CIVIL JUSTICE COUNCIL

Futures Group

Report on Digital Disadvantage

16 May 2025

Contents

1. Executive Summary

1.1 This report by the Civil Justice Council's (CJC) Futures Working Group (WG) considers how to define the concept of 'digital disadvantage'.

1.2 The Futures Group was originally set up in 2021 with a view to considering how digital technology may change the way our courts and tribunals will operate in the future. Membership of the WG has since changed with a focus on reviewing the current discourse on digital disadvantage. The ambition for this piece of work is to begin to develop a shared language about what is meant by digital disadvantage, and to recommend next steps to prioritise inclusive service design in the development of accessible digital technology.

1.3 Recently, there have been several investigatory reports into the subject of digital disadvantage which have all found that there is a high level of need for digital assistance to enable access to a digital legal system. Our WG wanted to understand what themes were emerging from the many reports written on this subject. This Report contains, at **Appendix A**, a literature review of some major reports prior to when the literature review was conducted in Summer 2024. Our aim was to identify current issues, consider what research has been carried out already, and consider existing definitions. We also wanted to use this as a basis for a forward-looking and creative approach to opportunities to support innovative AI-assisted solutions devised by private-sector start-ups and third-sector organisations, either working together or individually, alongside the public sector. A brief discussion of this is included later in this Report.

1.4 Our literature review considered eight reports from both government and third sector bodies, as well as surveys from independent academics and finds that there is no "universally accepted definition of digital exclusion".[1] There is also no agreed or similar methodology used by the variety of bodies who have examined this subject, and the concept is measured in different ways. We have also identified eight official trackers (see page 30 of Appendix A) which collect data, using different datasets to measure various aspects of digital exclusion. We would like to thank Will Page for his work in writing this appendix in the summer of 2024 and St Mary's University, Twickenham for funding this work.

[1] **House of Lords Communications and Digital Committee**, *Digital Exclusion* (3rd Report of Session 2022–23, HL Paper 219, 29 June 2023) 8

1.5 It has been clear in our meetings and discussions on this subject, including feedback from the Digital Disadvantage break out session at the CJC Annual Forum 2024, that what people think about when they think about digital disadvantage can differ. The term can be defined as intersectional, and traverses other well-known issues already recognised in access to justice discourse: geographical location; familiarity and use of digital and AI tools; vulnerability more generally and willingness to engage despite inherent ability. In our discussions of digital disadvantage therefore, the concept tended to be approached subjectively, depending on the perspective of the contributor. The term did not invite an objective definition that could be shared across those with different interests in the justice system.[2] Although the nucleus of views centre upon vulnerable participants in the legal process, it might also be that those who are generally unfamiliar with tech, digital and AI but would not consider themselves to be vulnerable, also feel disadvantaged by the speed and complexity of developments. It might also be the case that some people make a conscious choice not to engage with digital media, for a variety of reasons and this point was made in our discussions. An individual's level of 'disadvantage' may change over time, or be dependent on their location, or the particular task or service that they are attempting to complete or access. We agreed that there is no universally acceptable definition of digital disadvantage.[3] Similar terms, such as digital exclusion and digital poverty, may also be used. The literature review explores the different concepts and how terminology has shifted over time. In summary, there is no one definition, but there are common themes emerging from the discussions and the literature that was considered, namely the 4 A's: availability, accessibility, acceptability and adaptability.[4] These themes are all intrinsic in the broad concept of access to justice.

1.6 Beyond the reports considered in the literature review there is more practical work being done such as the work of HM Courts and Tribunals Service's (HMCTS) Strategy and User

[2] See, for example: the notes from the Civil Justice Council Annual Forum, summarised in Chapter 4.

[3] **House of Lords Communications and Digital Committee**, *Digital Exclusion* (3rd Report of Session 2022–23, HL Paper 219, 29 June 2023) [6]

[4] Similar issues are highlighted in: **House of Lords Communications and Digital Committee**, *Digital Exclusion* (3rd Report of Session 2022–23, HL Paper 219, 29 June 2023) 8, [6], based on the definition from **Ofcom**, *Digital Exclusion: A Review of Ofcom's Research on Digital Exclusion among Adults in the UK* (30 March 2022) https://www.ofcom.org.uk/__data/assets/pdf_file/0022/234364/digital-exclusion-review-2022.pdf

Insight Division,[5] and the Ministry of Justice's (MOJ) Digital Accessibility Team who promote inclusion internally.[6]

1.7 More recently, the Digital Exclusion Action Plan: First Steps, developed by the Department of Science, Innovation and Technology (DSIT), has determined to address digital inclusion across government departments.[7]

1.8 This work supports the recommendation of these reports that the language of digital disadvantage should be remodelled as 'digital inclusion'.

1.9 This Report is an initial to attempt to understand the idea of digital disadvantage. It is anticipated that an evolving programme of work will be required to ensure the priority of inclusion as a principle of digital design into the future as technology continues to develop. This is supported by ongoing work being carried out by the Online Procedure Rule Committee (OPRC).[8]

1.10 Our proposals involve new ways of working with a variety of stakeholders who are involved in digital developments.

Recommendations:

The CJC recommends the creation of a central hub for the development of a strategy for digital inclusion in the justice system.

The following subsequent recommendations should be considered in the development of the strategy, and with the aim of developing the ideas discussed in this report:

1) To suggest that the language of 'digital disadvantage' is more constructively thought of as 'digital inclusion', with the implication that access to justice is intrinsic in digital development and based on both stakeholders and users' needs. Broad inclusive design principles acknowledging the 4 A's: availability, accessibility, acceptability and adaptability should be adapted with a clear set of outcomes and standards to encourage consistency in approach across the sector.

[5] L Mulcahy and others, *Supporting Online Justice: Enhancing Accessibility, Participation and Procedural Fairness* (Centre for Socio-Legal Studies 2022).
[6] **Digital Accessibility Team**, 'Introducing the MOJ Digital Accessibility Team' (MOJ Digital & Technology Blog, 15 July 2021) https://mojdigital.blog.gov.uk/2021/07/15/introducing-the-moj-digital-accessibility-team/
[7] **Department for Science, Innovation and Technology**, *Digital Inclusion Action Plan: First Steps* (February 2025) https://www.gov.uk/government/publications/digital-inclusion-action-plan-first-steps/digital-inclusion-action-plan-first-steps
[8] **Online Procedure Rules Committee**, *Minutes of Meeting* (11 November 2024) para 10.

2) To recognise the dynamic and evolving nature of digital developments, and the paramountcy of ensuring access to justice as a priority theme in all future work in identifying how we measure success in developing and creating inclusive processes.

3) To encourage greater focus on data collection, and research on unmet legal need, and the intersection of this with digital tool development.

4) The CJC should work closely in partnership with other stakeholders and user groups. The literature review helps to demonstrate the broad spectrum of organisations expressing interest in this topic. Stakeholders such as the Access to Justice Foundation (ATJF) and the OPRC are deeply engaged in developing rules and recommendations. Court users, law firms and legal tech companies have an interest in how inclusion is applied in practice. Co-working across public sector, private sector and the third sector on a proof-of-concept project considering a live-use case is therefore recommended in order to understand and iterate the connection between digital inclusion and practice and the user journey taken through the civil justice system. The objective is to gather more information, data and mapping to see how processes work to support the user now and the potential to do this in the future. This will seek to support the work being done by the User Insight Team at HMCTS and the OPRC.

5) To support the idea that future work on inclusive design incorporates principles that empower court users to develop greater knowledge about the justice system, so it is not simply at point of need, but more widely and consistently disseminated as public legal education.

2. Introduction

2.1 The Futures WG of the CJC was set up in 2021, with a broad remit. More recently, the dynamic nature of change in the digital sphere has led us to focus on the nature of digital disadvantage and its relationship to access to justice more broadly. This Report is the first stage towards greater clarity and awareness of the needs of an inclusive digital justice system.

2.2 The Court modernisation programme, which began in 2016 and ran until March 2025, intended to significantly develop its infrastructure using technology, rather than traditional place or paper-based court systems.[9] The aim of this programme, as well as ongoing work, is to increase accessibility, efficiency and cost-efficiency.[10] Widespread digital development and the creation of a digital justice system lies at the heart of these changes.[11] These include greater use of technology to enable online processes to support procedures for, *inter alia*, online filing; uploading of documents; automated case management processes; video hearings; and more recently, the creation of pre-action portals. The impact of COVID also intensified the need to move systems online, especially because of the necessity at this time for remote hearings and online communications. Another imperative driver for greater efficiency is that court backlogs have increased markedly since the COVID pandemic, [12] and have contributed to the urgency of finding solutions that do not rely on conventional court hearings.

2.3 HMCTS reports that across the court service over 4.1 million cases have been submitted digitally since April 2019. [13] It states that for online cases, this has made the process three times faster than before.[14] Yet this represents only a quarter of the current caseload.[15] The

[9] N Byrom, *Digital Justice: HMCTS Data Strategy and Delivering Access to Justice* (The Legal Education Foundation 2019).
[10] **HM Courts and Tribunals Service**, 'The HMCTS Reform Programme' https://www.gov.uk/guidance/the-hmcts-reform-programme
[11] G Vos, 'The Future of Courts' (Speech at UCL, 14 May 2024) https://www.judiciary.uk/speech-by-the-master-of-the-rolls-the-future-of-courts/
[12] **Ministry of Justice**, *Civil Justice Statistics 2024*
[13] **HMCTS Blog**, 'Modernising Courts and Tribunals: What We've Achieved and Learned' (24 March 2025) https://insidehmcts.blog.gov.uk/2025/03/24/modernising-courts-and-tribunals-what-weve-achieved-and-learned/
[14] **HMCTS Blog**, 'All of Us Might Need the Justice System One Day: What Can You Expect and How Has HMCTS Reform Made Things Better?' (1 April 2025) https://insidehmcts.blog.gov.uk/2025/04/01/all-of-us-might-need-the-justice-system-one-day-what-can-you-expect-and-how-has-hmcts-reform-made-things-better/
[15] **Justice Committee**, *Oral Evidence: Work of the County Court* (HC 677, 8 April 2025) Q118.

aim is to increase the use of technology in the courts exponentially, through the creation of the Digital Justice System across civil, family and tribunal disputes.[16]

2.4 Technology, used appropriately, can help a lot of people at a much lower cost than providing individual one-to-one advice especially when technological solutions are integrated into justice strategic design.

2.5 The question is how to separate digital disadvantage from other forms of disadvantage that are inherent in the idea of access to justice. Digital capability does not mean that a person will also have legal understanding, or an ability to navigate the legal system whether it is online or in-person.

2.6 The development of AI and especially generative AI has also led to an increase in the number of private and third-sector providers and commercial entities offering online help and advice. [17] One example of this type of 'Justice Tech' is Citizens Advice AI tool 'Caddy' which offers a customer service AI tool.[18]

2.7 The MOJ Digital Strategy [19] stresses continued progress as well as an increase in digital development and improvement of services. The OPRC, established under the Judicial Review and Courts Act 2022, is working on changes to procedures and frameworks designed to support these developments.[20]

2.8 Concerns were raised in WG discussions about the lack of awareness by members of the public of dispute resolution methods generally,[21] and also the ethical underpinnings of digital and AI developments, which may or may not be designed with vulnerable litigants in mind.[22] It was constantly stressed that general issues of access to justice cannot be divorced from the concept of 'digital disadvantage'.

2.9 The WG has been engaged on this issue since summer 2024 and discussion has been focused on the definition of the term 'digital disadvantage'. We were lucky enough to have the help of Will Page, a PhD student, at the time lecturing at St Mary's University, Twickenham, who

[16] G Vos, 'Speech by the Master of the Rolls at the Lawtech UK Generative AI Event' (5 February 2025) https://www.judiciary.uk/speech-by-the-master-of-the-rolls-at-the-lawtechuk-generative-ai-event/

[17] See, for example: S Navas, 'The Provision of Legal Services to Consumers Using LawTech Tools: From "Service" to "Legal Product"' (2019) 7 *Open Journal of Social Sciences* 7.; C Denvir and A Darshini Selvarajah, 'Safeguarding Access to Justice in the Age of the Online Court' (2001) 85 *Modern Law Review* 25.

[18] 'The Caddy Tool' (AI.gov.uk Blog) https://ai.gov.uk/blogs/transforming-civic-engagement-with-caddy/

[19] **Ministry of Justice**, *MOJ Digital Strategy 2025* (19 December 2023).

[20] Judicial Review and Courts Act 2022.

[21] A Ames and others, *Legal Problem and Resolution Strategy 2023: Summary Report* (Ministry of Justice Analytical Series 2024)..

[22] G Vos, 'Speech by the Master of the Rolls: AI – Transforming the Work of Lawyers and Judges' (Manchester Law Society AI Conference, 2024) https://www.judiciary.uk/speech-by-the-master-of-the-rolls-at-the-lawtechuk-generative-ai-event/

wrote the literature review, which is included as an appendix to this Report. We are also grateful to all the members of the WG who attended meetings over the summer and to the attendees of the CJC National Forum for their helpful contributions to this Report.

Professor Elizabeth Smart

Professor Sue Prince

3. The issue: Digital Disadvantage

3.1 People frequently find means to resolve legal problems without using the legal system or just do not resolve their problems.[23] They often find the legal system to be incomprehensible and lack knowledge and understanding of how to access legal help and how to use the law to help them resolve problems.[24] The ATJF, working with the Solicitors Regulation Authority (SRA) and the Law Society of England and Wales, are currently considering how to build a better understanding of the consumer experience of online solutions to dispute resolution, as well as the barriers. They have found that there is lack of awareness generally about dispute resolution; that Online Dispute Resolution (ODR) is not being designed with appropriate accessibility, or with sufficient embedded support and guidance. [25]

3.2 The issue is not just for court users, as lawyers also have different levels of understanding of digital technology and AI. Different tools used in legal research, e.g. Westlaw, Lexis, etc also have potential error rates and there is a need for lawyers to further understand the issue of

[23] Seem, for example: P Pleasence, NJ Balmer and C Denvir, *How People Understand and Interact with the Law* (The Legal Education Foundation 2015) https://www.thelegaleducationfoundation.org/wp-content/uploads/2015/12/HPUIL_report.pdf
[24] See, for example: **Network for Justice**, *Roundtable of Legal and Advice Sector Leaders (LASR)* (2024) https://nfj.org.uk/about-us/legal-and-advice-sector-roundtable/
[25] NB: This is part of a **Regulators' Pioneer Fund** collaborative project exploring the potential of ODR to address unmet legal need.

'hallucination' drawing up legal arguments and supporting clients more generally. There are also ethical questions arising for lawyers and examples of poor practice where individuals are using and applying technology themselves.[26]

3.3 It is difficult to fully define the idea of digital disadvantage as it is so closely linked to the broader category of access to justice as well as the constantly evolving and dynamic field of AI and technology. The WG were keen to acknowledge the gaps in our understanding of how people use the legal system. We considered that reflection about a definition offered a 'snapshot in time': a more consistent understanding of language, and a consideration of the subject-matter and the methodology that should be employed when looking at digital disadvantage should be encouraged. A move towards a dialogue of 'inclusion' would enable a more constructive approach. For example, the MOJ in their Digital Strategy 2025, recognise the importance of user-centred design and development of digital legal services.[27] HMCTS and the ATJF identified a complex interplay between digital solutions and accessibility of legal advice services. They also emphasised the importance of user-centred approaches.[28]

3.4 Affordability is a huge factor in accessing digital services. Those who struggle to afford access to the internet, either go without it, or experience other financial strains to retain access.[29] Citizens Advice report that 1 million people have cut back or cancelled broadband packages in 2022-23. Tools such as the Ofcom Communications Affordability Tracker (June 2020 onwards) monitors households' ability to afford their communication services.[30] Roughly 6% of households had no broadband or internet access at home in 2021.[31]

3.5 The legal system can itself be extremely complex for court users. Focus on design enables greater understanding of court users and therefore a service that is better able to react to user need. The legal system was designed for use by lawyers rather than lay participants.

---

[26] See, for example: V Magesh and others, 'Hallucination Free? Assessing the Reliability of Leading AI Legal Research Tools' (Pre-print, under review, 24 May 2024) *Journal of Empirical Legal Studies* [2025] 1.

[27] **Ministry of Justice**, *Digital Strategy 2025* (2024) https://www.gov.uk/government/publications/ministry-of-justice-digital-strategy-2025/ministry-of-justice-digital-strategy-2025

[28] See, for example: **HM Courts and Tribunals Service**, *User Inclusion Strategic Public Engagement Group* https://www.gov.uk/government/publications/strategic-public-engagement-group-meeting-february-2025

[29] **Ofcom**, *Digital Exclusion Review* (2022) https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/media-literacy-research/adults/adults-media-use-and-attitudes-2022/digital-exclusion-review-2022.pdf 4.

[30] **Ofcom**, *Communications Affordability Tracker* https://www.ofcom.org.uk/phones-and-broadband/saving-money/affordability-tracker/

[31] **House of Lords Communications and Digital Committee**, *Digital Exclusion* (3rd Report of Session 2022–23, HL Paper 219, 29 June 2023) 8 https://publications.parliament.uk/pa/ld5803/ldselect/ldcomm/219/21902.htm

The small claims court was created to try to minimise some of that complexity: described as a project that 'on the whole failed to provide a satisfactory solution to the problem'.[32]

3.6 The Department of Education designed an Essential Skills Framework to support adults to enhance their essential digital skills.[33] These are categorised into communication, handling information and content, transacting, problem-solving and being safe and legal online. If a skills framework was embedded into design principles for providers of digital content, it would serve to create a more inclusive foundation for help and support.

3.7 There is an identifiable need for greater emphasis on the development of digital skills, for example, the House of Lords Communications and Digital Committee has reported that digital proficiencies were set to be the largest skills gap for people living in the UK by 2030.[34] Using digital design principles to enhance public legal education more generally should also be a priority in all elements of a digital service. For example, the Civil Resolution Tribunal in British Columbia, Canada uses a literacy level of 6th – 8th grade for all online communications, including judicial decisions.[35]

3.8 The MOJ Digital Strategy has the needs of the court user as one of its central themes.[36] Useability is a central tenet of design thinking when innovating in the legal system whether this development would improve the experience of justice for people. Where lawtech is designed to help, we are still at the early stages of inclusive design.[37] The future-looking focus is on having a strong digital foundation to legal services, with better informed decisions and with measurable outcomes, where the emphasis is on simpler, faster, better,[38] but the details of how this will work in practice are very vague. In addition, HMCTS' User Inclusion team is now seeking to design out barriers for access to justice and considering how to make reasonable adjustments in the digital justice system.

3.9 However, there is still a need for more data flags to be built into the system to generate more data to enable greater understanding of user need. This means understanding when

---

[32] K Economides, 'Small Claims and Procedural Justice' (1980) 7 *British Journal of Law and Society* 111, 111.
[33] **Department for Education**, *Essential Digital Skills Framework* (23 April 2019).
[34] **House of Lords Communications and Digital Committee**, *Digital Exclusion* (3rd Report of Session 2022–23, HL Paper 219, 29 June 2023).
[35] See, for example: **Green v Mercer** (2024) BCCRT 399 https://decisions.civilresolutionbc.ca/crt/crtd/en/item/526014/index.do?q=green+v+mercer
[36] **Ministry of Justice**, *Digital Strategy 2025* (19 December 2023). *"This strategy sets out our ambition to change the user experience of justice by providing simpler, faster and better services for everyone."*
[37] *An example of good practice is the **Content Hub Platform for Prisoners**, which uses design principles and data to create content specifically to help prisoners*.
[38] **Ministry of Justice**, *Digital Strategy 2025* (19 December 2023).

users get lost in the system or when they find the technology too difficult to understand or access.[39] The ability to identify different categories of cases in order to understand how users progress through the justice system and conduct other types of nuanced analysis will also help to better understand the needs of more vulnerable court users.

Conclusion

3.10 Technology does not offer a panacea to the difficulties with accessing justice. There is a gap in digital ability, accessibility, availability, and reliability as well as understanding of legal need. Whilst AI and legal technology offer tools to increase capability, there is a need to acknowledge that we require more data on how individuals interact with the legal system and principles and frameworks that ensure a more inclusive approach generally. The issue of how users choose to access the system is also important when taking an inclusive approach.

[39] The **Civil Resolution Tribunal** in British Columbia identifies this as a basic principle in the design of their online service.

4. Questions asked at the CJC Forum

4.1 This section provides a synopsis of contributions made at the workshop session on Digital Disadvantage held at the CJC's Annual Forum on Friday 29th November 2024. The discussion centred around three questions. The questions are below, with a summary of responses to each. We are grateful for the wide-ranging, full and passionate discussion that took place on this subject.

Question One

To what extent do you think it is possible to define digital disadvantage and is it more helpful to think about it in terms of digital inclusion given the many intersectional socio-economic factors which cut across large sections of society?

Summary of Responses

4.2 Inclusive design principles as a way forward, were supported by the majority; there were no dissenting opinions. There was a real sense of the need to think in terms of intersectional disadvantage in its many forms, and separate to the issue of simply being abreast of AI innovation and legal technology. The two are not separate, but the focus here is access to justice more broadly as opposed to the creative AI space which continues to develop exponentially and endeavouring to be ahead of the curve. The point being that you can have the AI technology (assuming you can harness it) but if the user cannot, will not, or is unable to use this technology, it is not, of itself, going to be the solution. When we say design principles, what is this for? Who do we think are going to use them? How can we encourage them to do so (through convening powers) and reflect on the idea that AI and legal tech are just one of those tools, principles. A comment was made in respect to the question of choice, which is an interesting perspective. Clearly there should be choice. A choice to use the system in a particular way, be it in a traditional way or in a digitally legal tech innovation driven way. That said, this must be balanced against whether or not the choice approach is a pragmatic one. In effect, is it efficient and effective?

4.3 To follow a rigid digital disadvantage pathway avoids the question of legal capability. It was argued in effect that the most well equipped may still be an access to justice victim due to lack of legal capability. To circle back to the issue that many users do not realise that they have a legal problem until it is too late. So, they're not going to access digital services or otherwise in the first instance. This leads to a conversation around public legal education and the extent to which that can fill this particular void. Much of the commentary referenced the need to define a goal, define an outcome, define a strength and create a strategy about what we want to achieve. There was consensus around the need to create an inclusive design framework which sets out those inclusive design principles and to the extent in terms of next steps consideration might be given to defining the actual vision and mission, aims and objectives in order to create an action plan with key measures of success, and staging posts for effective monitoring and evaluation.

Question Two

How could we use agreed inclusive guiding design principles to influence change in civil justice and government policy more broadly?

Summary of Responses

4.4 There was broad support for designing principles with a clear steer towards co-creation with a range of stakeholders which include users, and a role for an overarching body to ensure transparency and effective communication. The need for a shared understanding of the aims and outcomes, design principles and patterns and core values was felt to be important, and echoes the responses to question one.

Question Three

Whilst the focus is rightly on the end user to what extent could or should we look to focus on legal tech and innovation in the legal sector from the perspective that many SMEs possess neither the time or resource to keep abreast of and utilise effectively some of the innovations in the sector?

Summary of Responses

4.5 There was a strong sense in the room that AI is but just one tool to improve access to justice, and that with the pace of change and associated costs, this is not something we are able to achieve in isolation. The comments speak to earlier responses calling for a clear organisational structure and a strategic approach informed by the voice of the users of legal services, to enable the design to be targeted, efficient, and effective.

Conclusion

4.6 There was strong support to view digital disadvantage through the lens of digital inclusion, given the intersectional disadvantages that exist. A strong steer was given that AI and legal tech are only part of the solution, and we should consider how we harness them with key stakeholders in business, the courts, and government, within the broader context of responding to all forms of disadvantage. A key aspect of this is effective governance and oversight, linked to the real importance of inclusive design principles, which are co-created with the user rather than something imposed upon them.

5. Intersectionality and Digital Disadvantage

5.1 The aim of reforming the justice system is to enable easier transition between its various parts for litigants and this includes the pre-action space.[40] There is general optimism that the use of technology can help improve access to justice.[41] See also the point made earlier in this report, that HMCTS data shows the digital process to have resulted in cases progressing three times faster than before.

5.2 This positivity is, however, not felt universally. The Communications and Digital Committee report that around 2.4 million adults are unable to display or demonstrate basic skills such as connecting to Wi-Fi or updating a password.[42]

5.3 We therefore cannot assume that technology will be a magical fix to enable greater access to justice. Catrina Denvir and Amanda Darshini Selvarajah note that despite 'the Government's emphatic declarations, taking justice online will not automatically enhance access and indeed may limit it for some individuals.'[43] Case studies illustrate the sometimes disjointed approach felt by users of the system. For example, remote video attendance at court via telephone with weak technology links and poor interconnectivity with representatives.[44]

5.4 The growth of lawtech has led to the development of start-up businesses designing innovative processes to enable law firms to be more efficient. The Legal Services Act 2007 has led to greater liberalisation in the legal services market within the UK which enables and

[40] C Birss, 'Is a focus on data the way to improve access to justice in a multifaceted world?' (The 24th Competition Law Association Burrell Lecture, 30 November 2023) https://www.judiciary.uk/speech-by-lord-justice-colin-birss-is-a-focus-on-data-the-way-to-improve-access-to-justice-in-a-multifaceted-world/ [54]

[41] C Denvir and A D Selvarajah, 'Safeguarding Access to Justice in the Age of the Online Court' (2022) 85 *Modern Law Review* 25, 28

[42] House of Lords Communications and Digital Committee, **'Digital exclusion'** (3rd Report of Session 2022–23, HL Paper 219, 29 June 2023) https://publications.parliament.uk/pa/ld5803/ldselect/ldcomm/219/21902.htm 6

[42] Figure reported: Ibid 9

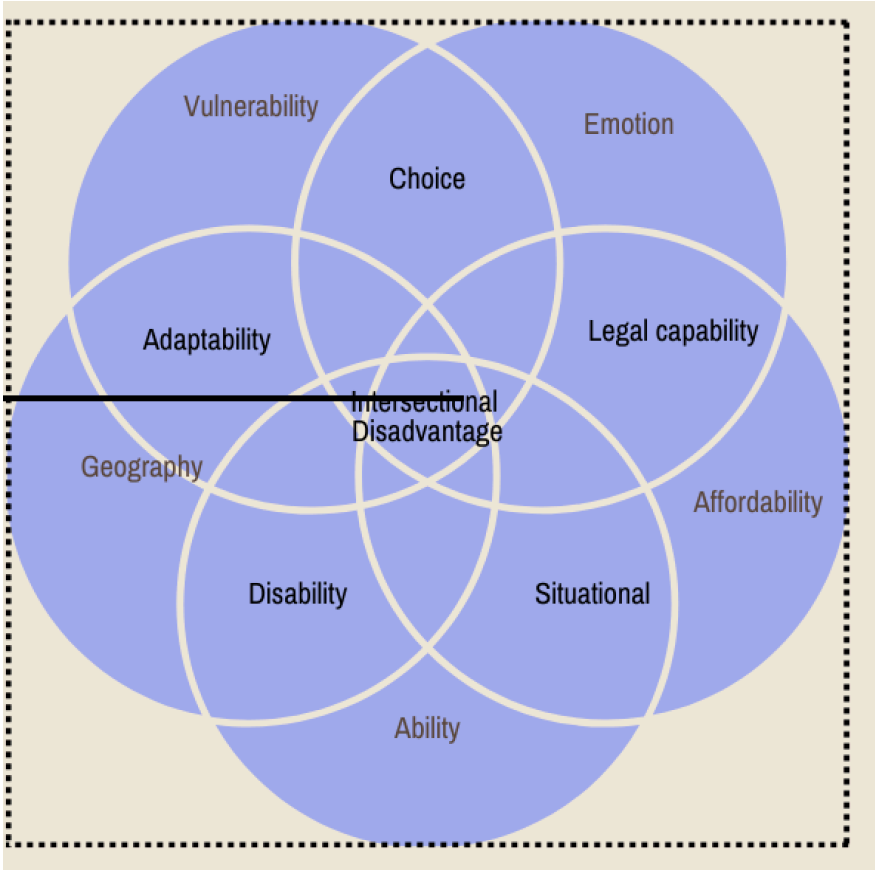
[43] Catrina Denvir and Amanda Darshini Selvarajah, 'Safeguarding Access to Justice in the Age of the Online Court' (2022) 85 *Modern Law Review* 25, 28

[44] See for example: [Case Study] O Adisa, S James and Daniel Newman, 'Chapter 15, Rural Access to Justice and Beyond: Dimensions of Access as a Criterion for Understanding Lay Users' Satisfaction with Remote Justice' in D Newman and F Gordon (eds), *Access to Justice in Rural Communities: Global Perspectives* (Hart Publishing 2023) 215

encourages the involvement of non-lawyers in these developments.[45] Some of these can be identified as general Business to Business (B2B) technology growth, but some are more specific to law firms (e.g. technology that analyses cases). A smaller number of start-ups are working in access to justice, either working with third sector advice organisations, or creating their own innovative tools for advice workers or litigants (e.g. chatbots or other automated services). One example is DoNotPay, which helps users with parking fines.[46] These types of sites may be developed by lawyers or computer scientists, and it is notable that the giving of legal advice is not an activity reserved to the legal profession under the Legal Services Act 2007.[47]

5.5 The risks associated with the use of AI could undermine trust in the legal system more generally if not developed with care and supervision. The Legal Services Board (LSB) offers an outcome-based approach, and legal regulators such as the SRA offer guidance to the professions.[48] Most investment in legal technology is being made in B2B rather than in access to justice.[49] Therefore, the role of responsible innovation lies in encouraging businesses and start-ups to work in the digital disadvantage space in conjunction with the third sector. One example of good practice is the Justice and Innovation Group run regularly by the Access to Justice Foundation, that showcases good practice in this area.[50] The Law Society is working on a three year 21st Century Justice project, putting forward ideas to improve access to justice through developing technological and digital support.[51] Their work is cross-industry including insurers, lawyers, and consumer groups and aims to enable lawyers to adapt to the changes introduced by digital technologies and AI.

[45] Other jurisdictions have made use of digital and regulatory sandboxes as mechanisms for testing innovation for legal services. See, for example: Utah Supreme Court to Extend Regulatory Sandbox to Seven Years (Utah Courts, May 2021) https://www.utcourts.gov/utc/news/2021/05/07/utah-supreme-court-to-extend-regulatory-sandbox-to-seven-years/ .
[46] See, for example: DoNotPay: https://donotpay.com.
[47] Legal Services Act 2007, s 12
[48] See, for example: Legal Services Board, Update on AI Approach (April 2024) https://legalservicesboard.org.uk/wp-content/uploads/2024/04/Legal-Services-Board-update-on-AI-approach-April-2024-pdf. See also: Solicitors Regulation Authority, *Lawtech Insight Summer 2024* https://publications.sra.org.uk/lawtech-insight-summer-24/. See also: Nuffield Family Justice Observatory, *AI in the Family Justice System: Briefing* (May 2024) https://www.nuffieldfjo.org.uk/wp-content/uploads/2024/05/NFJO_AI_Briefing_Final.pdf
[49] C M Harper and S S Zhang, 'Legal Tech and LawTech: Towards a Framework for Technological Trends in the Legal Services Industry' in A Mendez (ed), *Market Engineering: Insights from Two Decades of Research on Markets and Information* (Springer Cham 2021) 183-197
[50] Access to Justice Foundation, *Justice and Innovation Group* https://atjf.org.uk/justice-and-innovation-group
[51] The Law Society, *Interim Report on 21st Century Justice Project* (April 2024)



5.6 The above diagram shows the intersectionality of the various factors and barriers raised in connection with the concept of digital disadvantage by the WG and by attendees at the National Forum. There was a sense of the need to think about this subject in terms of intersectional disadvantage rather than by trying to increase understanding of AI innovation and legal tech. Many users of the legal system may be affected by many of these factors at any one time and therefore their needs are complex, multitudinous, and multi-dimensional, and beyond their use of digital tools. Differential legal needs and capabilities and their intersection with how technology is used to resolve legal problems require research and understanding of how people engage with the legal system along the lines of the project conducted by Hazel Genn in the 1990s.[52] A greater focus on how the user approaches the justice system will increase understanding of how to design inclusive processes and principles and serve to underpin a more people-centric approach to designing justice. The need for this research was enthusiastically supported by the WG.

[52] H Genn, *Paths to Justice: What People Do and Think about Law* (Bloomsbury Publishing 1999)

Conclusion

The idea of digital disadvantage naturally leads to a discussion of the types of disadvantage, many of which are inherent in the system. For this reason, we prefer to focus on inclusion. Even those who are digitally literate may face barriers with technology when faced with a legal problem or situation. Inclusion also suggests an end-to-end process, concentrating on the needs of the user.

6. Conclusion

6.1 Sir Geoffrey Vos, the Master of the Rolls and Chair of the CJC, acknowledged the importance of technology to society.[53] He said it provides part of the solution to access to justice, and he could envision "having real legal advice - not just AI chatbots giving advice to people that need it at the earliest possible stage".[54]

6.2 The WG considered that digital disadvantage serves to highlight underlying issues of access to justice, acknowledged as a priority for the current Government by the Lord Chancellor.[55] This is also reflected in the work of the Department of Science, Innovation and Technology in the Digital Inclusion Action Plan.[56] Digital disadvantage only serves to increase the broader pool of those who are unable to access justice through a variety of causes. For this reason, we have argued that the language of 'inclusion' would be more appropriate than using the terminology of 'disadvantage' in order to promulgate the idea that the justice system should be available to all and that the user is the priority in the design of the digital justice system.

6.3 Digital disadvantage is therefore an additional factor to be balanced against legal capability and the role of public legal education is important in offering principles for design. Offering thresholds and guidance on language levels and literacy, similar to those provided by the Civil Resolution Tribunal in British Columbia in Canada for example, would add to our inclusive design framework.

6.4 To view access to justice as enabled solely through the lens of digital disadvantage may be self-limiting. A set of design principles based on inclusivity could be a much more effective way of ensuring equity for everyone and access to justice for all. There is a sense that the concept of digital disadvantage plays into the deficit model of requiring the return of legal aid to solve the problem. Therefore, the WG believe that shifting the dial to a focus on the design of inclusive technology will actually serve wider society as a whole and increase capabilities as a priority.

---

[53] Oral Evidence, *Work of the Master of the Rolls*, HC 1387, 6 June 2023.
[54] *Ibid*.
[55] King's Speech Debate, HL Deb 24 July 2024
[56] Department for Science, Innovation and Technology, Digital Inclusion Action Plan: First Steps (Feb 2025) https://www.gov.uk/government/publications/digital-inclusion-action-plan-first-steps/digital-inclusion-action-plan-first-steps

6.5 It is necessary therefore to think about what we mean by inclusive design principles. We need to consider what they are for, and who is going to use them. We want to see technology as another tool in the access to justice toolbox, especially as we know that constant evolution is intrinsic in digital technology and that it will continue at speed to bring change and new processes and ways of working.

6.6 Responsible innovation requires an inclusive approach, especially in terms of how we bring value to society as a whole, and as technology continues to develop. This will involve new ways of working with a variety of stakeholders.

Next steps

6.7 This Report recommends the creation of central hub to develop a strategy for digital inclusion. The aim of this recommendation is to develop an approach that ensures access to justice is a priority for digital development.

6.8 As a first step, it is proposed that a user case study is done to map the end-to-end user journey through an aspect of the civil justice process to identify both inclusive processes and gaps and opportunities to intersect with advice and information. This will form the next stage of the work of the Futures Group in Summer 2025.

Table of abbreviations and acronyms

Abbreviation or acronym	Meaning
ATJF	Access to Justice Foundation
B2B	Business to Business
CJC	Civil Justice Council
DSIT	Department of Science, Innovation and Technology
HMCTS	His Majesty's Courts and Tribunals Service
LSB	Legal Services Board
MOJ	Ministry of Justice
ODR	Online Dispute Resolution
OPRC	OPRC Rule Committee
SME	Small or Medium-sized Enterprise
SRA	Solicitors Regulation Authority
WG	Working Group

Appendix A – Literature Review

Literature Review

–

Defining Digital Disadvantage and Understanding Access to Justice

William Page

Table of Contents

Introduction: Defining Digital Disadvantage and Understanding Access to Justice

This literature review clarifies our current understanding of 'digital disadvantage' and how it interacts with civil justice. This review draws on academic and non-academic sources that engage with digital disadvantage and related concepts. Drawing upon this literature range, this report seeks to provide the basis for a shared understanding of digital disadvantage, which shall act as a solid platform to develop future concepts and practices. These discussions aim to produce a satisfactory definition of digital disadvantage, which is flexible enough to engage with broader social discussions but narrow enough to have suitable application within the context of digitising and creating a hybrid civil justice system.

Digital disadvantage encompasses many different themes. While engaging with broader concepts of digital disadvantage, the scope of the review is specifically interested in its relationship with access to justice. As such, this review is structured to reflect four key themes that demonstrate this relationship. This intersection of themes represents the multifaceted nature of digital disadvantage.

This literature review is divided into the following themes, which will outline and expand on the literature. This discussion will also highlight potential avenues of development, which will inform the report that will be disseminated off the back of this research. The structure of this review is as follows:

1. The different definitions of digital disadvantage and digital exclusion:
    a. The consistency of these definitions across government and NGOs.
    b. Unpacking the multifaceted nature of this subject, with a focus on affordability, access, and ability.[1]
2. Examples of where positive changes are implemented to counter digital disadvantage.
3. Any lessons from an increase in technology use since COVID.
4. Other drivers for data collection on exclusion.

[1] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at p. 8 [6] based on the definition from Ofcom: Ofcom, 'Digital exclusion: A review of Ofcom's research on digital exclusion among adults in the UK', (30th March 2022) <https://www.ofcom.org.uk/ data/assets/pdf_file/0022/234364/digital-exclusion-review-2022.pdf> (accessed 7th June 2024)

This discussion will assist in framing a suitable definition of digital disadvantage and produce insights into how social factors contribute to it. Concepts of disadvantage will be placed in the context of access to justice, highlighting how the digitisation of public services needs to be sensitive to the realities of those facing digital disadvantage.

1. Defining Digital Disadvantage:

Across all reports that sought to engage with the concepts of digital disadvantage, there was an acknowledgement that there is no 'universally accepted definition of digital exclusion.'[2] Some reports framed their definitions along empirical metrics, such as the 'Tech Partnership Basic Digital Skills.'[3] Other reports, such as that published by the Communications and Digital Committee, rooted their definition from that produced by Ofcom. This definition draws upon three factors contributing to digital exclusion: affordability, access, and ability.[4] These concepts will be further discussed later in this literature review and will be applied to the legal context. Given the various expressions of digital disadvantage, this literature review will first consider the broad spectrum of definitions and how they relate. This discussion will focus on both pre-and post 2022 definitions. However, emphasis should be placed on post-2022 definitions and reports, as the COVID-19 pandemic increased the speed at which digital technology was implemented into the public sector.[4]

A. How Does the Definition of Digital Disadvantage Change Definitions Across Government and NGOs?

As discussed above, the definition of digital disadvantage encompasses many different concepts. As such, other variants of 'digital disadvantage' appear throughout the literature, such as digital inclusion and digital poverty. Each definition varies in scope and is measured in different ways. The table below highlights the terminology used and what that organisation's conception of digital disadvantage includes. This table will briefly give an overview of the different terminology. These reports and documents will be considered in more detail later in this review.

---

[2] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at p.8 [6]

[3] Office for National Statistics, 'Exploring the UK's digital divide', (4 March 2019) <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04> (accessed 21st June 2024)

[4] Covid-19 Committee, Beyond Digital: Planning for a Hybrid World (1st report, Session 2019–21, HL Paper 263) at p. 3

Organisation	Terminology Used	What is included in this definition?
Cabinet Office (2014)	Digital Inclusion (The report also noted this involved reducing digital exclusion).[5]	1. Digital skills. 2. Connectivity. 3. Accessibility.
Department for Science, Innovation & Technology and Department for Science, Innovation & Technology **UK Digital Strategy (2017)[6]**	Digital Skills and Inclusion	The definition of digital inclusion is framed along understanding the barriers that cause digital exclusion: - access: the ability to connect to the internet and go online - skills: the ability to use the internet and online services - confidence: a fear of crime, lack of trust or not knowing where to start online - motivation: understanding why using the internet is relevant and helpful
Office for National Statistics (2019)[7]	Digital Exclusion	The report adopted the Tech Partnership Basic Digital Skills framework to measure digital exclusion: 1. Manage information 2. Communicating 3. Transacting. 4. Problem-solving 5. Creating
UniCef (2021)[8]	Digital Inclusion	This report seeks to define 'digital inclusion' instead of digital disadvantage. As such, the report notes that five key components to be in place that would foster digital inclusion among children: • a device, • a connection, • skills, • a safe online environment, • and sustainability of access.

[5] Cabinet Office, 'Government Digital Inclusion Strategy' (2014) <https://www.gov.uk/government/publications/government-digital-inclusion-strategy/government-digital-inclusion-strategy#people-who-are-digitally-excluded> (accessed 12th June 2024)

[6] Department for Science, Innovation & Technology and Department for Science, Innovation & Technology, 'UK Digital Strategy 2017', (publish 2017, Updated 11 September 2023) <https://www.gov.uk/government/publications/uk-digital-strategy/uk-digital-strategy> (accessed 7th July 2024)

[7] Office for National Statistics, 'Exploring the UK's digital divide', (4 March 2019) <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04> (accessed 21st June 2024)

[8] UniCef, 'Closing the Digital Divide for Good: An end to the digital exclusion of children and young people in the UK', (published 2021) <https://www.unicef.org.uk/wp-content/uploads/2021/06/Closing-the-Digital-Divide-for-Good_FINAL.pdf> (accessed 21st June 2024) at p. 16

Covid-19 Committee (2021)	Digital Inequality	This report sought 'to discuss digital inequality 'over digital exclusion', as [they] believe that it captures the wider implications, for issues such as health, education and work, of inadequate digital access.'[9] Concepts of digital inequality were viewed as a matrix, on a 'spectrum of digital engagement'.[10]
Digital Poverty Alliance (2022)	Digital Poverty	This report is structured alongside the five 'detriments' of digital poverty: • Devices and connectivity, • Access, • Capability, • Motivation, • Support and participation.[11]
Ofcom (2022)	Digital Exclusion	- '**Access** – those who are digitally excluded because they have no access to the internet at home or elsewhere. - **Ability** – those who lack the digital skills and/or confidence to navigate the online environment safely and knowledgeably. - **Affordability** – those who struggle to afford access to the internet, and so either go without it, or experience other financial strains to retain access.'[12]
Communications and Digital Committee (2023)[13]	Digital Exclusion	1. Affordability. 2. Access 3. Ability

The above table demonstrates how the terminology and concepts surrounding digital disadvantage have shifted over the past decade. These shifts are visible internally and externally to the public sector, with NGOs adopting their concepts through narrower concepts,

[9] Covid-19 Committee, Beyond Digital: Planning for a Hybrid World (1st report, Session 2019–21, HL Paper 263) at p. 10 [18]
[10] Ibid. [20]
[11] Digital Poverty Alliance, UK Digital Poverty Evidence Review (2022) <https://digitalpovertyalliance.org/wp-content/uploads/2022/06/UK-Digital-Poverty-Evidence-Review-2022-v1.0-compressed.pdf> (accessed 25th June 2024) at p.15
[12] Ofcom, Digital exclusion review (2022) <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/media-literacy-research/adults/adults-media-use-and-attitudes-2022/digital-exclusion-review-2022.pdf> (accessed 25th June 2024) at p. 4
[13] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at p.8 [6]

such as digital poverty.[14] The following discussion further unpacks the abovementioned reports to address the terminology and concepts in greater detail.

Cabinet Office: Government Digital Inclusion Strategy (2014)

In 2014, the Cabinet Office published its digital inclusion strategy, which sought to tackle 'digital inclusion, or rather, reducing digital exclusion.'[15] This report framed digital inclusion in a way that focused on digital skills, connectivity and accessibility.[16] Digital skills were framed broadly as 'being able to use computers and the internet.'[17] The principle of connectivity was seen as having the 'right infrastructure', whereby people had access to the internet.[18] The final element of digital inclusion was accessibility, which stated that 'services should be designed to meet all users' needs.'[19] As part of this definition, digital inclusion was measured on a 9-point scale ranging from 1 (people who would never use the internet) to 9 (people who were experts).[20] The report noted that point 7 (basic digital skills) was 'the minimum capability people need to have to use the internet effectively.'[21] The report noted that a benefit to this approach was that it let them 'plot [a] users' level of digital capability against the level of capability they need to use a particular digital service.'[22] For example, at point 6 (task-specific), a user would not need a range of skills if the process was guided.

The development of this 9-point scale was underpinned by earlier research published by the Government Digital Service in November 2012.[23] This earlier research sought to categorise people into six distinct demographics:

1. Actively disengaged
2. Reluctantly online
3. Destination users

[14] Digital Poverty Alliance, UK Digital Poverty Evidence Review (2022) <https://digitalpovertyalliance.org/wp-content/uploads/2022/06/UK-Digital-Poverty-Evidence-Review-2022-v1.0-compressed.pdf> (accessed 25th June 2024) at p.15
[15] Cabinet Office, 'Government Digital Inclusion Strategy' (2014) <https://www.gov.uk/government/publications/government-digital-inclusion-strategy/government-digital-inclusion-strategy#people-who-are-digitally-excluded> (accessed 12th June 2024)
[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Ibid.

4. Willing but unable
5. Learning the ropes
6. Confident explorers[24]

Alongside this, the Cabinet Office used data from the Oxford Internet Survey[25] and the BBC[26] to introduce the demographic of people who were online but have now stopped using the internet and the concept of basic online skills. Alongside digital skills, this report highlighted the importance of connectivity and accessibility, primarily focusing on improving existing infrastructure to bring the Internet into more homes.

Concerning developing appropriate infrastructure, it was noted that the Government Digital Service had developed a checklist to provide best practices for helping people and organisations access the internet.[27] This checklist was divided into six main parts:

1. 'Start with user needs - not our own
2. Improve access - stop making things difficult
3. Motivate people - find something they care about
4. Keep it safe - build trust
5. Work with others - don't do it alone
6. Focus on wider outcomes - measure performance'[28]

This checklist was supported with real-world examples of where different principles had been applied. It provided suggestions for implementing these strategies in policies and practices.[29]

Despite the promising start to this report, as time went on, it routinely attracted criticism for the need for more implementation. For example 2016, the Science and Technology Committee

[24] Cabinet Office, 'Research and Analysis: Digital Landscape Research', (6th November 2012) <https://www.gov.uk/government/publications/digital-landscape-research/digital-landscape-research> (accessed 4th July 2024)
[25] Grant Blank and William H. Dutton, with Julia Lefowitz, 'OxIS 2019 Report: Perceived Threats to Privacy Online: The Internet in Britain', (9th September 2019) <https://oxis.oii.ox.ac.uk/reports/> (accessed 4th July 2024)
[26] BBC, 'Media Literacy: Understanding Digital Capabilities follow-up', (September 2013) <https://www.bbc.co.uk/learning/overview/assets/bbcmedialiteracy_20130930.pdf> (accessed 4th July 2024)
[27] Cabinet Office, 'Government Digital Inclusion Strategy' (2014) <https://www.gov.uk/government/publications/government-digital-inclusion-strategy/government-digital-inclusion-strategy#people-who-are-digitally-excluded> (accessed 12th June 2024)
[28] Government Digital Services, 'A checklist for digital inclusion - if we do these things, we're doing digital inclusion', (13th January 2014) <https://gds.blog.gov.uk/2014/01/13/a-checklist-for-digital-inclusion-if-we-do-these-things-were-doing-digital-inclusion/> (accessed 4th July 2024)
[29] Government Digital Services, 'A checklist for digital inclusion - if we do these things, we're doing digital inclusion', (13th January 2014) <https://gds.blog.gov.uk/2014/01/13/a-checklist-for-digital-inclusion-if-we-do-these-things-were-doing-digital-inclusion/> (accessed 4th July 2024)

commented that the 'Government's initiatives do not amount to a strategy.'[30] As such, they stated that 'digital exclusion and systemic problems with digital education and training need to be addressed as a matter of urgency.'[31] These sentiments are repeated throughout the decade, with the Communications and Digital Committee (2023) commenting, 'the Government has taken its eye off the ball.'[32] As such, a common theme throughout the literature is that immediate action is required through proactive and meaningful changes.

Department for Science, Innovation & Technology and Department for Science, Innovation & Technology: UK Digital Strategy (2017)[33]

In 2017, the government outlined a new digital strategy applying the principles outlined in the Industrial Strategy Green Paper to the digital economy.[34] This strategy was geared towards allowing the UK economy to 'prepare to leave the European Union.'[35] This strategy covered various areas relating to building a digital economy. However, given the scope of the literature review, the following will only consider part two of the strategy, which focuses on digital skills and inclusion.

The report notes that one in ten UK adults have not used the internet,[36] and notes that this lack of internet access could be related to a lack of 'connectivity, digital skills or motivation.'[37] As part of this strategy, the government sought to examine 'digital capability'. The concept of digital capability was related to digital exclusion, as those who do not have basic digital

[30] Science and Technology Committee, *Digital skills crisis* (Second Report of Session 2016–17, HC Paper 270) <https://committees.parliament.uk/work/4516/digital-skills-inquiry/publications/reports-responses/> (accessed 12th June 2024) at para[12]
[31] Ibid. [15]
[32] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 <https://publications.parliament.uk/pa/ld5803/ldselect/ldcomm/219/21902.htm> (accessed 3rd June 2024) at para [61]
[33] Department for Science, Innovation & Technology and Department for Science, Innovation & Technology, 'UK Digital Strategy 2017', (publish 2017, Updated 11 September 2023) <https://www.gov.uk/government/publications/uk-digital-strategy/uk-digital-strategy> (accessed 7th July 2024)
[34] Department for Business, Energy & Industrial Strategy, 'Building our Industrial Strategy', (23 January 2017) <https://www.gov.uk/government/consultations/building-our-industrial-strategy> (accessed 8th July 2024)
[35] Department for Science, Innovation & Technology and Department for Science, Innovation & Technology, 'UK Digital Strategy 2017', (publish 2017, Updated 11 September 2023)
[36] ONS, 'Internet users in the UK: 2016', (20th May 2016) <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2016> (accessed 8th July 2024)
[37] artment for Science, Innovation & Technology and Department for Science, Innovation & Technology, 'UK Digital Strategy 2017', (publish 2017, Updated 11 September 2023)

capability skills are likely to be excluded. As such, the concept of digital inclusion was framed alongside understanding the barriers to inclusion. These barriers are as follows:

- **Access:** the ability to connect to the internet and go online.
- **Skills:** the ability to use the internet and online services.
- **Confidence:** a fear of crime, lack of trust or not knowing where to start online.
- **Motivation:** understanding why using the internet is relevant and helpful.

This framing of barriers to digital inclusion is similar to those produced by the Cabinet Office in 2014 regarding digital skills, connectivity, and accessibility.[38] However, the characteristics of confidence and motivation were introduced, which appear to represent the six demographics (ranging from actively disengaged to confidence explores) highlighted by the Government Digital Service in November 2012.[39] As part of this strategy, many initiatives were noted to reduce digital capability, including free access to the Internet at public libraries. In addition, there was an emphasis on collaborative partnerships, where the private sector had introduced initiatives with the government to help foster digital skills.

Office for National Statistics: Exploring the UK's digital divide (2019)[40]

Some years later, the Office for National Statistics (ONS) sought to explore the digital divide, where they noted there was an increasing difference between those who had 'access to information and communications technology and those who do not.'[41] Because of this inequality, the report was rooted in the concept of digital exclusion whereby certain demographics were at 'risk of being left behind', as 'they lack the skills to be able to confidently and safely navigate the digital world.'[42] In measuring the scale of digital exclusion the report adopted the Tech Partnership Basic Digital Skills framework.[43] This framework highlights the five basic skills considered to be the core elements of digital inclusion. They are as follows:

---

[38] Cabinet Office, 'Government Digital Inclusion Strategy' (2014) <https://www.gov.uk/government/publications/government-digital-inclusion-strategy/government-digital-inclusion-strategy#people-who-are-digitally-excluded> (accessed 12th June 2024)
[39] Ibid.
[40] Office for National Statistics, 'Exploring the UK's digital divide', (4 March 2019) <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04> (accessed 21st June 2024)
[41] Ibid. at p.2
[42] Ibid.
[43] Office for National Statistics, 'Exploring the UK's digital divide', (4 March 2019) <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04> (accessed 21st June 2024) at p. 3

1. ‘**Manage information:** using a search engine to look for information, finding a website visited before, or downloading or saving a photo found online.
2. **Communicating:** sending a personal message via email or online messaging service or carefully making comments and sharing information online.
3. **Transacting:** buying items or services from a website or buying and installing apps on a device.
4. **Problem-solving:** verifying sources of information online or solving a problem with a device or digital service using online help.
5. **Creating:** completing online application forms including personal details or creating something new from existing online images, music or video.’[44]

When applying this framework, to possess digital skills, the ‘respondents need to be able to do one of the activities listed under it.’[45] The ONS noted that this framework is also used by the Lloyds Bank UK Consumer Index 2018 to estimate the digital skills of the UK population.[46] In this context, it was estimated that the number of people ‘in the UK lacking basic digital skills was declining, [and] in 2018, 8% of people in the UK (4.3 million people) were estimated to have zero basic digital skills.’[47] The ONS report highlighted why digital exclusion matters, highlighting the earning and employability benefits, retail transaction benefits, communication benefits, and the time-saving that could be made using online services.[48] This report then demonstrated the pattern of digital exclusion across the UK, demonstrating regional differences, gender differences, age variations, the significance of disability, and ethnic differences.[49] Although this data demonstrates the differences between demographics, this literature review will not highlight them, as this paper focuses on the concept of digital disadvantage.

The Covid-19 Committee: Planning for a Hybrid World (2021)[50]

This report by the Covid-19 Committee noted that ‘the future was always going to be hybrid—an increasingly blurred mix of online and offline aspects of life.’[51] However, the pandemic

[44] Office for National Statistics, ‘Exploring the UK’s digital divide’, (4 March 2019) <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04> (accessed 21st June 2024) at p. 3
[45] Ibid. at p.4
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid. at pp. 7 – 20
[50] Covid-19 Committee, Beyond Digital: Planning for a Hybrid World (1st report, Session 2019–21, HL Paper 263)
[51] Ibid. at p. 3

played a significant role in forcing a shift towards a hybrid system. With increasing pressures to be online, the Committee noted that 'the most disadvantaged and marginalised people in society were being further marginalised and disadvantaged' due to an inability to access online services due to financial and digital limitations.[52] The report noted that whilst the government had committed to creating a new digital strategy, this would not be sufficient if this were 'simply an updated version of what has gone before'.[53] This report credited ministers for acknowledging that the 2017 *Digital Strategy* 'does not reflect "the new post-COVID reality"'.[54] As such, the Committee argues that any new strategy must be hybrid and recognises the impact digital technology has on public policy.[55]

The report advocates for a 'hybrid' system, arguing that we 'can no longer think about 'digital' as being something separate' from the offline world.[56] As such, the Committee notes:

> 'A hybrid world is one that embraces the flexibility that remote working and virtual interaction can offer, with the recognition that we want and need public and private spaces in our communities to meet face-to-face […]'.[57]

This conception of 'hybrid' is framed with a sensitivity towards digital disadvantage. The report notes that 'a hybrid world cannot be inclusive nor offer equal opportunity to all unless everyone has the necessary broadband speeds, digital devices and skills to live and work online.'[58] As such, the Committee noted that government involvement is needed to overcome digital infrastructure and skills limitations. In addition, it was noted that government policy must be aware of the risk that increasing the use of digital technology carries, specifically in contexts where essential services are provided, as technological advancement 'may reinforce existing inequalities.'[59] In addition, any policy cannot understate the importance of face-to-face interactions.[60] With this in mind, any concept of digital disadvantage introduced due to this literature review must be rooted within the social context where real-world issues influence digital services.[61]

---

[52] Covid-19 Committee, Beyond Digital: Planning for a Hybrid World (1st report, Session 2019–21, HL Paper 263) at p. 3
[53] Ibid. at p.4
[54] Ibid. at p.8 [11]
[55] Ibid. at p.8 [12]
[56] Ibid. at p. 7 [10]
[57] Ibid. at p. 8 [Box 1]
[58] Ibid. at p. 8 [Box 2]
[59] Ibid.
[60] Ibid. at p. 9
[61] Ibid. at [15]

The most relevant discussion relating to the scope of this literature review is the concept of 'digital inequality', as defined in Chapter 2 of the report.[62] The report highlighted there is 'no simple, universal definition of digital inequality.'[63] The report noted many organisations use the term 'digital exclusion', which 'describes the experiences of those people who lack full access to digital technologies.'[64] On the other hand, this report expressly states that they:

> 'prefer to discuss digital inequality, as we believe that it captures the wider implications, for issues such as health, education and work, of inadequate digital access.'[65]

The report strengthens their broader understanding by highlighting that 'without adequate broadband access, digital devices, digital competence, confidence and skills,' the hybrid world will not be inclusive to all and 'existing inequalities will be exacerbated.'[66] They root this within written evidence from the Cambridge Centre for Housing and Planning Research that seeks to frame this issue as a 'spectrum of digital engagement' instead of a binary issue.[67] As such, concepts of digital inequality should be viewed as a matrix, where an individual may have any number of contributing factors impacting their digital inequality. Consequently, the terminology of digital disadvantage is framed similarly to digital inequality, as both focus on barriers to inclusion instead of inclusion itself.

Following the framing of digital inequality, the report highlighted the scale of digital inequality in the UK by determining how many households had access to the internet and how this resulted in some getting left behind.[68] In addressing this issue, drawing upon the Centre for Ageing Better's research, the Committee called for 'national government and local authorities [to] commit to universal access to the internet by working to expand access' to broadband and technology.[69] As part of their recommendation, they urged the Government to consider introducing a legal right to internet access and digital infrastructure.'[70] As part of this discussion, the Committee referred to the Digital Economy Act 2017, which was set to include the creation of a broadband Universal Service Order. This would give all premises in the UK a

[62] Covid-19 Committee, Beyond Digital: Planning for a Hybrid World (1st report, Session 2019–21, HL Paper 263) at p. 10 [16]
[63] Ibid. at p. 10 [18]
[64] Ibid
[65] Ibid.
[66] Ibid. at [19]
[67] Ibid. at [20]
[68] Ibid. at p. 11 - 14
[69] Ibid. at p. 14 [32]
[70] Ibid. at p.15 [39]

legal right to request a minimum standard of broadband connectivity.[71] In addition, like other reports, there was a discussion on 'digital literacy.'[72]

The View of NGOs: UNICEF (2021) and Digital Poverty Alliance (2022)

Before considering the two most recent government publications, the following considers how NGOs have approached and developed their own concepts of digital disadvantage. This review will first discuss UNICEF's work on digital inclusion and how it operates in the context of children. This is followed by discussing the work of the Digital Poverty Alliance and why they opt for the term 'digital poverty' over digital inclusion/exclusion.

The UNICEF report highlighted the impact COVID-19 had on children and their education, noting that 'the poorest and most marginalised were those who struggled the most', specifically 'children who were digitally excluded'.[73] This report sought to define 'digital inclusion' instead of digital disadvantage/exclusion. The report notes that five key components to be in place for a child to be digital included:

- a device,
- a connection,
- skills,
- a safe online environment,
- and sustainability of access.[74]

The report argued that all these components are required to ensure that children and young people are fully included in the digital world.[75] The report noted that there is currently no nationally agreed definition for digital inclusion and recommends that a 'meaningful and holistic consultative process' is required to ensure that the definition 'has integrity and longevity'.[76] Drawing upon the work of Carnegie UK, UNICEF notes that 'the definition must carry with it an agreed measure for each component, one that sets out a measurable minimum

[71] Covid-19 Committee, Beyond Digital: Planning for a Hybrid World (1st report, Session 2019–21, HL Paper 263) at p.15 [39]: See, Digital Economy Act 2017, Section 1
[72] Ibid. at p. 16 [43]
[73] UniCef, 'Closing the Digital Divide for Good: An end to the digital exclusion of children and young people in the UK', (published 2021) <https://www.unicef.org.uk/wp-content/uploads/2021/06/Closing-the-Digital-Divide-for-Good_FINAL.pdf> (accessed 21st June 2024) p. 2
[74] UniCef, 'Closing the Digital Divide for Good: An end to the digital exclusion of children and young people in the UK', (published 2021) <https://www.unicef.org.uk/wp-content/uploads/2021/06/Closing-the-Digital-Divide-for-Good_FINAL.pdf> (accessed 21st June 2024) at p. 16
[75] Ibid.
[76] Ibid. at p. 18

standard.'[77] The following briefly elaborates on what these five components mean in the context of this report.

The device and connection criteria can be compared to the notion of 'access' used in other reports. The concept of 'sustainability of access' refers to the device's functioning over an extended period and developing the necessary skills to ensure that children can keep pace with technological development.[78] This notion of longevity towards sustaining devices and skills should be highlighted within the report.

The skills and support aspect focused on allowing children to 'participate online as active, critical, and engaged digital citizens, rather than solely passively consuming content'.[79] This goes beyond the skills outlined in the Tech Partnership Basic Digital Skills framework, as UNICEF seek to provide children with more critical skills. A safe environment is more geared towards children, who require a safe environment to engage online. Overall, this report offers insights into the concept of digital disadvantage, stating a 'meaningful and holistic consultative process' is required to ensure that the definition 'has integrity and longevity'.[80] As such, this literature review considers future definitions and approaches undertaken should seek to build off each other – namely, the definition provided by the Communications and Digital Committee - to ensure a coherent and mutually beneficial approach.

The second NGO report was released the following year by the Digital Poverty Alliance. The report was based on understanding the concept of 'digital poverty', which they define as 'the inability to interact with the online world fully, when, where and how an individual needs to.'[81] The report noted the concept of digital poverty is similar to 'digital divide, digital inclusion and exclusion, and data poverty, but it is also distinct.'[82] The Digital Poverty Alliance considered this concept distinct, as it emphasises 'individual need.'[83] As such, the report notes

[77] Georgina Bowyer, Anna Grant and Douglas White, *Learning from Lockdown (*Carnegie UK Trust, 2020) https://www. carnegieuktrust.org.uk/publications/learning-from-lockdown-12- steps-to-eliminate-digital-exclusion/ (accessed 21th June 2024)
[78] UniCef, 'Closing the Digital Divide for Good: An end to the digital exclusion of children and young people in the UK', (published 2021) at p. 17
[79] Ibid.
[80] Ibid. at p. 18
[81] Digital Poverty Alliance, UK Digital Poverty Evidence Review (2022) <https://digitalpovertyalliance.org/wp-content/uploads/2022/06/UK-Digital-Poverty-Evidence-Review-2022-v1.0-compressed.pdf> (accessed 25th June 2024) at p.14
[82] Ibid.
[83] Ibid.

that the concept of 'digital poverty can begin to blur the lines between poverty and exclusion.'[84] Whilst the report claims that the distinct nature is rooted within the emphasis on 'individual need', there is no evidence to suggest that the concept of digital exclusion overlooks this. Where this report makes a unique contribution in highlighting the relationship between poverty and exclusion in the digital context.

In further unpacking the concept of digital poverty, the report notes that it 'is both – the result of *and* a cause of financial hardship.'[85] However, they note 'a person might not need to live in financial poverty to experience digital poverty.'[86] They relate this to broader discussions around social problems and state the 'evidence in this report overwhelmingly shows that digital exclusion is much more than simply technological', but can extend to social influences.[87] In this sense, despite the narrower scope of the report focusing on digital poverty, digital exclusion is also a factor of consideration. Following their discussion on digital exclusion, the report notes that 'digital poverty is a helpful term because it draws attention to this relationship between the technological and the social'.[88] As such, this report is structured alongside the five 'detriments' of digital poverty:

- Devices and connectivity,
- Access,
- Capability,
- Motivation,
- Support and participation.[89]

This list of detriments is similar to those outlined in other reports and would not necessarily solely relate to digital poverty. The report noted this, as they found that 'familiar categories of digital exclusion (access and connectivity, for instance)' can involve many different factors resulting from 'the digitisation of all spheres of life.'[90] As such, whilst this report focused on digital poverty, the concept engaged with broader concepts relating to the socio-economic influences on an individual's ability to access digital technology, skills and infrastructure.

[84] Digital Poverty Alliance, UK Digital Poverty Evidence Review (2022) <https://digitalpovertyalliance.org/wp-content/uploads/2022/06/UK-Digital-Poverty-Evidence-Review-2022-v1.0-compressed.pdf> (accessed 25th June 2024) at p.14
[85] Ibid.
[86] Ibid.
[87] Ibid.
[88] Ibid.
[89] Ibid. at p.15
[90] Ibid.

Ofcom: Digital Exclusion Review (2022)

One important publication that fed into the Communications and Digital Committee Report (2023),[91] was the digital exclusion review conducted by Ofcom. This report begins by highlighting that 'the number of households who do not have access to the internet at home currently stands at 6%.'[92] However, they note that 'online access is not the only factor in digital exclusion.'[93] For example, having the confidence to navigate the online sphere and online safety are 'prerequisites to reaping the full benefits of the internet.'[94] In drafting this report, a whole host of datasets were considered, which ranged from the Adults Media Literacy Tracker (2021), Use of Communications Survey (2020), Communications Affordability Tracker (June 2020 onwards), Digital Reliance and Vulnerability Tracker during the pandemic. (CCP Research, 2021), to name a few.[95]

The third section of this report, and most relevant to this literature review, was dedicated to defining digital exclusion. The definition adopted in this report is described as broad and appears to be similar to definitions from other reports, but limited the definition to three characteristics:

- '**Access** – those who are digitally excluded because they have no access to the internet at home or elsewhere.
- **Ability** – those who lack the digital skills and/or confidence to navigate the online environment safely and knowledgeably.
- **Affordability** – those who struggle to afford access to the internet, and so either go without it, or experience other financial strains to retain access.'[96]

Ofcom notes that these three branches of digital exclusion are linked to various issues, such as non-access to devices, inability to pay for data, and a lack of skills.[97] The report considered how many people in the UK are digitally excluded and the demographics most impacted; however, this literature review will not consider these at this moment, as demographics are discussed during the breakdown of the following report.

---

[91] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at p.8 [6]
[92] Ofcom, Digital exclusion review (2022) <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/media-literacy-research/adults/adults-media-use-and-attitudes-2022/digital-exclusion-review-2022.pdf> (accessed 25th June 2024) p. 1
[93] Ibid.
[94] Ibid.
[95] Ibid. at pp. 2 - 3
[96] Ibid. at p. 4
[97] Ibid. at p. 4

Communications and Digital Committee: Digital Exclusion (2023)[98]

The final report this review discusses is the Communications and Digital Committee's report on digital exclusion. This report lays out the current government policies on digital exclusion. The report notes that 'the root causes of digital exclusion reflect longstanding social, economic and regional disparities which are not easily solved. But the current scale of the challenge is a direct consequence of political lethargy.'[99] In this sense, the Committee states a new digital strategy is needed to combat digital exclusion. This strategy should do the following:

- Decisively help with the cost of living.
- Investing in developing basic digital literacy skills.
- Boost Digital inclusion hubs.
- Balance the commercial competition with the need to provide Internet services to police service communities.
- Futureproof public services.[100]

As such, any subsequent policies or reports should take these goals into account to ensure that the judicial branch moves in a similar direction to other areas of government.

The report highlights that there is no 'universally accepted definition of digital exclusion', but that the term often refers to how certain 'sections of the population [are] not being able to use the internet in ways that are needed to participate fully in modern society.'[101] The report adopts the definition of digital exclusion stated by Ofcom, as discussed above:

1. Affordability.
2. Access
3. Ability.[102]

This report holds that digital exclusion is caused and contributed to by various social factors,[103] but access to the Internet was deemed the most relevant factor.[104] In addition, where access to

[98] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at p.8 [6]
[99] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at p. 3
[100] Ibid. at pp. 3 - 4
[101] Ibid. at p.8 [6]
[102] Ofcom, 'Digital exclusion: A review of Ofcom's research on digital exclusion among adults in the UK', (30th March 2022) <https://www.ofcom.org.uk/__data/assets/pdf_file/0022/234364/digital-exclusion-review-2022.pdf> (accessed 7th June 2024)
[103] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at para [7]
[104] Ibid. at paras [8] – [10]

the Internet is available, users may lack the basic skills required to fully utilise its capabilities.[105] As part of this study, the report highlighted key demographics:

- Age
- Socio-economic status
- Disability
- Region[106]

It was noted that these factors and demographics should not be considered separately, as many interrelated factors play into digital exclusion.[107] In addition, the cost of living has adversely impacted accessibility to the Internet.[108] As such, an intersectional approach to understanding digital exclusion is required to understand the contributary impact some factors will have on another. In addition, the report set out why the government should take this issue seriously, drawing upon issues of economic growth,[109] moving public services online,[110] levelling up, education and well-being,[111] net zero,[112] and democratic inclusion.[113] Whilst these were all essential points, some were underdeveloped and generally gave the impression that this was to catch the eye of potential MPs who may need a quick reason to justify their support.

- **What has the government done so far? Strategy and work programmes**

As discussed above, in 2014, the Government published its Digital Inclusion Strategy. This identified four barriers to digital inclusion: access, skills, motivation and trust. It was noted that successive governments also attempted to introduce various policies to help build basic digital skills.[114] However, as noted in the report, the initial 2014 recommendations must be updated.[115] The definition of what 'digital exclusion' means and measures of success will likely continue to change as technologies, as living standards and expectations evolve.[116] As such, targeted changes are required. The report 'identified basic digital skills, social tariffs and

[105] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at para [11]
[106] Ibid. at paras [13] – [17]
[107] Ibid. at para [18]
[108] Ibid. at para [27]
[109] Ibid. at paras [34] – [39]
[110] Ibid. at para [40]
[111] Ibid. at paras [45] – [47]
[112] Ibid. at para [50]. This point was mostly related to working from home.
[113] Ibid. at para [51]
[114] Ibid. at paras [53], [54]
[115] Ibid. at para [56], [57]. [61], [62]
[116] Ibid. at para [69]

telecommunications upgrades as priorities for financial commitments.'[117] The following will briefly elaborate on what some of these changes are and what they mean:

- **Affordable Internet access:**

Access to an affordable and decent internet connection is key to digital inclusion.[118] This report focuses on four main areas:

- Improvements to social tariffs.
- VAT on social tariffs.
- Curbing excessive mid-contract price rise policies.
- Scaling up device donation schemes.

In addition, the report also advocated for affordable devices and suggested device donation schemes.[119] The report noted there may be regional differences in internet access,[120] and noted 'the Universal Service Obligation minimum standard is not keeping pace with modern requirements for digital inclusion.'[121] As such, when developing policies with national influences, we must be sensitive to the fact that not all regions of the UK have equal infrastructure.

- **Digital Skills:**

Digital skills are a key part of inclusion and have been a recurring theme throughout this literature review. The report highlighted the success of the 'Future Digital Inclusion programme funded by the Department for Education, which helped over 1 million people with basic skills between 2014 and 2021.'[122] However, the report focused on five critical areas of development:[123]

- More attention is needed to develop digital skills.
- Better join-up is needed. For example, the digital skills framework should be used more consistently across the government.[124]
- Consistent use of existing skills frameworks.

[117] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219, at para [73]
[118] Ibid. at para [80]
[119] Ibid. at para [111], [116]
[120] Ibid. at para [120]
[121] Ibid. at para [126]
[122] Ibid. at para [138]
[123] Ibid. at para [138]
[124] Ibid. at para [145]

- Less focus on qualifications: the Essential Digital Skills Qualification was unlikely to meet the needs of a diverse range of digitally excluded people "who do not seek formal qualifications but would benefit from digital skills support in familiar, community settings."[125]
- More support for community-level delivery: best served by trusted local organisations rather than large institutions.[126]

As such, any strategy related to developing digital skills should consider these factors to ensure the most effective implementation on the ground.

- **Accessible Services:**

This section of the report explored why service providers saw the shift towards digital platforms 'as a 'good thing' […] when it left many customers frustrated, reduced in-person interactions and rendered sections of the population unable to use valued services.'[127] This section referred to the observations of the House of Lords Covid-19 Committee, which found that in many areas, the re-platforming was 'a very poor substitute for 'in person' services and interactions.'[128] Within this report, the following was noted about how other jurisdictions facilitated these transformations:

> 'We heard that countries such as Iceland had prioritised local, in-person support to accompany their digital transformation strategies. Róbert Bjarnason, President of Citizens Foundation Iceland, explained that resources were targeted to libraries, city service centres and closed-down bank branches to transform them into digital support centres.[129]
>
> Kristina Reinsalu, Programme Director of e-Democracy at the e-Governance Academy Estonia, said Estonia had focused its limited resources on public libraries "in even the smallest rural areas and villages, where we launched free-access internet points with mentors and people who could [provide] support".'[130]

[125] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219, at para [152]
[126] Ibid. at para [154]
[127] Ibid. at [161]
[128] Covid-19 Committee, Beyond Digital: Planning for a Hybrid World (1st report, Session 2019–21, HL Paper 263) at p.3
[129] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219, at [167]
[130] Ibid.

With this in mind, the Government's digital inclusion strategy should include support for place-based in-person (face-to-face) initiatives to help those who cannot navigate online access to essential services. As such, adequate provisions must be maintained for those who cannot or do not wish to use online services.[131]As part of this, accessibility needs to focus on the design of inclusive hybrid systems.[132] The Report also considered the impact of predictive analysis, noting that it further marginalises already excluded groups. [133] The use of predictive analysis and AI will be discussed in further detail in section three of this review, highlighting lessons learned from COVID-19.

The report recommended that the government publish a refreshed digital inclusion strategy. In the meantime, the government should provide an update on progress since the 2014 strategy in response to this report.[134] As such, this literature review feeds into that recommendation by assisting in developing a digital inclusion strategy for the Civil Justice Council. The following section builds on this report by further considering affordability, access and ability in the legal context.

B. Understanding affordability, access and ability in the legal context:[135]

With the Online Procedural Rule Committee stating that while AI and digitisation represent the next steps in justice,[136], there was an acknowledgement that more work needs to be done to understand the challenges of integrating this technology within the justice system.[137] As such, whilst current understandings of digital exclusion are framed around access, ability and affordability,[138] - spanning across a wide range of different sectors and scenarios - there is limited attention given to how it relates to access to justice. The following discussion considers

[131] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at [170], [171]
[132] Ibid. at [172] – [177]
[133] Ibid, at [180]
[134] Ibid. at p.53
[135] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at p. 8 [6] based on the definition from Ofcom: Ofcom, 'Digital exclusion: A review of Ofcom's research on digital exclusion among adults in the UK', (30th March 2022) <https://www.ofcom.org.uk/ data/assets/pdf_file/0022/234364/digital-exclusion-review-2022.pdf> (accessed 7th June 2024)
[136] Online Procedure Rule Committee, 'Minutes of meeting 26 June at 2.1 5 pm' <https://assets.publishing.service.gov.uk/media/663cde05f34f9b5a56adc49d/oprc-minutes-26-june-2023.pdf> (accessed June 7th 2024) at para [8]
[137] Ibid.
[138] Ofcom, Digital exclusion review (2022) <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/media-literacy-research/adults/adults-media-use-and-attitudes-2022/digital-exclusion-review-2022.pdf> (accessed 25th June 2024) at p. 4

how these themes relate to access to justice by examining academic research on digital and legal capability.

Research undertaken by Denvir and Selvaraja evaluated the government's policy and sought to review the Courts and Tribunals (Online Procedure) Bill. This literature review will focus on two main elements of their paper. The first is their analysis of survey data, which identifies groups most at risk of exclusion based on a lack of internet access or digital/legal capability. The second is their review of the case law, which documents the judiciary's expectations for stakeholders.[139] The authors note that legal proceedings are often viewed through the lens of access to justice and addressing difficulties in engaging with adjudicative processes.[140] However, they note that despite 'the Government's emphatic declarations, taking justice online will not automatically enhance access and indeed may limit it for some individuals.'[141] These concerns are exacerbated where access to justice would be mandated through online means in the first instance and where face-to-face experiences become the exception.[142] As such, a more textured and nuanced understanding of access to justice is required.

Their study looked at access to the legal system through the lens of digital and legal capability. However, the data demonstrated that 'having digital skills is not associated with a higher level of legal confidence, and having legal confidence is not associated with a higher level of digital skill.'[143] In measuring digital capability, the authors used a rubric that measured a user's confidence in telling whether the information is accurate, the use of email, and the use of digital services, etc.[144] In measuring legal capability, a four-stage test measured an individual's ability to:

1. Recognise a problem as legal;
2. Seek information/assistance;
3. Navigate resolutions;
4. Pursue broader influence/law reform.[145]

[139] Catrina Denvir and Amanda Darshini Selvarajah, 'Safeguarding Access to Justice in the Age of the Online Court', (2022) *Modern Law Review*, 85: 25-68 at p. 32
[140] O. Rabinovich and E. Katsh, 'The New New Courts' (2017) 67 Am U L Rev 165
[141] Catrina Denvir and Amanda Darshini Selvarajah, 'Safeguarding Access to Justice in the Age of the Online Court', (2022) *Modern Law Review*, 85: 25-68 at p. 28
[142] Ibid. at p. 29
[143] Ibid. at p.52
[144] Ibid. at p. 42
[145] Ibid. at p. 43

The interaction between digital and legal capability plays an extensive role concerning access, ability, and affordability, demonstrating the broader issues underpinning access to justice. In a specific context, namely, a basic understanding of legal processes, the user's demands are unique; additional efforts are required to bridge skills gaps. This additional burden of legal capability presents hurdles in designing a hybrid legal system, where disadvantages can manifest in many forms. As such, any hybrid system should consider the skill level required towards digital and non-digital capability. However, beyond these concepts, Denvir and Selvaraja considered how a lack of internet access could interfere with an individual's human right to access justice. This is worth nothing if we wish to build a system that is not just accessible but lawful.

Internet-based Court Processes: Case Studies on Accessibility

Their study considered case studies surrounding integrating Internet-based processes within the court system. They noted that it has been found that the requirement to use online systems may constitute interference with the convention rights of the ECHR.[146] For example, following in *R (on the application of Unison)* v *Lord Chancellor* (*Unison*), measures were found to prevent certain groups from accessing the courts, which may violate the UK's constitutional right of access to the courts.[147] This paper offered insights into the human rights argument surrounding accessibility, linking protected characteristics with a lack of digital or legal capability.[148] As such, it would be worth reiterating that:

> 'Any attempt to limit the availability of non-electronic alternatives would need to be evaluated against the risk that the intended regime would produce a deleterious impact on access to justice and the courts, that it would contravene the requirements of the Public Sector Equalities Duty' or the duties laid down by the ECHR.[149]

As such, they recommend that an 'individual should not require internet access or use of the internet to obtain information about offline alternatives, or to lodge a request to initiate, conduct, progress or participate in proceedings by non-electronic means.'[150] This recommendation is in line with the views put forward by the Covid-19 Committee, which noted that a hybrid system was preferable with sufficient means of access for those unable or

[146] *LH Bishop Electric Co Ltd AF Sheldon(t/a Aztec Distributor)* v *Revenue & Customs* (2013) UKFTT 522 (TC) (unreported). See also *Blackburn & Anor* v *Revenue & Customs* [2013] UKFTT 525 (TC), [2013] STI 3404 at [59] (Bishop).
[147] *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51, [2017] ICR 1037 at [87].
[148] Catrina Denvir and Amanda Darshini Selvarajah, 'Safeguarding Access to Justice in the Age of the Online Court', (2022) *Modern Law Review*, 85: 25-68 at p. 55 - 56
[149] Ibid. at p. 63 - 64
[150] Ibid. at p. 64

unwilling to use digital systems. This core point demonstrates the importance of an effective hybrid system and is worth highlighting and taking forward by the Civil Justice Council.

The paper concluded that 'accessibility of justice and the perceived fairness of legal outcomes play a key role in shaping the legal norms that govern public behaviour.[151] These perceptions result in the public perceiving online systems as barriers to access to justice, which undermines legal confidence and self-efficacy – even if, in reality, these systems do not prevent access to justice.[152] This paper holds that 'maintaining access to non-electronic alternatives and supporting users' is fundamental.[153] This is influenced by perceptions that inaccessibility to courts will influence the party's decisions to settle outside of court. Overall, their paper held that more research is needed to explore how the 'domains of digital and legal capability interact'.[154] This data and future research will demonstrate the extent to which a participant would be willing to engage in online systems and how 'system design decisions can enhance willingness and efficacy.'[155] The following will consider examples of positive changes implemented to help counter digital disadvantage.

2. Examples of positive changes that have been implemented to counter digital disadvantage within the UK legal sector.

In the UK, steps have already been taken to enhance the digital capabilities of the judicial system. As noted by the Online Procedure Rule Committee (OPRC), the HMCTS Reform Programme has introduced free Wi-Fi in all court and tribunal buildings, video technology in 70% of court and tribunal rooms, digital listing tools are used routinely across courts, all supported by five centralised admin centres which handle cases.[156] In future meetings held by the OPRC, the HMCTS Reform Programme received further attention. As noted by the Committee, the new systems are underpinned by design principles, which place the user at the

[151] Catrina Denvir and Amanda Darshini Selvarajah, 'Safeguarding Access to Justice in the Age of the Online Court', (2022) *Modern Law Review*, 85: 25-68 at p. 67
[152] Catrina Denvir and Amanda Darshini Selvarajah, 'Safeguarding Access to Justice in the Age of the Online Court', (2022) *Modern Law Review*, 85: 25-68 at p. 67
[153] Ibid. at p. 68
[154] Ibid. at p. 68
[155] Ibid. at p. 68
[156] Online Procedure Rule Committee, 'Minutes of meeting 26 June at 2.1 5 pm' <https://assets.publishing.service.gov.uk/media/663cde05f34f9b5a56adc49d/oprc-minutes-26-june-2023.pdf> (accessed June 7th 2024)at para [13]

centre of the system's construction. In this instance, accessibility, proportionality, transparency, and futureproofing being are the key design principles.[157]

In October 2023, the Online Procedure Rule Committee noted the Ministry of Justice's intention to collaborate with the committee.[158] The ACAS 'Smarter Resolution Tool' was demonstrated during this meeting. This tool was developed to improve the interface between ACAS and the employment tribunals.[159] However, it was noted that this tool is only to give general advice – not legal advice -as not to 'risk of overstepping'.[160] In addition, an overview was given on the 'Official Injury Claims Portal'; however, it was noted that 'delays do arise due to the slow sharing of medical information.'[161] The question of digital literacy was raised, and how older generations and individuals with lower levels of education could navigate the system was queried. It was noted that there was an 'assisted paper system and a phone line, so those who cannot work the internet have alternative options.'[162] The system is not fully digital and has avenues for offline engagement. However, despite the 'assisted paper system and a phone line' being there to support and provide options, given the existing delays in data sharing, would this alternative system suffer in practice? In addition, whilst this system could be considered hybrid, do these avenues for offline engagement provide equal opportunities to access and engage with justice?

3. Lessons from an increase in the use of tech across the board since COVID.

As discussed above, the Covid-19 Committee noted that 'the future was always going to be hybrid—an increasingly blurred mix of online and offline aspects of life.'[163] With this increasing expectation that hybrid systems will play a prominent role in the future of governance, the Online Procedure Rule Committee has expressed a view that AI and

[157] Online Procedure Rule Committee, 'Minutes of meeting 10 July at 4.45pm' <https://assets.publishing.service.gov.uk/media/663cde25f34f9b5a56adc49e/oprc-minutes-10-july-2023.pdf> (accessed 7th July 2024) at para [7]
[158] Online Procedure Rule Committee, 'Minutes of meeting 9 October at 14:00' <https://assets.publishing.service.gov.uk/media/663cde49b7249a4c6e9d31d5/oprc-minutes-9-october-2023.pdf> (accessed June 7th 2024) at para [1]
[159] Online Procedure Rule Committee, 'Minutes of meeting 9 October at 14:00' <https://assets.publishing.service.gov.uk/media/663cde49b7249a4c6e9d31d5/oprc-minutes-9-october-2023.pdf> (accessed June 7th 2024) at para [6]
[160] Ibid. at para [8]
[161] Ibid. at para [10]
[162] Ibid. at para [11]
[163] Covid-19 Committee, Beyond Digital: Planning for a Hybrid World (1st report, Session 2019–21, HL Paper 263) at p. 3

digitisation represent the next steps in justice.[164] However, as they note, there are still challenges to integrating this technology within the justice system.[165] In creating a fair and just legal system, the incorporation of AI brings inherent risks to profiling and generating incorrect decisions, where the data fed into machine learning systems may not always accurate or appropriate for the desired purpose. As such, the following demonstrates the seriousness of certain risks associated with the adoption of AI, highlighted by the Communications and Digital Committee. This is followed by a discussion on how the public sector duty of equality would impact the relationship between public and private sector bodies. This paper highlights the need for clear standards and fair practices to be contractually communicated to private sector bodies seeking to collaborate with the public sector on these access-to-justice initiatives.

A. The adoption of AI and the risks of profiling and incorrect outcomes:

While AI may represent the next steps in justice, these steps should be taken carefully. As the Communications and Digital Committee noted, tools such as predictive analysis may adversely impact digitally excluded groups.[166] Their report demonstrated that 'digitally excluded groups may be poorly served by trends towards greater use of machine learning and predictive analytics in public-facing services.'[167] This could be because 'digitally excluded groups were likely to be underrepresented in some data sources, whilst belonging to demographics that are typically overrepresented in other sources.'[168] The report drew upon the recent example of the Netherlands child benefit scandal, where faulty data led to 20,000 families being wrongly accused of child benefit fraud in 2021.[169] This failure in governmental AI application demonstrates a critical failing of the state, given a justiciable hesitance to future technological reliance. This is partially important in the UK context, as it is no stranger to technological and AI failings. For example, the GCSE and A-Level grade scandal[170] and the Post Office scandal.[171] If these experiences have taught us anything, AI and technology do not offer a

[164] Online Procedure Rule Committee, 'Minutes of meeting 26 June at 2.1 5 pm' <https://assets.publishing.service.gov.uk/media/663cde05f34f9b5a56adc49d/oprc-minutes-26-june-2023.pdf> (accessed June 7th 2024) at para [8]
[165] Ibid.
[166] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219
[167] Ibid. at [178]
[168] Ibid. at [180]
[169] Ibid. at [181]
[170] BBC News, 'A-levels and GCSEs: How did the exam algorithm work?' (20th August 2020) <https://www.bbc.co.uk/news/explainers-53807730> (accessed 19th June 2024)
[171] BBC News, 'Post Office Horizon scandal: Why hundreds were wrongly prosecuted', (24th May 2024) <https://www.bbc.co.uk/news/business-56718036> (accessed 19th July 2024)

golden ticket to fixing the bureaucratic shortcomings of governance; as such, the implementation should be carefully limited to what is necessary with appropriate independent oversight and safeguards.

With this in mind, it is worth highlighting that the Communications and Digital Committee report noted the need for an overall assessment on using such tools across central and local public services and the implications this would have for a digital exclusion policy.[172] As such, where AI is used, there should be a focus on equality, where risks of exclusion or adverse impact will be seriously considered part of that process. Equality impact assessments should be completed as part of this process to satisfy the positive public sector equality duty.[173] The public sector duty of equality is discussed in the following section, highlighting the additional precautions that must be taken when collaborating with private sector partners.

The Communications and Digital Committee commented on the impact of COVID-19, noting that the pandemic has 'been a catalyst for the acquisition of new digital skills. But for others, the digital divide has become more entrenched as an increasing number of everyday activities and services have moved online, potentially forever.'[174] As such, despite this newfound fervour for the move to digital legal processes and the integration of AI, these visions of hybrid systems must be rooted in reality. A reality that acknowledges that technology is not a miracle cure for digital disadvantage, nor will it solve issues stemming from access to justice alone. In addition, when AI is used, a multifaceted approach must be taken to ensure we do not grow to over-depend on such systems.

B. The involvement of the private sector and the public sector duty of equality:

As noted above, Denvir and Selvarajah highlighted the importance of 'offline alternatives, or to lodge a request to initiate, conduct, progress or participate in proceedings by non-electronic means', as limited access through purely online means may breach the public sector duty of equality.[175] The following emphasises the importance of correctly analysing and risk assessing the partners who supply particular technology. As the public sector duty of equality is

[172] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 at [181]
[173] Similar points were raised by Catrina Denvir and Amanda Darshini Selvarajah in: 'Safeguarding Access to Justice in the Age of the Online Court', (2022) *Modern Law Review*, 85: 25-68 at pp. 63 - 64
[174] Ibid. at p. 16
[175] Catrina Denvir and Amanda Darshini Selvarajah, 'Safeguarding Access to Justice in the Age of the Online Court', (2022) *Modern Law Review*, 85: 25-68 at p. 63 - 64

nondelegable, if the public body does not take proper precautions, they will be held liable for the failings of the private sector's technology, even if the technological error was not directly their fault.

The Public Sector Duty of Equality (PSDE) comes from section 149 (1) of the Equality Act 2010, which states public bodies must eliminate discrimination, advance equality, and foster good relations towards those with protected characterises.[176] This non-delegable duty places a positive duty on the state to take proactive measures to counter any direct or indirect discriminatory practices. In the law enforcement context, the Court of Appeal noted that this was a 'duty of process and not outcome',[177] where importance was placed on following the correct procedure to 'make public authorities accountable to the public.'[178] As part of this analysis, the Appeal Court stated six principles required to be followed:

1) 'The PSED must be fulfilled before and at the time when a particular policy is being considered.
2) The duty must be exercised in substance, with rigour, and with an open mind. It is not a question of ticking boxes.
3) The duty is non-delegable.
4) The duty is a continuing one.
5) If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required.
6) Provided the court is satisfied that there has been a rigorous consideration of the duty, […], then it is for the decision-maker to decide how much weight should be given to the various factors informing the decision.'[179]

In this context, the facts surrounded an automatic facial recognition system used by the South Wales Police that had potentially discriminatory effects. The system was provided by the NEC Corporation; however, due to commercial confidentiality, they were not 'prepared to divulge the details [of their NeoFace Algorithm] so that it could be tested.'[180] The Court respected commercial confidentiality and held that, due to the non-delegable duty created by the PSDE, any potential inbuilt bias remains the responsibility of the SWPD.[181] The Court of Appeal held that 'whether the technology was biased or not was irrelevant, as the SWPD had not taken the

[176] Equality Act 2010, Section 149 (1)
[177] *R (Bridges) v SWPD* [2020] EWCA Civ 1058 at para [176]
[178] Ibid.
[179] Ibid. at para [175]
[180] Ibid. at para [196]
[181] Ibid.

reasonable steps to mitigate any potential risks posed towards' the protected characteristics.[182] As such, whilst there was no evidence South Wales Police had been using a system that produced discriminatory effects, the fact that they failed to follow the correct procedures and equality assessments resulted in liability.

The court upheld this reasoning on the grounds that the point of following these processes is to prevent practices 'which may appear […] to be neutral [but] may turn out in fact to have a disproportionate impact' on certain groups.[183] As such, if the judicial branch of the government seeks to involve the private sector and rely on their services and technology, proactive steps must be taken to ensure the relevant equality assessments are followed to mitigate against a technological failing. Therefore, public bodies must demonstrate the appropriate steps required to ensure either direct or indirect discriminatory practices will not manifest due to the implementation of that practice. These steps should be sensitive to those who may not possess a protected characteristic but may nevertheless be digitally disadvantaged. This wider understanding will assist in directing policy towards creating a more accessible system.

4. What are the other drivers for data collection on exclusion?

As demonstrated throughout all reports, there is a range of different existing sources of data. For example, The Ofcom report used a range of datasets, such as:

- Adults Media Literacy Tracker (2021)
- Technology Tracker (2021)
- Use of Communications Survey (2020)
- Communications Affordability Tracker (June 2020 onwards)
- Adult's Media Lives (2021)
- Understanding the financial impact of Covid-19 (2020-2021)
- Digital reliance and vulnerability tracker during the pandemic. (CCP Research, 2021).[184]

In addition, the Communications and Digital Committee drew upon Lloyds Bank Consumer Digital Index (2022).[185] This report 'measures the fundamental tasks needed to access the

[182] William Page, 'The Peculiarities of Privacy in Public Space & The Deployment of Automatic Facial Recognition (AFR) Surveillance Technology' (unpublished PhD research) p. 79
[183] *R (Bridges) v SWPD* [2020] EWCA Civ 1058 at para [179]
[184] Ofcom, Digital exclusion review (2022) <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/media-literacy-research/adults/adults-media-use-and-attitudes-2022/digital-exclusion-review-2022.pdf> (accessed 25th June 2024) at pp. 2 - 3
[185] Communications and Digital Committee, 'Digital exclusion', (published 29 June 2023) 3rd Report of Session 2022-23 - HL Paper 219 <https://publications.parliament.uk/pa/ld5803/ldselect/ldcomm/219/21902.htm> (accessed 3rd June 2024) at p. 42

online world and the essential digital skills needed for life and work.'[186] As such, data already exists on how people can use digital technology.

However, noted by Denvir and Selvarajah, more research is needed to explore how the 'domains of digital and legal capability interact.'[187] This additional research should pay attention to the extent to which a participant would be willing to engage in online systems and the 'system design decisions can enhance willingness and efficacy.'[188] The hybrid systems which gatekeep legal access will place the most strain between digital and legal capability. This research should still be rooted in the Communications and Digital Committee's concepts of digital exclusion: affordability, access and ability.[189] Future research should focus on legal capability and how it translates into digital services.

Conclusion: Digital Disadvantage and a Hybrid Civil Justice System

This literature review has demonstrated how a range of academic, governmental, and non-governmental organisations have approached the concept of digital disadvantage. Broadly speaking, digital disadvantage falls within a paradigm of established research conducted into digital inclusion/exclusion. Both qualitative and empirical approaches are taken to measure digital disadvantage. The most recent iteration of this concept being expressed as access, affordability, and ability.[190] Future research should be directed towards the interaction between digital and legal capability, where an intersectional approach is required to understand the unique and various limitations individuals will have when seeking to access digital justice. Where hybrid systems are used the offline alternatives should not be made the exception, and effort must still be made to ensure that these systems do not further disadvantage individuals against their digitally fluent counterparts. When collaborating with private organisations and implementing systems, appropriate standards of service must be communicated, and equality assessments are undertaken. Lastly, as routinely demonstrated, technology is not a miracle cure and must be used only to assist the functioning of a hybrid civil justice system – not replace the human elements it relies on.

---

[186] Lloyds Bank, 'Essential Digital Skills Data Tables', <https://www.lloydsbank.com/consumer-digital-index/essential-digital-skills.html> (accessed 20th July)
[187] Catrina Denvir and Amanda Darshini Selvarajah, 'Safeguarding Access to Justice in the Age of the Online Court', (2022) *Modern Law Review*, 85: 25-68 at p. 68
[188] Ibid.
[189] Ofcom, 'Digital exclusion: A review of Ofcom's research on digital exclusion among adults in the UK', (30th March 2022) <https://www.ofcom.org.uk/ data/assets/pdf_file/0022/234364/digital-exclusion-review-2022.pdf> (accessed 7th June 2024)
[190] Ibid.