

Courts and Tribunals (Online Procedure) Bill

Equalities Statement

Policy change summary

- This Equality Statement considers the impact of the Government's proposals to legislate to create a new Online Procedure Rule Committee ('OPRC') which will cover civil, family and tribunal proceedings. The new rule committee will have expertise to enable it to produce straight forward, easily understood court rules which will support the online procedure and will be an entirely new digital pathway governed by a new set of rules entirely separate to current processes.
- Ministers have agreed to establish a new and simpler method in which to construct rules that will promote efficient digital services that are fit for 21st Century to widen access to the justice system and to provide the necessary conditions for a greater uptake of digital services.

Equality duties

1. Section 149 of the Equality Act 2010 ("the Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
 - I. eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
 - II. advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
 - III. foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
2. In carrying out this duty Ministers and the department must pay "due regard" to the nine "protected characteristics" set out in the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

Equality considerations

3. Consideration has been given to the impact of the introduction of an OPRC. These are outlined below:

Although the OPRC rules will apply to proceedings across civil, family and tribunals we expect that the online rules will build on existing trend that indicates a greater uptake of internet usage across the UK:¹

- In 2018, 90% of adults in the UK were recent internet users, up from 89% in 2017.
- 8.4% of adults had never used the internet in 2018, down from 9.2% in 2017.
- Virtually all adults aged 16 to 34 years were recent internet users (99%) in 2018, compared with 44% of adults aged 75 years and over.
- 20% of disabled adults had never used the internet in 2018, down from 22% in 2017.).

¹ (www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2018)

4. Automation of the initial stages of the court process for applications already exists in some areas of civil justice. For example, Online Civil Money Claims service, Money Claims Online and Possession Claims Online. Additionally, a small claims mediation service is already run by HMCTS the admin team are based in Leicester. It handles 2000 referrals monthly resulting in 1300 appointments, with a settlement rate of 60%. Small claims mediation is, therefore, already an established part of the small claims process and seeks to help parties resolve disputes without the need to go to court.
5. To date, this framework has been governed by the Civil Procedural Committee under the auspice of the Civil Procedure Rules (CPR) that is largely governed by Civil Procedure Act 1997. To reflect the changing nature of technologies and to promote a change in culture, we are seeking to legislate to introduce a new streamlined OPRC which will be chiefly responsible for overseeing the introduction of simple and clear navigable rules that will open up justice more expansively to public citizens than currently exists. While the actual court rules will be a matter for the OPRC we have considered the impact on equality of any potential components of any new online procedure. Rules crafted by the OPRC would need to reflect the needs of the user, ensuring they are fully supported through the digitisation pathway. For example, by extending the scope and use of digital services, users not able to fully engage with the online process would need to be offered assisted digital support services around their specific needs.
6. There will be a range of assisted digital support packages available, ranging from telephone assistance, webchat to help people stay in digital channels, and more intensive face to face support. It means that support will be available for people who may be unable to access or have the skills to engage digitally. Administration staff also have to complete the Civil Service learning courses listed below;
 - I. Equality and diversity essentials
 - II. Disability awareness, and;
 - III. Unconscious bias
7. The proposed OPRC will comprise a core committee supported by sub-committees to provide additional expertise for each jurisdiction. The rule committee should be no larger than is necessary to achieve this purpose. Accordingly, with regard to the rules committee, we consider that the committee should consist of 5 members, namely:
 - I. Two judges, including one judge of the senior courts to be appointed by the Lord Chief Justice;
 - II. One lawyer; and
 - III. Two lay persons, one with experience in and knowledge of the lay advice sector, to be appointed by the Lord Chancellor.
8. The purpose of the new OPRC will be to provide new simple rules for the online process drafted specifically for court users who may not have legal support/representation. We envisage that the lay members of the committee will make sure that the needs of all court users are taken into consideration when establishing the new rules for any future online procedure. The appointment of the lay members will be through the public appointments procedure and fair and open competition. The OPRC also enables the Lord Chancellor to provide for

instances where a party may choose whether to use the online or paper procedures.

Direct discrimination

9. Our assessment is that the proposed online rules committee would not be directly discriminatory within the meaning of the Act. We will provide support which will apply equally to all service users who need help to access digital services.

Indirect discrimination

10. We do not believe that the proposed OPRC will result in any indirect discrimination against users of the justice system. The approach is designed to make the process easier for all court users by removing unnecessary complexity and making rules easier to follow for non-lawyers. It seeks to assist parties in resolving their disputes more speedily and efficiently and opening justice to a wider range of public citizens. We are aware that there may be some users who may not have the means or skills to access digital services. As a result, we will provide these users with assisted digital support designed to prevent those who have difficulty engaging with digital services from being excluded.
11. Overall however, the changes will improve accessibility from the current model, as new online tools improve navigation and advice, reduce reliance on paper, reduce reliance on representation (allowing justice to be accessible to those populations who may not have the money to do so – which is not standard across protected characteristics).
12. Although we are introducing a new Committee structure, responsible for designing and publishing bespoke online rules, this involves little change for the end user except an increase in accessibility of justice, speed and certainty.
13. Overall, we do not believe that the proposal will result in any indirect discrimination against users of the justice system since it is not considered likely to result in a worse effect for people with protected characteristics. The approach is designed to make the process easier and more accessible for all court users by offering other options to significantly improve user experience and reduce user costs by making justice more accessible (and paper routes will remain available). Furthermore, we consider the proposals are a proportionate means of achieving the legitimate aim of supporting citizens to present their own cases simply and to obtain justice more swiftly whilst reducing the costs of the courts and tribunals to taxpayers.

Discrimination arising from disability and duty to make reasonable adjustments

14. The proposal to provide Assisted Digital support for future online and digital procedures is a reasonable adjustment in itself. Participants with certain disabilities may in fact find that proposed measures have a positive impact as they will reduce the need to travel to court unnecessarily. The assisted digital services will address the digital access needs of individuals who are unable to

engage with online services, ensuring they can still access justice, and will mitigate any risk of discrimination arising from digitising our services.

Harassment and victimisation

15. We do not consider there to be a risk of harassment or victimisation as a result of these new measures, when they are implemented. We are aware that mediation, for example, may not be suitable for all cases and we will put steps in place to make sure that all cases are screened appropriately through triage service and dealt with fairly.

Advancing equality of opportunity

16. Overall, there are some key features that we think will contribute to making the justice system more accessible and will therefore advance equality of opportunity. Improved digital working and greater access to Justice without the need to consult a lawyer will make better use of the system to solve their disputes or understand their rights. Better online signposting to support services, easy to understand guidance and improved online navigation will mean that those who currently struggle to make sense of the courts will be able to understand how to enforce their rights or contest a dispute better.
17. Reducing reliance on geography through digitisation – reducing the need to travel or do things in person, making life easier for many people with disabilities, and providing them with online support for the first time with staff trained to understand and cater for their needs.

Fostering good relations

18. Consideration has been given to how the online procedure impacts on the duty to advance the fostering of good relations between people who have a protected characteristic and those who do not. We have considered how the proposals might impact on this limb of the duty but do not think there are any particular implications for this proposal.

Mitigation

19. Our assessment of equality impacts is that the implementation of an OPRC will not result in any direct discrimination of courts and tribunal users with protected characteristics. Online services are being designed and tested with a variety of users including those who may have limited or no digital skills. This ensures online forms are simple to use, easy to understand and inclusive. Further, the assisted digital services, that are currently in place will be designed to assist all users who have difficulty interacting with the justice system digitally, not just those with protected characteristics, this is not viewed as problematic.

Equality Impact analysis

20. While we acknowledge that the scope of the proposed OPRC covers civil, family and tribunals the focus of our analysis has been on users of the civil courts only. This is because this is the area where we see early benefit from the implementation of the OPRC. Due to the limitations in the data collated in the

existing IT system, we have not been able to look at the protected characteristics of individual applicants bringing proceedings in the County Court. The demographic data is also frequently limited to claimant users, creating an imbalanced data profile for evaluation.

21. Therefore, using the data that is available from the civil court user survey², we have looked at the characteristics of a representative sample of individual court users³. The following findings were found to be statistically significant:

Tables 1 & 2 display the demographic profile of individual claimants by claim type. In brief:

The profile of individual claimants matches the general population of adults (aged 16 or older) reasonably closely, although in comparison with the national profile, claimants were more likely to be:

- I. male;
- II. aged 45 or over;
- III. White ethnicity
- IV. self-employed; and
- V. without health problems.

(i) The age and gender profile were broadly similar by claim type although possession claimants were slightly older in profile (a higher percentage aged 55+) when compared with the average of all claimants.

(ii) Compared with the average, specified money and possession claimants were more likely to be educated to degree level.

(iii) Possession case claimants were more likely than average to be of non-white ethnicity.

(iv) Working status and income were broadly similar across claim types, although possession claimants were more likely than average to be retired and were more likely to have an annual income (respondent and partner) of at least £40,000.

(v) A third (34%) of unspecified money claimants cited a physical or mental health condition, higher than other groups, and likely to be related to the high proportion of personal injury claimants within this group (see Table 4.1).

(vi) Most claimants used the internet regularly, although frequent use (at least once a day) was higher among specified money and possession claimants. Unspecified money claimants were more likely than other groups to never use the internet.

Finally, as the equality duty is an ongoing duty, we will continue to monitor and review these proposals for any potential impacts on persons with protected

² www.gov.uk/government/publications/civil-court-user-survey-2014-to-2015

³ These include individuals who commence money claims and possession claims in the County Court, and exclude businesses.

characteristics, especially relating to the Online Civil Money Claims Service to make sure that access to justice is maintained.

Table 1 Demographic profile of claimants: age, gender, cohabitation, dependent children, ethnicity, qualifications (all individual claims) Claim type				All claimants	All adults (population)†
Specified money		Unspecified money		Possession/rent arrears	
%	%	%	%	%	
Gender					
Male	62	55	55	56	47
Female	38	45	45	44	53
Age					
16 to 24	2	3	*	2	15
25 to 34	12	17	11	15	15
35 to 44	18	20	18	20	18
45 to 54	25	25	21	25	17
55 to 64	23	18	28	20	15
65 to 74	15	12	19	14	11
75 and over	5	5	3	5	9
Highest qualifications					
Degree level or above	41	25	45		32
A-level	11	11	16		13
GCSE Grades A-C/O-levels	20	25	19		24
Other qualification	18	17	14		16
No formal qualifications	10	22	5		15
Married or co-habiting					
Yes	66	69	74	68	58
No	34	31	26	32	42
Dependent children					
Any aged < 16	30	39	30	35	43
Any aged 16-18 in FTE	9	12	7	10	
None	66	57	68	69	61
Ethnicity					
White	86	78	69	80	90
Asian/Asian British	7	16	18	14	5
Black//Black British	4	3	9	4	2
Mixed/Chinese/Other	3	3	4	3	3
<i>Bases: All claimants</i>					
Gender	1,455	412	204		2,105
Age	1,456	409	204		2,101
Qualifications	1,409	404	200		2,045
Cohabitation	1,444	412	200		2,090
Dependent children	1,433	406	198		2,070
Ethnicity	1,384	398	197		2,009
1. Source: Civil Court User Survey 2014/15 – Individual claims					
Table 2 Demographic profile of claimants:				All claimants	All adults (population)†

health and internet use (all individual claims) Claim type						
Specified money		Unspecified money		Possession/ rent arrears		
%	%	%	%	%	%	
Health						
Any physical or mental health condition	19	34	13	25	36	
Internet use						
Several times a day	69	53	74	61	73	
Once a day	14	14	12	14		
Less often	11	18	9	15	19	
Never	6	16	6	11	8	
<i>Bases: All claimants</i>						
<i>Health</i>	<i>1,416</i>	<i>402</i>	<i>200</i>	<i>2,048</i>		
<i>Internet</i>	<i>1,425</i>	<i>409</i>	<i>201</i>	<i>2,066</i>		
<i>Source: 2. Civil Court User Survey 2014/15 – Individual claims</i>						