people, suggesting that in-person contact in a familiar location was essential and that to deliver Digital Support remotely would undermine its value, particularly for vulnerable users.</p> <p>Keeping digital and legal advice within the same appointment and delivering Digital Support in face-to-face appointments were seen as valuable components but also created an end-to-end service, where advice providers were able</p>	Digital Support requires some further work in terms of establishing how it fits into the justice system and the articulation of this will be vital in order to implement Digital Support successfully and in particular to be able to build in the right data collection and evaluation frameworks.	The other documents that we have reviewed as part of this research project did not appear to discuss Digital Support but there was a recurring theme that training is needed to help those who lack the requisite IT skills to deliver or receive legal advice through the digitised system.

				<p>to offer a continuous contribution to the Digital Support user,</p> <p>There is a need to support the upskilling of staff in Digital Support participating centres.</p> <p>It is important to recognise the emotional, procedural and legal needs of Digital Support users. It was also noted that it is not only those who are vulnerable that may need assistance, but also those who are not objectively vulnerable but who need assistance as a result of the complexity or emotional stress of their legal problem.</p>		
Aug-21	<i>HMCTS Digital Support: Phase 4 Addendum Report</i>	The Good Things Foundation (provider of digital support services to HMCTS during the pilot phase of the programme between Sep 2017 and Jul 2021).	The report sought to evaluate the progress that had been made by The Good Things Foundation during its management of the support programme's initial phases. It also outlined areas of best practice, and areas for improvement.	During the pilot phase, a total of 1,274 digital support appointments had been attended, 74% of which were in relation to SSCS appeals.	<p>The report outlined areas of good practice across several categories, in order to provide a better service for Digital Support users (p.28 of the report). These categories included:</p> <ul style="list-style-type: none"> <li>- How to ensure a smooth implementation process for centres</li> </ul>	<p>The contract for delivery of Digital Services has been awarded to We Are Digital from Oct 2021.</p> <p>The new contract enabled the scheme to be rolled out nationally before Spring 2022, which would be delivered via a mix of in-</p>

					<ul style="list-style-type: none"> <li>- How to ensure a smooth on boarding process for centres</li> <li>- The contextual factors that can facilitate centres to deliver Digital Support</li> <li>- What needs to be in place to meet DS users' needs</li> </ul> <p>What needs to be in place to deliver efficient and effective referrals between HMCTS and centres</p>	<p>person centres and via telephone/Skype.</p> <p>We have not been able to identify a similar series of reports provided by We Are Digital to assess the service they have provided, for the duration of their contract.</p>
Oct-21	<p><i>Achieving Digital Equity in Access to Justice</i> - Kate M Murray (Lead Researcher for the Achieving Digital Equity Project)</p> <p><b>[Socio-economic status]</b></p>	<p>British Colombia.</p> <p>Socio-economic status</p>	<p>This study examined the barriers to access and use of digital resources</p>	<p>Positive impacts:</p> <p>Increased knowledge about the legal system and available legal resources; Addresses the challenge of a lack of physical proximity to local legal services – increases access to online legal help and makes it easier to locate; Can make it easier to afford a lawyer</p>	<p>Design of services needs to account for the variety of digital technology access situations</p> <p>Support and one-to-one assistance with digital legal resources to address barriers of legal complexity, stress, overwhelm and trauma, and lack of technology access and comfort.</p>	<p>Previous research carried out by the Public Law Project in "<i>Digital Support for Tribunals: What we know and what we need to know</i>" 2018 offers an interesting comparison between the Canadian and British approach to digitalisation, in that the Civil Resolution Tribunal in British Columbia was</p>

				<p>Negative impacts:</p> <p>Inequitable access: those in lower income households own fewer devices that can connect to the Internet and were less likely to have Internet access on these; Digital experience, skill and comfort will differ. Lower income households face one or more barriers to using the Internet. The trend is even more pronounced for older lower income residents. Internet access further varies across rural communities.</p>	Multilingual assistance and supported technology	established as an entirely distinct tribunal, outside of the conventional court system. As such, the emphasis of the tribunal is to assist parties with finding a method of communication that best suits their needs, as opposed to the approach of the UK approach which involves the establishment of an alternative digital channel which ultimately follows the same process as resolving the matter through a formal, paper-led, court process.
Nov-21	<i>Remote Justice? Virtual benefits tribunals and disabled clients</i> - Islington People's Rights	Disabled users, users with physical and mental health conditions, focus more on clients/appellants	<p>The perception of whether remote hearings are a benefit or disadvantage for users are mixed. It can create 'practical and attitudinal barriers for some appellants but reduced them for others'.</p> <p>Disabled appellants with representation tend to see them as</p>	Technical difficulties, stress and lack of emotional support, lack of clarity and instructions around the process, difficulty in communication between clients and advisors. Perceived negative consequences of judges not being able to see appellants and their true conditions.	Choice of format, including face-to-face where that is desired. These options should be presented neutrally, rather than asking appellants to justify why they can't join a video hearing.	The work of parties such as Mulcahy published in March 2022 has meant that some recommendation areas in this report have been assisted, such as improving the guidance provided to appellants,

	<b><i>[Disabilities and mental health conditions]</i></b>		<p>an advantage, as attending in-person can be difficult due to physical and mental health conditions. However, there was concern that remote tribunals made it harder for clients to access their rights.</p>		<p>Encouragement to have someone in the same physical as an appellant for emotional support. Greater flexibility in timetables and build in more breaks. This can also help judges as a user group to avoid burnout and overtiredness.</p> <p>Improve instructions and guidance given to appellants. Invite clients to participate from the same physical location as their adviser. Further investigation should be made into the practicalities of offering this option.</p> <p>Establishing a channel of communication between the advisor and appellant where possible</p> <p>Advising clients before the remote hearing e.g. to find a quiet space, be comfortable, have papers laid out, bring a drink/snack.</p> <p><b><i>[Digital assistance]</i></b></p>	<p>and preparing them for the hearing process. However, as subsequent commentators have noted during 2022, the report strongly advises that parties should be presented with a choice of format in which their appeal should be heard.</p>
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Jan-22	<p><i>Safeguarding Access to Justice in the Age of the Online Court</i> – Denvir and Selvarajah (Modern Law Review, Volume 85, Issue 1, Pages 25-68)</p> <p><b>[Digital assistance]</b></p>	Digitally excluded parties.	This research sought to consider the adequacy of provisions of the Courts and Tribunals (Online Procedure) Bill, concerning support for online court users, and the availability of different channels to progress their claim. The research utilised a review of the bill's development, as well as examining survey data identifying groups most at risk of digital exclusion, and reviewing recent case law to gain an understanding of the expectations set within the judiciary.	<p>"Our findings suggest that whilst few people lack internet access (10.8 per cent), and access is higher among those reporting civil justice problems (4.9 per cent without access) as compared to those not reporting civil justice problems (13.6 per cent), there are a number of groups for whom channel plurality remains a necessity.... Findings point to particularly high numbers of those aged 65+ lacking internet access."</p> <p>"Our findings show that the provision of assisted digital support services is of critical importance for a number of key groups. Taking BDS (Basic Digital Skills) as the minimum capability required to interact with digital systems, 14.8 per cent of those reporting 1+ civil justice problem will require digital support. Figures are slightly lower for potential or court/tribunal users (10.7 per cent). As hypothesised, those aged 65 or older are more likely to require assistance with a quarter of those aged 65–74 lacking BDS, rising to just over a</p>	<p>"We would also caution against any measures to prevent mode switching as a case progresses through to resolution or determination, for the simple reason that users may at the outset over-estimate their digital capability, the suitability of their hardware, or their ability to maintain internet access"</p> <p>"the commitment to provide non-electronic alternatives and support 'could and should be clearly expressed in the [CT(OP)] Bill in a way that would make it much more difficult for future Governments to resile from it'. We ought to be wary of assuming that the requirements currently set down in the Bill to preserve access to offline alternatives and provide assistance to those using online services are sufficient to safeguard access to justice."</p>	<p>At this time, the Courts and Tribunals (Online Procedure) Bill is progressing through parliament. The requirements it sets in terms of supporting users are in section 4, which states "The Lord Chancellor must arrange for the provision of such support as the Lord Chancellor considers to be appropriate and proportionate, for the purpose of assisting persons to initiate, conduct, progress or participate in proceedings by electronic means, in accordance with Online Procedure Rules"</p> <p>The online procedure rules are described in s.1 of the act as being procedural rules which: "must require that kind</p>

				<p>third for those 74+. However, it is not just those in the oldest age brackets who exhibit low levels of capability, with the model predicting that nearly a quarter of those aged 45–64 would also be expected to lack BDS"</p> <p>Courts have however been less likely to view an alleged lack of digital capability as reasonable where support services exist, or where no attempt has been made to seek help. However there does appear to be a limit to what users are expected to know, with courts and tribunals concluding that online systems must be designed for use by everyone, including those who may have no previous experience with the system in question"</p>		<p>of proceedings, or one or more aspects of that kind of proceedings, to be initiated by electronic means;</p> <p>(b)may authorise or require that kind of proceedings, or one or more aspects of that kind of proceedings, to be conducted, progressed or disposed of by electronic means;</p> <p>(c)may authorise or require the parties to that kind of proceedings (and their representatives) to participate in hearings, including the hearing at which the proceedings are disposed of, by electronic means"</p> <p>The rules will be formed by an 'Online Procedure Rule Committee' who are to be formed in accordance with the</p>
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						requirements set out under s.5 of the act.
Mar -22	<p><i>Remote hearings – The Law Society (web article)</i></p> <p><b><i>[Disabilities and mental health conditions]</i></b></p>	Members of the legal profession.	The article sought to outline the Law Society's response to the entire reform programme, as opposed to specific jurisdictions/types of hearing.	<p>"Four out of five legal professionals have heard or attended cases where one or more parties were unrepresented, according to the Youth Justice Legal Centre.</p> <p>Only 16% of solicitors indicated that vulnerable clients were able to take part in remote hearings effectively, in a survey for our Law under Lockdown report</p> <p>In 2018, there were 5.3 million adults in the UK, or 10% of the adult UK population who were not internet users, according to a study by the Office of National Statistics"</p> <p><b><i>[Digital assistance]</i></b></p>	<p>From the outset of the court modernisation programme, we've been emphasising the importance of analysing fully the impact of remote hearings on access to justice and on justice outcomes.</p> <p>This should include analysis of:</p> <ul style="list-style-type: none"> <li>- Different types of party;</li> <li>- Their perception of whether justice was done;</li> <li>- Their ability to understand and take part in proceedings</li> </ul> <p>We believe it's also critical to have:</p>	<p>As noted in the Justice Committee's report in April 2022, HMCTS has been found to have under-delivered in terms of its approach to data collection and analysis.</p> <p>Whilst there have been efforts such as those of Mulcahy et al in March 2022 to create freely available resources which provide contextual knowledge as to how online hearings will function, the findings of this study noted that there is still high demand for further resources of this nature to be produced.</p>

					<ul style="list-style-type: none"> <li>- Rigorous and comprehensive data collection;</li> <li>- Consultation with both the legal profession and court users; and</li> <li>- Robust data collection will allow us to properly evaluate the impact of COVID, and make sure lessons are learned and applied to future reforms.</li> </ul> <p><b><i>[Protected characteristic]</i></b></p> <p>Consistent, well-functioning platforms, policies and procedures must also be in place that ensure all parties:</p> <ul style="list-style-type: none"> <li>- Have access to equipment, platforms and training;</li> </ul>	
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					<ul style="list-style-type: none"> <li>- Can confidentially communicate with their legal representatives throughout a hearing; and</li> <li>- Understand what should happen when a technical problem occurs</li> </ul> <p><b>[Digital assistance]</b></p>	
Mar-22	<i>Westminster Government Civil Society Shadow Report</i> - Inclusion London	The group of people this report focuses on is Deaf and Disabled people (DDP). The term "disabled people" covers people with physical impairments, mobility impairments, sensory impairments, learning disabilities/difficulties, people who are neurodivergent and people living with mental distress, energy-limited chronic illness or other long-term health	This report focuses more on the social care and health system rather than the provision of digital legal services, however, there were some points that could be drawn out.	<p>Before the pandemic 67% of benefit claimants were Deaf or Disabled yet Universal Credit was designed to be digital by default.</p> <p>The cost of digital technology for those on benefits and low incomes is one aspect and the lack of support to use technology is another. Digital skills training is not able to help groups of people who require ongoing physical, mental or cognitive support when navigating the internet. There is regional variation, with the North East having the highest proportion of non-internet users in the country and DDP in rural areas have patch</p>	<p>The report does not explicitly provide recommendations in regards to the digitalisation of services but the following are points that can be drawn out:</p> <p>Digital skills training should be provided to those who require ongoing physical, mental or cognitive support when navigating the internet. As the highest proportion of non-internet users is in the North East, perhaps such training could be directed to this area in the main as well as to DDP in rural areas.</p>	Digital exclusion remains a significant issues for DDP however, the other documents reviewed did not discuss this topic and therefore we are unable to comment as to whether there has been progress in this regard.

		<p>conditions. Deaf people refers to people whose first language is sign language.</p> <p>.</p>		<p>broadband and distance from public libraries.</p> <p>The pandemic caused isolation for many DDP particularly those who are digitally excluded but for others the adoption of remote technology led to an unprecedented agree of inclusion in tribunals as well as other aspect of life such as education, health, culture</p> <p>A key concern that was raised that following the cut of legal aid, the Westminster Government did not include anything about reinstating legal aid for initial welfare advice and employment claims despite evidence that the lack of support to resolve legal issues has negative impacts on emotional, social, financial and mental health.</p> <p>It was found that courts fail to make reasonable adjustments for Disabled defendants, denying them access to a fair trial.</p>	<p>Steps could be taken to assess the adjustments that courts make for DDP and how these could be improved.</p>	
Mar-22	<i>HMCTS protected characteristics</i>	The focus was on users of reformed	This report summarises the Protected Characteristics Questions	The results have shown that of the respondents seeking advice in	This report did not provide any recommendations but was	An area we can compare this document

	<p><i>questionnaire:</i> Data on users of reformed services – HMCTS</p> <p><b>[Users of the reformed/digital HMCTS service]</b></p>	HMCTS services, including divorce, probate, online civil money claims and social security and child support.	(PCQ) of users of digital HMTCS services between April and September 2021.	<p>social security and child support, all of which were digital appellants:</p> <ul style="list-style-type: none"> <li>• English or Welsh was the main language for 91.5%</li> <li>• 50.7% were not religious and 40.3% had various religions</li> <li>• 84% were white, 6.5% were Asian or Asian British, 4.8% were Black, African, Caribbean or Black British, 2.7% were mixed and 1.9% were another ethnic group</li> <li>• 94% were not pregnant and 5.1% were</li> <li>• 93% were heterosexual, 3.1% were gay or lesbian, 2.7% were bisexual and 1.2% were other</li> <li>• 60.7% were female and 39.3% were male</li> <li>• 99.6% gender was the same as birth and 0.4% was not</li> <li>• 29.5% were married and 70.5% were not</li> </ul>	rather an overview of the characteristics of those using digital HMTCS services. However, in terms of recommendations that we can put forward, perhaps it would be prudent to carry out a similar report so as to yield comparative data post-pandemic.	to is the suggestions for data that should be captured in Natalie Byrom's earlier report surrounding HMCTS's data strategy. In particular, it is notable that the questionnaire appears to collect data regarding potential vulnerabilities, but does not extend to characteristics identified as indicative of digital exclusion, such as level of education and employment status.
Mar-22	<i>Supporting Online Justice</i> - Professor Linda Mulcahy, Dr	SEND Tribunal	This research culminated in the production of 5 films to assist lay users of the justice system in	The research carried out concluded that there was a high demand for resources of this nature, and that	The research concluded with the rollout of several videos published by HMCTS, to	The research team have received further funding to establish a new

	Emma Rowden, Dr Anna Tsalapatanis	SSCS Tribunal  Employment Tribunal (for England & Wales and Scotland)  Family Court  General Users of the court system	accessing and participating in online hearings (which have since been published on the HMCTS YouTube channel).	<p>up until that point there had been a significant shortage of such materials being made accessible to the public.</p> <p>The research identified factors which may make an online hearing challenging, which are listed below in order of priority:</p> <ol style="list-style-type: none"> <li>1. Digital disadvantage</li> <li>2. Disability</li> <li>3. Disadvantaged/vulnerable</li> <li>4. Particular legal actors</li> <li>5. Types of people</li> <li>6. Types of case</li> <li>7. Other</li> </ol> <p>The report notes that the term 'disability' is an extremely broad label, and in turn provided further clarification regarding the responses to its survey:</p> <p>"Of the 135 responses in this category the majority of comments</p>	<p>explain the processes followed in tribunals and family courts. One of the films was specifically for use in the SSCS tribunal. The researchers noted that whilst the work they had done had been well-received, there was a strong interest in further resources of this nature in many more areas.</p>	<p>'Designing for Inclusion' Programme, which will have the aim of creating free and easy to use design toolkits which can then be used by community legal advice workers to create resources tailored to the requirements of their users.</p> <p>Detailed consideration has been given to the needs of a wide range of users, such as the neurodiverse, visually or hearing impaired and the needs are built into the design process of the products.</p>
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				<p>related to people with learning difficulties and special educational needs (28%) such as autistic spectrum disorder, attention deficit disorder or attention deficit hyperactivity disorder. By way of example, reference was made to the ways in which the neurodiverse often rely on non-verbal cues that are more difficult to convey on a screen showing numerous faces. Participants in the survey also drew attention to the particular needs of those who are deaf or hard of hearing (24%). One interpreter noted that deaf people who use BSL interpreters might have problems with video hearings because sign language is a 3D language and video works in 2D. Others mentioned that it was particularly difficult for people who needed to lip read to do so efficiently when the screen was split into multiple small faces. Finally, respondents referred to people with mental health or psychiatric problems (20%) who might be more prone to becoming confused online".</p>		
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				<b>[Disabilities and mental health conditions]</b>		
Apr-22	<p><i>Access to justice during the COVID-19 pandemic in the UK</i> - Report by various parties for the All Party Parliamentary Group for Legal and Constitutional Affairs</p> <p><b>[Public observers of the Court of Protection]</b></p>	Public observers within the Court of Protection and data/targeted research from various County and Crown Courts.	This report focuses on the introduction of remote court hearings introduced as a result of the pandemic and the impact it has had on access to justice.	<p>Telephone hearings were found to be lower quality overall than video hearings. It was also noted that the lack of visuals in telephone hearings results in parties talking over each other, which made the hearing difficult to follow at times. However, a positive point in regards to hearings held via telephone conference was that the court provided a free phone number to access hearings from, which makes the remote hearing more accessible as compared to video hearings, where individuals would need access to the right software such as Microsoft Teams and a computer. It was also noted that some hearings have to be held by telephone because arranging a video hearing is significantly more labour intensive.</p> <p>The Court of Protection is predominantly using Microsoft Teams however other courts make greater use of CVP. Therefore members of the public may have to familiarise themselves with several</p>	<p>Remote hearings should remain as a viable option because they enable observers to access hearings from any location and allow people with restricted mobility to gain access more easily. Remote hearings also eliminate travel costs associated with physical hearings, reducing costs for the public.</p> <p>Training on how to access court hearings should be given to those not familiar with technology.</p> <p>The number of platforms used for remote hearings should be standardised across different courts.</p> <p>Video hearings should remain and audio-hearings should be reserved for a last resort; users should be encouraged to opt</p>	<p>We haven't seen whether a singular platform for remote hearings has been developed and/or whether the use of CVP has been phased out.</p> <p>The other documents reviewed do not touch upon the subject of public observers within the remote court setting, so we are unable to comment on whether any progress has been made on this front.</p>

				<p>pieces of software to gain access to hearings at different courts. It was noted that some attendees of hearings experienced minor connectivity issues. However, remote hearings were found to be more accessible to a wider public than face-to-face hearings.</p> <p>In terms of public observers in the Court of Protection, there are some administrative issues hindering public access to hearings however the public can gain access to hearings with minimal effort.</p> <p>It was found that a request to access an afternoon hearing was more successful than a request to access a morning hearing. Hearings lists should also be updated for the whole week to allow more efficient access to hearings.</p>	<p>for video hearings over telephone where appropriate.</p> <p>Improved technology should be established for online hearings for example, break out rooms for judges and counsel instead of asking observers to leave the session while private discussions are held.</p> <p>Adjournments of remote hearings should be communicated more effectively to members of the public.</p> <p>Improvements should be made to the response times for access requests made by public observers.</p> <p>HMCTS staff should be given standardised training to allow court staff to guide parties more effectively.</p>	
Apr- 22	<i>Sixth Report of Session 2021-2022 –</i>	The overall progress of reforms across HMCTS.	The main focus of the Committee's review was upon the issue of capacity within the English and Welsh courts. This is an issue which	"Ultimately, we were struck by witnesses telling us that there was not sufficient data, or analysis undertaken to evaluate the	"The Ministry of Justice and HMCTS have missed opportunities to swiftly deliver an ambitious court reform	The Government submitted a response to the Committee's findings, in which it was

	House of Commons Justice Committee		<p>forms a key underpinning factor for the implementation of digital solutions in courts and tribunals, and as such involved discussions concerning how the digital courts and tribunals interacted with their users.</p>	<p>effectiveness of interventions, such as improved digital access"</p> <p>"Dr Byrom from the Legal Education Foundation, was highly critical of the lack of data collection by HMCTS. She said that the courts service had chosen not to collect the data needed to assess the impact of the pandemic on access to justice, and outlined instances of where Parliament had told HMCTS and the Ministry of Justice that more needed to be done"</p> <p><b><i>[Protected characteristic]</i></b></p>	<p>programme. Many of the problems that we heard about during our inquiry and continue to hear about, could have been avoided if better data collection had been built into the system much earlier. We recognise that the MOJ and HMCTS are taking steps to improve the data situation. However, we would stress that the level of improvement required will need a sustained focus and significant investment"</p> <p><b><i>[Protected characteristic]</i></b></p>	<p>stated that "£3 million has been allocated within MoJ to fund data improvement across the Department with increasing amounts for 2023–25. This programme will focus on transforming the management of our data, building our data capability and changing the way users engage with our information. These activities will drive up our data quality and make it easier to access, use and share data across the system."</p> <p>As part of the Government's response, it was also noted that the National Audit Office will be publishing a progress update as to the progress of HMCTS's reform program, which will be due for publication over the</p>
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						course of Winter 2022/2023.
Jul-22	<p><i>Digital Inclusion in London</i> - Loti Digital Inclusion Innovation Programme - Mayor of London</p> <p><b>[Digital assistance]</b></p>	London, low income, digitally excluded individuals, individuals in temporary accommodation	<p>This report looks at digital exclusion more generally, challenges to residents of London regarding being involved digitally and provides 6 recommendations.</p> <p>Key projects delivered to date:</p> <p>Mapping Digital Exclusion</p> <p>Digital Inclusion Research</p> <p>Providing Devices</p> <p>Digital Inclusion in temporary accommodation</p> <p>Providing Social Tariffs</p> <p>Using Social Value</p> <p>Triaging Support for Digitally excluded residents.</p>	<p>The report identified 6 key challenges that faced digital inclusion in London, which were as follows:</p> <ul style="list-style-type: none"> <li>- Securing access to affordable broadband for residents</li> <li>- Reaching digitally excluded residents</li> <li>- Meeting the scale of need for devices</li> <li>- Addressing the lack of funding and capacity for digital inclusion</li> <li>- Identifying and mapping need</li> <li>- Addressing the lack of evidence on digital inclusion programmes</li> </ul>	<p>Partnering with charities, social enterprises, providing training on use of digital devices to improve digital literacy.</p> <p>Telecoms companies to work with councils to deliver broadband, device poverty, the Mayor of London and LOTI should explore whether creating a London-wide scheme to refurbish devices.</p>	<p>The report formed part of a broader pilot scheme launched by the Mayor of London, called the "Digital Inclusion Service", which was launched in July 2022.</p> <p>The aims of the scheme are to support up to 75,000 people over three years and offer support through providing offline Londoners with upcycled devices, providing free or low/cost mobile connectivity, and making people aware of basic skills education courses available to them locally.</p> <p>The scale of the issue which the pilot aims to tackle is emphasised by the scheme's estimations that</p>

						270,000 Londoners have no access to the internet or digital access, with a further 2 million having very limited use, such as people without their own devices, or having the ability to get online, but have difficulty accessing online services such as forms or internet banking,
Sep-22	<p><i>First-tier Tribunal (Immigration and Asylum Chamber) Reform: interim process evaluation – HMCTS</i></p> <p><b>[Non-English speakers]</b></p>	Digitally excluded users, non-native English speakers	<p>The purpose of this evaluation was to discuss the digitisation of immigration tribunals, to understand how they are working, and any areas of best practice, or areas for improvement.</p> <p>The evaluation followed a methodology of conducting 43 interviews with legal representatives, Home Office representatives, legal officers and judges operating within the system, as well as a survey of 196 legal professionals (representing a 10% response rate). The findings were also supported by utilising data taken from the</p>	<p>" Of those surveyed, the majority rated the new digital service as good or very good (55%)... though a considerable number did rate the service as 'poor' (19%) and at least somewhat worse than the previous process (26%)".</p> <p>It was noted by some legal representatives that their lack of access to the court's system was having the effect of compounding anxieties amongst applicants around delays in their claim process, due to the fact that they were difficult to explain. Furthermore, the physical separation from clients enforced as</p>	<p>"It is important to continue to monitor and evaluate the new service as the roll-out continues, with a particular focus on:</p> <p>Making Improvements to technology and access</p> <p>Monitoring compliance with the process</p> <p>Monitoring workload and ways of working of legal officers</p> <p>The introduction of the new appellant in person service"</p>	The research did not take into account unrepresented appellants, which the report itself acknowledges as forming a gap in its evidence.

			<p>Tribunal's case management system from January 2020 to July 31<sup>st</sup> 2021.</p>	<p>a result of COVID meant that it became harder to update appellants regarding their appeals or obtain instructions, due to them being difficult to contact, parties being in isolation, or there being delays in the process.</p> <p>There was reporting of significant service downtime as a result of technical issues. This was often not communicated to representatives and impacted ability to communicate with clients as to the reasons for delays which created anxiety. One third of legal representatives needed assistance setting up accounts and there were multiple issues regarding online systems and being able to retrieve information and files.</p> <p>Ability and confidence in using technology led to a more positive experience.</p> <p>There were some concerns expressed by users as to how those unrepresented would manage the process especially those with</p>		
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				limited digital skills and those affected by language barriers.		
Oct – 22	<i>Exclusion in the interests of inclusion: who should stay offline in the emerging world of online justice?"</i> – Mulcahy & Tsalapatinis (Journal of Social Welfare and Family Law, 26 October 2022)	The primary focus, given the context of the research, was vulnerable parties encountering online hearings.	The purpose of this article was to consider the circumstances where cases are excluded from online proceedings. The article is drawn from research of court staff, lay users and regular participants in court hearings, as well as existing social science literature	<p>"Data produced by HMCTS suggests that public users that attended in-person were slightly more likely (16%) than those who attended remotely (11%) to have additional support needs. This suggests that some hearings were changed to in-person if support needs were identified (Clark 2021). However, there is evidence that in some jurisdictions online or telephone hearings were conducted during the pandemic involving vulnerable litigants without the necessary equipment or skills to engage effectively (Ryan et al. 2020)."</p> <p><b>[Disabilities and mental health conditions]</b></p> <p>"Moreover the minimum recommended bandwidth for a successful remote video hearing is 1.5 Mbps in both directions which is a higher standard than upload speeds in the Government's Universal Service Obligation which stipulates a minimum 10 Mbps</p>	<p>"The issues of how digital disadvantage is defined and intersects with other vulnerabilities, needs to be made a key consideration in the design of software programmes, public engagement or information initiatives, and judicial and court staff training"</p> <p><b>[Disabilities and mental health conditions]</b></p> <p>"The research reported here makes clear that more sophisticated guidance needs to be provided to judges in the aftermath of the pandemic and that there is evidence of demand for this."</p>	The findings of this report closely link with that of Denvir and Selvarajah, in that it highlights the importance of more than one channel being made available to disadvantaged or vulnerable parties navigating the court and tribunal system. This is similar to the approach operated in the Danish courts, as highlighted in the Public Law Project's 2018 review.



				<p>download/1 Mbps minimum upload (Hutton 2022)."</p> <p><b><i>[Digital assistance]</i></b></p> <p>"The guidance issued during the pandemic has failed to capture the breadth of users who should attend face to face. Judicial guidance issued during the pandemic largely failed to address the issue of how digital disadvantage could be identified, focussing instead on the characteristics of cases and procedural complexity"</p> <p><b><i>[Digital assistance]</i></b></p>		
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