

Our response to the  
Justice Select  
Committee's consultation  
on

# ACCESS TO JUSTICE

implications of court and  
tribunal reforms



March 2019

## About Revolving Doors Agency

- Revolving Doors is a national charity that has been working for 25 years to change systems and improve services for people in the revolving door of personal crisis and crime.
- People in the revolving door are characterised by repeat low-level, nonviolent offences, such as theft and minor drug offences, linked to multiple underlying problems, including mental ill health, problematic substance use, homelessness and domestic abuse. Their health, care and offending-related needs go hand in hand with persistent poverty, long-term unemployment, trauma and social exclusion.
- We bring independent research, policy expertise and lived experience together to support effective solutions to end the revolving door.
- We work with policy-makers, commissioners, local decision-makers, and frontline professionals to share evidence, demonstrate effective solutions, and change policy, while involving people with direct experience of the problem in all our work through lived experience forums based in London, Birmingham, and Manchester.
- Our recent analysis of MoJ data has found that last year 60,000 cautions or convictions for minor offences were given to people who had offended 11 or more times. The data reveals that these individuals had a total of over 1.8 million previous sentencing occasions where the criminal justice system failed to provide an effective intervention when they were dealt with for similar minor offences in order to prevent or to break the cycle of personal crisis and crime.

## About this consultation

- Our response has been informed by the research and policy expertise outlined as well as:
- Our membership to HMCTS Defendant Voice Engagement Panel, HMCTS Equalities and Inclusion Engagement Group and previously the Justice Working Party on Preventing Digital Exclusion from Online Justice;
- A recent contribution of our Chief Exec and two Lived Experience Forum members to a roundtable on the HMCTS Reforms hosted by the Justice Minister Lucy Frazer QC MP;
- Research Revolving Doors carried out looking into the needs of digitally excluded and underserved populations and how assisted digital services can better address their needs. This work was commissioned by HMCTS in 2017. We worked with community groups across the country to bring together digitally excluded people across the country. Overall, we conducted 8 focus groups with 67 people aged between 18- 90<sup>1</sup>, including people with multiple and complex needs (including contact with criminal justice system), women who have experienced domestic violence, people who are on long term or disability benefits, British Sign Language Users, people who speak English as a second language (including Welsh and Mandarin Chinese speakers) and older people (65+ who live in community and 85+ who live in a care home). We are pleased to share findings from this research is

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<sup>1</sup> The small sample size means the findings and recommendations of this study should be taken as indicative, rather than conclusive. It is our view that testing and prototyping with digitally excluded and underserved communities needs to continue to ensure assisted digital or alternative services meet their needs.

shared with the Justice Select Committee in response to their first question on the impact of Reforms on digitally excluded populations.

**I. What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to:**

- a. civil justice?**
- b. family justice?**
- c. criminal justice?**
- d. administrative justice, particularly as delivered by the tribunals system?**
- e. those who are digitally excluded or require support to use digital service**

**I.1.** In our response we consider the access to justice implications for people who are digitally excluded or require digital assistance and consider their journey in all courts, and where possible give detailed responses for:

- significant increased use of remote (i.e. video and telephone) hearings, which is seen as “an easy and convenient alternative for everybody”;
- a new digitised probate system, with applications made and managed online;
- a new online divorce application;
- moving the social security and child support tribunal online – benefits appeals are intended to be one of the first services to be moved entirely online, with an end to end digital process.

**I.2.** The Reform Programme promised a more accessible and understandable way of interacting with the court, increased convenience, reduced cost, and the ability to stay better informed of the progress of one’s case – without the “delays, and constraints that come with physical hearings”. The Committee might find that this may *indeed* be the case for the majority of people – but we urge the committee to pay specific attention its impact on certain groups, those who are not just digitally excluded but also socially excluded across the justice system. Special consideration should be given to underserved populations:

- those who experience poverty, have low household income, come from a low social class, left school by 16,
- those who are disabled (including mental ill health and learning disabilities), particularly those who are in mental health institutions or live in remote learning disability settings,
- those who have acquired brain injury or autism,
- those who experience homelessness,
- women experiencing domestic abuse,
- young people leaving care and more broadly young adults (18-25) who are, or at risk of, being in contact with the criminal justice system,
- people who persistently come into contact with the criminal justice system.

We are concerned the Courts and Tribunals Reform could widen the existing inequalities in our justice system for these groups.

**I.3.** There is significant evidence that digitally excluded populations are more concentrated in vulnerable groups, i.e. those who are older, less educated, more likely to be employed, disabled and socially isolated. Citizen Advice, which advises millions every year through its

website and face to face have observed “some of the factors linked to digital exclusion are more prevalent among the clients who contact Citizens Advice”<sup>2</sup>.

**1.4.** We recommend that the term ‘digital exclusion’ to be read more broadly than just access to internet or online devices. Digital exclusion can be people who lack access either to internet or devices, or the skills, ability, confidence and motivation to use it well, or use it in the context of accessing justice services. There are significant socio-economic, communication and psychological barriers to accessing and using digital services. These barriers are often multi-faceted, and their complex interactions may explain why people are not able to engage with digital justice services.

**1.5.** We recommend the Committee consider the access to justice implications of HMCTS Reform in the wider context of the current justice issues, particularly with cuts to legal aid. There is increasing evidence that those with low household incomes are unable to access legal advice and representation. Our research<sup>3</sup> shows that the combination of lack of legal knowledge, social and digital exclusion, frequent rejection for legal support and its contagious deterrent effect can become detrimental for people experiencing multiple disadvantage (including digital and social exclusion) to access to justice. In our survey of 30 people with lived experience of ‘revolving door’, we found a heavy reliance on informal information and support networks made up of friends and family in identifying legal aid eligibility. With the exception of one person who took part, participants did not know about digital services such as the government’s own legal aid entitlement checker and said they were not likely to use online services to find out about their eligibility or legal aid providers. We also found that in 85% of cases that received legal aid, people in the revolving door found their legal representative recommendations from friends and family. The remaining 15% were found through keyworkers in drug/alcohol or homelessness services, or luck (one interviewee was approached by a solicitor on the road she lived on).

**1.6.** In 2017, Revolving Doors carried out research commissioned by HMCTS. The research looked into the needs of digitally excluded and underserved populations and how assisted digital services can better address their needs. We worked with community groups across the country to bring together digitally excluded people across the country. Overall, we conducted 8 focus groups with 67 people aged between 18- 90<sup>4</sup>, including people with multiple and complex needs (including contact with criminal justice system), women who have experienced domestic violence, people who are on long term or disability benefits, British Sign Language Users, people who speak English as a second language (including Welsh and Mandarin Chinese speakers) and older people (65+ who live in community and 85+ who live in a care home). We are pleased to share findings from this research with the Justice Select Committee in response to their first question on the impact of Reforms on digitally excluded populations.

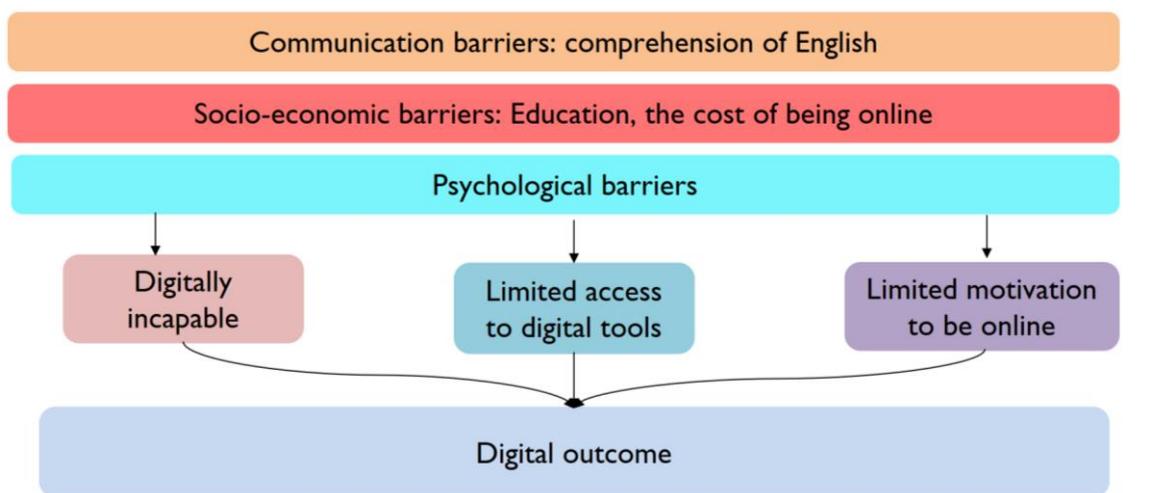
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<sup>2</sup> [https://www.citizensadvice.org.uk/Global/Public/Impact/Digitalcapabilityreport\\_final\\_July%20\(3\).pdf](https://www.citizensadvice.org.uk/Global/Public/Impact/Digitalcapabilityreport_final_July%20(3).pdf)

<sup>3</sup> Revolving Doors Agency (2019) No Justice in the Capital?

<sup>4</sup> The small sample size means the findings and recommendations of this study should be taken as indicative, rather than conclusive. It is our view that testing and prototyping with digitally excluded and underserved communities needs to continue to ensure assisted digital or alternative services meet their needs.

**1.7.1.** This research pointed out to three main barriers: socio-economic barriers (education, the cost of being online), communication barriers (comprehension of English) and psychological barriers (apathy, trust) that can produce the outcome of digital court processes. We summarise these in the below figure:



Here we summarise some of the key themes that emerged from this study:

### **1.7.2. Socio-economic barriers: Competencies and Access**

- Basic competencies using a computer was a substantial foundational barrier to being or accessing services online. Among people we have spoken, the degree of skills deficit ranged from being unable to turn on a computer to interacting with the system by dictating personal details to the person who is completing the digital tasks for them.
- It is not difficult to stipulate that basic competency is often a result of poor access. For many, the cost of getting online, owning a computer or a smartphone, connecting to a broadband or mobile data service were prohibitively high, and there were no other services they could use to access computers. Capability and access were hugely salient for people’s motivation. Even when they were able to access computers, the lack of suitable training and support meant they were unable to learn and practice.
- It is important to note that the scale of the “digital exclusion” challenge is not unique to people in the revolving door:
  - While 90 per cent of households in Great Britain had internet access, in households with one adult aged 65 and over, 61 per cent had internet access<sup>5</sup>.
  - 22 per cent of disabled adults had never used the internet in 2017.<sup>6</sup>
  - The problem of socio-economic disadvantage is also considerable, people in social class DE, people who left school aged 16 or younger, people with low household incomes make up a large proportion of people online – in fact education has a huge influence on whether someone is likely to be an

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<https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2017>

<sup>6</sup> <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2017>

internet user at all – 80 per cent of those who are offline had left school by age 16.<sup>7</sup>

- Similarly, research carried out by NHS Digital<sup>8</sup> showed 33 per cent of people who are homeless had never been online or described themselves to have poor or very poor digital skills.
- In the study we conducted for HMCTS, several participants including frequent online users, commented extensively on the difficulties they have experienced accessing or using websites of public bodies and other agencies. Common grievances were about not knowing how to switch between pages, how to complete online forms, including ticking the relevant boxes, as well as difficulties uploading pages and submitting information in time.
- When presented with technical problems, they were often reluctant to persist or look for technical support, instead preferred doing things ‘the old way’ (paper, phone or in person) or asked a friend to do it for them. This was either due to the time and financial costs associated with rectifying mistakes on the phone, or a pervasive lack of trust in technology or ‘the system’.

### 1.7.3. Communication barriers

- A second issue that related closely to the tripartite of motivation, access and capability was the pervasiveness of technical language and legal jargon. Focus groups made the impact of socioeconomic status on educational outcomes, including literacy skills, abundantly clear, and we have heard extensively about the frustrations and embarrassments caused by the written language across underserved populations.
- It is important to note that 10 per cent<sup>9</sup> of the population estimated to have dyslexia, and a further 15 per cent are ‘functionally illiterate’ (i.e. they can understand short straightforward texts on familiar topics accurately and independently, but reading information from unfamiliar sources, or on unfamiliar topics, could cause problems). 85 percent of all juveniles who come into contact with the juvenile court system are functionally illiterate and so are 60 percent of all prison inmates. Therefore, it is important that the digital resources, including assistive texts use Plain English.
- Even then, in the absence of legal advice and representation for civil and family justice matters, and most minor criminal justice matters, we are concerned that many people will not be able to absorb the information easily or at first reading and this will add to their anxiety about using online tools and accessing justice.
- We also found significant variation in types of communication barriers for different groups:
  - **For people who speak English as a second language**, the use of complex legal or technical language is an understandable barrier in accessing services online. Our research indicated that these groups faced an additional language barrier in accessing training and technical support, as the services available in the community were offered in English and therefore not often accessible to people who are not fluent English speakers.

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<sup>7</sup> <https://www.goodthingsfoundation.org/research-publications/real-digital-divide> p.10

<sup>8</sup> <http://www.pathway.org.uk/wp-content/uploads/2013/05/Digital-Inclusion-Report-Final-for-web.pdf>

<sup>9</sup> [http://www.dyslexiaaction.org.uk/page/facts-and-figures-about-dyslexia-0#\\_edn1](http://www.dyslexiaaction.org.uk/page/facts-and-figures-about-dyslexia-0#_edn1)

- **For people who use British Sign Language**, there were over-looked language challenges accessing information. Often being deaf is understood as being solely aural in its challenges and barriers – that they begin and end at their ability to hear; but prelingual deafness (deafness present at birth or before language formation) has a profound effect on the development on language acquisition. It therefore follows that English, both oral and written, is an abstract concept for prelingually deaf individuals. The focus group echoed this when considering the barriers to using the internet: Many individuals could not read English, and those who could found many webpages from government and other public bodies to be difficult to comprehend.
- **For Welsh speakers**, language was a complex matter intertwined with identity, heredity and culture. Many were bilingual, which placed them in an unusual position in relation to government services – they could always access the service by switching to English if there was no Welsh version available, or if they were not familiar with or understanding of terms and words in the Welsh language version of the service. Switching to English, though, resulted in unsatisfactory experiences of services and conflicted with their sense of identity, as well as their inherent right to interact with the government in their preferred medium of communication. Many members of the focus group noted that Welsh was a language which could be spoken with ease, but when written down, especially in a technical or educative sense, the language could appear foreign and not representative of the conversations people have every day. These frustrations with written Welsh were compounded, for some of the participants, by digital tools – such as translation of pages and spellchecker – not recognising their specific dialect and form of Welsh. This was another driver of why people would rather use English online.

#### **1.7.4. Psychological barriers: Trust, privacy and apathy**

- The third prevalent theme across the focus groups was the lack of trust between users and digital services, particularly those provided by the government departments and public bodies. The system was seen as apathetic and unresponsive to their needs. This reflection on their lives and how the system itself interacts with it, was in itself important for future interactions with it.
- The focus groups indicated that people across underserved populations were greatly concerned with online privacy and their concerns were strong enough to drive digital abstinence. Their anxiety was closely linked to data protection with regards to formal information (e.g. bank details and health records) and was two-fold: (i) lack of trust with the person at the other end, i.e. who can access your data and why and (ii) general trust in the infrastructure, e.g. safety of the sites.
- Our research for the HMCTS showed that **women experiencing domestic violence** are particularly concerned about their data being repurposed and provided to third parties. We have found alarming anxieties about their details being available to the perpetrators. Two women told us:

*“I’m having to move housing because of a history of domestic violence. I won’t register to vote, housing, benefits...anything I think is a risk factor of my details being out there for my ex-partner to find.”*

*“I’ve heard of situations where for example, tax credits have been giving details to perpetrators. I’m very scared of that. Even when I speak to someone on the phone I think is – is this person connected to my partner?”*

- There was further indicative evidence that individuals’ experiences with digital tools or the process of learning was hugely important in understanding current and future motivations towards using the internet. There was also an indication that negative experiences (including technical issues, breaches of privacy, consistently repeated spam, online fraud or negative social interactions) created a significant disincentive, and further stress and anxiety on individuals.
- We have found online processes, especially for important actions such as job application, housing benefit application, doctor’s appointment, essay submission, coupled with a deadline can cause significant anxiety and can even exacerbate, trigger mental health and addiction problems or at the very least worry individuals that they will be triggered. One participant told us:  
*“I do get quite anxious, especially with government agencies. ... They don’t confirm it. I then have to follow up with a phone call to check they’ve got it. ... Just the process of trying to think about it can stop me from doing it. It’s the anxiety about the waiting and knowing if they’ve received it. I’ll then worry ‘oh my God did I put the right date on it’. I would then start it again. ... I’m a recovering addict and crazy as that sound it could be a trigger. If I can’t do it online, it would trigger me.”*
- This is especially a problem when there is no acknowledgement of successful submission – many experience stress and anxiety about their submission not being received or containing vital errors, and their apprehension is enough to deter them from using or relying on online processes. It is important to note that this apprehension applies to even frequent online users. One participant told us:  
*“I would not do a housing application online, because if it crashes that’s the roof over my head. ... I don’t trust the system to go through successfully... Applying for work – it doesn’t work. It’s put me off and I’m an experienced IT user. ... It makes me feel anxious and it’s made me give up on various applications.”*

**1.8.** In this section, we will discuss how socio-economic, and psychological barriers may play out for different groups, including: people experiencing homelessness, people who are in prison, people with mental health problems, people with acquired brain injury and autism, young people leaving care and young adults.

### **1.8.1. People experiencing homelessness**

- According to the latest MHCLG release in autumn 2017, there were 4,751 people sleeping rough in England. This population illustrate the interaction of severe digital exclusion and multiple legal problems.
- While a previous Lemos and Crane report<sup>10</sup> describes homeless people as ‘surprisingly resourceful’ at getting hold of digital technologies, various research evidences that they face many problems with paying for services like calls or data, and experience theft and inability to charge phones. Free internet may be available in places like coffee shops, but it is reserved for paying customers. Public services that provide free access to the internet can be unwelcoming. There is no consistent and routine offer of free internet access in services specifically aimed at homeless people – such as day centres, night shelters and hostel accommodation.
- Research also shows that homeless people are 10 times more likely to experience sanctions<sup>11</sup>. A recent research carried out by Northumbria University<sup>12</sup> shows that benefit sanctions on homeless people had increased in each of the last three years, with homeless young people the most affected.
- The Northumbria University research also suggests that the increase in online applications from Job Centre Plus, Department of Work and Pension and housing agencies leave these individuals with various problems. For example, they end up facing benefit sanctions, missing bidding on properties due to not being able to access to internet.

### **1.8.2. Prisoners**

- For people who are in prison, there are specific additional barriers to access to justice under the Reforms.
- We understand the Digital Case System is presently only accessible by legal representatives with a secure mail address. Accessing alternatives might be very difficult from detention, making those in prison or custody wholly reliant on others, such as a legal representative taking paper copies of digital files into prison, which incurs additional and unnecessary costs. Further the ever-increasing use of video conferencing and hearings by video link in criminal proceedings renders it more difficult for physical copies of papers to be delivered to defendant remanded in custody. The risk is that all parties (including the judge) save for the defendant will have unrestricted access to all papers, whilst the defendant may remain unaware of the details of the material upon which he is being convicted or sentenced.
- We also understand that prison have proven slow to adapt innovation with internal processes (including prisoner’s applications) largely on paper. Security concerns

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<sup>10</sup> <https://lankellychase.org.uk/wp-content/uploads/2015/01/Trends-and-Friends-2015.pdf>

<sup>11</sup> <https://www.homeless.org.uk/sites/default/files/site-attachments/A%20High%20Cost%20to%20Pay%20Sept%2013.pdf>

<sup>12</sup> <https://www.yhne.org.uk/wp-content/uploads/6-JH-Benefit-Sanctions-and-Homelessness-presentation.pptx>

result in significant restrictions even for visitors. For example, JUSTICE found that in some prisons although legal representatives may bring digital devices on prison visits, there is no Wi-Fi in the relevant meeting rooms and legal representatives are prohibited from hot-spotting devices. Items such as smart watches and USB sticks are contraband. (Justice consultation with Serco, Feb 2018)

### **1.8.3. People with mental ill health**

- Mental health inpatients are similarly digitally excluded by lack of internet access and confiscation of personal devices. The NHS digital website suggests that free internet is not yet widely available for such patients. *“Wifi is being put in place in a small number of trusts, before it is rolled to mental health, community and acute trusts across the country (subject to funding) who are in mental health institutions or learning disability settings”*
- For people with mental ill health in community settings, we expect reasonable adjustments, including assisted digital options and face to face support would be made available. However, reasonable adjustments can only be made if the need is declared/or identified. We are concerned that some lower level needs (or those coupled with drug and alcohol addiction) may go undetected. As our research for HMCTS has shown online processes for important tasks (such as courts and tribunals) can cause significant worry and may trigger mental health problems.

### **1.8.4. People with autism and traumatic brain injury**

- Similarly, we question whether reasonable adjustments will be made when people with neurological disorder, autism or traumatic brain injury wish to access digital courts. We need further evidence that some lower level needs might not be detected in the new system.

### **1.8.5. Young people**

- Young people may seem to be an unlikely group to be digitally excluded, but the recent report by the Carnegie UK Trust which looked at the digital exclusion of young people found that “those who are in the care of the state; those whose needs may reflect adverse family circumstances, whose needs reflect features of child development or who are in receipt of statutory support services” are likely to be digitally excluded. The Trust observed that some 300,000 young people lack basic digital skills. It is worthwhile noting that young people with similar characteristics are significantly overrepresented in our criminal justice system.
- Young people may already struggle to find help on legal matters (online or in person) and other evidence from Youth Access suggest that socially excluded young people often have a wide range of problems with possible legal solutions but they are also less likely to access traditional courts or legal services.

**1.9.** Taken all together, it is our view that there is no one-size-fits-all solution to the challenges posed by digital exclusion. People come from a variety of backgrounds and life experiences, and this heterogeneity should follow that assisted digital should be equally heterogeneous, considering a variety of experiences and attitudes and the support available should be tailored when possible.

**1.10.** A wide range of channels (paper, phone/text, webchat and face to face support) should be resourced and made available, and users must have a choice about which ones they wish to access. Many individuals facing multiple disadvantages would require face to face assistance as they may find engaging online or over the telephone more difficult.

**1.11.** It is vital that the face to face support is provided by a local, trusted organisation that is accessible, particularly for ‘underserved’ and vulnerable populations (including people in the revolving door with experience of mental ill health, domestic abuse, homelessness). Low levels of help seeking behaviour is common in this population, alongside a distrust of services linked to previous negative experiences of contact with statutory services, such as being taken into care. Our previous research<sup>13</sup> suggests that an individual in the revolving door experienced over 7 types of problems in relation to civil law, family law, and tribunals in addition to several contact with the criminal justice system. However, in three quarters of the cases that require legal action, they did not seek legal assistance using standard processes open to general public. By extension, we anticipate, they will be very unlikely to seek help with digital court processes unless it is provided by an organisation they trust.

**1.12.** The support available should be non-judgemental, consistent over a prolonged period, responding positively and constructively to challenges and setbacks people may face; and more importantly it should be tailored to individuals’ needs and culturally sensitive to specific needs and expectations of women and people from minority ethnic backgrounds.

**1.13.** Our research highlights that online processes, especially for important actions such as job application, housing benefit application, doctor’s appointment, essay submission, coupled with a deadline can cause significant anxiety and can even exacerbate, trigger mental health and addiction problems or at the very least worry individuals that they will be triggered. This is especially a problem when there is no acknowledgement of successful submission. Therefore, it is vital that people always receive a confirmation of the receipt of their document.

**1.14.** Finally, while the HMCTS has clearly benefited from the expertise of independent research and advice from organisations, such as Revolving Doors Agency, to date the research has been limited in size. We recommend major systematic reviews or academic research that goes alongside the pilot sites to evaluate outcomes of Reform programme, particularly looking at the outcomes of digital court and tribunal proceedings to be commissioned urgently.

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<sup>13</sup> Revolving Doors Agency (2019) *No justice in the capital?*

## **2. What are the effects on access to justice of court and tribunal centre closures, including the likely impact of closures that have not yet been implemented; and of reductions in HMCTS staffing under the reform programme? For users, how far can online processes and video hearings be a sufficient substitute for access to court and tribunal buildings?**

**2.1.** We understand that the reform programme's overarching aim is to increase access to justice through introduction of online processes and video hearings. However, we have some concerns about its impact on some specific groups who may not be able to access online processes (as detailed in Question 1), as well as how requiring people to access digital courts may inhibit some individuals' ability to engage with the court process. In particular, we would ask the Committee to consider young adults, people from BAME backgrounds and people who have neurological disorders, autism and traumatic brain injury.

### **2.2. People with neurological disorders, autism and brain injury**

- It is estimated that there are up to 1.3 million people in the UK living with a TBI-related disability. However, there is high prevalence rate of brain injury in offending institutions compared to the general population. The estimated prevalence of TBI in the offender population is 60.25%<sup>14</sup>. More recently The Disabilities Trust reported that 64% of female offenders at HMP/YOI Drake Hall had a history indicative of brain injury<sup>15</sup>.
- Similarly, recent research claims that individuals with Asperger's Syndrome are potentially over-represented within the criminal justice system<sup>16</sup>.
- CPS guidance on 'mentally vulnerable witnesses' reads "some disabilities are obvious, some are hidden. Witnesses may have a combination of disabilities. They may not wish to disclose the fact that they have a disability during initial and subsequent needs assessments. Different witnesses on the autistic spectrum may have very different needs."
- We therefore question how these adjustments can be made when people with neurological disorders, autism or traumatic brain injury wishes to access digital courts. We need further evidence that some lower level needs might not be detected in the new system.
- We have heard suggestions from stakeholder meetings we attended that requiring people to access digital courts might inhibit their ability to engage with the court process, their responses particularly lack of eye contact might be misread, and they may not be able to respond to the questions as well.

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[https://www.researchgate.net/publication/42589252\\_Prevalence\\_of\\_Traumatic\\_Brain\\_Injury\\_in\\_an\\_Offender\\_Population\\_A\\_Meta-Analysis](https://www.researchgate.net/publication/42589252_Prevalence_of_Traumatic_Brain_Injury_in_an_Offender_Population_A_Meta-Analysis)

<sup>15</sup> <https://www.headway.org.uk/media/6461/making-the-link-female-offending-and-brain-injury-brief-report.pdf>

<sup>16</sup> <https://journals.sagepub.com/doi/abs/10.1177/1748895811398455>

### 2.3. Young adults

- A recent research by Carnegie Trust which looked at the digital exclusion of young people found that “those who are in the care of the state; those whose needs may reflect adverse family circumstances, whose needs reflect features of child development or who are in receipt of statutory support services” are likely to be digitally excluded. The Trust observed that some 300,000 young people lack basic digital skills. It is worthwhile noting that young people with similar characteristics are significantly overrepresented in our criminal justice system.
- The young adults in prison today are more likely to be serving longer sentences and have more challenging issues. This means that in the youth estate, and increasingly the young adult cohort, issues that once were considered niche are now the mainstream.
  - Brain injury affects up to 70% of young people in prison, which can impact on memory, attention, socio-communication, mood and behaviour, depression, anxiety, and anger<sup>17</sup>.
  - No study has been undertaken to assess the prevalence of brain injury among people serving community sentences, but it is expected to be significant.
  - Rates of learning disability, communication impairment and autistic spectrum disorder are ten times as high as they are among young people in the general population.<sup>18</sup>
- The evidence that young adults aged 18-25 are a distinct group is increasingly robust. Findings from neuroscience show clearly that brain not fully developed till mid 20s and forward planning, rational thinking, empathy the last elements to develop.<sup>19</sup>
- The Justice Select Committee concluded that “For young adults with neuro-disabilities maturity may be significantly hindered or delayed.”<sup>20</sup>

Taken together, young adults in the criminal justice system are not only digitally excluded, but also may not have the maturity, skills, and ability to engage with the digital court systems. This may manifest for example by a lack of not understanding the context of digital hearing, not engaging in eye contact, or disconnecting or walking away from a digital hearing when the discussions are heated.

**2.4. People from BAME backgrounds.** If the digital courts ever progressed to the level of a conventional on-video call such as Skype, other visual clues about where and how the defendant live will be added to the court process. We are concerned about a similar introduction of unconscious bias or assumptions to the decision-making processes, which may increase the disproportional representation of young black men from working class backgrounds in our criminal justice system. Until the HMCTS and the government invest in outcomes testing, we err on the side of caution.

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<sup>17</sup>Prof Huw Williams [https://www.barrowcadbury.org.uk/wp-content/uploads/2012/11/Repairing-Shattered-Lives\\_Report.pdf](https://www.barrowcadbury.org.uk/wp-content/uploads/2012/11/Repairing-Shattered-Lives_Report.pdf)

<sup>18</sup> Justice Select Committee (2016) Young Adults

<sup>19</sup>University of Birmingham (2011) <https://www.t2a.org.uk/wp-content/uploads/2016/02/Birmingham-University-Maturity-final-literature-review-report.pdf>

<sup>20</sup> Justice Select Committee (2016) Young Adults

[https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/169/16902.htm?utm\\_source=169&utm\\_campaign=modulereports&utm\\_medium=fullbullet](https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/169/16902.htm?utm_source=169&utm_campaign=modulereports&utm_medium=fullbullet)

**2.6.** At a recent roundtable with the Justice Minister Lucy Frazer QC MP two of our Lived Experience Forum members, alongside five other people with lived experience of the criminal justice system shared their experience of the court process including online pleading. When the Minister asked whether the participants researched about what happens at the court online, it became abundantly clear that individuals would not carry out the research on their own and likely to change their indicative plea having had a discussion with the barrister just before entering the court. We have heard from people with lived experience of the criminal justice again and again that many did not have access to legal advice and representation for minor offences, and we are concerned that with the introduction of digital courts, their outcomes will be impacted for the worse.

**2.7.** At the same meeting, one of our Lived Experience Forum members highlighted the need for ‘human contact’ when people are ultimately going through one of the hardest points in their life time. The physical courts appear to facilitate this ‘human touch’, as one of our Lived Experience Forum member put it:

*“I need the judge to know that I am a human and I need my humanity to be read by the judge and you can’t do that through a screen.”*

**2.8.** Members of our Lived Experience Forums tell us that one exception where they would prefer digital/video hearings is ‘remand hearings’ from prison that are part of ‘formality’ and the likelihood of the defendant to stay in prison is almost certain. We heard from our members the difficulties they had in traveling in a van for hours, having to skip meals, and spending night in a different prison, and their desire to stay in a familiar environment.

**2.9.** However, it is very important that the remand hearing happens. We have heard from barristers that online remand hearings sometimes do not take place and they are recorded as ‘non-attendance’. At a recent Liaison and Diversion Programme Board meeting, we have heard from people with lived experience that they are not offered an escort and do not get a hearing. We have also heard anecdotal evidence that some judges would not record ‘not attended’ because they know about access issues. We would therefore urge the Justice Committee to monitor HMCTS performance for video remand hearing to identify if the issue is “not escorted” or “not attend”.

**2.10.** Our final concern relates to the recent news<sup>21</sup> that trials had been adjourned because evidence stored on court systems could not be accessed. This followed a larger IT issue in January which resulted in CPS papers not being served either in email in magistrates’ courts or uploaded into the Digital Case System for the Crown Court across the country. It is essential that the IT systems that support our court and tribunal systems are robust, secure and stable to support the reform programme.

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<sup>21</sup> <https://www.bbc.co.uk/news/amp/technology-47482143>

**3. Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication, with:**

- a. **Judicial office holders at all levels of seniority?**
- b. **The legal professions and the advice sector?**
- c. **Other relevant stakeholders?**

**3.1.** We acknowledge that the HMCTS have had several working groups including two which we regularly attend on Defendants and EIEG. There are also two other forums on Litigants in Person and young people. In our experience, these meetings bring together legal professions, the advice sector and the third sector including organisations like ourselves together to consult on the reforms and communicate the latest learnings. While the reforms are taking place rapidly, changes the sector would like to see have been slow.

**3.2.** We are also concerned that these processes often exclude the voices of people with lived experience of our justice system. Recently, two of our forum members have given evidence at a Ministerial roundtable on digital hearings and there were seven people with lived experience in the room. While we recognise that it is difficult to find a balance between the sector and people with lived experience, **we recommend that these meetings need to be part of a regular programme of public engagement, rather than one off exercises.** We recognise the HMCTS is carrying out user-testing of their services, but it is important that *defendants are listened to, not just researched.*

**4. Have the Ministry of Justice and HMCTS taken sufficient steps to evaluate the impact of reforms implemented so far, including those introduced as pilots; and have they made sufficient commitment to evaluation in future?**

**4.1.** The HMCTS has clearly benefited from the expertise of independent research and advice from organisations, such as Revolving Doors Agency, to date the research has been limited in size.

**4.2.** We recommend major systematic reviews or academic research that goes alongside the pilot sites to evaluate outcomes of Reform programme, particularly looking at the outcomes of digital court and tribunal proceedings to be commissioned urgently.

<p>This response has been prepared by Burcu Borysik, Policy Manager, at Revolving Doors Agency <a href="mailto:burcu.borysik@revolving-doors.org.uk">burcu.borysik@revolving-doors.org.uk</a></p>
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