

**Transforming our justice system: Assisted Digital
Ministry of Justice consultation document
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 LITRG welcomes the opportunity to respond to the Ministry of Justice consultation document 'Transforming our justice system'.
- 1.2 Our comments relate to the first of the three specific elements on which the consultation invites views: assisted digital facilities. We focus on the proposal to introduce assisted digital support that will allow the digitally excluded to access new digital services being developed as part of Her Majesty's Courts & Tribunal Service (HMCTS) Reform Programme.
- 1.3 We support the proposals to use technology to make it easier and quicker for people to communicate with the court and tribunal services. In a digital age, many will expect this functionality and will no doubt migrate to online if the services are well designed to meet user needs. We welcome the proposals to introduce assisted digital support to help people go online in a variety of ways, including face-to-face, telephone and web chat.
- 1.4 These do though need to be balanced by providing alternative and easily accessible services for those who cannot engage digitally and making them at least as good as what is available online. We are pleased that HMCTS fully recognises this and welcome its proposals to retain the paper channel for those, whose number could well be significant, who need it. We strongly recommend that face-to-face and telephone support should also be available if the user needs help to complete the paper form.

- 1.5 The consultation document does not specifically mention those who have English as a second language. Appropriate help and support must be in place to ensure these people have equal access to the justice system.
- 1.6 It is crucial that any assisted digital service HMCTS produces must be equal to the best services available elsewhere (be that from the private sector or other public sector providers). It is not right if those who cannot afford to pay receive an inferior service.
- 1.7 We note the proposal that face-to-face assistance will be contracted out to one or more third party organisations. Although we recognise that this will be managed by HMCTS we would like clarification and reassurance as to how quality and consistency will be maintained.¹ Failure to provide consistency of quality, information and access may lead to a lack of trust and resistance to using online services which would be regrettable.
- 1.8 There is a balance to be struck between enabling as many services as possible to go online as quickly as possible and the significant risk of overwhelming people with rapid change. We suggest that HMCTS's online services, along with the associated support, are introduced gradually, starting with the most basic services first.
- 1.9 HMCTS's digital services must be accessible through devices such as smartphones and tablets as well as more traditional ways such as laptops and PCs. Assisted digital support must be able to cope with helping people to access services via different devices.
- 1.10 It is crucial that HMCTS clearly publicises the support available to help people go online and, for those who cannot access online, the alternatives need to be made clear. We therefore recommend that HMCTS develops a robust publicity campaign supported by thorough guidance and information available not only on GOV.UK but also through other channels.
- 1.11 In relation to tax appeals, the first duty must be on HM Revenue and Customs (HMRC) to ensure that people who are in dispute with them are made aware of the options available. HMRC are currently engaging in their own digital transformation programme – 'Making Tax Digital'² – through which they are intending to mandate digital interactions for many people. We think that their timetable for doing so is unachievably short, with huge associated risks, and that implementation must be delayed or staged more gradually. In time, it may well be that HMRC's digital systems can flag appeal rights and seamlessly pass people to the Tribunal Service in the event that a dispute cannot be resolved internally. But there will always be those who need to use alternative channels, both for tax purposes and any consequent appeals. Indeed, anyone wishing to appeal against an HMRC decision that they must comply with tax obligations digitally, or a refusal by HMRC to apply an exemption from

¹ We urge caution in subcontracting services, given current and past problems that other Government Departments have found when using external third parties – see recent problems HMRC have had in subcontracting tax credits compliance work to 'Concentrix'.

² See <https://www.gov.uk/government/collections/making-tax-digital-consultations>

having to use digital services must not then face a digital appeals service – otherwise, there is a huge risk that justice will be denied.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 General Comments

- 3.1 When developing digital services it is important to recognise technological changes such as the rise of smartphones and tablets, which are now the most popular way for UK adults to access the internet. Such devices are however still owned by only 71% of the population.³ HMCTS's digital services must be accessible through these devices as well as more traditional ways such as laptops and PCs. Assisted digital support must be able to cope with helping people to access services via different devices.
- 3.2 An over-reliance on smartphones may however result in repercussions such as not being able to easily save information (particularly if the device itself has limited storage capacity and the user is unfamiliar with the cloud, or does not have a cloud account set up, or indeed is reluctant to store personal details on the cloud); or not being able to print out a copy of what has been sent in. Issues such as this should be addressed as part of digital service

³ Office for National Statistics Report –

<http://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetanddigitalmediausage/bulletins/internetaccesshouseholdsandindividuals/2016#main-points> Published 4 August 2016

design by perhaps offering users a page that confirms and displays evidence of what they have submitted that they can save to email (and print if necessary) for their own records.

- 3.3 The consultation document refers to making certain services such as Probate, Lasting Powers of Attorney, divorce applications and the Social Security and Child Support Tribunal digital by default services. We welcome the comment in paragraph 1.8 (page 5) that states that an alternative access route will be available for **every** service that moves online. We assume that this also refers to digital by default services. We cannot over emphasise that anything less would be unacceptable.
- 3.4 The consultation document does not appear to mention publicity in any great depth. This is an important element that should not be overlooked. Unless people understand the benefits of going online they may be reluctant to do so. It is also vital that HMCTS clearly publicises the support available to help people go online and, for those who cannot, the alternatives need to be made clear. In the case of *LH Bishop Electric Company Ltd and others v HMRC [2013]*⁴, Judge Mosedale was critical of HMRC for failing to properly publicise a telephone-filing facility which could have been used by some of those mandated to file VAT returns electronically, but who were struggling to do so because of age, physical disability or remoteness of location:

Paragraph 503. ‘...HMRC chose not to advertise the availability of telephone filing (or help at HMRC enquiry centres) because HMRC wanted to restrict the use of the concessions to those who had no other options.’

Paragraph 504. ‘As a matter of public law, this cannot be a satisfactory justification for failing to publish to all taxpayers the availability of a concession. If it is right to offer a concession, then it should be offered to all persons who would be entitled to benefit from it. It should not be limited to those who litigate or who ring the online helpdesk.’

- 3.5 We therefore recommend that HMCTS develops a robust publicity campaign supported by thorough guidance and information available not only on GOV.UK but also through other channels.
- 3.6 In developing its assisted digital strategy, those who cannot interact digitally whether as a result of lack of access, skills, motivation or trust in online services (the four barriers recognised in the 2014 Government Digital Inclusion Strategy)⁵ should not be at a disadvantage compared to those who can interact in this way. We are pleased to see that

⁴ See paragraphs 477-516 of the judgement, the quotes are taken from paragraphs 503 and 504.
<http://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02910.html>

⁵ Policy Paper, ‘Government Digital Inclusion Strategy’
<https://www.gov.uk/government/publications/government-digital-inclusion-strategy/government-digital-inclusion-strategy-Updated-4-December-2014>

access, skills and motivation are factors considered at paragraph 7.1.3 (page 13) of the consultation document but note that there appears to be no mention of trust. The barrier of trust also needs to be taken into account, whether that be: concerns over cyber security, for example people feeling safe to submit information in online; trust in the organisation with which they are interacting, for example will people trust HMCTS to protect and look after the confidential information they submit; or trust in the information that people are being given, for example with the proposal that third-party providers will manage some of the assisted digital support, will people trust that the information they are being given is accurate?⁶

4 Responses to specific questions and proposals

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

- 4.1.1 We agree that offering users a choice of telephone, webchat, face-to-face and paper is the right approach. Services such as web chat will no doubt be welcomed by those familiar with technology, provided the service is fast, reliable and accurate. Retaining channels such as telephone, face to face and paper for those who need it is essential.
- 4.1.2 Although we recognise that providing assisted digital support will encourage many to go online, there will always be those who will not or cannot interact in this way. It is vital that these people, and this may be a significant number as detailed in the following paragraphs, have equal access to the justice system. The channels outlined above therefore should not only be used in an assisted digital capacity i.e. to help, support and encourage those who can and want to go online, but should automatically be available as an 'alternative to online' for those who cannot or in some cases will not interact in this way.
- 4.1.3 As mentioned in the preceding paragraph, numbers who either need help to or may never be able to go online, may be significant. In June 2016, the Science and Technology Commons Select Committee⁷ reported that almost 12.6 million UK adults still lacked basic digital skills and 5.8 million people had never used the internet; and in August 2016 the Joseph Rowntree Foundation⁸ reported that 5 million UK adults lack basic literacy and numeracy skills, which in turn may affect their ability to go online. Our observations from working with low income

⁶ Reports in the media that large companies, even providers of IT and internet services such as Yahoo and TalkTalk, have themselves been 'hacked' continue to reinforce people's security concerns.

⁷Digital Skills Crisis <http://www.parliament.uk/business/committees/committees-a-z/commons-select/science-and-technology-committee/news-parliament-2015/digital-skills-crisis-report-published-16-17/>. Published June 2016

⁸ Joseph Rowntree Foundation report <https://www.jrf.org.uk/press/5-million-adults-lack-basic-literacy-and-numeracy-skills>. Published 29 August 2016.

and vulnerable groups tell us that there are many people who are unable to interact digitally be that as a result of lack of access, skills, motivation or trust in using online services. It is vital that these people get the right help to go online, where they are able to. And for those who cannot, alternatives must be available. Recent research, soon to be published by LITRG, tells us that the preferred method of communication for those unable to interact digitally is to speak to somebody. We therefore welcome HMCTS's proposals to retain face-to-face and telephone support but must reiterate that these channels must be available to all users, not only those whom HMCTS hopes to encourage to go online. The staff on helplines or delivering face-to-face services must also be trained to understand people's particular difficulties and how to make reasonable adjustments to overcome them – a dedicated helpline would be preferable.

- 4.1.4 In addition to the protection afforded by the 2010 Equality Act,⁹ it is also important to note the findings in *LH Bishop Electric Company Ltd and others v HMRC [2013]*¹⁰. In that case, HMRC Regulations which mandated online VAT returns without regard to the needs of older people, people with disabilities, or those living remotely, were found to be incompatible with those people's human rights. It is also important to note that people's abilities are not static – for example someone who may be able to engage digitally may become excluded from doing so due to the natural ageing process and finding it difficult to keep up with technology. It cannot be assumed that people's position will not change, so HMCTS needs to be flexible enough to adapt their approach to reflect a change in an individual's circumstances.
- 4.1.5 The consultation document seems to imply that the paper channel will consist of a user filling in a form (as they do now) and posting it to HMCTS who then enter the data on the user's behalf. It is not made clear, but we assume – and indeed strongly recommend – that face-to-face and telephone support should also be available if the user needs help to complete the form.
- 4.1.6 We also caution HMCTS to ensure that any 'alternatives to online' are properly resourced to cope with demand so that users who cannot interact in this way continue to receive an equally good service as those who can.
- 4.1.7 The consultation document does not specifically mention those who have English as a second language or those who are unfamiliar with the type of language commonly used online or in legal proceedings. Guidance must therefore be written in plain English and help must be available to support these people.

⁹ The 2010 Equality Act Guidance <https://www.gov.uk/guidance/equality-act-2010-guidance>. Updated June 2015

¹⁰ See the conclusion of the first-tier Tribunal *LH Bishop Electric Company Ltd and others v HMRC [2013]* <http://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02910.html>

- 4.1.8 It must also be noted that some people (such as those with disabilities or those without English as a first language) often ask another person – friend or family member – to assist them. HMCTS must have channels available to facilitate this. Note should be taken in this regard of HMRC’s ‘Trusted Helper’ facility,¹¹ as a similar facility would be helpful for individuals requiring assistance to make an appeal.
- 4.2 ***Question 2: Do you believe that any channels are particularly well suited to certain types of HMCTS service? Please state your reasons.***
- 4.2.1 We have no detailed experience of working with HMCTS or its services but assume that it will not be practicable, possible or appropriate to move all services online.
- 4.2.2 With this in mind, we feel that the more routine and less complicated processes will be best suited to moving online.
- 4.2.3 Complex cases that are normally dealt with by legal representatives may also be most suited to moving online as the majority of legal service providers are likely to be digitally competent and able to help their clients with this aspect of things.
- 4.2.4 So that people will not feel overwhelmed by rapid change, HMCTS should perhaps consider a staged move to online, where they move and user-test a couple of services, and associated support, at a time. If this approach is adopted, then it would make sense to move the more routine processes first.
- 4.2.5 As well as considering which services are best delivered through which channel, it is also important to consider which channels may be best suited to the needs of different users.
- 4.2.6 Services such as web chat (where a person answers questions) and perhaps automated virtual assistant technology (where an automated computer database answers questions) – although there is no mention of the latter being made available – will no doubt be embraced by those who are comfortable with using technology, provided the information supplied is reliable, accurate and consistent with that supplied by other channels.
- 4.2.7 As mentioned earlier, LITRG research amongst those who came to us for help tells us that people who struggle to interact digitally prefer to get help by actually speaking to somebody. HMCTS should use the more traditional services of face-to-face and telephone support to help and encourage these people to go online, where they can. These channels should also be available for those who despite help cannot and, in some cases, will never be able to do so.
- 4.2.8 Face-to-face and telephone support may also be appropriate to help users comply with the more complex HMCTS processes. We must also emphasise that face-to-face services need to be accessible locally. For instance, how would someone in the Highlands and Islands of Scotland access such support? Also what about overseas litigants, of which there will be

¹¹ See <https://www.gov.uk/help-friends-family-tax>

some? Perhaps there could be video conferencing available at local facilities, through which people can contact a helper (with suitable support at the venue). Service standards ought to be in place, and monitored regularly.

5 Impact and equalities impact assessments – Assisted Digital

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

- 5.1.1 We have a few comments, in addition to those we have made above, that relate specifically to the Assisted Digital (AD) Impact and Equality Assessment.
- 5.1.2 Paragraph 25 (page 6) states ‘there may also be costs to HMCTS of promoting the existence and use of assisted digital services, to ensure those who need assistance are aware of it and know how it can help them.’ We have already flagged up the importance of a robust publicity campaign which should be costed as part of the impact assessment. Unless people know how digital services will benefit them and what support is available, they may not be inclined to use them. This may affect take up.
- 5.1.3 Paragraph 36 (page 7) states that ‘if third parties are contracted to provide all or part of the assisted digital service, they would receive payment from HMCTS/Ministry of Justice to deliver such services’. If this proposal is taken forward, a thorough cost/benefit analysis must be carried out and publicly shared so that people understand the rationale behind outsourcing these services. Failure to do this may result in lack of engagement with the aims and aspirations of the HMCTS Reform Programme.
- 5.1.4 Paragraph 1.2 to 1.2.4 (page 10) refers to the creation of new end-to-end digital processes for certain services such as the Social Security and Child Support Tribunal. It should be noted that there may be an impact in terms of time needed for both users and legal service providers to familiarise themselves with these and other new processes.
- 5.1.5 Paragraph 1.4.1 (page 10) states that face-to-face assistance such as completion and submission of an online application form on behalf of a member of the public may be contracted to one or more third party organisations. We have already commented that HMCTS needs to consider how they will ensure quality and consistency across all organisations and all channels. It is also important to consider the security and confidentiality aspects of an organisation being empowered to complete a form on behalf of a member of the public as well as the potential impact of an incorrectly completed form – who, for example, will be ultimately responsible if the information provided on the form is incorrect? Failure to provide guidance around transparency and accountability may result in reluctance to use third-party organisations. As noted above, we are however concerned that there will be a reluctance to trust third party organisations given recent reports of problems encountered as a result of Government Departments subcontracting services (such as HMRC’s contract with Concentrix relating to tax credits compliance cases).

5.1.6 HMCTS states that it will provide their own assisted digital service free of charge but acknowledge that private sector legal services providers may choose to offer similar services. We are concerned that legal service providers, in order to encourage people to use their firm for legal advice and/or representation (and generate income as a result), may develop more sophisticated assisted digital support than can be offered by HMCTS. It is vital that any assisted digital service HMCTS produces must be equal to anything offered by a private sector provider. It is not right if those who cannot afford to pay receive an inferior service.

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

5.2.1 We comment on direct and indirect discrimination as well as each of the protected characteristics in turn.

5.2.2 **Direct and indirect discrimination** – we agree in principle that provided assisted digital support, along with alternatives to digital that are equally as good as online services, is made available to all users then there will be no direct or indirect discrimination. Care however needs to be taken when considering whether additional costs involved in enabling people to go online will result in discrimination. We comment on this further in the disability section below.

5.2.3 **Race** – the only additional comment we have with regard to race is in relation to those who do not have English as a first language. Appropriate help and support must be in place to give these people equal access to the justice system.

5.2.4 **Sex** – no additional comment.

5.2.5 **Disability** – the consultation document recognises that people with disabilities are far less likely to have used the internet than those without a disability and are therefore more likely to need assisted digital support to go online.

5.2.6 It is important to recognise that some disabled people, despite help and support, will never be able to go online or even if they do will still not be able to use all the facilities available including, say, an online account for bringing proceedings. For these people alternatives such as face-to-face, telephone and paper channels must be available.

5.2.7 It is also important to recognise that the broad spectrum of disabilities needs to be recognised and properly understood. Essentially, disability may not just be ‘mental’ or ‘physical’ – it also includes social, communication and learning difficulties.

5.2.8 The consultation document states that assisted digital services will address the digital access needs of disabled individuals but HMCTS must recognise that there is no one size fits all answer as different disabilities will affect an individual’s ability to access technology differently. Even when the disability is the same, it may affect two people quite differently so the solution (reasonable adjustment to be made) may be specific to the individual’s needs.

- 5.2.9 It is important to note that specialist equipment often plays an important part in helping people go online. This might include voice activated software that eliminates the need to use a keyboard, screen reading software that reads aloud what is on a computer screen, or hardware that allows a person to control a computer through subtle mouth movements.
- 5.2.10 This specialist equipment not only comes at a financial cost but there is also a cost in terms of time needed to learn how to use it effectively. We doubt whether any assisted digital support offered by HMCTS will go so far as helping people to acquire and use this equipment and this point must therefore be borne in mind when considering equality of opportunity for those who have to access digital services in a different way. It is important that people whether disabled or not are given equal access to the justice system and that it does not come at an additional cost or burden.
- 5.2.11 There is a problem, however, with assuming that people with disabilities always have access to special hardware or software. For example, people who develop impaired sight as they get older may be otherwise perfectly capable of using the internet; but websites do not always have in-built functionality to adjust them such that they are accessible to people with partial disability. 'Disability testing' of services should therefore include how a person might make minor adjustments to the display (such as change of contrast), without them having to have recourse to specialist packages.
- 5.2.12 **Sexual orientation** – no additional comment.
- 5.2.13 **Religion or belief** – no additional comment.
- 5.2.14 **Age** – the consultation document recognises that compared to younger people, older people are less likely to go online. Research carried out and soon to be published by LITRG, along with our general observations of working with older people, tells us that they are the least likely to be online and when they are, tend to use older devices and/or software and are less likely to upgrade them in line with developing technology. As a later development in their lives, many do not tend to use technology in the same way as younger people and do not always take changes in their stride as easily as those who have grown up with them. Some for example may find it difficult to cope with newer versions of Windows, preferring to continue with the version they are familiar with. This may of course mean that the software they are using is incompatible with technological advances.
- 5.2.15 It is also important to recognise that even though a person may be digitally competent at a certain age, this can decrease over time as result of physical, cognitive and/or behavioural changes that come from either illness or the natural ageing process. As well as providing assisted digital support to help those who can go online, it is also vital that alternatives must be available along with the ability to switch back from digital should a person need to. It is important that people no matter what age, are given equal access to the justice system.
- 5.2.16 **Marriage and civil partnership** – no additional comment.
- 5.2.17 **Gender reassignment** – no additional comment.

5.2.18 **Pregnancy and maternity** – no additional comment.

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

5.3.1 We agree that compliance with the requirements of the Public Sector Equality Duty limbs of the Equality Act 2010, should mean that HMCTS has correctly identified the range of equalities impacts.

LITRG
31 October 2016