

Response from the Social Security Advisory Committee to the consultation: *Transforming our justice system: assisted digital strategy*

The Committee recognises that the objective of tribunal reform is worthwhile, and welcomes the Ministry of Justice's focus on improving tribunal appeals for users. The [consultation paper](#) identifies the need to design solutions based on the particular needs of the people using that service, and that the digitally excluded may be overrepresented within some tribunal jurisdictions.

The Committee is conscious that appeals are an important part of the process of establishing entitlement for social security benefits and highlight that social security claimants are among the more vulnerable tribunal users. We believe the design of digital services in the Social Entitlement Chamber will need to be very sensitive to the vulnerabilities experienced by social security users and that those who cannot interact digitally - for whatever reason - should not be at a disadvantage compared to other users who are able to access digital services. There are a number of areas which we feel the Ministry of Justice should consider in relation to digital reform of tribunal services for social security appeals, and these are set out below:

Access

Evidence presented to the Committee by our stakeholders testifies to the low levels of confidence in literacy and IT skills among some social security claimants, who face barriers in accessing digital services. We are also conscious that some social security claimants, particularly those with mental health problems, find it difficult to pursue appeals. We are concerned that these tribunal users should not be further dissuaded from appealing departmental decisions by the need to engage with an unfamiliar medium and that the Ministry of Justice should seek to understand the behavioural impact of moving to a digitally assisted service for such users.

The consultation paper is not clear on how communications on the individual's appeal will be made, and whether these are also to be made via digital services. If so, the barriers to accessing online services will be an ongoing issue for some social security tribunal users. We welcome the aspiration to reduce costs for tribunal users by avoiding the need for them to have to travel to tribunal hearing centres, but would also highlight the potential costs associated with online communications for those who are digitally excluded as well as the need to balance this with the benefits gained from oral face-to-face hearings (see below).

Support needs

The Committee welcomes the recognition within the consultation paper that many tribunal users will require support to be able to access digital processes. We would anticipate that some social security claimants will need high levels of support, which, if they are to be effective, will need to be resourced properly. Our stakeholder evidence highlights the value of support to tribunal users and, consequently, to tribunal judges in eliciting relevant evidence to determine appeals. We would strongly encourage the Ministry of Justice to ensure that this support is robustly tested and in place before moving to digital services. We would be concerned if there was an untested assumption that third sector services will have the capacity to provide this additional and new form of assistance and support.

The consultation document also identifies the possibility of telephony support to assist the digital approach. It is unclear where this support would be based, whether it would be provided directly from the Ministry of Justice or via third sector partners, but the stakeholder evidence submitted to us in relation to our [‘Decision making and mandatory reconsideration’](#) report made clear that particularly vulnerable social security claimants were often unable to cope with telephone calls from the DWP in relation to providing further evidence on their claims. Our report [‘Telephony in DWP and HMRC’](#) also identified that some social security/tax credit claimants experienced difficulties in accessing telephony-based support services, including costs and long delays in answering calls. We would ask the Ministry of Justice to ensure that these types of problems are not replicated in telephony based support services for social security tribunal users.

Additional evidence

The evidence that we received for our report on ‘Decision making and mandatory reconsideration’ highlighted the value of oral evidence to the tribunal in determining an appeal. This is particularly true in the Social Entitlement Chamber where more claimants are likely to have physical and mental health conditions, poor numeracy and literacy skills, English as a second language and various other vulnerabilities.

Tribunals often overturn departmental appeals on the basis of new evidence that is revealed at the hearing, and while this may include new documentary evidence it is clear that the evidence obtained through an inquisitorial process as well as through ocular observations is critical to decisions being changed at Tribunal.¹

¹ See page 16 of our [‘Decision Making and mandatory reconsideration’](#) report where results from a Pilot in 2012 showed that 63 per cent of cases at Tribunal were primarily overturned due to cogent oral evidence present at the Tribunal whereas only 13 per cent were reversed as a result of new cogent documentary evidence being provided.

We would be concerned that this opportunity to draw out further evidence might be lost through an online appeal. Whilst interaction through digital channels may well be helpful at various points in the process, they should not automatically rule out oral face-to-face hearings before a Tribunal which should remain an available option.

[By email]

Social Security Advisory Committee
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