



Ministry
of Justice

HMCTS Reform Evaluation

Rapid Evidence Assessments

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The RTK Ltd

Ministry of Justice Analytical Series

2023



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First published 2023



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This publication is available for download at <http://www.justice.gov.uk/publications/research-and-analysis/moj>

ISBN 978 1 911691 14 3

Acknowledgements

The authors acknowledge the contribution of colleagues from the Ministry of Justice to the conduct of the review and production of the final report.

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Dr Tony Muntun, Miriam Antcliffe, Alan Gomersall, and Dr Emma Carter. Dr Tony Muntun authored the final report and provided oversight for the project. Alan Gomersall developed search strings and conducted searches, citation chases and grey literature searches. Miriam Antcliffe led on data extraction and quality appraisal of the papers. Dr Emma Carter was project manager and led on reference management.

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1. Introduction and report summary

Evaluating HMCTS Reform

In 2016, HM Courts & Tribunals Service (HMCTS) set out the vision to modernise the justice system through an ambitious programme of change. The HMCTS reform programme aims to bring modern technology and new ways of working to the courts and tribunals system.

The MoJ is conducting an evaluation of the HMCTS reform programme to ensure that the effects of reform can be identified and assessed. This evaluation will help identify if the reform programme has met its aims and what effects it had, for whom and why. The evaluation focuses on the impact of the HMCTS reform programme on access to justice, for both the general population and among vulnerable groups. Further information on HMCTS reform can be found at the HMCTS webpage,¹ and on the MoJ's evaluation of the reform programme at the evaluation's webpage.²

Considering the existing evidence base is an important stage in the evaluation process.³ The MoJ therefore commissioned a suite of evidence assessments to generate a clear understanding of the current evidence base and to identify any evidence gaps.

HMCTS reform is a complex programme, with over 40 projects. The MoJ have created a theory of change to explain how the activities of HMCTS reform are anticipated to contribute to the intended aims and outcomes of the programme.

¹ [The HMCTS Reform Programme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about-hm-courts-and-tribunals-service)

² [HMCTS Reform Overarching Evaluation: Research - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/research-data-and-analysis/publications/hmcts-reform-overarching-evaluation-research)

³ HM Treasury (2020) Magenta Book: Central Government guidance on Evaluation. Available: [HMT_Magenta_Book.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/HMT_Magenta_Book.pdf)

Within the theory of change, the activities of the reform programme have been grouped into four themes:⁴

1. Adding new channels (routes to services) and redesigning existing channels around user needs
2. Using remote hearing technology in more hearings
3. Consolidating the court estate and investing in court infrastructure
4. Introducing new support services.

Evidence assessment approach

Four Rapid Evidence Assessments (REA) have been conducted (one for each thematic area) to understand the evidence base for these four themes of the reform programme's activity. REAs provide a balanced assessment of the existing evidence base, utilising rigorous and explicit systematic methods to search and appraise identified research.⁵ In line with the MoJ's overarching evaluation, the REAs have focused on understanding what is known in the evidence base regarding how certain types of activity may impact access to justice.

The REAs searched for existing evidence across a range of literature types, including research published through traditional channels (evidence reviews and empirical studies) and grey literature (literature not formally published in books or journal articles, such as government reports).

Acknowledging that activity similar to that of HMCTS reform may be utilised in areas beyond the justice sector, where preliminary results indicated it was necessary and useful, evidence was sought from the wider public sector, the private sector, and third sectors. Searches also looked beyond the UK, including international publications.⁶

⁴ [HMCTS Reform, MoJ Evaluation: Progress Report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁵ [\[ARCHIVED CONTENT\] Rapid Evidence Assessment Toolkit index - Civil Service \(nationalarchives.gov.uk\)](https://nationalarchives.gov.uk)

⁶ Publications were examined if they were: published from 2010 onwards; published in the English language; and conducted in the UK (including devolved administrations), Singapore, EU, Scandinavia, USA, Canada, Ireland, Australia, or New Zealand.

The REAs considered over 1900 unique texts for inclusion. The quality of each study was rigorously assessed (see Technical Appendix Chapter 8) but ratings did not form part of the inclusion criteria (provided in Technical Appendix Chapter 5). In line with Cochrane guidance,⁷ a narrative synthesis⁸ was used to report the review findings, due to the limited number of empirical evaluations identified.

Summary conclusions of the evidence base

Overall, the evidence base is limited across the four REAs. The quality of evidence isn't strong, with very few experimental evaluations found that could throw light on the relative strengths and weaknesses of activity like that of the HMCTS reform programme. Most of the material identified comprised critical reviews published by expert practitioners and academics. These critical reviews contributed well-informed opinion pieces rather than systematic analyses of the research literature.

Consequently, whilst a range of both possible benefits and concerns were raised in the literature regarding activity similar to that of HMCTS reform, confident conclusions cannot be made on the likely impact of reform to access to justice, and how this may affect certain users differently.

As many of the reforms are introducing new tools, services and systems to the courts and tribunals, evidence is limited across the four themes of reform activity. A key message throughout the reviews is the need to improve knowledge, and by implication, data, particularly regarding digital service provision. Further empirical and experimental research to evaluate court reform is encouraged. Findings relating to individual REAs are summarised in sections 1.1 – 1.4 below.

⁷ http://methods.cochrane.org/sites/methods.cochrane.org/rapidreviews/files/uploads/cochrane_rr_-_guidance-23mar2020-final.pdf

⁸ A narrative synthesis uses text to tell the story of the findings. It includes four key elements: (i) Developing a theory of how an intervention works, why and for whom; (ii) Developing a preliminary synthesis of findings of included studies; (iii) Exploring relationships in the data; and (iv) Assessing the robustness of the synthesis.

1.1 Rapid Evidence Assessment 1 (REA1): Adding new channels (routes to services) and redesigning existing channels around user needs

Primary research question:

How might a shift towards online services impact public access to justice?

Overall, there is minimal research literature concerning how a shift towards online services might impact access to justice. The evidence base identified largely consists of literature reviews, of which very few used robust systematic review methods. These literature reviews suggested that inequality of access may be an issue for some groups for whom a shift to more online service provision may be disadvantageous.⁹ However, several noted that courts and tribunals lack robust data to identify disadvantaged groups and understand the drivers of inequalities.¹⁰

Additionally, several reviewers suggested that the shift to online services presents opportunities to re-evaluate traditional judicial processes.¹¹ Designing services from scratch rather than trying to retrofit existing processes to new online provision could spur innovation.¹² Online Dispute Resolution (ODR),¹³ a form of Alternative Dispute Resolution (ADR)¹⁴ was held up by some as a potential source of good practice. E-commerce has become an early adopter of ODR as a means of settling complaints.¹⁵

⁹ Yamagata, H. & Fox, D. (2017). Evaluating the use of videoconferencing technology in domestic violence ex parte hearings: assessing procedural consistency. *Justice System Journal*, 38(2), 135-148.

¹⁰ Ryan, M., Rothera, S., Roe, A., Rehill, J., and Harker, L. (2021). *Remote hearings in the family court post pandemic*. London: Nuffield Family Justice Observatory.

¹¹ Bandes, S.A. & Feigenson, N., (2020). Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom. *Buffalo Law Review*, 68(5), 1275-1352.

¹² Wasser, L. A. (2021). Design challenges in applying online dispute resolution to divorce. *Family Court Review*, 59(2), 268-277.

¹³ E.g., Salter, S. (2017). Online dispute resolution and justice system integration: British Columbia's Civil Resolution Tribunal. *Windsor Yearbook of Access to Justice/Recueil annuel de Windsor d'accès à la justice*, 34(1), 112-129.

¹⁴ ADR is a generic term that describes processes used to promote early and cost-effective settlement. One such technique is mediation, whereby a trained neutral mediator acts as a go-between for the parties and facilitates negotiations. The result is consensual (e.g., both parties agree to it)

¹⁵ Wing, L., Martinez, J., Katsh, E., & Rule, C. (2021). Designing ethical online dispute resolution systems: The rise of the fourth party. *Negotiation Journal*, 37(1), 49-64.

Where primary research was identified, papers focussed mainly on the speed, efficiency, and cost of delivering online services. However, none used experimental methods to examine differences in justice outcomes between online and traditional processes.

In conclusion, REA1 highlighted the concern from commentators within the sector that a shift towards online services may have an adverse impact on public access to justice. The consensus view is that some groups, such as the digitally excluded and the physically disabled, may be particularly at risk. However, the review did not uncover a body of robust, consistent evidence that might enable the courts and tribunals to identify who these groups might be, or which judicial processes and procedures might drive potential inequalities. The lack of that data is a significant gap in the evidence required to address concerns regarding potential inequalities.

1.2 Rapid Evidence Assessment 2 (REA2): Using remote hearing technology in more hearings

Primary research question:

How does the use of remote technologies (video and audio tools) to facilitate services (or certain stages within services) impact access to those services, systems and any resolution sought?

Overall, the literature on the use of remote hearing technologies and how the use of these facilities may impact access to services is mixed. The evidence base consisted of some primary research and several critical reviews.

Critical reviews have pointed to the possible benefits of video hearings, such as making hearings more geographically accessible, saving time and the cost of travel, as well as being less intimidating and stressful than physical court.^{16,17} Additionally, it's thought that video hearings could support some vulnerable groups by increasing accessibility.

¹⁶ Rossner, M., & McCurdy, M. (2018). Implementing video hearings (party-to-state): A process evaluation. *Current Issues in Criminal Justice*, 33(1), 94-110.

¹⁷ E.g., Salter, S. (2017). Online dispute resolution and justice system integration: British Columbia's Civil Resolution Tribunal. *Windsor Yearbook of Access to Justice/Recueil annuel de Windsor d'accès à la justice*, 34(1), 112-129.

However, there are concerns that it may limit effective participation for others - it isn't 'one size fits all' and is likely to vary across different users and types of cases.¹⁸

The issue of fairness in relation to video hearings has been the subject of more critical reviews than primary research studies. Currently, very little primary research has focused on exploring relative fairness. Some authors suggest video hearings may weaken a defence and, as a consequence, potentially compromise fair and effective participation in the judicial process. One study analysing US immigration case data suggested the use of remote hearing technologies was associated with less favourable outcomes for applicants.¹⁹ A more developed evidence base consisting of robust outcome comparisons would go some way to informing this debate.

One recurring theme was in regard to the quality of remote equipment and technologies. Some research has identified that disruptions appear more common in remote hearings,²⁰ and noted concerns regarding the dependability of the equipment.²¹ Research also highlighted the importance of the audio quality, noting poor quality audio may lead to misinterpretations and fewer details recalled.²² Literature reviews also suggest the importance of the visual set up of the technology, such as camera angles that allow participants to look at one another in the eye.²³

¹⁸ Easton, J. (2018). Where to Draw the Line? Is Efficiency Encroaching on a Fair Justice System? *The Political Quarterly*, 89(2), 246-253.

¹⁹ Thorley, D., & Mitts, J. (2019). Trial by skype: A causality-oriented replication exploring the use of remote video adjudication in immigration removal proceedings. *International Review of Law and Economics*, 59, 82-97.

²⁰ Fielding, N., Braun, S., Hieke, G., & Mainwaring, C. (2020). Video enabled justice evaluation. *Sussex Police and Crime Commissioner and University of Surrey*, available from: <http://spccweb.thco.co.uk/media/4851/vej-final-report-ver-11b.pdf>

²¹ Rossner, M., & McCurdy, M. (2020). Video Hearings Process Evaluation Final Report. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905603/HMCTS391_Video_hearings_process_evaluation_phase_2_v2.pdf

²² Lange, N. D., Thomas, R. P., Dana, J., & Dawes, R. M. (2011). Contextual biases in the interpretation of auditory evidence. *Law and Human Behavior*, 35(3), 178.

²³ Regenbrecht, H., & Langlotz, T. (2015). Mutual gaze support in videoconferencing reviewed. *Communications of the Association for Information Systems*, 37(1), 45.

Poor sound and image quality might disproportionately disadvantage certain groups. However, there is a lack of evidence about how particular user groups might be impacted by audio and video hearings.²⁴

In conclusion, the available evidence points to the importance of taking a nuanced view towards the issue of how the adoption of remote technologies might impact access. While some groups may find it easier to access remote services, others may find themselves disadvantaged. This underscores the importance of developing a better understanding of the needs different groups may have, and how remote technologies can best address those needs.

1.3 Rapid Evidence Assessment 3 (REA3): Consolidating the court estate and investing in court infrastructure

Primary research question:

How does centralising the workforce (and the processes they use), and improving the physical estate where services are provided, impact access to those services, systems and any resolution sought?

The lack of primary research is the defining feature of the evidence landscape for REA3. Subsequently, little is known in the existing literature about how centralising the workforce and improving the physical estate where services are provided impacts access to those services, systems and any resolution sought.

The texts identified largely consist of grey literature (i.e., not published in peer-reviewed journals), such as government or local authority reports, findings from scrutiny bodies such as the National Audit Office, or papers produced by NHS trusts. Lessons from this grey literature can inform development of good practice guidelines for rationalisation of the court estate.

In conclusion, REA3 showed that very little has been published regarding strategic approaches to rationalising court estates. The literature identified that, when managed

²⁴ Equality and Human Rights Commission. (2020). Inclusive Justice: A System Designed for All. *Equality and Human Rights Commission*.

well, asset disposal and better property utilisation can drive efficiency and cost effectiveness.²⁵ However, the sector lacks good data on utilisation, which is a major barrier to effective decision-making about property estates.²⁶ HMCTS could usefully support effective court estate planning by collecting robust data on the relative costs of providing different services.

1.4 Rapid Evidence Assessment 4 (REA4): Introducing new support services

Primary research question:

How does the provision of additional support to users of online services impact access to those services, systems and any resolution sought?

Overall, relatively little is known in the existing literature about how the provision of additional support to users of online services impacts access to those services, systems and any resolution sought. The evidence base identified in REA4 included a small number of good quality primary studies that do not come specifically from the justice sector but include some applicable learnings. For example, groups who lack internet access are less likely to have requisite digital skills²⁷ and people over the age of 65 are less likely to have access to the internet.²⁸

Additionally, the primary research identified that the justice system lacks good data on the proportion of court users who are digitally excluded.²⁹ The Civil Justice Council estimates that 6% of those with civil justice problems lack basic online skills and 14% lack basic digital skills.³⁰ Models of good practice in the provision of digital support might be drawn

²⁵ U.S. General Services Administration. (2015). *The National Strategy For the Efficient Use of Real Property and the Reduce the Footprint (RTF) Policy*.

²⁶ Isle of Wight NHS Trust. (2022). *Estate Strategy 2021-2025*.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ryan, M., Rothera, S., Roe, A., Rehill, J., and Harker, L. (2021). *Remote hearings in the family court post pandemic*. London: Nuffield Family Justice Observatory.

³⁰ Hynes, J. (2021). *Digital Support for HMCTS Reformed Services: What we know and what we need to know*.

from the private sector.³¹ Training for professionals involved in court proceedings would help educate them regarding expectations around the needs of court users.³²

In conclusion, REA4 identified evidence from digital services in other sectors to suggest a significant proportion of HMCTS users are likely to lack basic digital skills and therefore require support to avoid exclusion. What is clear from the literature is a recognition that the judicial system must afford people with severe communication impairments respect and an opportunity to be heard. For that to happen, the system needs to ensure it understands the augmentative and alternative communication methods that many of those with communication challenges rely on. Without this understanding, there is a risk that court proceedings may lack the flexibility necessary to accommodate their needs.

1.5 Main evidence gaps

Across the four REAs, six evidence gaps have been identified. To address these gaps, it is suggested that the following robust empirical research is required (in no particular order):

- Robust systematic reviews of evidence concerning online processes and procedures which may disadvantage certain groups of users.
- Primary research using experimental designs to compare outcomes of online and face-to-face court proceedings.
- Detailed examination of the barriers to effective participation in online court proceedings across the full range of court users.
- Primary research into estate rationalisation to establish good practice in relation to costs, benefits, and workforce development, including to test assumptions around cost savings.
- Robust data (primary research) on court utilisation to inform estate rationalisation strategy, including the physical condition of buildings and their functional suitability.
- Court-based data to determine how the provision of online support can avoid disadvantaging specific groups of people.

³¹ Greacen, J. M. (2019). Eighteen ways courts should use technology to better serve their customers. *Family Court Review*, 57(4), 515-538.

³² Ibid.

Overall, the four REAs indicate that there is a lack of robust evidence to enable confident conclusions to be made on the likely impact of reform activity on access to justice, and how this may affect different user groups.

1.6 Report Structure

The remainder of this report is divided into three further chapters. First, the approach (methodology) is set out in Chapter 2. The full findings are then presented in Chapter 3, before an extended discussion of the evidence gaps is provided in Chapter 4. Further detail of the methodology is provided in the Technical Appendix document. This includes: the database searches; search results; full inclusion and exclusion criteria; evidence base assessment and details about each individual paper included in the REAs.

2. Approach

This chapter outlines the methodology used to conduct each REA. It begins by stating the aims of the reviews (the research questions to be addressed). Details of the inclusion and exclusion criteria are then presented before a summary of the search results for all four REAs is provided. Further details of the approach can be found in the Technical Appendix. The approach taken aligns with government best practice guidance.^{33,34}

2.1 Aims of the reviews

Each REA addressed different research questions, related to the specific topic of the thematic area.

REA1: Adding new channels (routes to services) and redesigning existing channels around user needs

Primary research question:

How might a shift towards online services impact public access to justice?

Secondary research questions:

1. Do all users have access to online services and the wider systems they sit within?
2. Are online services equitable for all users?
3. Does the experience of the online service differ between users?
4. Is the remedy or solution the service is designed to facilitate accessible and effective for users?

³³ [HMT_Magenta_Book.pdf \(publishing.service.gov.uk\)](#)

³⁴ [Production_of_quick_scoping_reviews_and_rapid_evidence_assessments.pdf \(publishing.service.gov.uk\)](#)

REA2: Using remote hearing technology in more hearings

Primary research question:

How does the use of remote technologies (video and audio tools) to facilitate services (or certain stages within services) impact access to those services, systems and any resolution sought?

Secondary research questions:

1. Do all users have access to the remote technology and the wider systems they sit within?
2. Is the use of remote technologies fair for all users?
3. Does the experience of the remote technologies differ between users?
4. Is the remedy or solution the remote technology is designed to facilitate accessible and effective for users?

REA3: Consolidating the court estate and investing in court infrastructure

Primary research question:

How does centralising the workforce (and the processes they use), and improving the physical estate where services are provided, impact access to those services, systems and any resolution sought?

Secondary research questions:

1. Does improving the physical estate where services are delivered impact the quality of user experience?
2. Does improving the accessibility of the physical estate where services are delivered increase the consistency of experience for all users? Does this facilitate access to the wider system the services sit within, and the remedy or solution sought?
3. Does centralising the workforce and the processes they use impact users' access to the services provided?
4. Does centralising the workforce and the processes they use impact the quality-of-service users experience?

REA4: Introducing new support services

Primary research question:

How does the provision of additional support to users of online services impact access to those services, systems and any resolution sought?

Secondary research questions:

1. Does additional support increase users' access to online services and the wider systems they sit within?
2. Do additional support services meet the needs for all users?
3. Does the experience of additional support services differ between users?
4. Do additional support services increase the quality and consistency of experience for online service users?

2.2 Inclusion and exclusion criteria

The REAs set out to identify relevant publications that addressed the key research questions. Pre-specified inclusion and exclusion criteria determined the selection of publications for review. The REA reporting follows guidelines set out in the 2020 Preferred Reporting Items for Systematic reviews and Meta-Analyses (PRISMA) statement.³⁵

Three categories of publications were examined:

- evidence reviews (a review which summarises the available evidence, with a particular focus on the outcomes, impacts and delivery of similar projects)
- empirical (primary) studies (studies consisting of investigation or experimentation whereby the findings are identified by analysing empirical evidence)
- grey literature (literature not formally published in books or journal articles, such as government reports) and descriptive studies (studies which are not experimental but instead describe the characteristics of a population or phenomenon) including organisational and expert intelligence.

³⁵ Page, M. J., McKenzie, J. E., Bossuyt, P. M., Boutron, I., Hoffmann, T. C., Mulrow, C. D., ... & Moher, D. (2021). The PRISMA 2020 statement: an updated guideline for reporting systematic reviews. *Bmj*, 372.

Publications were examined if they were: published from 2010 onwards; published in the English language; and conducted in the UK (including devolved administrations), Singapore, EU, Scandinavia, USA, Canada, Ireland, Australia, or New Zealand. Nine online databases were searched.³⁶ Supplemental searches with Google Scholar using strict criteria were also conducted.³⁷

Abstracts of all publications identified by searches were screened. Two members of the team screened the same 10 hits to ensure good inter-rater reliability of selection for full text retrieval. They discussed selections until agreed criteria produced complete consensus on selections. From that point, hits were screened independently, whilst regular checks were undertaken to ensure consistent application of inclusion and exclusion criteria.

Details of papers selected for full text retrieval were uploaded onto reference management software and checked for duplicates. The same 10 full texts were screened to decide on whether they met the inclusion criteria, and again two members of the team agreed on the outcomes for the 10 texts. The remaining texts were divided equally and screened independently for inclusion.

These searches were undertaken in September 2022.

Review protocols and inclusion criteria

The following review protocols for the REAs are registered on the Open Science Framework.³⁸ These protocols include the first iteration of the search strings, which follows the convention of reporting reviews providing the first iteration of the search strings given they develop through the process of reviewing the initial searches and vary from database to database.³⁹

³⁶ See Technical Appendix Chapter 2 for details.

³⁷ Haddaway NR, Collins AM, Coughlin D, Kirk S (2015) The Role of Google Scholar in Evidence Reviews and Its Applicability to Grey Literature Searching. *PLOS ONE* 10(9): e0138237

³⁸ REA1: <https://osf.io/dt27w> REA 2: <https://osf.io/btx3j> REA 3: <https://osf.io/vf64d> REA 4: <https://osf.io/vg4wd>

³⁹ Page, M. J., McKenzie, J. E., Bossuyt, P. M., Boutron, I., Hoffmann, T. C., Mulrow, C. D., ... & Moher, D. (2021). The PRISMA 2020 statement: an updated guideline for reporting systematic reviews. *International Journal of Surgery*, 88, 105906.

The inclusion criteria are summarised in the Population, Interventions, Comparators and Outcomes (PICO)⁴⁰ overleaf in Table 1. The full inclusion and exclusion criteria are included in the Technical Appendix.⁴¹

⁴⁰ [Extracting PICO Sentences from Clinical Trial Reports using Supervised Distant Supervision - PMC \(nih.gov\)](#)

⁴¹ Full details of data retrieval, assessments of relevance and quality ratings are available on request from the authors.

Table 1. Inclusion criteria (PICO)

PICO	REA1	REA2	REA3	REA4
Population	Members of the public who use online services.	Members of the public, legal professionals and members of the judiciary who use online services.	Members of the public using public services.	Users accessing additional support services to assist them to access new digitalised services.
Interventions	Online services that assist with judicial issues, either within the context of courts and tribunals or services that provide an alternative to traditional service delivery models.	Audio or video hearings. Video hearing pilots. Use of video in other public services.	Changes to physical estates or to the workforce, such as increased accessibility or security and increased efficiency in the workforce.	Additional support services, either via telephone or online, to support users to access online services.
Comparators	Existing in-person services.	Existing in-person hearings.	User experiences of physical services prior to any physical changes.	Existing support in place prior to change which is not designed to support users of online services.
Outcomes	Improved and equitable access to services for the public; equality of access for vulnerable groups or those without support; improved public experience of the legal system, effective remedy, ⁴² accessible remedy.	Hearings are accessible and inclusive and improved public experience of the legal system; improved professional experience of hearings which are of high quality and consistent; effective remedy; ⁴³ accessible remedy.	Maximise utilisation of buildings, reduced operating costs, reduced administrative costs. Improved physical accessible and security. Improved quality and experience of the physical estates.	Users are supported to access online services. Improved access to online services, improved experience of using online services.

⁴² 'Remedy' is a legal term describing the means by which a court enforces a right or orders redress for a wrong.

⁴³ Ibid.

The table below summarises search results for all four REAs. Details of individual searches can be found in the Technical Appendix. Many of the papers identified were relevant to more than one REA.

Table 2. Numbers of texts included for each REA

Review stage	Rapid Evidence Assessment			
	REA1	REA2	REA3	REA4
Unique records	1290	28	28	607
Identified for retrieval	220	17	25	29
Full texts retrieved	188	15	24	24
Full texts excluded	69	7	0	19
Full texts included	119	8	24	5
Additional texts included	2	5	2	3
Texts from other REAs included	8	27	5	15
Total included	129	40	31	23

3. Findings

This chapter describes the findings of the REAs. For each REA, the characteristics of the evidence base is presented, followed by a discussion of the key findings. A concluding summary then provides an assessment of the evidence base for each theme.

3.1 Rapid Evidence Assessment 1 (REA1): Adding new channels (routes to services) and redesigning existing channels around user needs

Introduction

REA1 aimed to answer the following primary research question: how might a shift towards online services impact public access to justice?

The largest category of texts included for this theme were literature reviews. Of those, very few used systematic review methods: they did not systematically evaluate and record the quality of the evidence they included. That may well reflect the absence of a substantive body of empirical work done in the area.

The review found relatively few primary research papers, none of which used experimental methods to examine differences in outcomes. The few that were identified tended to focus on process issues. That is, they examined the speed, efficiency, and cost of delivering online services relative to traditional face-to-face procedures.

Evidence base summary ratings⁴⁴

As overall cumulative ratings, the evidence base is considered to be:

- Strength: Medium
- Quality: Moderate
- Size: Medium
- Consistency: Good
- Context: Relevant

⁴⁴ Table 7 in the Technical Appendix document summarises the strength of evidence base data across all four REAs.

Key Findings (KF)

KF1: Literature reviews in the justice sector tend to explore issues of transparency, access, and fairness of online services.

Searches for REA1 found only one systematic review⁴⁵ (the most reliable and robust type of literature review). Most of the reviews identified were critical reviews (used to summarise salient issues and provide a reflection on or critique a topic rather than provide a robust analysis of evidence).

The consensus from these critical reviews is that balance is essential. Online services need to deliver efficiency, but at the same time ensure fairness, due process, and transparency. The International Council for Online Dispute Resolution (ICODR) has created standards for ODR for courts to consider as they digitise. The ICODR standards are designed to ensure fairness, due process, transparency, and efficiency.⁴⁶ Several critical reviews suggest that principles like those reflected in the ICODR standards provide a useful starting point from which to develop good practice.^{47,48} Authors tend to agree that emerging policy would benefit from being able to compare international data from pilot projects to inform further development of online judicial services to advance access to justice.

KF2: There is a concern that inequality of access may be an issue for some groups, described below, for whom a shift to more online service provision may be disadvantageous.

KF3: Those described as ‘digitally excluded’ are particularly at risk.

⁴⁵ Gentry, M. T., Lapid, M. I., Clark, M. M., & Rummans, T. A. (2019). Evidence for telehealth group-based treatment: a systematic review. *Journal of telemedicine and telecare*, 25(6), 327-342.

⁴⁶ Schmitz, A. J. (2019). Expanding access to remedies through E-court initiatives. *Buff. L. Rev.*, 67, 89.

⁴⁷ Hodson, D. (2019). The role, benefits, and concerns of digital technology in the family justice system. *Family Court Review*, 57(3), 425-433.

⁴⁸ Cortés, P. (2015). A new regulatory framework for extra-judicial consumer redress: where we are and how to move forward. *Legal Studies*, 35(1), 114-141.

Research into the impact of delivering court and tribunal services online on different user groups is developing. One emerging theme concerns potential inequality of access. Several authors have highlighted digital exclusion as a driver of inequalities of access to online services.

For example, a UK study interviewed claimants using Jobcentre Plus digital services.⁴⁹ Claimants said they required access to bookable, private, internet-enabled PCs at the Jobcentre, library or external providers, and access to IT training and support (both face-to-face and telephone) to enable them to use Jobcentre Plus digital services. It is however possible that the requirements of claimants may have changed since the study (2011).

A more recent study conducted in England and Wales analysed data from the 2014–2015 Legal Problem and Resolution Survey (LPRS).⁵⁰ The LPRS is a telephone survey of the experience of and response to a broad range of civil legal problems, which captured information from 10,058 adults in England and Wales. Data from the study suggests that lack of internet access is a problem for around 10% of the general population, but less than 5% among those reporting civil justice problems. The authors concluded that retaining an option for face-to-face proceedings may be essential for several groups of people. They include older people, those with an annual income of less than £15,000, people living in social housing (and to a lesser degree, privately renting), being economically inactive or unemployed, and not having educational qualifications or dependent children.

KF4: Courts and Tribunals need robust data to identify disadvantaged groups and understand the drivers of inequalities. The sector currently lacks the data necessary to develop that understanding.

⁴⁹ Adam, D., Campbell-Hall, V., de Hoyos, M., Green, A. E., & Thomas, A. (2011). *Increasing digital channel use among digitally excluded Jobcentre Plus claimants* (No. 776). DWP Research Report.

⁵⁰ Denvir, C., & Selvarajah, A. D. (2022). Safeguarding access to justice in the age of the online court. *The Modern Law Review*, 85(1), 25-68.

What does emerge from the literature is the need for more data on which groups of people are likely to be disadvantaged by the move to online services, and what might be responsible for driving those inequalities.⁵¹

KF5: Opportunities include designing services from scratch rather than trying to retrofit existing processes to new online provision.

Some critical reviews challenged judicial systems not just to appraise but to redesign service delivery from the bottom up.^{e.g., 52,53} A critical review from a US attorney and Family Law expert argued that online services have the potential to provide more convenient and less expensive judicial process and procedures.⁵⁴ However, the review noted that those gains should not be made at the expense of quality of service.

The review goes on to look at online services in more detail, including providing a cost-benefit analysis. It concludes that key points for the US Family Court system to consider include the expansion of online services, the applicability of online procedures for divorce proceedings, the potential for greater democratisation of service delivery, collecting data to monitor the value of online services, and applying legal scholarship to the issue in a robust and consistent manner.

KF6: There is a sizeable body of literature that covers Online Dispute Resolution (ODR), which characterises ODR as a form of Alternative Dispute Resolution (ADR) that exploits the speed and convenience of the Internet and ICT.

⁵¹ Gingras, D., & Morrison, J. (2021). Artificial intelligence and family ODR. *Family Court Review*, 59(2), 227-231.

⁵² Chiodo, SE., (2020). Ontario Civil Justice Reform in the Wake of COVID-19: Inspired or Institutionalized?. *Osgoode Hall Law Journal*, 57(3), 801-833.

⁵³ Engstrom, DF., (2021). Digital Civil Procedure. *University of Pennsylvania Law Review*, 169(8), 2243-2289.

⁵⁴ Wasser, L. A. (2021). Design challenges in applying online dispute resolution to divorce. *Family Court Review*, 59(2), 268-277.

Both reviews and primary research papers examine issues of online services under the banner of ODR. e.g., ^{55,56,57,58} ODR is seen by the authors of these studies as an opportunity to provide insights into broader access to justice issues, particularly within ADR. ADR is an umbrella term describing processes used to promote early and cost-effective settlement. For example, mediation, where a trained neutral mediator works with both parties in a dispute to reach a consensual resolution. Several critical reviews argue ODR is particularly well-suited to dealing with low-value civil disputes, the least complex cases in the legal system.⁵⁹ Around 12,000 cases are dealt with every year in the civil and commercial mediation market across England and Wales.⁶⁰

The literature generally treats ODR as a generic term used to describe digital technology employed in dispute resolution. Critical reviews explored the capability of ODR to deliver improved efficiency through online communication and better consistency. Reviews have also examined the ability of ODR to enhance learning through data documentation, the study of dispute patterns, and the connection between procedural choices and substantive outcomes. A recurring issue is the potential trade-off between improved procedures and public accessibility.

Existing primary research has typically used qualitative methods to examine user experiences of ODR. Studies look at the impact of specific ODR technologies on disputants' experiences of procedural justice. Stakeholders raise several issues including security, privacy, and authentication.

⁵⁵ Salter, S. (2017). Online dispute resolution and justice system integration: British Columbia's Civil Resolution Tribunal. *Windsor Yearbook of Access to Justice/Recueil annuel de Windsor d'accès à la justice*, 34(1), 112-129.

⁵⁶ Rabinovich-Einy, O., & Katsh, E. (2017). A new relationship between public and private dispute resolution: Lessons from online dispute resolution. *Ohio St. J. on Disp. Resol.*, 32, 695.

⁵⁷ Sela, A. (2018). Can computers be fair: how automated and human-powered online dispute resolution affect procedural justice in mediation and arbitration. *Ohio St. J. on Disp. Resol.*, 33, 91.

⁵⁸ Abedi, F., Zeleznikow, J., & Brien, C. (2019). Developing regulatory standards for the concept of security in online dispute resolution systems. *Computer Law & Security Review*, 35(5), 105328.

⁵⁹ Prince, S. (2020). Encouragement of mediation in England and Wales has been futile: is there now a role for online dispute resolution in settling low-value claims?. *International Journal of Law in Context*, 16(2), 181-196.

⁶⁰ Centre for Effective Dispute Resolution (2018) 8th Mediation Audit. London: CEDR. Available at <https://www.cedr.com/foundation/mediation-audit/> (accessed 4 November 2022).

KF7: Private sector organisations have developed ODR as an option for addressing consumer grievances. E-commerce was an early adopter of ODR as a means of settling complaints.⁶¹

One review put the estimated annual number of private sector e-disputes at one billion worldwide. The authors noted that the sheer volume of these disputes has created demand in the private sector for expanding ODR, accelerated by the need to reduce face-to-face contact in response to the Covid-19 pandemic. This increased demand has stimulated debates around the governance of ODR procedures. The issues mirror debates in the justice literature: increased efficiency should not come at the price of reduced accountability. As a starting point, the National Center for Technology and Dispute Resolution created a set of values to serve as guidance for creating accountability mechanisms for the ethical design and function of ODR.⁶²

KF8: The review found very little primary research on the impact of ODR on private sector dispute resolution procedures.

The number of critical reviews of private sector ODR procedures is not matched by a body of primary research. That may, of course, reflect commercial sensitivities around the issue. However, with little primary research in the private sector regarding ODR, the lessons for the justice sector regarding its impact are limited.

KF9: International bodies including the European Court of Human Rights and the International Council for Online Dispute Resolution provide guidance on standards for ODR for courts to consider as they digitise.^{63,64}

⁶¹ Wing, L., Martinez, J., Katsh, E., & Rule, C. (2021). Designing ethical online dispute resolution systems: The rise of the fourth party. *Negotiation Journal*, 37(1), 49-64.

⁶² Ibid.

⁶³ Swierczynski, M., (2022). Critical evaluation of new Council of Europe guidelines concerning digital courts. *Review of European and Comparative Law*, 48(1), 133-155.

⁶⁴ Schmitz, A. J. (2019). Expanding access to remedies through E-court initiatives. *Buff. L. Rev.*, 67, 89.

With digitalisation playing an increasingly important role in dispute resolution, the Council of Europe has produced a set of guidelines designed to help member States.⁶⁵ The guidelines address issues of how to introduce digital procedures into court proceedings without compromising human dignity, human rights, and fundamental freedoms.

One review noted that the guidelines were consistent with jurisprudence of the European Court of Human Rights under Articles Six and 13 of the Convention. It went on to recommend adding two further principles: “Introduction of AI components should not compromise the human and symbolic faces of justice” and “Member states should implement mechanisms enhancing cyber security”.⁶⁶ The reviewer concluded the guidelines provided a useful, practical toolbox for member states.

The International Council for Online Dispute Resolution (ICODR) has also produced a list of ethical standards for the introduction of ODR.⁶⁷ The author of a US review noted the standards attempted to enable policymakers to develop ODR systems with the capacity to balance the drive for efficiency with fairness, due process, and transparency. They concluded that the ICODR principles and standards provide a starting point for developing good practice. They also advised that policymakers from different countries might usefully compare data from pilot projects to inform the further development of ODR.⁶⁸

KF10: Some papers discussed the use of artificial intelligence in ODR, and its potential being more accessible with system redesign.⁶⁹

More recent developments in ODR have seen the application of Artificial Intelligence (AI) to provide intelligent dispute resolution support. Several critical reviews have explored its potential.

⁶⁵ [Guidelines on Online Dispute Resolution Mechanisms - Newsletter 2021 \(coe.int\)](#) Last accessed Nov 4, 2022

⁶⁶ Swierczynski, M., (2022). Critical evaluation of new Council of Europe guidelines concerning digital courts. *Review of European and Comparative Law*, 48(1), 133-155.

⁶⁷ <https://icodr.org/standards/> Last accessed Nov 4, 2022

⁶⁸ Schmitz, A. J. (2019). Expanding access to remedies through E-court initiatives. *Buff. L. Rev.*, 67, 89.

⁶⁹ Zeleznikow, J. (2021). Using Artificial Intelligence to provide Intelligent Dispute Resolution Support. *Group Decision and Negotiation*, 30(4), 789-812.

One review focused on the important components of intelligent ODR systems. It developed a model for constructing user centric intelligent ODR systems. The model integrated case management, triaging, advisory tools, communication tools, decision support tools, and drafting software and agreement technologies. The author offered the model as a starting point for developing intelligent ODR systems.⁷⁰

A second review considered AI as a means of enabling ODR procedures to take account of context in judicial interactions. It described a situation in which AI Information could be used in machine learning to select cases and gather data on information such as body language and emotions. That way it could promote better framed decisions based not only on figures but also on important contextual information, similar to what happens when parties communicate face-to-face.⁷¹

Some reviews were more cautious about the potential contribution of AI. One author pointed out the requisite systems do not currently have the capacity to handle principles of justice that may affect the resolution process.⁷² They argued that justice could equally as easily be hampered rather than helped by the development of AI processes. The review concluded that a significant level of oversight and regulation will be necessary to deal with issues with AI in ODR.

Conclusion

The literature identified in REA 1 included concern from commentators within the sector that a shift towards online services may have an adverse impact on public access to justice. The consensus view is that some groups, such as the digitally excluded and the physically disabled, may be particularly at risk.

However, the review did not uncover a body of robust, consistent evidence that might enable the courts and tribunals to identify who these groups might be, or which judicial processes and procedures might drive potential inequalities.

⁷⁰ Ibid.

⁷¹ Carneiro, D., Gomes, M., Costa, Â., Novais, P., & Neves, J. (2017). Enriching conflict resolution environments with the provision of context information. *Expert Systems*, 34(5), e12049.

⁷² Alessa, H. (2022). The role of Artificial Intelligence in Online Dispute Resolution: A brief and critical overview. *Information & Communications Technology Law*, 31(3), 319-342.

Several critical reviews alluded to the opportunities for procedural reform that the move to online service provision might offer. Some authors suggested reforms could provide the chance to introduce changes that could mitigate against possible exclusion.

The literature on Online Dispute Resolution (ODR) comes closest to informing issues allied to the reform programme. ODR is a form of Alternative Dispute Resolution (ADR) with the capacity to use the speed and convenience of the internet to reduce both the time and cost of delivering judicial services. The private sector has widely adopted it as a means of dealing with consumer complaints in the context of E-commerce. However, the lack of published primary research makes it difficult to come to any definitive conclusions regarding customer accessibility.

International bodies including the European Court of Human Rights and the International Center for Online Dispute Resolution have provided guidance on standards for ODR. HMCTS may find it useful to look in detail at that guidance as they digitise.

Some authors have suggested artificial intelligence may have a role to play in ODR, especially for high volume low value disputes. However, as with ODR more generally, there is a lack of robust evidence of how AI might operate in more complex cases.

In light of these findings, further research is suggested to fill the identified evidence gaps, as set out in Chapter 4.

3.2 Rapid Evidence Assessment 2 (REA2): Using remote hearing technology in more hearings

Introduction

The review continued with REA2, with the aim of answering the following primary research question: how does the use of remote technologies (video and audio tools) to facilitate services (or certain stages within services) impact access to those services, systems and any resolution sought?

The specific focus of REA2 was on remote hearings. The unique texts for REA2 included primary research studies, covering topics such as video adjudication in immigration cases, evaluation of virtual court pilots, and contextual biases in the interpretation of auditory

evidence. The review also included a paper from the Equality and Human Rights Commission that looked at the impact of video hearings on effective participation.

Evidence base summary ratings⁷³

As overall cumulative ratings, the evidence base is considered to be:

- Strength: Medium
- Quality: Good (primary research identified) / Low (reviews identified)
- Size: Medium
- Consistency: Good
- Context: Relevant

Key Findings (KF)

KF1: Video can support some vulnerable groups by increasing accessibility but can also limit fair and effective participation for others – there is no ‘one size fits all’.

Several critical reviews raised the issue of whether the move to video hearings might compromise the fundamental principles of the judicial system.^{e.g., 74,75} Most assume the move to video hearings will deliver financial savings. However, the consensus is that this should not happen at the expense of compromising accessibility.

One review makes the point that accessibility is likely to vary across different groups of users and different types of judicial cases.⁷⁶ The author concludes that procedures that will provide a more efficient criminal justice system should be welcomed if sufficient protections are in place to ensure fair and effective administration of justice. As part of that process, the author proposes that video might be used in three situations: (i) for non-contentious administrative hearings where all parties have agreed the outcome; (ii) in contested hearings where the defendant cannot be transported to attend in person; and

⁷³ Table 7 in the Technical Appendix document summarises the strength of evidence base data across all four REAs.

⁷⁴ Doughty, J. (2020). Remote justice—family court hearings during the pandemic. *Journal of Social Welfare and Family Law*, 42(3), 377-380.

⁷⁵ Fekete, G. (2021). Videoconference Hearings after the Times of Pandemic. *EU and comparative law issues and challenges series (ECLIC)*, 5, 468-486.

⁷⁶ Easton, J. (2018). Where to Draw the Line? Is Efficiency Encroaching on a Fair Justice System? *The Political Quarterly*, 89(2), 246-253.

(iii) to support vulnerable witnesses. The author also argues that one way of ensuring fair and effective participation is for the judiciary, acting as independent arbiters, to retain discretion over when video link technology can be used within a criminal process.

KF2: Video hearings can make hearings more geographically accessible, save time and cost of travel and be less intimidating and stressful than physical court.

Several critical reviews suggested possible benefits of video hearings.^{e.g., 77,78} Those can include ease of access, saving time and costs of travel, and providing a less intimidating venue.

The primary research that was available did not provide consistent support for all of those assumptions. A survey conducted by HMCTS found that public users who attended hearings remotely had an equal or better experience with their hearing than those who attended in-person.⁷⁹ That said, survey results suggested respondents felt the service could do more to improve the experiences of public user groups less satisfied with their overall experience, including those with vulnerable characteristics.

KF3: Video hearings can be more accessible for some groups of disabled people and vulnerable people.

KF4: There is a lack of evidence about specifically how disabled defendants might be impacted by audio and video hearings. Poor sound and image quality might disproportionately disadvantage certain groups.⁸⁰

⁷⁷ Rossner, M., & McCurdy, M. (2018). Implementing video hearings (party-to-state): A process evaluation. *Current Issues in Criminal Justice*, 33(1), 94-110.

⁷⁸ Yamagata, H., & Fox, D. (2017). Evaluating the use of videoconferencing technology in domestic violence ex parte hearings: assessing procedural consistency. *Justice System Journal*, 38(2), 135-148.

⁷⁹ Clark, J. (2021). Evaluation of remote hearings during the COVID 19 pandemic. London: HMCTS

⁸⁰ Equality and Human Rights Commission. (2020). Inclusive Justice: A System Designed for All. *Equality and Human Rights Commission*.

The critical reviews assessed tend to assume that video hearings may improve accessibility for people with a range of sensory impairments, including visual and auditory.⁸¹

However, a report from the Equality and Human Rights Commission concluded there has been very limited assessment of the potential impact of using video hearings in criminal justice cases with disabled defendants in England, Scotland, and Wales. People interviewed, both defendants and professionals, raised concerns about video-links with poor sound and image quality. They reported that links may not work at all, or they may be intermittent.

The report recommended action be taken to: (a) look in detail at evidence emerging from the pilots for video enabled justice; (b) ensure defendants have accessible information that explains their right to raise issues that they may have with participation; (c) ensure frontline professionals have the expertise necessary to identify people for whom video hearings would be unsuitable; (d) support Liaison and Diversion services to make recommendations on adjustments, including postponing non-urgent cases; (e) consider the use of registered intermediaries to provide remote communications support to defendants in video hearings; and (f) consider using audio and video recordings of hearings as part of the evidence base to evaluate remote hearings.

KF5: Research in the Family Court has identified aspects that would improve user experiences, and highlighted user concerns regarding remote hearing accessibility.

Nuffield Family Justice Observatory conducted a survey of over 3,200 professionals and parents and other family members from across England and Wales concerning remote hearings in the Family Court (2021).⁸² Professionals and parents raised concerns about the difficulties experienced by lay parties accessing technology to fully participate in hearings, the lack of legal and other support for parties before and during the hearing,

⁸¹ Larson, D. A. (2019). Digital accessibility and disability accommodations in online dispute resolution: ODR for everyone. *Ohio St. J. on Disp. Resol.*, 34, 431.

⁸² Ryan, M., Rothera, S., Roe, A., Rehill, J., and Harker, L. (2021). *Remote hearings in the family court post pandemic*. London: Nuffield Family Justice Observatory.

concerns about privacy and confidentiality, and concerns about the particular communication needs of some parents not being met.

Two thirds of professionals (63%) felt more needed to be done to ensure that remote hearings were fair and worked smoothly. Nearly three quarters of parents (73%) did not feel sufficiently well supported during their hearing(s).

Examples of good practice cited by professionals and parents included making sure lay parties and their representatives were better prepared for the hearing, checking access to technology/links before the start of the hearing, providing better written guidance to parents and professionals, and improving the technology.

Overall, survey results suggested the justice system could do more to understand the needs of court users likely to experience exclusion from elements of remote hearings.

KF6: Video hearings may weaken a defence and therefore fair and effective participation. For example, video could make it more difficult to assess the demeanour of witnesses and defendants.

The issue of fairness in relation to video hearings has been the subject of more critical reviews than primary research studies. For the moment, very little primary research has focused on exploring relative fairness.

Some critical reviews start from the position that video hearings are less fair than face-to-face proceedings. One review took a critical look at the balance between effectiveness and legality.⁸³ The author concluded online proceedings improve accessibility and deliver faster procedures but require both legal and technical preparedness. They cited temporary rules established by the European Court of Human Rights during the Covid pandemic as an exemplar of how general requirements to use videoconference systems could fulfil the requirements of the right to a fair trial.

⁸³ Fekete, G. (2021). Videoconference Hearings after the Times of Pandemic. EU and comparative law issues and challenges series (ECLIC), 5, 468-486.

One US study compared video hearings with face-to-face hearings in the context of immigration removal proceedings.⁸⁴ Results suggested that appearing face-to-face had a positive effect on final case outcomes. In addition, people appearing in person were 44.5% more likely to be granted relief and 8% more likely to be granted voluntary departure. As might be expected given these outcomes, video respondents were 18.9% more likely to receive a removal order at the end of their proceedings.

A more developed evidence base consisting of robust outcome comparisons would go some way to informing this debate.

KF7: Disruptions appear more common in audio and video hearings. The quality of audio and visual equipment is important.

The London School of Economics conducted a process evaluation of a prototype version of the video hearings service.⁸⁵ The final report described users as reporting high levels of satisfaction, reassuring guidance, and they were able to resolve potential technical issues. The judiciary felt online hearings were a good option but noted issues with the dependability of technical equipment. The report's conclusions focussed on technical issues, including the need to address effective lighting and framing, use of microphones and headsets, and ways of informing parties of when their video or audio fails.

In addition, an evaluation of local video enabled procedures noted disruptions were more common in video court than face-to-face and were either moderate or severe disruptions.⁸⁶ Author recommendations included the need for significant investment to improve the quality of audio-visual equipment.

⁸⁴ Thorley, D., & Mitts, J. (2019). Trial by skype: A causality-oriented replication exploring the use of remote video adjudication in immigration removal proceedings. *International Review of Law and Economics*, 59, 82-97.

⁸⁵ Rossner, M., & McCurdy, M. (2020). Video Hearings Process Evaluation Final Report. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90560/3/HMCTS391_Video_hearings_process_evaluation_phase_2_v2.pdf

⁸⁶ Fielding, N., Braun, S., Hieke, G., & Mainwaring, C. (2020). Video enabled justice evaluation. Sussex Police and Crime Commissioner and University of Surrey, available from: <http://spccweb.thco.co.uk/media/4851/vej-final-report-ver-11b.pdf>.

KF8: Experiments showed witnesses were viewed less favourably and people remembered fewer details when the audio quality was poor, or when the camera angles meant that mutual gaze (eye contact) of participants was not possible.⁸⁷

Primary research has provided evidence to underline the importance of ensuring the quality of video and audio links. A US study (2011) looked at how interpretations of evidence can be influenced by the quality of audio.⁸⁸ The research found that poor quality audio can lead to misinterpretations by listeners especially if they are biased in any way by the context.

A literature review looked at evidence concerning the importance of non-verbal cues in verbal communication in scenarios requiring levels of trust and judgement.⁸⁹ The author explored the role that mutual gaze (eye contact) support plays in face-to-face judicial proceedings. The review concluded that videoconferencing systems generally lack adequate technical capacity to enable mutual gaze support on online hearings. However, the review did note that 2D and 3D techniques may offer good potential for future research and development.

KF9: During the Covid pandemic, the family courts had to adapt to online hearings and change guidance responsively in ways that may inform good practice more generally.

The Covid pandemic provided a critical natural experiment that enabled people to collect data that could be used to develop good practice in the delivery of online judicial services. In particular, the family courts provided some good examples.⁹⁰

⁸⁷ Regenbrecht, H., & Langlotz, T. (2015). Mutual gaze support in videoconferencing reviewed. *Communications of the Association for Information Systems*, 37(1), 45.

⁸⁸ Lange, N. D., Thomas, R. P., Dana, J., & Dawes, R. M. (2011). Contextual biases in the interpretation of auditory evidence. *Law and Human Behavior*, 35(3), 178.

⁸⁹ Regenbrecht, H., & Langlotz, T. (2015). Mutual gaze support in videoconferencing reviewed. *Communications of the Association for Information Systems*, 37(1), 45.

⁹⁰ Ryan, M., Rothera, S., Roe, A., Rehill, J., and Harker, L. (2021). *Remote hearings in the family court post pandemic*. London: Nuffield Family Justice Observatory.

One such investigation used a single case involving a delayed family court hearing. The children had been removed from their birth parents for a year and were waiting on decisions to secure permanent placements.⁹¹ The Judge held a hybrid hearing with the parents and barrister in the room; everyone else involved with the case was remote. Because this was the first final hearing to be held online, guidance was developed on things to consider when determining which cases were suitable to be heard online. The author's recommendations included: urgency; the available technology; and any safe options for partial attendance in a court room.

KF10: Minimum safeguards may be helpful for video hearings. For example: ensuring people are aware of their right to legal advice, pausing to consider their response and clearly establishing appeals procedures.^{90, 91, 92}

As with Online Dispute Resolution, there is a strand running through the literature promoting the need for standards for video hearings. For example, one review noted the need for minimum safeguards: (a) to require defendants to opt-in to any process, then to pause to consider their response; (b) to have a right to legal advice and for this to be clearly stated; (c) for all defendants to receive consistent and equitable outcomes, robust process with judicial oversight and scrutiny; and (d) to ensure the appeal process is clearly established.⁹²

Another review considered the issue of security.⁹³ It concluded that one useful avenue in this regard might be to use guidelines developed by professionals in data protection, international security and implement encryption.

⁹¹ Doughty, J. (2020). Remote justice—family court hearings during the pandemic. *Journal of Social Welfare and Family Law*, 42(3), 377-380.

⁹² Easton, J., (2018). Where to Draw the Line? Is Efficiency Encroaching on a Fair Justice System?. *Political Quarterly*, 89(2), 246-253.

⁹³ Abedi, F., Zeleznikow, J., Brien, C., (2019). Developing regulatory standards for the concept of security in online dispute resolution systems. *Computer Law & Security Review*, 35(5), 105328.

However, evidence of a consensus view is emerging that the sector currently lacks the robust empirical evidence necessary to provide a sound basis for the development of appropriate minimum safeguards.⁹⁴

KF11: A standard layout in video hearings including labelling the judge may help enable people to identify who is speaking.

Lord Justice Briggs set out a vision for what has been termed the “Online Court”.⁹⁵ The model he proposed is the subject of comment by both academics and legal professionals. A common concern is the extent to which it is desirable or possible to reproduce elements of physical courtroom rituals in a virtual environment.

Reviews typically look in detail at the ritual dynamics of virtual court hearings.⁹⁶ The author argues that ritual plays a key role as part of criminal court. Previous research has shown defendants and witnesses find some of those rituals contribute to making courts an unpleasant environment.

The design of the remote spaces, the backdrops, and the way in which people are placed on the screen can all have an impact on the courtroom experience. Creating online or virtual courts is an opportunity to establish more egalitarian and less hierarchical forms of interaction. A simple example of how design could have a positive impact would be to give thought to how labelling might help people follow proceedings more effectively.

KF12: It should not be assumed that virtual courts will save money. Economic modelling of a pilot in magistrates courts predicted that a virtual court would cost more than it saves.

⁹⁴ Ward, J. (2015). Transforming ‘summary justice’ through police-led prosecution and ‘virtual courts’ is ‘procedural due process’ being undermined? *British Journal of Criminology*, 55(2), 341-358.

⁹⁵ Briggs, L. J. (2016). Civil courts structure review: Final report by Lord Justice Briggs.

⁹⁶ Rossner, M. (2021). Remote rituals in virtual courts. *Journal of Law and Society*, 48(3), 334-361.

There is an assumption across much of the literature that moving proceedings online will lead to cost savings.^{e.g., 97,98} In general, those assumptions are not evidenced through any robust cost benefit analyses.

One exception is an evaluation of a virtual court pilot published by the Ministry of Justice.⁹⁹ The pilot ran in two magistrates' courts in London and Kent; defendants appeared via video link in magistrates court while remaining physically located in a police station.

Results suggested video links between police station and court can be successful to conduct a first hearing in most cases. The report also used data collected to undertake economic modelling of the relative costs and benefits of virtual courts. The model produced suggested costs would outweigh savings over a ten-year period. Set up and running costs of technical equipment, higher legal aid costs, additional resource burden on police custody officers and extended court hours all contributed to additional costs.

The authors concluded that *'a system that makes significant cost savings is likely to be a challenge, the impact on judicial processes and outcomes is complex and there are some causes for concern'*.

Modelling needs to test assumptions about cost savings. At the moment, the sector does not have the data necessary to conduct those analyses.

KF13: Several reviews suggest the shift to online services presents opportunities to re-evaluate traditional judicial processes.

Reflecting themes explored by several commentators,^{e.g., 100,101} a literature review from the US looked at how the move to online services might offer opportunities to reappraise

⁹⁷ Engstrom, DF., (2021). Digital Civil Procedure. *University of Pennsylvania Law Review*, 169(8), 2243-2289.

⁹⁸ Bannon, AL., Keith, D., (2021). Remote Court: Principles for virtual proceedings during the covid-19 pandemic and beyond. *Northwestern University Law Review*, 115(6), 1875-1920.

⁹⁹ Terry, M., Johnson, S., & Thompson, D. P. (2010). *Virtual court pilot outcome evaluation*. London: Ministry of Justice.

¹⁰⁰ Assy, R., (2017). Briggs' Online Court and the Need for a Paradigm Shift. *Civil Justice Quarterly*, 36(1), 70-85.

¹⁰¹ Bannon, AL., Keith, D., (2021). Remote Court: Principles for virtual proceedings during the covid-19 pandemic and beyond. *Northwestern University Law Review*, 115(6), 1875-1920.

judicial systems.¹⁰² The author argued that adversarial systems are built around the importance of the public court as a venue that not only provides “a mystique of authenticity and legitimacy”, but also provides an opportunity for all parties to come together, hear evidence being presented, and decisions being made openly and formally.

However, the Covid pandemic created the imperative to move to online proceedings. Rather than regarding virtual courts as just a pragmatic solution to unexpected and temporary conditions, the paper makes a case for using the situation to reflect on the essential goals of the justice system and to re-examine courtroom practices in light of those goals. Taking a more critical view of traditional practices, the author argued, might encourage the judicial system to re-assess its key values, and by doing so, make more informed trade-offs when those values may run into conflicting competing needs and concerns around efficiency and accessibility.

Conclusion

The available evidence points to the importance of taking a nuanced view towards the issue of how the adoption of remote technologies might impact access to services. While some groups may find it easier to access remote services, others may find themselves disadvantaged. The point serves to underscore the importance of developing better understanding of the needs different groups may have, and how remote technologies can best address those needs.

Certainly, the view among some authors is that video hearings may weaken a defence and as a consequence potentially compromise fair and effective participation in the judicial process. While there was little in the way of robust evidence, one study analysing US immigration case data suggested the use of remote hearing technologies was associated with less favourable outcomes for applicants. A more developed evidence base consisting of robust outcome comparisons would go some way to informing this debate.

Research highlighted the importance of the audio quality, and similarly, review authors suggested the influence camera angles can have for hearing participants and their ability

¹⁰² Bandes, S.A., Feigenson, N., (2020). Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom. *Buffalo Law Review*, 68(5), 1275-1352.

to look each other in the eyes. A potential solution was to implement standardised layouts for video hearings to make it easier for people to establish who is speaking.

Poor sound and image quality might disproportionately disadvantage certain groups. However, once again there is a lack of evidence about how particular groups of defendants might be impacted by audio and video hearings.

One of the recurring themes regarding current use of remote technologies concerned the quality of existing equipment. HMCTS may need to provide investment to address the problem of disruptions caused by technological failures. For that reason, assumptions that virtual courts will save money should not be taken for granted. They need to be investigated through the collection of robust data and sound economic modelling.

3.3 Rapid Evidence Assessment 3 (REA3): Consolidating the court estate and investing in court infrastructure

Introduction

REA3 aimed to answer the following primary research question: how does centralising the workforce (and the processes they use) and improving the physical estate where services are provided impact access to those services, systems and any resolution sought?

The lack of primary research is the defining feature of the evidence landscape for REA3. The majority of the unique texts included were classified as grey literature. As a general definition, grey literature comprises texts that are not the product of peer-review processes characterising publication in scientific journals. Most were either good quality government or local authority reports, findings from scrutiny bodies such as the National Audit Office, or papers produced by NHS trusts. Texts generally sought to establish good practice in addressing estate rationalisation rather than offering empirical analysis of specific benefits, financial or otherwise.

Evidence base summary ratings¹⁰³

As overall cumulative ratings, the evidence base is considered to be:

- Strength: Limited
- Quality: Moderate (primary research identified) / Low (reviews identified)
- Size: Medium
- Consistency: Good
- Context: Relevant

Key Findings (KF)

KF1: Lessons from government property management agencies, local authorities and NHS estate planning can inform development of good practice guidelines for rationalisation of the court estate.

Grey literature formed the largest single element of the evidence base for REA3. Sources included strategic estate management documents from each of the home nations, from local authorities, and the National Health Service at both national and trust levels.^{104,105,106}

One particularly relevant example of grey literature is a report from the National Audit Office on progress towards the government estate strategy, which focussed on three questions: (i) what progress has been made in reducing the estate since 2012; (ii) how effectively has the Government Property Unit (GPU) overseen and coordinated departments' estates; and (iii) how well has the GPU designed and implemented its two major estates programmes: Hubs and the New Property Model? The report concluded the GPU had delivered value for money from the government estate. The GPU had supported departments to achieve results, increasing collaboration across central government and facilitating property deals. It has also worked with local government to enable projects that delivered savings for local taxpayers.

¹⁰³ Table 7 in the Technical Appendix document summarises the strength of evidence base data across all four REAs.

¹⁰⁴ Government Property Unit. (2013). *Government's Estate Strategy: Delivering a modern estate*. London: Cabinet Office

¹⁰⁵ Leeds City Council. (2021). *Estate Management Strategy*.

¹⁰⁶ Health Research Authority. (2021). *Estates' strategy 2020 - 2025*.

KF2: Managed well, asset disposal and better property utilisation can drive efficiency and cost effectiveness.

Evidence from papers published in both the UK and the US suggests that the efficient management of property assets can deliver savings.

For example, the US General Services Administration described a three-step policy framework designed to improve the efficiency and cost effectiveness of government property assets:¹⁰⁷ (i) freeze growth in the real property footprint; (ii) measure the costs and utilisation of individual property assets to support more efficient use of space; and (iii) identify opportunities to reduce and promote the more efficient use of property through asset disposals and better space utilisation.

KF3: Lack of good data on utilisation is a major barrier to effective decision-making about property estates.¹⁰⁸

Putting together an effective estate strategy invariably requires good data. One NHS Trust collated data across several domains. They included: physical condition of buildings; their functional suitability; and environmental management. One area the strategy found it useful to have data on was space utilisation – patterns of use for existing buildings - to the extent that it became a key performance indicator for measuring the success of their estate strategy.

The outcome of these space utilisation assessments informed the Trust's investment priorities and estate planning. Good data on space utilisation helped ensure that their estate strategy had the capacity to provide the right places for both employees and external stakeholders. However, this was a rare exception where good data was available.

¹⁰⁷ U.S. General Services Administration. (2015). *The National Strategy For the Efficient Use of Real Property and the Reduce the Footprint (RTF) Policy*.

¹⁰⁸ Isle of Wight NHS Trust. (2022). *Estate Strategy 2021-2025*.

KF4: The management of government property estates needs to include accurate workforce and skills planning data.

Most estate rationalisation strategies develop out of a need to reduce operating costs. Few consider links between estate rationalisation and business need. As a result, they risk having a negative impact on business performance.

A report on effective estate rationalisation highlighted the benefits of making strategy genuinely part of an organisation's business plan by specifying how estate management will work alongside workforce and skills planning.¹⁰⁹

Using the example of the Home Office, the report set out how an estate rationalisation strategy becomes more of a plan for skills and recruitment, rather than simply a valuation and occupancy exercise. By making the estate strategy about people, rather than property, the approach becomes about upskilling the workforce and shaping the estate around business need.

KF5: Decisions need to consider robust data on potential cost savings that may accrue to estate rationalisation.¹¹⁰

KF6: Effective court estate planning needs to be informed by robust data on the relative costs of providing online and face-to-face services.¹¹¹

The review highlighted concerns amongst policy makers and judicial professionals about the lack of robust cost benefit data to underpin assumptions regarding savings that may accrue to moving more services online.

In its review of government estate management, the NAO made several recommendations concerning data. It highlighted the need to: establish a property asset register; agree data

¹⁰⁹ MACE. (2017). Estates rationalisation: delivering a successful strategy.

¹¹⁰ U.S. General Services Administration. (2015). *The National Strategy For the Efficient Use of Real Property and the Reduce the Footprint (RTF) Policy*.

¹¹¹ Houghton, K.R., Foth, M., Hearn, G., (2018). Working from the Other Office: Trialling Co-Working Spaces for Public Servants. *Australian Journal of Public Administration*, 77(4), 757-778.

improvement plans with the departments; assess capability to manage and analyse cross-government data; and collect property utilisation data from across central government and analyse them to identify opportunities for co-locations and sub-letting or disposing of under-utilised space.

The move to greater digital connectivity has impacted debates about moving more towards online service provision. Research from Australia suggested potential cost savings can accrue to factors other than more efficient estate management. Savings from providing more online services can also be realised by enabling more flexible working by government employees.¹¹² A trial undertaken by the Queensland State Government showed how greater flexible working led to improvements in productivity, staff retention and the work/life balance of employees. Further research is needed to identify whether the results of this trial are generalisable outside of the Queensland State Government.

KF7: Planning process needs to include consideration of sustainability and environmental performance issues.

The Government Property Agency (GPA) is responsible for delivering a transformed, and value for money government estate. Its 10-year strategy sets out an ambitious agenda to capitalise on smarter working and the capacity to deliver more services online.¹¹³

Sustainability and environmental performance play a key role in the GPA's strategy. The GPA has committed to developing measurable carbon reduction targets to provide an example for the UK property industry and contribute to wider sustainability.

Their plan is to achieve this through improving the condition and sustainability of the existing estate where this offers good value for money; ensuring new builds and major refurbishments are designed for net zero carbon; developing new buildings to high environmental standards; and developing plans for renewable energy and working with green energy suppliers.

¹¹² Ibid.

¹¹³ Government Property Agency. (2021). Government Property Agency Strategy 2020 to 2030.

KF8: Locality planning needs to be done collaboratively with local authorities as part of place-based approaches to service delivery.

The same GPA report highlights the way in which effective estate reorganisation can make a significant contribution to the government’s levelling up agenda.¹¹⁴ Working collaboratively with local authorities can improve opportunities for making meaningful social and economic differences for local communities and ensuring that delivery and decision making is closer to the people it serves.

Effective working with local authorities can help ensure buildings add to a sense of place. It can promote a local sense that the public sector and national government have a desire and capacity to form a significant part of the community. Done correctly, estate reorganisation has the capacity to attract inward investment by supporting regeneration and place-making.

KF9: Collecting local social, demographic, and geographical data need to be part of planning.

Realising the opportunities that effective estate management strategies can deliver for local communities inevitably requires planning. Improving data quality to better inform management and decision making is critical.¹¹⁵

KF10: Failing to invest in maintaining property can lead to greater long-term expenditure.

The Ministry of Defence (MoD) is a government department with an extensive property portfolio. A Select Committee on Defence report noted the importance of allocating resources to maintaining existing property.¹¹⁶ It concluded that, at times when budgets are under pressure and departmental plans may include selling off properties, it can be tempting to under invest in adequate maintenance. Departments need to think carefully.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Select Committee on Defence. (2007). House of Commons - Defence - Written Evidence.

A failure to invest in maintaining property can turn out to be a false economy, leading to greater expenditure in the long run.

Conclusion

The lack of primary research is the defining feature of the evidence landscape for REA3.

REA3 has shown that very little has been published regarding strategic approaches to rationalising the HMCTS estate. However, the review did uncover literature from government property management agencies, local authorities, and NHS estate planning.

That literature identified several lessons concerning good practice that could be used to develop good practice guidelines. Where estate rationalisation has been done well, evidence suggests that both asset disposal and improved property utilisation can deliver both efficiencies and cost savings. However, the lack of good data is once again a critical risk when it comes to delivering those savings. HMCTS could usefully support effective court estate planning by collecting robust data on the relative costs of providing online and face-to-face services.

Good management of government property estates can enhance financial savings by incorporating accurate workforce and skills planning data. Strategists can further enhance savings by taking opportunities to work with local authorities as part of adopting place-based approaches to service delivery. That level of local planning and collaboration needs to be supported by local social, demographic, and geographical data.

Lastly, there is a widely held view that strategists need to ensure planning processes include consideration of sustainability and environmental performance issues.

3.4 Rapid Evidence Assessment 4 (REA4): Introducing new support services

Introduction

REA4 aimed to answer the following primary research question: how does the provision of additional support to users of online services impact access to those services, systems and any resolution sought?

Papers included in the review comprised a small number of good quality primary studies and a robust scoping review. The primary studies do not come specifically from the justice sector. However, they do include some key lessons that can be applied to the HMCTS reform programme. The good quality review paper looks at evidence concerning effective court accommodations designed to support disabled people with severe communication impairments.

Evidence base summary ratings¹¹⁷

As overall cumulative ratings, the evidence base is considered to be:

- Strength: Limited
- Quality: Moderate (primary research identified) / Low (reviews identified)
- Size: Low
- Consistency: Good
- Context: Relevant

Key Findings (KF)

KF1: Evidence from digital services in other sectors suggests a significant proportion of HMCTS users are likely to lack basic digital skills and therefore require digital support to avoid exclusion.

KF2: Groups who lack internet access are less likely to have requisite digital skills.

KF3: People over the age of 65 are, compared to other age groups, less likely to have access to the internet.

Evidence from advice organisations provides some estimates of the likely extent of digital exclusion. For example, Citizens Advice Bureau (CAB), since renamed Citizens Advice, surveyed 3,000 clients accessing face-to-face advice at a sample of 39 Citizens Advice services in each region of England and Wales.¹¹⁸ The survey used an established framework from Go On UK to assess 10 'basic digital skills'. The framework comprises a

¹¹⁷ Table 7 in the Technical Appendix document summarises the strength of evidence base data across all four REAs.

¹¹⁸ Citizens Advice Bureau (2016). *Digital capability Understanding the digital needs of face-to-face clients of Citizens Advice*. London: CAB

series of online tasks grouped into five areas: managing information, communication, transacting, problem solving and creating. People are considered to have ‘basic digital skills’ if they can complete at least one task in all five skill areas.

Results suggested that face-to-face CAB clients are twice as likely to lack basic digital skills as the UK general population, so most likely to need digital support to avoid exclusion. They were found to be more likely than the general population to lack internet access and less likely to have each digital skill. CAB clients over the age of 65 were less likely to have access to the internet.

KF4: The Civil Justice Council estimates that 6% of those with civil justice problems lack basic online skills’ and 14% lack basic digital skills.¹¹⁹

The Public Law Project (PLP), an independent national legal charity, looked specifically at the issue of digital support for HMCTS reformed services.¹²⁰ The report cited the CAB report (see above) on digital exclusion. It also noted the Civil Justice Council estimates that 6% of those with civil justice problems lack ‘Basic Online Skills’ whilst 14% lack ‘Basic Digital Skills’.¹²¹

The PLP review concluded the provision of effective digital support is critical to the success of the HMCTS reform programme.

KF5: Models of good practice in the provision of digital support might be drawn from the private sector.

A US review produced by a former state court administrator for New Mexico looked in detail at how private sector practices might offer good practice examples for the provision

¹¹⁹ ‘Basic Online Skills’ relates only to the range of activity undertaken online, whilst ‘Basic Digital Skills’ relates to diversity of online activity and respondents’ confidence in identifying reputable sources of information online.

¹²⁰ Hynes, J, (2021). *Digital Support for HMCTS Reformed Services: What we know and what we need to know*. [210513_Digital-Support-Research-Briefing_v6_Final-draft-for-publicationpdf.pdf](https://publiclawproject.org.uk/210513_Digital-Support-Research-Briefing_v6_Final-draft-for-publicationpdf.pdf) (publiclawproject.org.uk)

¹²¹ Civil Justice Council (2018) *Assisted Digital Support for Civil Justice System Users: Final Research Report*, April 2018, available at: [Microsoft Word - CJCReport_FINAL_ChangesMarked.docx](https://www.judiciary.uk/wp-content/uploads/2018/04/Assisted-Digital-Support-for-Civil-Justice-System-Users-Final-Research-Report-2018.pdf) ([judiciary.uk](https://www.judiciary.uk))

of digital support for court users.¹²² Suggestions included: enabling parties to schedule hearings at their own convenience; enable parties to pay fines online; customers to complete forms online and simplify form completion; the creation of an order or judgment at the close of a hearing or trial; and the creation of online triage portal.

The review also noted that the COSCA/NCSC¹²³ Joint Technology Committee is developing the next generation of functional standards for court case management systems (CMS).¹²⁴

KF6: People with severe communication impairments must be afforded respect and an opportunity to be heard.

KF7: Disabled people with severe communication impairments may have multiple needs and therefore may need more than one accommodation for them to achieve equal participation in court.

KF8: Accommodations including augmentative and alternative communication methods are traditionally not always allowed in court proceedings.

A good quality scoping review looked specifically at the range of accommodations courts may need to consider for people with severe communication difficulties.¹²⁵ The authors argued that for persons with severe communication disabilities to be given access to justice, court accommodations need to be considered a human right (as cited in Article 13 of the Convention on the Rights of Persons with Disabilities). The review set out to identify the range of documented court accommodations internationally implemented to enable persons with severe communication disabilities to participate equally and without discrimination in court.

¹²² Greacen, J. M. (2019). Eighteen ways courts should use technology to better serve their customers. *Family Court Review*, 57(4), 515-538.

¹²³ Conference of State Court Administrators/National Center for State Courts

¹²⁴ <http://cosca.ncsc.dni.us/jtc.html>

¹²⁵ White, R., Bornman, J., Johnson, E., & Msipa, D. (2021). Court accommodations for persons with severe communication disabilities: A legal scoping review. *Psychology, Public Policy, and Law*, 27(3), 399.

The review highlighted that because people with severe communication disabilities may have multiple disabilities, they are likely to need more than one accommodation if they are to be granted equal participation in court. The authors argued that from a human rights perspective, people with severe communication disabilities must be allowed to use their “voice”, shown respect, and given an opportunity to be heard. Procedural justice calls attention to the fact that it is not enough for the courts to demonstrate fairness; but persons with severe communication disabilities should feel that the duration of the court process is fair.

The most frequently observed accommodations included the use of intermediaries, permitting augmentative and alternative communication (AAC),¹²⁶ ensuring appropriate and proper questioning strategies, allowing frequent breaks, including closed-circuit television (CCTV) in court, and using expert witnesses.

However, the authors also pointed out that judicial systems do not always allow the full range of AAC communication methods to be part of court proceedings. Those include, for example, the use of CCTV in court to allow witnesses with severe communication disabilities to provide statements.

KF9: Training for professionals involved in court proceedings would help educate them regarding expectations around the needs of witnesses and defendants.

People with disabilities, especially those with severe communication disabilities, continue to face significant barriers when attempting to achieve equality of access to the courts. That is the same for both defendants and victims. One significant barrier concerns the limited degree of training legal practitioners have regarding the needs of people with communication difficulties.¹²⁷

¹²⁶ AAC strategies and techniques are used by people with severe communication difficulties. They are generally divided into unaided strategies (systems that rely on the body, e.g. signing) and aided systems that rely on tools or equipment such as speech generating devices.

¹²⁷ White, R., Bornman, J., Johnson, E., & Msipa, D. (2021). Court accommodations for persons with severe communication disabilities: A legal scoping review. *Psychology, Public Policy, and Law*, 27(3), 399.

An article from Northern Ireland cited by the review examines critical accommodations made in court procedures.¹²⁸ In addition to sensitive adjustments to law, policy and procedure, the authors note the courts have exercised considerable effort to ensure they have access to the best evidence on how to accommodate atypical vulnerable witnesses. This move has also been backed up by legal training providers proactively promoting specialist education and training.

The paper concludes that it is encouraging to see the legal profession demonstrate that it is open to challenging traditional assumptions about people with disabilities and exhibit an openness towards reform. Addressing training issues among professionals is likely to make a significant contribution to establishing a more equal, legitimate, and inclusionary criminal justice system where all people are enabled to participate irrespective of what the paper's authors describe as their cognitive or developmental capabilities.

Conclusion

Relatively little is known in the existing literature about how the provision of additional support to users of online services impacts access to those services, systems and any resolution sought.

However, REA4 has uncovered evidence from digital services in other sectors to suggest a significant proportion of HMCTS users are likely to lack basic digital skills and therefore require support to avoid exclusion. Evidence as to who those groups might be was less definitive. The justice system lacks good data on the proportion of court users likely to experience digitally exclusion. That said, estimates from the Civil Justice Council put the proportion of those likely to have civil justice issues who lack basic online skills at 6%.

The private sector may offer some evidence regarding models of good practice when it comes to providing digital support for service users. However, commercial sensitivities make it difficult to find publicly available material.

What is clear from the literature is a recognition that the judicial system must afford people with severe communication impairments respect and an opportunity to be heard. For that

¹²⁸ Doak, J., & Doak, L. (2017). Non-verbal victims in the adversarial criminal process: communication, competency, and credibility. *N. Ir. Legal Q.*, 68, 451.

to happen, the system will need to ensure the augmentative and alternative communication methods that many of those with communication challenges rely on are understood. Without this understanding, there is a risk that court proceedings may lack the flexibility necessary to accommodate their needs.

4. Conclusions, limitations, and evidence gaps

Overall, the quality of evidence across the four reviews was not strong. Very few experimental evaluations were found that could throw light on the relative strengths and weaknesses of online proceedings relative to business as usual. Most of the material identified comprised critical reviews published by expert practitioners and academics. These critical reviews contributed well-informed opinion pieces rather than systematic analyses of the research literature.

A key message running through all four reviews was the need to improve knowledge, and by implication, data, on key elements of digital service provision. Despite the move towards more court and tribunal services being delivered online, the review found little in the way of robust evidence that HMCTS could use to ensure new systems remain accessible to all stakeholders.

The review highlighted potential issues worthy of consideration as the move to digital services gathers pace. For example, some authors asked whether this was an opportunity to revisit the extent to which all court and tribunal procedures needed to remain exclusively adversarial. They suggested that more inquisitorial approaches lent themselves more easily to online proceedings. Others suggested the move to digital services might usefully start with high volume, low value cases such as consumer rights. This would offer opportunities to trial new processes and procedures before introducing them into the criminal courts.

The key finding across all four reviews has been the lack of comprehensive, robust evidence. Without more research, HMCTS are likely to find it difficult to establish what good practice in the new systems and processes introduced by the reform programme looks like. Given the nature of the reform activity (updating and introducing new tools, services and systems to the courts and tribunals), it is perhaps unsurprising that the evidence base is limited. It is also acknowledged that the REAs have drawn on literature available at the time the searches were conducted, therefore any research not in the public

domain at this point is not included. Further empirical and experimental research to evaluate court reform is encouraged.

This chapter highlights six specific areas that would benefit from more robust empirical research (in no particular order):

1. Robust systematic reviews of evidence concerning online process and procedures which may disadvantage certain groups of users

The move to digital service provision has prompted a debate around exclusion. People with physical or intellectual disabilities, whether victims, witnesses, defendants, appellants, respondents or legal professionals, all face potential barriers to participating in online judicial proceedings.¹²⁹ In addition, the digitally excluded face potential barriers in participating in online proceedings irrespective of whether they have disabilities. REA1 found most of the evidence summaries on the subject to be critical reviews.

In moving more towards digital services, it is essential that HMCTS is responsive to the needs of people at risk of being disadvantaged. That requires detailed knowledge of the challenges that may face different groups, and how the courts might best mitigate those challenges.

2. Primary research using experimental designs to compare outcomes of online and face-to-face court proceedings

The lack of systematic reviews in this area reflects the absence of a substantive body of empirical research. The few examples of primary research identified by this review tended to focus on the speed, efficiency, and cost of delivering online services relative to traditional face-to-face procedures. The reviews did not find any robust experimental research that examined differences in judicial outcomes between online and face-to-face processes.

¹²⁹ Doak, J., & Doak, L. (2017). Non-verbal victims in the adversarial criminal process: communication, competency, and credibility. *N. Ir. Legal Q.*, 68, 451.

Having that evidence would potentially go some way to addressing questions of the extent to which online proceedings carry bias, and under what circumstances. For example, some authors suggest video hearings may weaken a defence and, as a consequence, potentially compromise fair and effective participation in the judicial process. One study analysing US immigration case data suggested the use of remote hearing technologies was associated with less favourable outcomes for applicants. A more developed evidence base consisting of robust outcome comparisons would go some way to informing this debate.

3. Detailed examination of the barriers to effective participation in online court proceedings across the full range of court users

The literature consistently posits the view that the HMCTS reform programme has the capacity to fundamentally change the processes through which justice is delivered. As such, in order to avoid obstructing access to justice, it is essential to collect data which can identify whether new processes and procedures create barriers to bringing a claim or have unacceptable risks of users being unfairly treated.

Reforms have the potential to alter the types of cases individuals bring to the courts. Consequently, data are needed to monitor changes in the characteristics of claimants initiating cases and the types of cases being initiated to understand the impact of reform on access to justice.¹³⁰

4. Primary research into estate rationalisation to establish good practice in relation to costs, benefits, and workforce development

The assumption in most of the literature is that estate rationalisation will deliver cost savings. However, there is very little in the way of robust data to substantiate those claims. In fact, one of the few reviews to have investigated the issue concluded that ‘a system that

¹³⁰ Byrom, N. (2019). Developing the detail: Evaluating the impact of court reform in England and Wales on access to justice. London: Legal Education Foundation.

makes significant cost savings is likely to be a challenge, the impact on judicial processes and outcomes is complex and there are some causes for concern'.¹³¹

There is little doubt the reform programme could benefit from collecting data to test assumptions about cost savings.

In addition, the experiences from other sectors, including health, suggest effective estate rationalisation strategies are underpinned by robust workforce and skills planning data, as well as local social, demographic, and geographical data. This review found little evidence that these data are currently available.

5. Robust data on court utilisation to inform estate rationalisation strategy

The experience of other sectors including health and defence could help inform data collection planning. For example, the NHS has found effective estate utilisation strategies need robust data on utilisation. Good data on utilisation has helped ensure estate strategies provide the right places for both employees and external stakeholders. HMCTS could well benefit from investing in the collection of those data, including information on the physical condition of buildings; their functional suitability; and environmental management.

6. Court based data to determine how the provision of online support can avoid disadvantaging specific groups of people

The review has established that the justice sector lacks good data on the extent to which the move to online services may exclude certain groups of people. Similarly, a gap exists in terms of knowledge regarding the effective provision of support for those at risk of digital exclusion. Critical reviews have suggested that an effective method of collecting the necessary data would be to rigorously monitor and evaluate models of support provision in courts.

¹³¹ Terry, M., Johnson, S., & Thompson, D. P. (2010). *Virtual court pilot outcome evaluation*. London: Ministry of Justice.

Reviews have also suggested that providing legal professionals with training to give them more realistic expectations of the support needs of witnesses and defendants could reduce the risk of digital exclusion.¹³² HMCTS might base any proposed training on data collected through an assessment of workforce need.

¹³² White, R., Bornman, J., Johnson, E., & Msipa, D. (2021). Court accommodations for persons with severe communication disabilities: A legal scoping review. *Psychology, Public Policy, and Law*, 27(3), 399.

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