

Digital Justice: HMCTS data strategy and delivering access to justice

Report and recommendations

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Executive summary

A Background

- I The court system in England and Wales is undergoing a period of rapid and extensive change. The ongoing £1 billion programme of court reform is unprecedented in scope and pace and has been described as the most ambitious in the world.¹ The programme encompasses multiple elements including automisation of case management; the widespread use of video conferencing; new facilities for parties to file applications online and upload documents; workforce changes and estates consolidation in the context of a court system which currently deals with four million cases per annum. In whole areas of the justice system, such as divorce and civil money claims, and certain types of social security and child support tribunal cases, physical and remote hearings will be reserved ‘only for those cases that cannot be otherwise resolved’.² The stated ambition of these reforms is to create ‘a courts and tribunal system that is just, proportionate and accessible to everyone’.³ In delivering these changes HM Courts and Tribunals Service (‘HMCTS’) have pledged to ‘maintain or improve access to justice’.⁴
- II Whether access to justice is ‘maintained or improved’ through reform is both an empirical and a legal question. In order to test, review and, where necessary, improve systems to meet this commitment, a robust strategy for data collection, analysis and sharing must be in place. Data must be collected to confirm that existing legal duties relating to access to and the fairness of the justice system, as well as obligations under the Public Sector Equality Duty are met. The collection and publication of this data is critical to building trust in reformed processes and encouraging adoption of new services.

1 HMCTS Chief Executive, Susan Acland-Hood (2018). ‘Modernising the Courts and Tribunals Service: Future of Justice Conference.’ 14 May 2018, presentation available at: https://www.ucl.ac.uk/laws/sites/laws/files/ucl_foj_01_03_acland-hood.pdf

2 Sir Geoffrey Vos, Chancellor of the High Court (2018). ‘The Foundation for Science and Technology: Debate on how the adoption of new technology can be accelerated to improve the efficiency of the justice system.’ 20 June 2018, p2. Available at: <https://www.judiciary.uk/wp-content/uploads/2018/06/speech-chc-the-foundation-for-science-and-technology.pdf>

3 The Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, September 2016. *Transforming Our Justice System*, p5. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf

4 Senior President of Tribunals (2018). *The Modernisation of Tribunals 2018: A Report by the Senior President of Tribunals*. p9. Available at: https://www.judiciary.uk/wp-content/uploads/2019/01/Supplementary-SPT-report-Dec-2018_final.pdf

III In recognition of this, HMCTS have committed to (i) facilitating an overarching evaluation of the impact of reform on ‘access to, and the fairness of the justice system, particularly in relation to those who are vulnerable⁵ and (ii) ongoing evaluation and iteration of reformed services in light of insights gathered from data, including using data on the demographic and protected characteristics of users of the justice system to inform service design⁶ and identify and tackle disproportionalities.⁷ They have also committed to working with researchers and academics to design and test their approach to evaluation. This report, based on extensive stakeholder consultation with the judiciary, policy makers, national and international experts in evaluation, public justice system digitisation, public law and equality and diversity monitoring recommends an approach to data collection for service design, iteration and ongoing evaluation.⁸ The adoption of this approach will enable HMCTS to design inclusive services, demonstrate that reformed processes uphold access to justice, meet their legal obligations and strengthen public trust and confidence in the justice system.

5 See Ministry of Justice, ‘Evaluating our reforms: Response to PAC Recommendation 4, January 2019.’ Available at: <https://www.gov.uk/government/news/moj-response-to-public-accounts-committee-transforming-courts-and-tribunals> (accessed 7 February 2019).

6 See Susan Acland-Hood, ‘Susan Acland-Hood sets out our priorities for the next phase of courts and tribunals reform.’ *Inside HMCTS Blog*. Available at: <https://insidehmcts.blog.gov.uk/2017/10/26/susan-acland-hood-sets-out-our-priorities-for-the-next-phase-of-courts-and-tribunals-reform/>

HMCTS. *Reform Update: May 2018*. p20. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711535/HMCTS_Reform_Update_May_2018.pdf

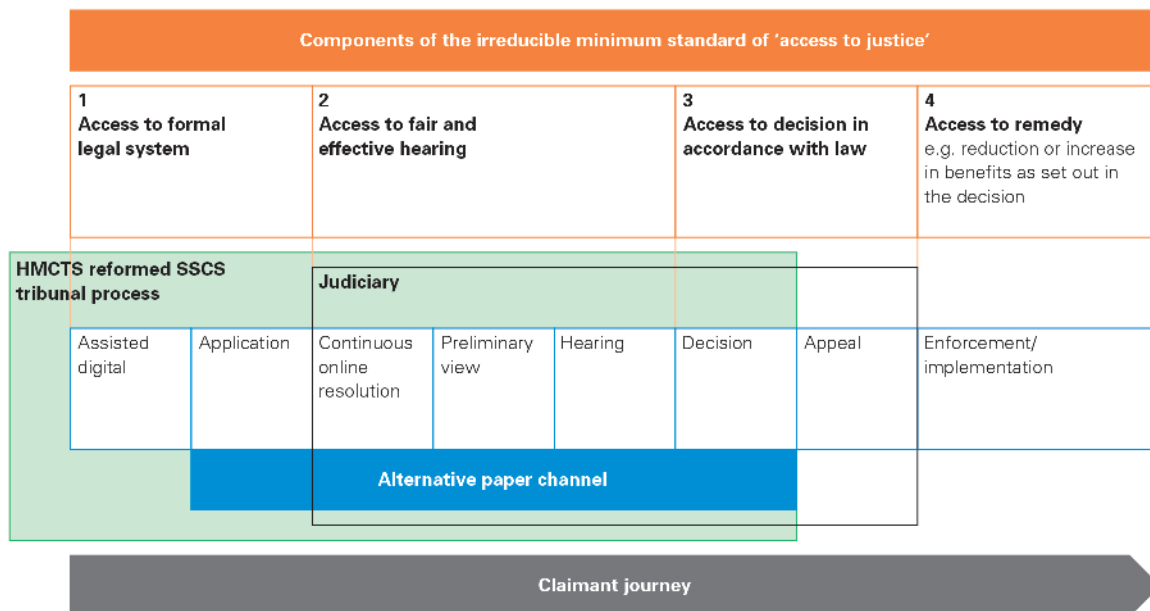
HMCTS (2019). *Putting People at the Heart of Reform: Response to PAC recommendation 2*, p6, para 22. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775594/Public_Accounts_Committee_Recommendation_2_31_Jan_2019.pdf

7 Ministry of Justice (2019). *Evaluating our Reforms: Response to PAC recommendation 4*, p2, para 6. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775588/Public_Accounts_Committee_Recommendation_4_31_Jan_2019pdf.pdf

8 The approach to developing recommendations is described at Chapter 2 and a full list of those consulted is available at Appendix A.

- B Understanding the impact of reform and designing services that deliver the goal of maintaining or improving access to justice**
- iv Stakeholder proposals for delivering HMCTS’s commitments to both overarching and project level evaluation are developed from the definitions of ‘access to justice’ and ‘vulnerability’ that are set out under existing substantive and procedural law (Chapter 4).
 - v Stakeholders have identified an irreducible minimum standard of ‘access to justice’ under English law, which is capable of acting as an empirical standard for the purposes of iterating reformed services and evaluating the impact of court reform. *The components of this irreducible minimum standard are: (i) access to the formal legal system, (ii) access to an effective hearing, (iii) access to a decision in accordance with substantive law, (iv) access to remedy.*
 - vi The four components of the access to justice standard are interrelated, mutually supportive and non-divisible.⁹ Figure 0-1 below shows how the standard maps to an individual project. Stakeholders agreed that any evaluation of reform must examine the impact of reformed services on each of these four components to arrive at a determination regarding the impact on access to justice. *Assessments of the impact of reform on access to justice must be based on a holistic evaluation that explores the progression of a full range of cases and individuals through the system from claim to outcome. These proposals should be adopted in both the overarching evaluation of the reform programme, and at the individual service level, to guide the design, testing and iteration of projects.*

Figure 0-1 Mapping the minimum standard of access to justice to a reformed service



9 For example, an observable increase in individuals accessing the formal legal system, of itself, is insufficient to justify assertions that access to justice has improved under reform.

- VII In addition to the requirement to monitor the impact of reform against the access to justice standard established by law, HMCTS’s obligations under the Public Sector Equality Duty, its commitment to monitor disproportionality and accepted good practice also require that data on the protected characteristics of users is captured and monitored. This collection will enable review and, where necessary, adaptation and improvement of new processes and services to meet obligations.¹⁰ In practical terms, for each service that is being reformed, 13 data points relating to individuals using the system should be collected. These are summarised below at Figure 0-2.

Figure 0-2 **Minimum data required to measure vulnerability**

Individual attributes to be captured	Data in practice directions used to identify vulnerability?	Data related to digital exclusion?	Data needed to monitor duties under the Equality Act 2010?
1 Age	✓	✓	✓
2 Disability ¹¹	✓	✓	✓
3 Employment status/income	✓	✓	✗
4 English as a foreign language	✓	✗	✗
5 Gender reassignment	✗	✗	✓
6 Highest level of education (proxy for literacy)	✓	✓	✗
7 Postcode (permanent address, to identify whether in a care home, homeless, in an area of low internet coverage etc.)	✓	✓	✗
8 Pregnancy and maternity	✗	✗	✓
9 Race	✗	✗	✓
10 Religion or belief	✗	✗	✓
11 Sex	✗	✗	✓
12 Sexual orientation	✗	✗	✓
13 Fear or distress connected with the case e.g. domestic violence/abuse, in detention, survivor of trafficking/trauma	✓	✗	✗

10 See guidance for public bodies provided by the Equality and Human Rights Commission available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty> and the work of the Race Disparity Unit.

11 This should include detailed information on the nature of the disability, as different conditions are likely to impact on vulnerability in different ways.

C Further areas of priority need

- VIII The adoption of stakeholder proposals for evaluation and public commitments made by HMCTS in relation to evaluation necessitates the creation of mechanisms to follow individuals and cases as they progress through reformed systems. In light of this, it is recommended that HMCTS consider the benefits and risks of introducing unique identifiers for individual users of the justice system. Experts in privacy law and data ethics should be consulted to ensure that the data associated with unique identifiers is captured, stored and utilised in a manner that respects established legal and ethical requirements.
- IX Stakeholders made specific recommendations regarding the data and methods needed to monitor and evaluate the impact of reform on access to the formal legal system, access to a fair and effective hearing, access to a determination and access to remedy. These are presented in *Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice*¹² and summarised in the following paper (Chapter 4, sections D-E5).
- X Three further areas of priority need were identified by stakeholders: (i) reforming the system for providing free, public access to judgments, (ii) improving access to court listings and (iii) providing free access to certain types of case level data, including transcripts and statements of case (Chapter 4, sections H1-H3). In relation to the need to reform the system for making judgments available to the public, stakeholders' concerns related to the coverage of existing free to access databases, the comprehensibility of content to those without legal training and the format in which judgments are published.

D Delivering HMCTS's commitments to facilitate evaluation and developing principles for sharing data

- XI The current Data Access Panel is unlikely to cope with increased demands for data. Urgent attention must be given to designing a medium-term solution for data sharing that reduces the burden on HMCTS. However, in the short term it is recommended that the appropriate standard for approving or denying requests to access data should be based on the robustness of the research design (Chapter 5).
- XII Existing models for sharing data with researchers are available and should be utilised in the medium term to facilitate the delivery of HMCTS's public commitments to make data available for evaluation and research. UK Research and Innovation has made substantial investments in infrastructure to support the research use of administrative data.¹³ HMCTS should publish its vision with regard to data and develop its overarching strategy in line with existing legal and ethical principles through a transparent and accountable process. HMCTS should dedicate resource to reviewing national and international best practice, existing legal frameworks, engaging a wide range of stakeholders and publics and testing the acceptability of different models with stakeholders and the public (Chapter 6).

12 Natalie Byrom (2019). *Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice*. Available at: <https://research.thelegaleducationfoundation.org/research-learning/funded-research/developing-the-detail-evaluating-the-impact-of-court-reform-in-england-and-wales-on-access-to-justice>

13 See: <https://www.adruk.org>

E Table of recommendations

1	HMCTS should consider the benefits and risks of introducing unique identifiers for individual users of the justice system...Experts in privacy law and data ethics should be consulted to ensure that this data is captured, stored and utilised in a manner that respects established legal and ethical principles. The public acceptability of the creation of individual identifiers should be tested prior to their introduction. (4.32)	10	[HMCTS should commit to] collecting data on patterns of engagement by users with legal advice and representation across paper and reformed processes to test the assumptions underpinning pilots. (4.36.5)
2	HMCTS should commit to embedding the collection of the thirteen data-points relating to vulnerability (outlined...in Figure 4-2) into each service. The collection of this data should take place at the earliest possible opportunity in the user journey, whether this is initiated through digital or paper processes...It is recommended that HMCTS commit to embedding the collection of this data into reformed services before they reach public beta stage. Those services already in public beta stage should be prioritised for immediate work to embed the collection of this data. (4.33)	11	[HMCTS should commit to] collecting data on the characteristics of users and cases 'triaged' to different processes, to assist the judiciary in understanding whether the Practice Directions they have made are being applied correctly and to assist in the training of Authorised Officers who are intended to assist with these processes. (4.36.6)
3	[HMCTS should commit to the ongoing collection of data on] the characteristics of users initiating and defending cases via different channels to identify and monitor disproportionalities, e.g. individual vs bulk claimant, geo-demographic characteristics of claimants and defendants, represented vs unrepresented. (4.34.1)	12	[HMCTS should commit to] collecting data on the outcomes of cases e.g abandoned/withdrawn/settled/determined and the amounts awarded/settled for across the different processes, e.g. Continuous Online Resolution, Online Civil Money Claims. (4.36.7)
4	[HMCTS should commit to the ongoing collection of data on] the types of cases initiated via different channels to identify disproportionalities and refine services. This data should be presented at a level of specificity that would support useful analysis, e.g. for a money claim, the amount, type of claim and amount claimed. (4.34.2)	13	HMCTS should commit to collecting data on the characteristics of users and cases that reach judicial determination and analyse this data against the types of users that initiate cases, to explore patterns in the characteristics of users and cases that reach the judicial determination stage. (4.37)
5	HMCTS should publish and consult on the metrics/data proxies used to assess the cost and effort associated with initiating and defending a claim via different channels. Once these metrics are agreed, the data collected should be analysed and reported on according to both case type and user characteristics. (4.35)	14	HMCTS should capture and publish data on applications for enforcement, time from decision to enforcement and whether enforcement proceedings are defended across both paper and reformed services as part of any evaluation of the impact of the reform programme on access to remedy. Examples of data to be captured (in the context of Civil Money Claims) could include: whether enforcement is applied for; type of enforcement applied for (warrant of execution, attachment of earnings order, third party debt order, charging order, bankruptcy petition); whether an application for suspension of a warrant/variation of order is made and whether an application notice, certificate of cancellation or satisfaction is applied for by the defendant. It has been claimed that enforcement is easier following mediation—or less necessary because people comply more willingly with negotiated settlement agreements. As such, data comparing compliance with ODR settlement terms to compliance with determinations should be captured. (4.38)
6	[HMCTS should commit to] capturing data on subjective perceptions of procedural justice using standardised tools, replacing the user satisfaction survey currently used. (4.36.1)	15	HMCTS should conduct an urgent review of their internal position with regard to data and prioritise the production of an external-facing data catalogue. This catalogue should: <ul style="list-style-type: none"> • list what data is held • explain who is responsible for each dataset • detail where the data is stored and who stores it • provide an indication of the relative quality of different datasets • explain who is currently allowed to access the data and for what purposes • describe existing arrangements for accessing data and detail any charges associated with access to particular types of data. (4.57)
7	[HMCTS should commit to] working with experts in ODR to develop objective indicators of procedural fairness for new online processes, and using this data to augment the data captures on subjective perceptions of procedural fairness. (4.36.2)		
8	[HMCTS should commit to] sharing data collected on the impact of design architecture and behavioural 'nudges' incorporated into forms and reformed processes with researchers to validate and check assumptions and build trust in new processes. (4.36.3)		
9	[HMCTS should commit to] working with expert stakeholders to identify proxies for user engagement with reformed processes, e.g. management of information such as volume and quality of evidence provided, uptake of procedural safeguards etc. (4.36.4)		

E Table of recommendations service *continued*

16, 17	HMCTS should work with the judiciary and colleagues in the Ministry of Justice to commission an independent report which reviews the current arrangements for disseminating judgments to the public and maps the information flows from courts to publication. On the basis of this report, HMCTS and the MoJ should engage with key stakeholders to develop a publication solution that delivers free and comprehensive access to judgments in a structured machine-readable format. (4.58, 4.59)	22	Minutes of future Data Access Panel ('DAP') meetings should be made publicly available: at present DAP is purely an email group supported by a small secretariat and leadership function in the Analysis and Performance team. Minutes should be recorded and information on accepted and rejected applications should be made publicly available, as per the UK Statistics Authority Code of Practice T6 on Data Governance. (5.3.4)
18	HMCTS should consider approaches to meeting the other areas of priority need identified by stakeholders through a transparent process as part of the development of the HMCTS data strategy. Tools such as the ODI Data Ethics Canvas could be deployed to devise an approach in partnership with internal and external stakeholders. (4.60)	23	Scenarios (including resource implications) should be urgently developed for how to handle increased demand in 2019 and meet HMCTS's public commitments in the near term. (5.3.6)
19	The appropriate standard for approving or denying requests to the access data should be based on the robustness of the research design, rather than utility to the business. A central sponsor in HMCTS must be resourced with adequate additional funding to deliver this function if volumes of requests increase as expected in line with the rollout of reforms. (5.3.1)	24	HMCTS should publish its vision with regard to shared/open data and develop its overarching strategy in line with existing legal and ethical principles through a transparent and accountable process. (6.14)
20	Functions and roles should be clearly articulated and resourced, particularly with regard to Quality Assurance, GDPR and Privacy Assurance. (5.3.2)	25	In terms of developing wider open/shared data principles: consolidating, publishing and consulting on the aims of the future open/shared data strategy with key stakeholders at the earliest possible opportunity is recommended. HMCTS should publish details of their approach across the ODI data spectrum with indicative timeframes for engaging stakeholders. (6.15)
21	The production of an external-facing data catalogue to guide applications should be prioritised as a matter of urgency. Data Engineering Fellowships should be established to deliver this work (see Chapter 7 below). Work to engage external funders where needed to deliver this should be prioritised. (5.3.3)	26	HMCTS should dedicate resource to reviewing national and international best practice, existing legal frameworks, engaging a wide range of stakeholders and publics and testing the acceptability of different models with stakeholders and the public. (6.16)
		27	Once draft principles are agreed, the datasets identified as a priority need by stakeholders ¹⁴ should be catalogued and used as a case study to evaluate the utility of the approach designed, starting with case level data. ¹⁵ (6.17)
		28	Existing models for sharing data with accredited researchers are available and should be utilised in the medium term to facilitate the delivery of HMCTS's public commitments to make data available for evaluation and research. See for example, the services funded as part of ADR UK (including, for example, the Office for National Statistics Secure Research Service and the SAIL Databank) that provide safe accredited access for approved researchers to administrative data. ¹⁶ (6.18)
		29	Data Engineering Fellowships should be funded for between 6 –12 months. Consultation with internal and external stakeholders suggested that the key responsibilities, skills and person specification should be modelled on the recently advertised role of Ministry of Justice Lead Data Engineer (Band A). ¹⁷ Key responsibilities, data engineering skills and the person specification are reproduced below at Appendix B. (7.2)

14 See Chapter 4, section H below.

15 As per the recommendation made by the Supreme Court in *Cape Intermediate Holdings Ltd (Appellant/Cross Respondent) v Dring (for and on behalf of Asbestos Victims Support Groups Forum UK) (Respondent/Cross Appellant)* [2019] UKSC 38. Per para 51.

16 See: <https://www.adruk.org>

17 See: <https://justicejobs.tal.net/vx/mobile-0/appcentre-1/brand-2/candidate/so/pm/1/pl/3/opp/23124-23124-Band-Ab-Lead-Data-Engineers-Ministry-of-Justice-Analytical-Services-Directorate/en-GB>

1 Background

- 1.1 The Legal Education Foundation is a charitable trust that seeks to help people understand and use the law. TLEF governors award grants to organisations to enable them to deliver projects that advance our strategic objectives.¹⁸ TLEF has a particular interest in ensuring that not just lawyers but all users of the court system have access to sufficient information, education and advice to enable them to make effective use of the courts, and to achieve just outcomes. TLEF has committed resources to building the evidence base of need and what works in supporting individuals to secure their rights, protections and fair treatment, and funds work to explore the ways in which technology might be used to enhance access to justice. As a function of our work in these areas, and in light of the implications of fundamental changes to the justice system for the individual's ability to understand and use the law to secure their rights, TLEF has taken a keen interest in the HM Courts and Tribunals Service reform programme ('the reform programme') since it was announced by the Ministry of Justice, the Lord Chief Justice and the Senior President of Tribunals in September 2016.¹⁹
- 1.2 As a funder of justice system related research, TLEF has recognised the unique opportunity presented by the reform programme to improve the quality and accessibility of justice system data. TLEF's partners and stakeholders in the research community have repeatedly identified (i) the paucity of justice system data, (ii) issues in identifying existing datasets, and (iii) systemic issues in accessing what data does exist as persistent barriers to the conduct of advanced empirical research. In May 2018, TLEF, together with the Nuffield Foundation and UCL Laws, jointly convened a symposium titled 'The Future of Justice: Harnessing the Power of Empirical Research'. Discussion at the conference highlighted both existing issues with the collection of and access to data and the imperative for the reform programme to engage with and address these issues, in order to facilitate the evaluation, learning and continuous improvement of the reformed systems committed to by Her Majesty's Courts and Tribunal Service ('HMCTS').
- 1.3 Beyond the academic and research community, TLEF considers that improving the data architecture around justice system processes and creating lawful, ethical, transparent and proportionate mechanisms to access this data is vital in order to improve public understanding of the operation, efficacy and fairness of the justice system. The collection of data and the ability to access this data to pursue projects that deliver public benefit is vital to facilitate the design of evidence-based initiatives to assist individuals to secure their rights. TLEF's work supporting projects that harness technology to address access to justice issues has highlighted the importance of collecting and providing access to data in driving innovation and promoting equitable access to the justice system. TLEF's work on law reform, policy and regulation has underscored the need to develop rule of law compliant mechanisms for sharing, linking and accessing data, and to develop, test and refine the principles underpinning these processes in consultation with a broad range of stakeholders.
- 1.4 TLEF recognised early in the process the opportunity that reform presented to address questions about the collection and use of data. The Foundation engaged with officials, academics, senior judiciary and the sector to make early calls for a commitment to a data strategy to underpin the reform process. TLEF has since welcomed the public commitments articulated by HMCTS Chief Executive Officer Susan Acland-Hood ('CEO of HMCTS') and former Minister for Courts the Rt. Hon. Lucy Frazer QC MP to harness the opportunity presented by reform to (i) build new, efficient and responsive data systems, (ii) collect data that will facilitate the evaluation and continuous improvement of reform projects, (iii) provide access for academics and researchers, (iv) support innovation in access to justice through sharing data with the public and other stakeholders, and (v) deliver open justice. Chapter 3 below provides further detailed information on these public commitments. To assist HMCTS to deliver their external commitments, in October 2018 TLEF Director of Research, Dr Natalie Byrom was appointed by HMCTS as Expert Advisor on Open Data and Academic Engagement for an initial period of three months. Chapter 2 below sets out the remit of this role and the approach taken to producing the recommendations presented in this report.

18 For more information about The Legal Education Foundation and its work please visit: <https://www.thelegaleducationfoundation.org>

19 The Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, September 2016. *Transforming Our Justice System*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf p5.

2 Expert advisor on open data and academic engagement: remit and approach

- 2.1 The Expert Advisor role was delivered through a three-month secondment which commenced in October 2018. The Expert Advisor was seconded to HMCTS for four days per week during this period. As a public guarantee of independence, it was agreed that this post would be unremunerated and that findings and recommendations would be made available upon completion, whether or not HMCTS chose to act upon them.
- 2.2 The agreed remit for the secondment consisted of the following four areas:
- 2.2.1 Improve HMCTS’s understanding of key stakeholders’ needs and what data are required to measure the impact of reform in line with HMCTS’s vision and public commitments.
 - 2.2.2 Recommend pragmatic short-term changes to improve how HMCTS supports those seeking to carry out research using HMCTS data.
 - 2.2.3 Understand how HMCTS’s future data strategy can best support making data available to researchers and the lawtech sector securely and appropriately. This will inform the creation of data-sharing principles for HMCTS.
 - 2.2.4 Establish a range of externally-funded data engineering fellowships. These will improve the preparation of new and existing datasets for internal and external use.
- 2.3 In developing the recommendations contained in this report, the following activities were undertaken by the Expert Advisor:
- 2.3.1 Interviews with key stakeholders, including: HMCTS and Ministry of Justice (‘MoJ’) staff, members of the judiciary (including the Senior President of Tribunals and Chair of the Litigants in Person Engagement Group) specialist funders (e.g. The Nuffield Foundation, The Alan Turing Institute, UKRI-ESRC), administrative data experts, the UK Statistics Authority, legal publishers, government data specialists, privacy law specialist NGOs, civil society groups, members of the lawtech Delivery Panel, and socio-legal researchers. A full list of those consulted is available at Appendix A.
 - 2.3.2 Desk-based research to benchmark data collection practices internationally in relation to Public Justice System digitisation and Online Dispute Resolution projects and to identify approaches to evaluation. This resulted in a briefing paper which is available on The Legal Education Foundation website.²⁰ This exercise also facilitated the identification of expert stakeholders who were invited to attend the international workshops, which took place in October and November 2018.
 - 2.3.3 Convening of two international workshops over three days, bringing together 38 expert stakeholders and members of the judiciary from the UK and overseas to deepen understanding of key stakeholders’ needs in relation to data and to share best practice in evaluating the impact of court reform, digitisation and the introduction of the public justice system Online Dispute Resolution on access to justice. This resulted in a set of detailed draft principles for evaluating the impact of reform on access to justice and their implications for data collection which formed the basis of a public consultation which concluded on 22 March 2019. The paper incorporating feedback from the consultation is available on The Legal Education Foundation website.²¹
 - 2.3.4 Attending and speaking at workshops and conferences to gather stakeholder views and explore particular issues in relation to the collection, retention and sharing of government data.
- 2.4 This report is structured as follows: Chapter 3 below sets out HMCTS’s existing public commitments in relation to data collection, evaluation and data sharing, before moving in Chapters 4 – 7 to present the findings and recommendations made in relation to the secondment remit as set out at para 2.2 above.

20 Natalie Byrom (2018). *Measuring Success in Online Courts: An Empirical Challenge*. Available at: <https://research.thelegaleducationfoundation.org/research-learning/learning-through-our-grant-making/briefing-paper-measuring-success-in-online-courts-an-empirical-challenge>

21 Natalie Byrom (2018). *Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice*. Consultation paper available at: <https://research.thelegaleducationfoundation.org/research-learning/funded-research/developing-the-detail-evaluating-the-impact-of-court-reform-in-england-and-wales-on-access-to-justice>

3 Data collection, evaluation, open data and the reform programme: vision and public commitments

- 3.1 Reform leaders including Chief Executive Officer of HMCTS Susan Acland-Hood, former Courts Minister Lucy Frazer QC MP, and senior judiciary have set out the organisation’s vision for data and made successive public commitments in relation to data collection, evaluation, and data sharing with different constituencies, for the purposes of designing reformed services around users, supporting innovation, pump-priming the lawtech sector, delivering legal support and maintaining open justice.
- 3.2 Since 2017, the CEO of HMCTS has publicly emphasised the organisation’s commitment to using the opportunity presented by the reform programme to move beyond the collection of ‘business as usual’ data to deliver a reformed justice system that is capable of supporting continuous improvement. In an October 2017 post to the ‘Inside HMCTS’ blog, the CEO of HMCTS stated that ‘...we will build excellent data systems into all our new systems—so that we can keep track of how well they and we are working; learn and improve; and measure the right things (for example, finding ways of measuring and then reducing other people’s wasted effort, not just our own use of buildings or speed of resolution)’.²² In the official ‘Reform Update’ published online in May 2018, the CEO of HMCTS provided further detail on this work and committed to making data available to researchers and academics, stating:

“Finally, we are consciously and deliberately planning the data and management information that we want our new systems to provide, and which will be the foundation of further improvement—allowing us to see much more readily where there are blockages or difficulties, and whether the things we are doing to address them are working. This shift to readily-available, real-time information about how things are working—coupled with the way we are designing our systems, which incorporates an assumption that we will want to change and improve them regularly in future—helps to make our changes future-proof by designing for further improvement. We will also make data available – in a suitably anonymised way – for researchers and academics to use.”²³

- 3.3 In addition, in a joint letter to the Open Government Network dated 26 November 2018,²⁴ former Courts Minister Lucy Frazer reiterated the government’s commitment to open justice and the role of sharing justice system information with the public in delivering this commitment. Paragraph five of the letter states:

“We are committed to adhering to and upholding the principle of open justice as we reform our courts...As well as considering the legal framework for open justice, our Courts Reform Programme also provides us with a timely opportunity to review and improve some of our practices, such as improving processes to make information readily available to the public as far as is lawful and proportionate, so that future courts and tribunals are effective for the judiciary, legal and media professionals, and the public.”

22 Susan Acland-Hood, ‘Susan Acland-Hood sets out our priorities for the next phase of courts and tribunals reform.’ *Inside HMCTS Blog*. Available at: <https://insidehmcts.blog.gov.uk/2017/10/26/susan-acland-hood-sets-out-our-priorities-for-the-next-phase-of-courts-and-tribunals-reform/>

23 HMCTS. *Reform Update: May 2018*. p20. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711535/HMCTS_Reform_Update_May_2018.pdf

24 *Letter on Commitment to Open Justice in the Open Government National Action Plan 2018 – 20*. Available at: <https://www.opengovernment.org.uk/resource/letter-on-commitment-to-open-justice-in-the-open-government-national-action-plan-2018-20/>

- 3.4 In the summer of 2018, the Public Accounts Committee, a body tasked with ‘holding the government and its civil servants to account for the delivery of public services’ conducted a review of progress made in respect of the reform programme and made a series of recommendations, including specifying that HMCTS must ‘...write to the Committee by January 2019, setting out how it will identify and evaluate the impact of changes on people’s access to and the fairness of the justice system, particularly in relation to those who are vulnerable’.²⁵ In responding to this recommendation in February 2019, HMCTS, in a joint publication with MoJ cemented their existing commitments to collect data and make it available, confirming that HMCTS would:
- 3.4.1 Partner with external researchers and share data to facilitate independent research on the reform programme.²⁶
 - 3.4.2 Improve the way the organisation collects and shares data with external researchers, by ‘making it easier to apply for data through our data access panel, gathering requirements (user needs) so we know what data we need to collect; bringing in expertise to help us define how we can make our data available on a sustainable basis’.²⁷
 - 3.4.3 Make listings data available online and provide access to the results of cases on request via the Courts and Tribunals Service Centres.²⁸
 - 3.4.4 Use information on the characteristics (e.g. demographics, income level, geographical location) of people who use the justice system to ‘inform service design and the design of our national services’.²⁹
- 3.5 The MoJ-led evaluation of the reform programme underscores HMCTS’s existing commitment to the collection of data on outcomes, demographic characteristics and the principle of data sharing with external researchers.³⁰ In their response to Public Accounts Committee Recommendation 4 titled ‘Evaluating our reforms’ the MoJ states that evaluation of the reform programme will involve: ‘the use of performance information and the assessment process that is built into the design of individual reform projects to give us much more timely, accessible and shareable data on impact, including people’s effort...experience and perceptions’.³¹ The MoJ-led response states that the evaluation design will seek to answer three key questions: ‘i. Has reform altered outcomes (fairness e.g. case/hearing outcomes, sentencing and financial awards)?; ii. Has reform changed the ability of users to pursue a case effectively (access to justice e.g. ability and speed at which court users can access and pursue a case)?; and iii. Has reform had an effect on costs including those incurred by those who use courts and tribunals (e.g. travel costs, costs of time wasted)?’³² Whilst the full evaluation plan has not yet been published, the inclusion of question ii, ‘Has reform changed the ability of users to pursue a case effectively’³³ makes it clear that the evaluation will be seeking to follow the progress of users through the reformed system.³⁴ That reformed systems facilitate the ability of HMCTS and the MoJ to link data relating to individual perceptions of fairness to case outcomes was confirmed by the Courts Minister Lucy Frazer MP QC at a breakfast event held at the Law Society on 26 February 2019.³⁵ The evaluation approach further commits to ‘...reviewing the data and metrics we currently collect, and designing new data streams and metrics to help us better explore the effect of these reforms. For example, we will do more to collect data on the protected characteristics of those who use the courts and tribunals in a way that will make it far easier to identify and tackle disproportionalities’³⁶ alongside ‘ongoing monitoring of high profile/high impact reforms’.³⁷

25 MoJ (2019). *Evaluating our reforms: Response to PAC recommendation 4*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775588/Public_Accounts_Committee_Recommendation_4_31_Jan_2019.pdf

26 HMCTS (2019). *Putting People at the Heart of Reform: Response to PAC recommendation 2*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775594/Public_Accounts_Committee_Recommendation_2_31_Jan_2019.pdf p3, para 17.

27 Ibid, p4, para 3.

28 Ibid, p6, para 22.

29 Ibid, p4, para 4.

30 Public Accounts Committee, ‘Transforming courts and tribunals’ 20 July 2018, HC 976.

31 Ministry of Justice (2019). *Evaluating our Reforms: Response to PAC recommendation 4*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775588/Public_Accounts_Committee_Recommendation_4_31_Jan_2019.pdf p2, para 5ii.

32 Ibid, p2, para 7.

33 Ibid, p2, para 7.

34 Ibid, p2, para 7ii.

35 <https://www.lawsociety.org.uk/support-services/court-reform/future-of-law-lecture/>

36 See supra n31, p2, para 6.

37 See supra n31 p2, para 5iii.

- 3.6 In scoping their evaluation, the Ministry of Justice has committed to drawing on external expertise to ‘seek advice about how evaluation can best be undertaken’.³⁸ Workshops convened by the Expert Advisor to bring together academic stakeholders to develop a framework for evaluating the impact of the reform programme as a whole on access to justice were held as part of the work to gather external stakeholder needs—this framework is available via the TLEF website,³⁹ and the implications of its adoption for data collection across reformed processes are discussed below in Chapter 4.
- 3.7 In addition, whilst the reform programme is being delivered by HMCTS with the budget and business case approved by the Executive, the settlement achieved through the enactment of the Constitutional Reform Act 2005 has resulted in the judiciary adopting a crucial leadership role in relation to the reforms. The Senior President of Tribunals has described the purpose of the reform programme as follows: ‘to give the administration of justice a new operating model with a sustainable and affordable infrastructure that delivers better services at lower costs and safeguards the rule of law by improving access to justice’.⁴⁰ In keeping with its prominent role in instigating and overseeing the reform programme, the senior judiciary has proposed six criteria according to which the projects developed will be ‘tested, and if successful, implemented’⁴¹ the first of which is, ‘1. Ensure justice is accessible to those who need it i.e. to improve or maintain access to justice’. The empirical nature of these principles necessitates a concomitant strategy for collecting data in order to enable those members of the judiciary with an oversight function in respect of reform to verify whether these standards have been met.
- 3.8 Finally, successive policy initiatives developed by the government to encourage the adoption of technology in the legal services sector and pump-prime the nascent lawtech sector have significant dependencies on improving the collection and accessibility of justice system data. The LawTech Delivery Panel and the £20 million Next Generation Services Fund, which has supported work to identify and remove the barriers to artificial intelligence in legal services, are high profile examples of government commitment to this agenda. In February 2019, the Ministry of Justice published a Legal Support Action Plan (‘the Action Plan’) which aims to deliver quicker and easier access to legal support services.⁴² The Action Plan announced the creation of a £5 million innovation fund⁴³ which will support projects that harness technology to deliver early legal support and advice. The Action Plan acknowledges issues with access to data as a critical challenge to delivering innovation⁴⁴ and references newly-initiated ‘work across MoJ and in particular within HMCTS, to explore the ways in which we may be able to consider how we share data and in what form’ alongside an explicit commitment to ‘work across the justice system to explore how we can use data more effectively’.⁴⁵
- 3.9 In summary, senior figures in HMCTS, the MoJ and the judiciary have all made significant public commitments to facilitate the collection and publication of data through the reform programme. The collection and publication of justice system data has been positioned as a key dependency for a range of government initiatives, and as critical to the delivery of the vision for both the reform programme and the wider legal services sector. This report now goes on to set out the four objectives of the secondment and presents findings and recommendations in respect of these objectives. These recommendations aim to support HMCTS to deliver the publicly-articulated vision for data.

38 See supra n31, p2, para 10.

39 Natalie Byrom (2019). *Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice*. Available at: <https://research.thelegaleducationfoundation.org/research-learning/funded-research/developing-the-detail-evaluating-the-impact-of-court-reform-in-england-and-wales-on-access-to-justice>. A preliminary meeting which brought together academics to comment on the proposed approach to evaluation was held in May 2019, and further details regarding the evaluation approach and composition of the Evaluation Advisory Panel will be published shortly.

40 Senior President of Tribunals (2018). *The Modernisation of Tribunals 2018: A Report by the Senior President of Tribunals*. p9. Available at: https://www.judiciary.uk/wp-content/uploads/2019/01/Supplementary-SPT-report-Dec-2018_final.pdf.

41 *Ibid*, p9.

42 Ministry of Justice (2019). *Legal Support: The Way Ahead. (CP 40)*. London: The Stationery Office. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777036/legal-support-the-way-ahead.pdf. Accessed 12 April 2019.

43 *Ibid*, p34.

44 *Ibid*, p35.

45 *Ibid*, p36.

4 Improve HMCTS's understanding of key stakeholders' needs and what data are required to measure the impact of reform

A Background

- 4.1 As has been noted in various presentations delivered by reform leaders, the scope and pace of the reform programme is unprecedented—both historically and internationally. The CEO of HMCTS, in a presentation delivered in May 2018, stated that ‘our reform programme is the most ambitious in the world’ encompassing elements including: automisation of case management; the widespread use of video conferencing; new facilities for parties to file applications online and upload documents; workforce changes and estates consolidation in the context of a court system which currently deals with four million cases per annum. In whole areas of the justice system, such as divorce and civil money claims, and certain types of social security and child support tribunal cases, physical and remote hearings will be reserved ‘only for those cases that cannot be otherwise resolved.’ Aside from the substantial procedural and operational changes, the scale and breadth of reform is fundamentally altering the data landscape within which the justice system operates: digitising processes has the potential to transform the way in which data that has historically been captured on paper is recorded, stored, utilised and published. In addition, the introduction of new kinds of legal process (such as Continuous Online Resolution, and Civil Money Claims Online) and the intention to use data to evaluate and continuously monitor and improve services implies that reformed systems will generate new categories of justice system data, beyond the data that has historically been collected by HMCTS. The reform programme therefore presents an unprecedented and exciting opportunity to address systemic challenges in relation to the justice system data landscape, and in doing so deliver a justice system that is more transparent, more accountable and more capable of supporting research, innovation and evidence-based policy making.

B The urgency of the challenge: problems with the present system

- 4.2 Harnessing the opportunity presented by the reform programme to address deficiencies in justice system data could not be more urgent. The public announcements detailed above in Chapter 3, and resultant expectations, represent a step-change from the position at present. Even defining the types of data currently collected and stored by HMCTS and mapping the arrangements for accessing this data and making it available is a difficult task. Research in support of Chapter 5 below revealed that meeting data requests from internal and external stakeholders is a lengthy and time-consuming process that is currently under-resourced by HMCTS.
- 4.3 Research conducted in preparing this report revealed the complexity of current arrangements for the collection, storage and publication of justice system data under legacy systems; the limitations of current access arrangements; difficulties in identifying who ‘owns’ which datasets and poor public visibility regarding the data that is currently held by HMCTS. This has led to misconceptions about what is available and in what format and renders it difficult for stakeholders to formulate reasonable requests for data—consultation revealed that stakeholders often overestimated both the volume of data held by HMCTS under legacy systems and the ease with which this data could be accessed. Being clear about the nature and scale of the task underway is vital in managing expectations and ensuring that the development of the data infrastructure needed to deliver the range of commitments articulated by reform leaders is appropriately resourced. Consistent messaging based on credible and demonstrable action is key to managing reputational risk to HMCTS created by this disconnect.
- 4.4 Most pressingly, there is an urgent need to ensure that HMCTS collect the data necessary to deliver on their public commitments in relation to evaluating the impact of reform and facilitating continuous improvement. The following discussion presents findings and recommendations from expert stakeholders in relation to the data needed to evaluate reform, before moving to discuss the wider needs of external stakeholders.

C Evaluating the impact of reform: HMCTS commitments to evaluation, evaluative activity and continuous improvement

4.5 As stated above in Chapter 3, HMCTS have committed to:

4.5.1 Facilitating an overarching evaluation of the reform programme. This evaluation, led by analysts at the MoJ will measure the impact of the reform programme as a whole on access to and the fairness of the justice system, particularly in relation to those who are vulnerable.⁴⁶ The detailed plan for evaluation published by the MoJ in February 2019⁴⁷ specifies that performance information gathered through reformed services will be used to calculate the impact of reform on user outcomes, the ability to effectively pursue a case, and the costs incurred by users of the courts and tribunals system.

4.5.2 Ongoing evaluation and iteration of reformed services in light of insights gathered from data, including using data on the demographic and protected characteristics of users of the justice system to inform service design⁴⁸ and identify and tackle disproportionalities.⁴⁹ Importantly, whilst responsibility for the design and delivery of the overarching evaluation of reform programme sits with the MoJ, HMCTS project teams lead 'the process of review, assessment and adaptation (which) is built into the design of reform at an individual project level...'⁵⁰ where through 'a process of testing and learning these services are reviewed against key metrics and refined and adapted as necessary'.⁵¹

4.5.3 Using 'insights from external research and academia to validate and challenge our approach'.⁵² This implies providing meaningful opportunities for academics and researchers to engage with the reform programme and provide advice and feedback on services as they are developed.

4.6 The work undertaken to support HMCTS to deliver on these commitments is described below in section D.

D Delivering on commitments: consultation with expert stakeholders and the wider access to justice community to understand the data and methodological approaches needed to measure the impact of reform

4.7 Work to understand the data and methods required to measure the impact of reform on access to justice was conducted in three stages. Stage one of this work consisted of a desk-based review, conducted by the Expert Advisor, which mapped the existing measures used to demonstrate the success or otherwise of 'online courts' in relation to access to justice⁵³ to understand what could be learned from international best practice. The literature review revealed an emphasis on indicators such as (i) reductions in cost (both to the court system and individual litigants); (ii) reduction in time to resolution; (iii) reduced need for hearings (as hearings are associated with greater cost and increased time to resolution); (iv) increased rates of settlement; (v) increased case volume and litigant engagement; and (vi) subjective measures of procedural justice and user satisfaction. Whilst these measures are important, and are recognised as useful, they do not clearly map to the existing definitions of 'access to justice' set out in case law, or the measures used to assess access to justice in empirical research in physical settings.⁵⁴

46 Ministry of Justice (2019). *Evaluating our reforms: Response to PAC recommendation 4*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775588/Public_Accounts_Committee_Recommendation_4_31_Jan_2019pdf.pdf

47 Ibid, p2, para 5.

48 Ibid, p3, para 13.

49 Ibid, p2, para 6.

50 Ibid, p.2, para 13.

51 Ibid, p2, para 13.

52 HMCTS (2018). *Engaging with Our External Stakeholders: Our Approach and Plans*. 29 November 2018. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759859/HMCTS060_ExternalStakeEngageApproach_FINAL.pdf p15.

53 Natalie Byrom (2018). *Measuring Success in Online Courts: An Empirical Challenge*. Available at: <https://research.thelegaleducationfoundation.org/research-learning/learning-through-our-grant-making/briefing-paper-measuring-success-in-online-courts-an-empirical-challenge>.

54 Ibid.

- 4.8 Stage two consisted of workshop discussions involving 38 international expert stakeholders in October and November 2018. Attendees were selected for their experience and expertise in Public Justice System Online Dispute Resolution; access to justice; Public Law; Equality and Diversity monitoring and the evaluation of complex programmes. Academics, practitioners, policy professionals, court administrators, NGOs and the judiciary were all represented. Discussions at the workshops were focussed on (i) designing an evaluation approach that would deliver on HMCTS's commitment to the Public Accounts Committee,⁵⁵ and (ii) identifying the data that should be recorded through reform to facilitate continuous improvement of services in the interests of access to justice. The output of these workshops was a consultation paper *Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice* which was published and promoted via The Legal Education Foundation website.⁵⁶ A period of public consultation then followed—this concluded on 22 March 2019 and an updated version of the paper incorporating feedback is published at The Legal Education Foundation website.
- 4.9 The reception of the paper has been overwhelmingly positive—the consultation paper received coverage in the legal press,⁵⁷ has been featured in seminars held at Yale Law School and a research paper based on the report was awarded gold at the OECD roundtable, and featured at the OECD roundtable on Equal Access to Justice, held in March 2019. The approach to evaluation has been endorsed by the Administrative Justice Council and the Senior President of Tribunals, Sir Ernest Ryder. The findings and recommendations detailed below can therefore be considered to have the broad support of external stakeholders.

55 'To measure the impact of the reform programme on both access to the justice system and the fairness of the justice system, particularly in relation to those who are vulnerable.' Ministry of Justice (2019). *Evaluating our Reforms: Response to PAC recommendation 4*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775588/Public_Accounts_Committee_Recommendation_4_31_Jan_2019.pdf

56 Available at: <https://research.thelegaleducationfoundation.org/research-learning/funded-research/developing-the-detail-evaluating-the-impact-of-court-reform-in-england-and-wales-on-access-to-justice>

57 Dan Bindman (2019). 'Court reforms "must measure impact on vulnerable litigants."' 12 March 2019. Available at: <https://www.legalfutures.co.uk/latest-news/court-reforms-must-measure-impact-on-vulnerable-litigants>

58 Available at: <https://research.thelegaleducationfoundation.org/research-learning/funded-research/developing-the-detail-evaluating-the-impact-of-court-reform-in-england-and-wales-on-access-to-justice>

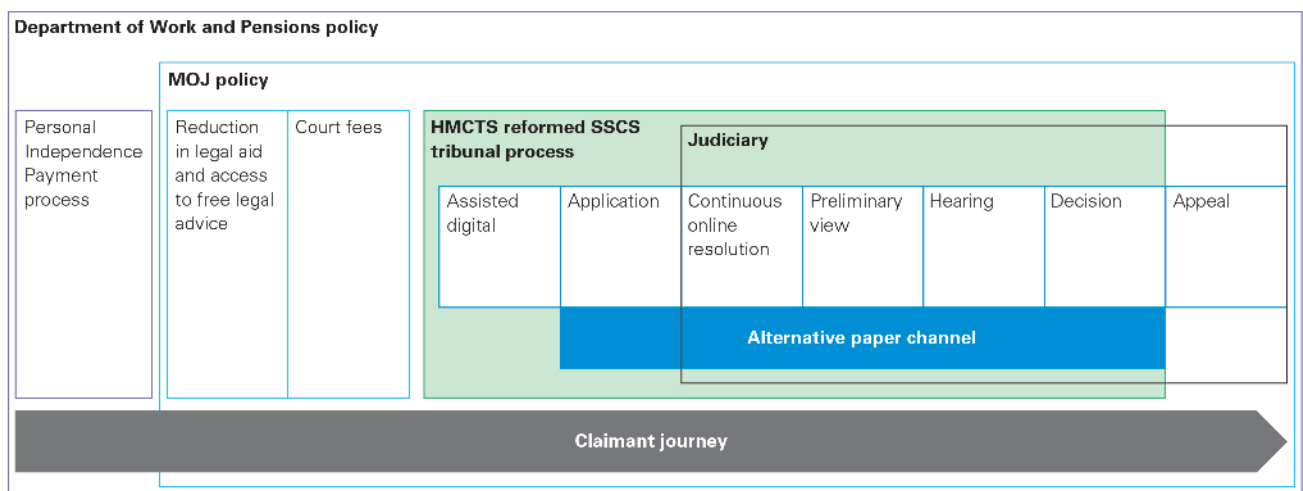
59 *Children's Rights Alliance for England v Secretary of State for Justice* [2013] EWCA Civ 34; [2013] HRLR. 17.

E Summary of stakeholder proposals for evaluation

- 4.10 The proposals for delivering HMCTS commitments to evaluation are developed from the definitions of 'access to justice' and 'vulnerability' that are set out under existing substantive and procedural law. The standards proposed are already established in law in England and Wales and have been used in determining key cases. A detailed exposition of the legal basis for both the definition of vulnerability and the irreducible minimum standard of access to justice proposed by stakeholders is provided in *Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice* which should be read in conjunction with the following summary.⁵⁸
- E1 The scope of the proposals
- 4.11 The reform programme is being conducted in the context of a justice landscape that has seen significant changes in recent years. It is indisputable that there are numerous factors beyond the scope of reform that impact on the overall accessibility of the justice system—factors that range from the introduction of court fees, reductions in the availability of public funding for legal advice and assistance and the low levels of public understanding of law and legal rights. However, the current reform programme is fundamentally altering the processes through which justice is delivered, and as such, it is incumbent on reform leaders to demonstrate (or create the data that enables others to demonstrate) that new systems do not impede access to justice by creating barriers to bringing a claim or design processes that place users at an unacceptable risk of being 'processed unfairly'.⁵⁹

- 4.12 Disaggregating the impact of the reform programme (or the individual projects that comprise it) from other external factors is a complex but necessary task. Figure 4-1 below illustrates this complexity, through attempting to describe the ecosystem of factors that impact on access to justice beyond the scope of the reform programme, using the Social Security Claims Tribunal Appeals project as an example.⁶⁰ The recommendations in this paper focus on the part of the ‘justice ecosystem’ that is within the remit of the HMCTS reform programme—i.e. the design and operation of courts and tribunals (shown in orange in Figure 4-1 below).

Figure 4-1 Illustrative example of the access to justice ecosystem around reform



- 4.13 The Public Accounts Committee recommendation, agreed to by HMCTS, underlined the importance of considering the impact of reform on: ‘access to, and the fairness of, the justice system, particularly in relation to those who are vulnerable’. As stated above, on 5 February 2019, the Ministry of Justice published their response to the Public Accounts Committee which set out, at a high level, the issues to be considered in the scoping of the evaluation of the reform programme.⁶¹ This response identified the need to construct a definition of ‘vulnerability’ for the purposes of evaluation. Stakeholders proposed the adoption of a minimum viable definition of ‘vulnerability’ which is drawn from extant law, procedural rules and practice directions, augmented by research on the attributes of digitally-excluded populations. HMCTS’s commitment to monitor disproportionality and accepted good practice in meeting obligations under the Public Sector Equality Duty requires capturing data on the protected characteristics of users.⁶² In practical terms, the collection of 13 data points, summarised below at Figure 4-2 must be undertaken.

60 Complete logic models/official descriptions of projects, even those at the ‘public beta stage’ of testing, are currently unavailable. As such, the figures contained within this document are based on best available knowledge regarding the processes designed, and should be viewed as illustrative, rather than definitive.

61 See Ministry of Justice: January 2019, *Evaluating our reforms: Response to PAC Recommendation 4*. Available at: <https://www.gov.uk/government/news/moj-response-to-public-accounts-committee-transforming-courts-and-tribunals> (accessed 7 February 2019).

62 See guidance for public bodies provided by the Equality and Human Rights Commission available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty> and the work of the Race Disparity Unit.

E2 The four components of access to justice

- 4.14 Stakeholders identified an irreducible minimum standard of ‘access to justice’ under English law, which is capable of acting as an empirical standard for the purposes of evaluation. The components of this irreducible minimum standard are:
- access to the formal legal system
 - access to an effective hearing
 - access to a decision in accordance with substantive law
 - access to remedy.

Figure 4-2 Minimum data required to measure vulnerability

Individual attributes to be captured		Data in practice directions used to identify vulnerability?	Data related to digital exclusion?	Data needed to monitor duties under the Equality Act 2010?
1	Age	✓	✓	✓
2	Disability ⁶³	✓	✓	✓
3	Employment status/income	✓	✓	✗
4	English as a foreign language	✓	✗	✗
5	Gender reassignment	✗	✗	✓
6	Highest level of education (proxy for literacy)	✓	✓	✗
7	Postcode (Permanent address, to identify whether in a care home, homeless, in an area of low internet coverage etc.)	✓	✓	✗
8	Pregnancy and maternity	✗	✗	✓
9	Race	✗	✗	✓
10	Religion or belief	✗	✗	✓
11	Sex	✗	✗	✓
12	Sexual orientation	✗	✗	✓
13	Fear or distress connected with the case e.g. domestic violence/abuse, in detention, survivor of trafficking/trauma	✓	✗	✗

4.15 These components are interrelated, mutually supportive and non-divisible (for example, an observable increase in individuals accessing the formal legal system, of itself, is insufficient to justify assertions that access to justice has improved under reform). Stakeholders agreed that any evaluation of reform must examine the impact of the programme on each of these four components to arrive at a determination regarding the impact of the programme on access to justice. Assessments of the impact of reform on access to justice must be based on a holistic evaluation that explores the progression of a full range of cases and individuals through the system from claim to outcome. The following discussion summarises stakeholders’ views regarding the way in which measurement of this standard should be approached.

E3 Measuring Component 1: access to the formal legal system

4.16 In determining whether a system poses an inherent risk to access to justice, the case law establishes that the test to be applied is whether ‘looking at the full run of cases...that go through the system, the other forms of assistance relied on by the Lord Chancellor are adequate and available’ to ensure effective participation (*R (Howard League for Penal Reform and The Prisoners’ Advice Service) v Lord Chancellor* [2017] EWCA Civ 244 [51]) and ‘whether the safeguards relied on are sufficient to render the system fair and just’ (*R (Detention Action) v First Tier Tribunal (Immigration and Asylum Chamber)* [27]). Answering this question requires ‘a detailed examination of the support that is available in practice’ (*R (Howard League for Penal Reform and The Prisoners’ Advice Service) v Lord Chancellor* [2017] EWCA Civ 244 [52]).

63 This should include detailed information on the nature of the disability, as different conditions are likely to impact on vulnerability in different ways.

- 4.17 In the case of the reform programme, the practical support and safeguards put in place to ensure that access is not impeded are (i) the assisted digital programme, which is designed to help those who are 'digitally excluded' or lack digital skills to engage with new processes and (ii) the continued existence of a reformed paper channel that is simpler and easier to use. Stakeholders concluded that any evaluation of the impact of the reform programme on access to justice must therefore examine both the operation of assisted digital and the paper channel, and the experience of individuals who use them.
- 4.18 Recent case law (*R (Unison) v Lord Chancellor* [2017] UKSC 51[96]) has established the principle that changes to the justice system should be assessed according to their likely impact on behaviour in the real world.⁶⁴ The law reform and human rights charity Justice has highlighted the importance of monitoring the impact of the court reform programme on motivation and confidence to access the justice system.⁶⁵ In light of this, stakeholders asserted that evaluation of the impact of reform should include survey work using validated measures to explore the impact of reform on attitudes to the justice system. This would generate insights into the impact of the programme on the ability and willingness to initiate claims. Pleasence and Balmer have published standardised inventories designed to measure confidence in the civil justice system that could be deployed to assess changes over time.⁶⁶
- 4.19 Stakeholders noted that digitisation of processes has an *ex ante* ambiguous effect on the ability of individuals to initiate claims. Digitisation may make it easier for certain types of claimant to initiate claims, whilst deterring others. Reducing barriers to accessing legal processes may alter the types of cases that individuals pursue through the justice system. For example, in the context of Civil Money Claims, it is possible that digitising processes and moving them online reduces the effort expended by claimant companies, whilst increasing the effort burdens placed on vulnerable defendants.
- 4.20 Stakeholders welcomed the proposals from HMCTS to incorporate measures of 'cost' and 'effort' into the performance framework for the reformed system. It was concluded that any evaluation of the reform programme should explore the impact of reform on the effort involved in initiating and resolving a claim on different types of service user, with particular emphasis on monitoring the impact on those who are vulnerable.

E4 Measuring Component 2: access to a fair and effective hearing

- 4.21 Stakeholders identified the concept of 'a fair and effective hearing' as a crucial component of any definition of access to justice, noting that the existing case law on access to justice gives primacy to the notion of an individual being able to put his or her case effectively. Discussion at the workshops identified four issues implicated in evaluating access to a fair and effective hearing: (i) the need for evaluation to adopt established subjective measures of fairness and efficacy; (ii) the importance of incorporating objective measures of fairness and efficacy into any evaluation; (iii) the imperative to monitor the impact and accuracy of triage procedures within new services and (iv) the need to understand the impact of change of the 'mode of hearing' on judicial decision making, in order to ensure that physical and online hearings deliver equality of fairness and efficacy.

E4.1 *Subjective measures of fairness and efficacy*

- 4.22 In relation to measuring subjective fairness and efficacy, stakeholders expressed concern that to date, HMCTS has relied on 'user satisfaction' surveys as a proxy for measuring the efficacy of new services rather than established measures of procedural fairness. Until now, the questions used to assess user satisfaction have not been made publicly available, making it difficult to assess the extent to which the user satisfaction surveys deployed map to existing validated approaches for measuring procedural justice.

64 Alan Bogg (2018). 'The Common Law Constitution at Work: *R (on the application of UNISON) v Lord Chancellor*.' *Modern Law Review* 81(3) 509-538, p513.

65 Justice (2018). 'Preventing Digital Exclusion from Online Justice', p42. Available at: <https://justice.org.uk/our-work/assisted-digital/>

66 Pascoe Pleasence & Nigel Balmer (2019). 'Legal Confidence and Attitudes to Law: Developing Standardised Measures of Legal Capability'. Available at: <https://research.thelegaleducationfoundation.org/research-learning/funded-research/legal-confidence-and-attitudes-to-law-developing-standardised-measures>

E4.2 *Objective measures of fairness and efficacy*

- 4.23 Further to this, stakeholders asserted that data from validated subjective measures of procedural justice should be combined with data from objective indicators of procedural justice as part of any evaluation of the impact of reform on the fairness and efficacy of hearings. Stakeholders emphasised the importance of including objective measures of procedural justice in any evaluation of new processes such as Continuous Online Resolution or virtual hearings, particularly where they are likely to involve vulnerable individuals. Stakeholders noted that those who have low levels of legal knowledge, are disadvantaged or are involved in disputes of subjective importance are most at risk of exploitation if the sole focus of evaluation is based on subjective indicators of procedural justice. Accordingly, it was considered imperative that HMCTS incorporate opportunities for evaluators to read or watch online dispute resolution (ODR) interactions and assess their performance against established measures of procedural fairness, in order to monitor the efficacy and fairness of new services.
- 4.24 The ambiguous impact of the move to online processes on user behaviour underscores the need to incorporate measures of objective fairness into any evaluation of reform. Stakeholders with expertise in the design and evaluation of ODR systems emphasised that small changes in the design architecture of systems (e.g. altering the position of different boxes or questions) could radically impact on the behaviour of individuals in unintended ways. Given the lack of extant evidence exploring the impact of design architecture on user behaviour in the context of justice system processes, stakeholders asserted that any evaluation of the impact of reform must entail comprehensive and ongoing evaluation of the impact of design architecture on user behaviour. For example, the positioning of links to external sources of guidance and support within new systems could serve to encourage or deter users from seeking this advice.
- 4.25 In addition, stakeholders raised concerns that changes in mode might impact on user engagement with legal processes and safeguards, including legal advice and representation. Whilst it is recognised that legal advice and representation is not a guarantee of fairness, stakeholders recommended that any evaluation of reform projects should explore the impact of new processes on litigant engagement with processes and further, that data be captured on rates of representation between online and physical processes. Research published by the Ministry of Justice in 2010 into a pilot 'Virtual Court' process that allowed defendants charged with an offence to appear in the Magistrates Court for their first hearing via a secure video link identified that 'the rate of defence representation was lower in Virtual Courts compared to the expectations of the pilot in the original model and the comparator area.'⁶⁷ The Lammy Review (2017) highlighted the impact of engagement with defence representation on outcomes for individuals.⁶⁸

E4.3 *Understanding triage*

- 4.26 Stakeholders stated that the common law in England and Wales recognises that an oral hearing may be required 'when facts which appear to be important are in dispute, or where a significant explanation or mitigation is advanced which needs to be heard orally if it is to be accepted' (*R (Howard League for Penal Reform and The Prisoner's Advice Service) v Lord Chancellor* [2017] EWCA Civ 244 (41)). Publications relating to reform have emphasised that online processes, such as the new Online Civil Money Claims service and Continuous Online Resolution for Personal Independence Payment Appeals are primarily intended to target 'relatively simple' disputes.

67 Matthew Terry et al. (2010). 'Virtual Court pilot: Outcome Evaluation.' Ministry of Justice Research Series 21/10, December 2010, pvi.

68 David Lammy (2017). The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System. London: Lammy Review.

- 4.27 Given these objectives, stakeholders were concerned that HMCTS reflect on lessons from the experience of the Detained Fast Track (DFT) process. The DFT was 'designed to accelerate timescales for claims that were considered suitable for a quick decision' however in practice triage procedures were inadequate and vulnerable people with complex cases were regularly detained.⁶⁹ This had serious consequences for individuals—wrongly entering the process had a significant impact on a person's chances of successfully claiming asylum—one study stated that in many years, the Home Office refused 99% of asylum claims that were placed on the Detained Fast Track.⁷⁰
- 4.28 Given this context, stakeholders called for transparency around the judicial led triage process adopted for identifying 'relatively simple' cases and publication of the evidence base for deriving the triage process. Whilst triage processes are being designed and tested, stakeholders called for safeguards to be put in place to protect those who are vulnerable, for example, in the case of Continuous Online Resolution for Personal Independence Payment Appeals, stakeholders argued that decisions arising from the Continuous Online Resolution process should only be binding if they are in favour of the appellant. Stakeholders also praised examples from the USA, where Online Dispute Resolution platforms such as Matterhorn have built-in safeguards to protect vulnerable individuals in money claims, for example, making it impossible for litigants to mediate if they have a defence to a claim.

E4.4 *Understanding the impact of mode of hearing on decision making*

- 4.29 An effective hearing requires both that individuals are able to present the information necessary to enable a decision maker to make a determination based on applying the law to the facts of the case and that the decision maker is able to comprehend this information. Historically, it has been held that an oral hearing represents the most effective forum for facilitating this. It was therefore recommended that any evaluation of new processes intended to replace the function of physical hearings, such as Continuous Online Resolution or virtual hearings, should look at the impact of changes in mode on judicial attitudes, behaviour and decision making in order to ensure that changing the mode of hearing does not impact on the way in which evidence is heard and understood.

E5 Measuring Component 3: access to a determination

- 4.30 Stakeholders affirmed that the constitutional function of courts is to apply the substantive law to the facts of the case and in doing so enforce and develop the legal framework. Stakeholders noted that the business case for the reform programme is expected to be achieved through the creation of 'new online systems for mediation and resolution so that citizens can resolve more disputes outside the courtroom.'⁷¹ This emphasis on Alternative Dispute Resolution and settlement is not a new phenomenon. However, stakeholders expressed concerns that the reform programme as currently constituted represented a wholesale endorsement of the proposition that the function of the justice system in certain areas is to promote resolution or settlement rather than vindicate rights. Stakeholders expressed concerns regarding the impact that this may have on the development of the substantive law and recommended that any evaluation of the impact of reform must capture the impact of reform on the types of cases that are being decided before the courts. Stakeholders further emphasised the importance of collecting data on the characteristics of individuals whose cases are determined by the courts, in order to understand whether the impact of the reform programme is to replicate existing trends or create new ones.

69 IVAR (2017). 'Detained Fast Track Litigation Case Study: Detention Action Using the law for social change' p2. Available at: <https://www.ivar.org.uk/publication/detained-fast-track-litigation-case-study-detention-action/>

70 Detention Action (2011). 'Fast Track to Despair: The Unnecessary Detention of Asylum-seekers' p12. Available at: <https://detentionaction.org.uk/2011/10/02/fast-track-to-despair-report-published/>

71 National Audit Office (2018). HM Courts and Tribunals Service: Early progress in transforming courts and tribunals [online] 9 May 2018 p4. Available at: <https://www.nao.org.uk/report/early-progress-in-transforming-courts-and-tribunals/>

E6 Measuring Component 4: access to remedy

4.31 Stakeholders emphasised that assessments of the impact of changes to the justice system on access to justice must take account of 'behaviour in the real world.'⁷² In *R (Unison) v Lord Chancellor* [2017] UKSC 51 [96] it was established that access to justice can be violated if changes to the system render it 'futile or irrational to bring a claim'. Data on the enforcement of judgments, and the extent to which agreements reached are upheld, can form part of an individual calculation as to the rationality of initiating a claim. In light of this, stakeholders suggested that data should be captured on enforcement rates, whether enforcement orders are defended, and the time from decision to enforcement as part of any evaluation of the impact of the reform programme on access to justice.

F Recommendations for data collection: implementing the proposals and delivering on commitments

4.32 The adoption of stakeholder proposals for evaluation and public commitments made by HMCTS in relation to evaluation (summarised above in section C) necessitate the creation of mechanisms to follow individuals and cases as they progress through reformed systems. In light of this, it is recommended that HMCTS consider the benefits and risks of introducing unique identifiers for individual users of the justice system. Unique identifiers at the user, rather than case level would facilitate the development of a detailed understanding of the way in which court users progress through the system, where and when they exit the system, and the outcomes they secure when they do so. This would support HMCTS to deliver a better service to users of reformed systems and meet their public commitments as outlined in Chapter 3 above. If appropriately anonymised, this data could also be of use to researchers and wider stakeholders (including policy makers). Experts in privacy law and data ethics should be consulted to advise on the benefits and drawbacks of this approach and ensure that this data is captured, stored and utilised in a manner that respects established legal and ethical requirements. The public acceptability of the creation of individual identifiers should be tested prior to their introduction.

4.33 In advance of a decision being made regarding the introduction of unique identifiers, and in order to ensure that opportunities to monitor the impact of reform both on access to justice for those who are vulnerable and on the fairness of the justice system are not missed, HMCTS should commit to embedding the collection of the thirteen data-points relating to vulnerability (outlined above in Figure 4-2) into each service. The collection of this data should take place at the earliest possible opportunity in the user journey, whether this is initiated through digital or paper processes. Decisions regarding the collection of this data should not be devolved to individual service projects but standardised across the programme drawing on best practice from other government departments. This is necessary to monitor patterns in attrition at different stages and the relationship between vulnerability and different types of outcome (e.g. settlement, withdrawal from the system). It is recommended that HMCTS commit to embedding the collection of this data into reformed services before they reach public beta stage. Those services already in public beta stage should be prioritised for immediate work to embed the collection of this data.

72 Alan Bogg (2018). 'The Common Law Constitution at Work: *R (on the application of UNISON) v Lord Chancellor*.' *Modern Law Review* 81(3) 509-538, p513.

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- F1 Data to measure Component 1: access to the formal legal system
- 4.34 In order to measure the impact of reform on access to the formal legal system, it is recommended that HMCTS should commit to the ongoing collection of data on:
- 4.34.1 The characteristics of users initiating and defending cases via different channels to identify and monitor disproportionalities, e.g. individual vs bulk claimant, geo-demographic characteristics of claimants and defendants, represented vs unrepresented.
 - 4.34.2 The types of cases initiated via different channels to identify disproportionalities and refine services. This data should be presented at a level of specificity that would support useful analysis, e.g. for a money claim, the amount, type of claim and amount claimed.
- 4.35 HCMTS should publish and consult on the metrics/data proxies used to assess the cost and effort associated with initiating and defending a claim via different channels. Once these metrics are agreed, the data collected should be analysed and reported on according to both case type and user characteristics.

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- F2 Data to measure Component 2: access to a fair and effective hearing
- 4.36 In order to measure the impact of reform on access to a fair and effective hearing, it is recommended that HMCTS should commit to:
- 4.36.1 Capturing data on subjective perceptions of procedural justice using standardised tools, replacing the user satisfaction survey currently used.
 - 4.36.2 Working with experts in ODR to develop objective indicators of procedural fairness for new online processes, and using this data to augment the data captures on subjective perceptions of procedural fairness.
 - 4.36.3 Sharing data collected on the impact of design architecture and behavioural 'nudges' incorporated into forms and reformed processes with researchers to validate and check assumptions and build trust in new processes.
 - 4.36.4 Working with expert stakeholders to identify proxies for user engagement with reformed processes, e.g. management of information such as volume and quality of evidence provided, uptake of procedural safeguards etc.
 - 4.36.5 Collecting data on patterns of engagement by users with legal advice and representation across paper and reformed processes to test the assumptions underpinning pilots.
 - 4.36.6 Collecting data on the characteristics of users and cases 'triaged' to different processes, to assist the judiciary in understanding whether the Practice Directions they have made are being applied correctly and to assist in the training of Authorised Officers who are intended to assist with these processes.⁷³
 - 4.36.7 Collecting data on the outcomes of cases e.g. abandoned/withdrawn/settled/determined and the amounts awarded/settled for across the different processes, e.g. Continuous Online Resolution, Online Civil Money Claims.

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- F3 Data to measure Component 3: access to a determination
- 4.37 HMCTS should commit to collecting data on the characteristics of users and cases that reach judicial determination and analyse this data against the types of users that initiate cases, to explore patterns in the characteristics of users and cases that reach the judicial determination stage.

73 Senior President of Tribunals (2018). *The Modernisation of Tribunals 2018: A Report by the Senior President of Tribunals*. p30 and p36. Available at: https://www.judiciary.uk/wp-content/uploads/2019/01/Supplementary-SPT-report-Dec-2018_final.pdf

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- F4 Data to measure Component 4: access to remedy
- 4.38 HMCTS should capture and publish data on applications for enforcement, time from decision to enforcement and whether enforcement proceedings are defended across both paper and reformed services as part of any evaluation of the impact of the reform programme on access to remedy. Examples of data to be captured (in the context of Civil Money Claims) could include: whether enforcement is applied for; type of enforcement applied for (warrant of execution, attachment of earnings order, third party debt order, charging order, bankruptcy petition); whether an application for suspension of a warrant/variation of order is made and whether an application notice, certificate of cancellation or satisfaction is applied for by the defendant. It has been claimed that enforcement is easier following mediation—or less necessary because people comply more willingly with negotiated settlement agreements. As such, data comparing compliance with ODR settlement terms to compliance with determinations should be captured.

G Delivering HMCTS commitments beyond evaluation: identifying and articulating priority needs of key stakeholders

- 4.39 As described above in Chapter 3, senior officials within HMCTS and the MoJ have made successive public commitments to harnessing the opportunity presented by the reform programme to fundamentally review and improve the way in which justice system data is collected, used and shared, including a shift to the provision of real-time information on the operation of the court system.
- 4.40 Reform leaders and departmental ministers have stated that the open/shared data strategy developed for the reformed court service will support three broad aims: (i) facilitating the delivery of commitments around open justice; (ii) supporting the development and growth of the lawtech sector and (iii) supporting innovation in the design and delivery of legal support in the context of the publication of the Legal Support Strategy.
- 4.41 Given these stated aims, work was undertaken to engage key stakeholders from (i) academic and civil society organisations with a focus on open justice; (ii) representatives from the legal advice and legal support sector; and (iii) academics and representatives working in the lawtech sector to identify priority needs.
- 4.42 One barrier to identifying overlapping needs across stakeholder groups (and therefore areas of priority focus for HMCTS) has been the absence of a consistent framework to describe the data ecosystem generated by the courts and tribunals system, particularly in the jurisdictions of civil, administrative and family law. A framework is proposed below at Figure 4-3 which sets out four broad categories of data and provides illustrative examples of the types of data contained within each category.

Figure 4-3 Categories of justice system data

Categories of data	Illustration of the types of data referred to within these categories, using Civil Money Claims Online ⁷⁴ as an example
Court user data	<ul style="list-style-type: none"> • Geo-demographic and equalities characteristics of parties • Party type e.g. bulk user? • Represented vs unrepresented (full representation/unbundled/limited scope)? • Perceptions of fairness/user satisfaction/customer effort
Case level data	<ul style="list-style-type: none"> • Claimant/Defendant name and contact details • Detailed case type • Value of claim • Directions questionnaire • Procedural mechanisms initiated by parties e.g. defence, counterclaim, application for default judgment, appeal of judgment • Procedural mechanisms initiated by court e.g. referral to mediation, settlement review, or full hearing • Outcome by stage e.g. settled, withdrawn, judgment issued • Value of settlement/judgment • Costs order issued? • Enforcement applied for (warrant of execution, attachment of earnings order, third party debt order, charging order, bankruptcy petition) • Application for suspension of a warrant/variation of order made? • Application notice, certificate of cancellation or satisfaction applied for? • Administration order applied for?
Administrative/management information data	<ul style="list-style-type: none"> • Court listings • Judge allocated • Applications for help with fees? • Track allocated • Date and time stamped information for each ‘event’ from initial filing to outcome e.g. case management hearing held, referral to mediation • Order for a private hearing/anonymisation of parties applied for? • Outcome e.g. settled, withdrawn, judgment issued
Primary legal data	<ul style="list-style-type: none"> • Judgments

74 Reformed service as described in a presentation delivered by Programme Director – Courts Tribunals and Regional Tier, David Phillips (2019). ‘HMCTS Reform Programme: Online Civil Money Claims and Civil Enforcement.’ 11 March 2019. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785324/Civil_reform_event_11_March_2019.pdf

4.43 Figure 4-4 below summarises at a high level the data needs articulated by key stakeholders according to data category, with illustrative examples of the purposes for which this data is required. It also indicates where the collection of data within these categories is necessary to deliver the priorities and goals identified by internal stakeholders.

Figure 4-4 **Key stakeholder needs by data category**

External stakeholders	Civil society		
	Legal support and advice sector	Open justice NGOs, academics and media	Lawtech
Court user data	Yes at aggregate for designing services/ prioritising resources	Yes in aggregate form, to understand impact of reform and support principles of transparency and accountability	Yes requires careful deliberation and balancing of legal and ethical concerns
Case level data	Yes specifically free access to transcripts of hearings to support clients	Yes advocate for the creation of an online platform for public access to key court documents	Yes to inform the design of tools to augment relational expertise e.g. deliver AI-assisted prediction of case outcomes, identify effective arguments
Administrative/ Management information data		Yes advocate for free access to online court lists that give details of charge/claim, names of parties and reporting restrictions	Yes advocate for online court listings to facilitate opportunities to develop products for litigation funders
Primary legal data	Yes specific need for LiPs to have free access to case law in a format that enables them to identify and understand their legal rights and for NGOs and small firms who cannot afford subscriptions to private legal publishers to have free access for the purposes of legal research	Yes advocate for free online access to all judgments in audio or written form	Yes in structured machine-readable format to develop tools that facilitate the compilation of new information e.g. topic insight guides and support legal professionals with research and to develop tools to predict case outcomes
Internal stakeholders	Judiciary	HMCTS	Policy makers e.g. Ministry, Select Committees, National Audit Office
Court user data	Yes especially to assist in training case managers in triage	Yes to design reformed processes and facilitate continuous improvement	Yes to evaluate reformed processes and develop policy
Case level data	Yes	Yes to support judge-led triage of cases to different processes	Yes at aggregate level for reporting
Administrative/ Management information data	Yes	Yes to provide real-time insight on operation of the system	Yes for the purposes of evaluating reform and developing policy
Primary legal data	Yes the MoJ pays to provide access to judgments and insight provided by private legal publishers		Yes to develop policy and deliver objectives of the Legal Support Strategy and support policy aims in relation to lawtech

- 4.44 As illustrated by Figure 4-4 above, areas of priority need articulated by stakeholders that HMCTS data strategy should address as a matter of urgency are (i) access to primary legal data, (ii) access to court listings and (iii) access to case level data.
- 4.45 Section H below presents the overarching findings from consultation with key stakeholders and key requests across the three areas of priority need identified.

H Findings and priority need

4.46 One overarching need identified through the process of consultation with key stakeholders related to the lack of public visibility of the data held by HMCTS at present, particularly in relation to the civil, administrative and family courts. Stakeholders noted that detailed datasets are available for criminal justice cases and that historically, civil and administrative justice data has been lamentably weak in comparison. Stakeholders noted with approval the work completed by the Government Digital Service in partnership with HMCTS which mapped datasets and dataflows across the criminal justice system,⁷⁵ and were keen that a similar exercise be conducted for the civil, family and administrative justice systems.

H1 Priority need 1: reforming the system for accessing primary legal data

4.47 There was a high degree of consensus across stakeholder groups regarding the urgent need to understand and reform the system for providing public access to primary legal data i.e. judgments. Stakeholders argued that proper arrangements for providing public access to judgments were essential to the delivery of various areas of government policy, including encouraging uptake of reformed services; on the basis that if individuals are unable to access authoritative information regarding their rights, they are less likely to identify claims or to be comfortable partaking in processes such as mediation, which will be incorporated into the new Civil Money Claims Online process.

4.48 In a common law system, providing access to judgments is crucial in order for individuals to understand their legal position and initiate or defend legal claims. It is commonly argued, and uncontroversial to state that 'the rule of law requires that the public have access to the law—to all the binding norms and authoritative interpretations of them'.⁷⁶ The provision of access to judgments is also critical to the delivery of principles of open justice: stakeholders argued that in the context of a reformed system where physical hearings were to be reserved only for those cases that could not otherwise be resolved⁷⁷ the vital importance of providing access to judgments and capitalising on opportunities for reformed systems to deliver what Professor Richard Susskind has described as enhanced 'informational openness' is underscored.

4.49 The current system for disseminating judgments is opaque and complex—stakeholders reported that 'the bulk of the task of publishing judgments has been delegated to non-public institutions, some of which have a profit-driven motive'.⁷⁸ A report published by the EU Commission in 2018 revealed that the UK provided no data in relation to the availability of judgments online—placing the UK bottom of a table ranking EU countries in terms of general public access to judgments online.⁷⁹ Some decisions and sentencing remarks are made available on gov.uk and the websites of the Courts and Tribunals Judiciary and the Supreme Court. The most extensive collection of free-to-access judgments can be found on the website of the British and Irish Legal Information Institute (BAILII), a non-profit organisation with two full-time staff. Whilst judgments from gov.uk and Courts and Tribunals websites are indexed by Google, BAILII does not allow the indexing of its judgments.

75 See Mike Bracken (2015). 'Mapping new ideas for the digital justice system.' Available at: <https://gds.blog.gov.uk/2015/08/18/mapping-new-ideas-for-the-digital-justice-system-2/>

76 Mireille van Eechoud and Lucie Guilbault (2016). 'International copyright reform in support of open legal information.' https://www.ivir.nl/publicaties/download/OpendataCopyrightReform_ODRSdraft-WP_sep16.pdf

77 Sir Geoffrey Vos Chancellor of the High Court (2018). 'The Foundation for Science and Technology: Debate on how the adoption of new technology can be accelerated to improve the efficiency of the justice system.' 20 June 2018. p2. Available at: <https://www.judiciary.uk/wp-content/uploads/2018/06/speech-chc-the-foundation-for-science-and-technology.pdf>

78 Rahul Rose and Sue Hawley (2018). 'Veil of secrecy: Is the fight against corruption being undermined by a lack of open justice?' Available at: <https://docs.wixstatic.com/ugd/54261cb5a8c697963841afbb1af7cc10e27e4c.pdf>

79 European Commission (2018) 'The 2018 EU Justice Scoreboard' COM (2018) 364 final, Luxembourg: Publications Office of the European Union p28. Available at: https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf

- 4.50 The concerns raised by stakeholders in relation to the current arrangements for making judgments freely available related to coverage, comprehensibility of content and the format in which judgments are published. These concerns, and their implications are detailed below:

H1.1 *Coverage*

- 4.51 Concern was expressed by stakeholders regarding the coverage of databases that provide free access to judgments, particularly when this is compared to the coverage provided by commercial publishers. Stakeholders pointed to evidence that for the year 2017, BAILII offered 'less than a fifth of the Court of Appeal Criminal Division decisions available on fee-charging legal research resource Justis... and only 70 per cent of the Court of Appeal Civil Division decisions.'⁸⁰ Stakeholders asserted that the gap in coverage is attributed to missing extempore judgments. This indicates a potential issue regarding equality of arms in terms of access to legal information: BAILII reports that smaller legal firms and not-for-profit organisations supporting vulnerable clients rely on their content as they cannot afford access to commercial publishers. Limited reporting of cases also creates barriers for journalists with an interest in reporting on criminal cases: stakeholders reported that BAILII does not publish sentencing remarks.⁸¹

H1.2 *Comprehensibility of content to those without legal training*

- 4.52 Stakeholders from the legal support sector raised concerns that reformed systems are being developed on the presumption that individuals will navigate them without recourse to legal advice, and in the context of historic under-investment in the provision of free public legal information, including most crucially case law.⁸² Stakeholders highlighted low levels of public legal understanding⁸³ and lack of funding for public legal information, arguing that asking individuals to manage legal processes without being able to access relevant legal information in a readily-understandable format was likely to exacerbate rather than alleviate equality of arms issues. It was further argued that lack of public access to authoritative, comprehensible information regarding legal rights was also likely to undermine the aims of the reform programme regarding encouraging early settlement of disputes—individuals with little knowledge of their legal position are ill-equipped to accurately assess offers to settle.
- 4.53 International pioneers of public justice system online dispute resolution have repeatedly cited the importance of access to legal information: Shannon Salter, Chair of the Civil Resolution Tribunal ('CRT') in British Columbia stated that without the free online access to case law and authoritative legal commentary (of the type provided by the Canadian Legal Information Institute [CanLII]), 'it is unreasonable to expect people to be able to present their case in courts or tribunals without a lawyer'.⁸⁴ BAILII receives significantly lower levels of funding in absolute terms than its equivalents in Canada and Australia⁸⁵—this has implications for its ability to deliver added value for non-expert users.

80 Rahul Rose and Sue Hawley (2018). 'Veil of secrecy: Is the fight against corruption being undermined by a lack of open justice?' p15. Available at: https://docs.wixstatic.com/ugd/54261c_b5a8c697963841afbb1af7cc10e27e4c.pdf

81 Ibid, p15.

82 In comparison, Legislation.gov.uk was repeatedly cited by stakeholders as a world-leading example of digital legal content provision.

83 See for example Pleasence and Balmer (2015). 'How people understand and use the law.' PPSI 2015, p15, who reported that of respondents to the Civil and Social Justice Panel Survey 2010 and 2012 who had experienced a legal problem, 55% stated that they either did not understand their legal position or understood it only partly. Available at: https://www.thelegaeducationfoundation.org/wp-content/uploads/2015/12/HPUIL_report.pdf

84 Interview with Shannon Salter, Chair of the Civil Resolution Tribunal, British Columbia.

85 The annual incomes of BAILII, CanLII and AustLII in 2017 were, respectively, £130 k, £2.3 million, £632 k (GBP equivalents as on 12.3.19).

H1.3 *The format in which judgments are published*

4.54 Currently the sites providing free access to judgments publish them in non-machine-readable, unstructured format. Stakeholders from lawtech and for-profit publishers reported that the failure to publish judgments in a structured, machine-readable format that defines particular elements e.g. party names, decision etc creates barriers to entry for lawtech start-ups, particularly those operating in the not-for-profit sector, as the costs associated with preparing data are prohibitive. Stakeholders argued that judgments should be made available in an open, machine-readable format (such as XML) using a consistent and open XML standard. A common set of meta-data fields should be applied and XML schema used should be capable of distinguishing the applicative/procedural part of the judgment from the mere representation of the document. Stakeholders reported that the development of open data standards for publishing judgments would align England and Wales with developments in Europe and the USA, helping to ensure our ongoing competitiveness.

H2 Priority need 2: access to court listings

4.55 Stakeholders identified access to online court lists as a priority need, with civil society groups raising concerns about current arrangements which provide online listings in advance at a level of detail only to those who can afford to pay a fee. Stakeholders argued that current arrangements inhibit the ability of journalists to identify and report on cases. Representatives from lawtech reported that the lack of availability of court listings undermined the ability of litigation funders to identify cases to invest in, stymieing growth in this part of the sector.

H3 Priority need 3: access to case level data

4.56 Key stakeholders from the legal advice and support sector and civil society raised widening access to transcriptions of hearings as a priority need that the reform programme is well placed to address. The legal advice and support sector reported that the costs of purchasing transcripts for clients with limited means can be prohibitive, and that the inability to access these transcripts can undermine their ability to effectively seek advice. Stakeholders from civil society representing the interests of journalists pointed to the prohibitive cost of transcripts as a barrier to reporting on cases, which has implications for open justice.⁸⁶ Stakeholders also argued for the creation of an online platform to facilitate members of the public with a legitimate interest to access key court documents in criminal and civil cases, following the model of the online portal for accessing statement of case developed by The Rolls Building.

86 Rahul Rose and Sue Hawley (2018). 'Veil of secrecy: Is the fight against corruption being undermined by a lack of open justice?' p14, p16 and p20.

I Recommendations for addressing priority need identified by key stakeholders

- 4.57 HMCTS should conduct an urgent review of their internal position with regard to data and prioritise the production of an external-facing data catalogue. This catalogue should:
- 4.57.1 list what data is held
 - 4.57.2 explain who is responsible for each dataset
 - 4.57.3 detail where the data is stored and who stores it
 - 4.57.4 provide an indication of the relative quality of different datasets
 - 4.57.5 explain who is currently allowed to access the data and for what purposes
 - 4.57.6 describe existing arrangements for accessing data and detail any charges associated with access to particular types of data.
- 4.58 HMCTS should work with the judiciary and colleagues in the Ministry of Justice to commission an independent report which reviews the current arrangements for disseminating judgments to the public and maps the information flows from courts to publication.
- 4.59 On the basis of this report, HMCTS and the MoJ should engage with key stakeholders to develop a publication solution that delivers free and comprehensive access to judgments in a structured machine-readable format. The principles to prioritise in designing this solution should include:
- 4.59.1 maximizing the utility of content for those without legal skills and qualifications
 - 4.59.2 ensuring that relevant legal frameworks and reporting restrictions are respected
 - 4.59.3 publishing judgments in a format that creates a level playing field for innovation e.g. in XML/machine readable format
 - 4.59.4 learning from and building on existing good practice in publishing case law, for example the approach and XML standard developed by the Publications Office of the European Union.
- 4.60 HMCTS should consider approaches to meeting the other areas of priority need identified by stakeholders through a transparent process as part of the development of the HMCTS open/shared data strategy. Tools such as the ODI Data Ethics Canvas could be deployed to devise an approach in partnership with internal and external stakeholders.

5 Recommend pragmatic short-term changes to improve how HMCTS supports those seeking to carry out research using HMCTS data

A Findings

- 5.1 A series of internal to HMCTS proposals to improve the Data Access Panel ('the DAP') process have recently been proposed: these are welcome and likely to address some of the issues identified in the short term. However, the DAP currently receives a low volume of requests (6 are recorded for the year 2018/19) and whilst a relatively low proportion are denied (13%)⁸⁷ historically more requests are withdrawn by applicants (40%) than approved (29%). If the rising interest in HMCTS data and reform translates to increased demand on the DAP, it is unlikely that the current structure or resource will be able to cope. In the short term however, DAP will be critical to delivering on HMCTS's commitments on data sharing for reformed services.
- 5.2 The issues consistently raised by researchers seeking to use HMCTS data are as follows:
- 5.2.1 Lack of available information regarding the data HMCTS holds and is able to provide.
 - 5.2.2 Reliance on identifying and developing a relationship with supportive individuals in HMCTS in order to facilitate access: researchers' experience with HMCTS staff once they had made contact was universally positive; whether this is a sustainable model in the medium to longer term in the context of a predicted rise in the number of requests for data is unclear.
 - 5.2.3 Lack of transparency regarding the requests previously approved; this makes it difficult for prospective applicants to understand whether their request is likely to be accepted.
 - 5.2.4 Delays in accessing data: extensive delays are not uncommon (even when the request originates from another government department.).

B Recommendations

- 5.3 The DAP model as currently devised is likely to be unable to cope with increased demands for data. Urgent attention must be given to designing a medium-term solution for data sharing that reduces the burden on HMCTS. However, in the short term it is recommended that:
- 5.3.1 The appropriate standard for approving or denying requests to the access data should be based on the robustness of the research design, rather than utility to the business. HMCTS should identify a team to act as a central sponsor where a business sponsor cannot be found: this team must be resourced with adequate additional funding to deliver this function, given that volumes of requests are expected to increase in line with the rollout of reforms.
 - 5.3.2 Functions and roles should be clearly articulated and resourced, particularly with regard to Quality Assurance, GDPR and Privacy Assurance.
 - 5.3.3 The production of an external-facing data catalogue to guide applications (as recommended at 4.57 above) should be prioritised as a matter of urgency. Data Engineering Fellowships should be established to deliver this work (see Chapter 7 below). Work to engage external funders where needed to deliver this should be prioritised.
 - 5.3.4 Minutes of future DAP meetings should be made publicly available; at present DAP is purely an email group supported by a small secretariat and leadership function in the Analysis and Performance team. Minutes should be recorded and information on accepted and rejected applications should be made publicly available, as per the UK Statistics Authority Code of Practice T6 on Data Governance.⁸⁸

87 Percentage figures for the years 2015/16-2018/19.

88 Available at: <https://www.statisticsauthority.gov.uk/code-of-practice/the-code/trustworthiness/t6-data-governance/#case-study-demonstrating-transparency-when-linking-and-publishing-data>

- 5.3.5 Third party requests to access HMCTS data via DAP, the purpose for which the data was requested, the type of data requested, the outcome of the request, the license end date and confirmation of destruction or re-use post license expiry should be published in the format currently adopted by the Department of Education.⁸⁹
- 5.3.6 Scenarios (including resource implications) should be urgently developed for how to handle increased demand in 2019 and meet HMCTS's public commitments in the near term.

89 Available at: <https://www.gov.uk/government/publications/dfe-external-data-shares>

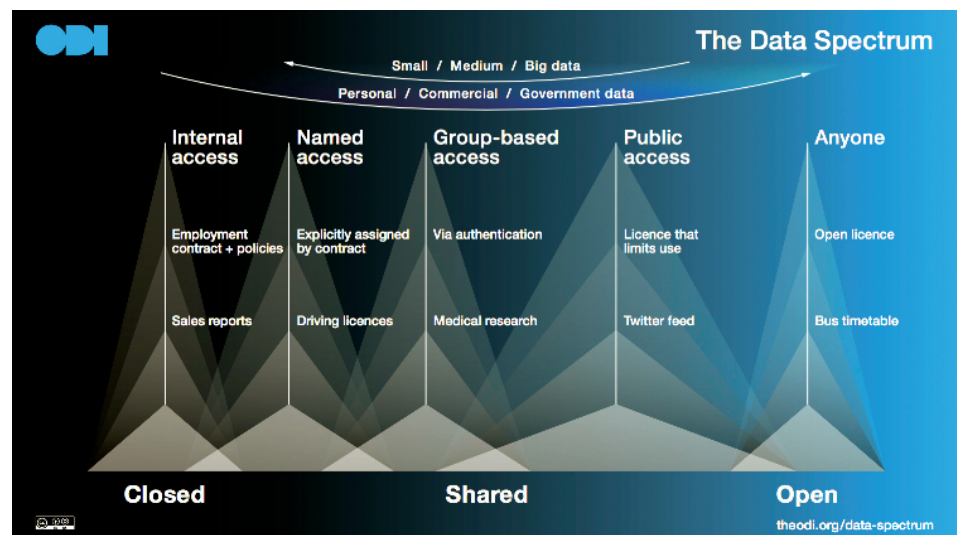
6 Understand how the HMCTS future data strategy can best support making data available to researchers and lawtech securely and appropriately

- 6.1 The reform programme constitutes an unprecedented opportunity for HMCTS to lead government in modelling best practice in designing and delivering a strategy for sharing justice system data. As described above in Chapter 3, reform leaders have articulated at a high level the ambitions and goals for the HMCTS open/shared data strategy; these have been understood to encompass:
- 6.1.1 An ambition to shift to using real-time data to improve the experience of users of the justice system.
 - 6.1.2 A commitment to collecting data to understand how systems are working, and facilitate continuous improvement in the interests of supporting users to access justice.
 - 6.1.3 Creating opportunities to share data with researchers and others to deliver public benefit and support innovation.
 - 6.1.4 Using data to deliver the goals of open justice.

A Findings

- 6.2 Across government and civil society there is increasing interest in the potential to harness administrative data to (a) improve services, (b) deliver research that furthers the public interest and (c) catalyse innovation. In 2015, The Open Data Institute published their data spectrum, to help organisations and their stakeholders develop a shared understanding and common language for talking about data and how it is licensed (see Figure 6-1 below).

Figure 6-1 The Open Data Institute data spectrum



90 Open Data Institute (2017). 'Policy design patterns that help you use data to create impact: Strategic government interventions using data' 27 January 2017. Available at: <https://theodi.org/article/policy-design-patterns-that-help-you-use-data-to-create-impact/>

91 Mark Smith (2018). 'How smart is your city? Putting a value on TfL's open data policy', Deloitte. Available at: <https://www2.deloitte.com/uk/en/pages/impact-report-2018/articles/how-smart-is-your-city.html#>

92 The Open Data Institute is an independent, non-profit, non-partisan company founded by Sir Tim Berners-Lee and Sir Nigel Shadbolt to advocate for the innovative use of open data to affect positive change across the globe.

93 Supra n90.

94 Paul Quinton (2011). *The impact of information about crime and policing on public perceptions: The results of a randomised controlled trial*. National Policing Improvement Agency. Available at: https://whatworks.college.police.uk/Research/Documents/Full_Report_-_Crime_and_Policing_Information.pdf

95 Amanda Smith et al. (2014). 'Police.uk and Data.police.uk: Developing Open Crime and Justice Data for the UK' *eJournal of eDemocracy and Open Data*, citing Paul Quinton (2011). *The impact of information about crime and policing on public perceptions: The results of a randomised controlled trial*. National Policing Improvement Agency. Available at: https://whatworks.college.police.uk/Research/Documents/Full_Report_-_Crime_and_Policing_Information.pdf p1.

96 Kit Collingwood (2015). 'Opening up data in the criminal justice system' MoJ Digital and Technology Blog. Available at: <https://mojdigital.blog.gov.uk/2015/12/01/opening-up-data-in-the-criminal-justice-system/>

97 See: <https://www.adruk.org/news-publications/news-blogs/the-stars-are-aligned-why-now-is-the-perfect-time-for-adr-uk-103/>

98 See University of Oxford press release: 'The Alan Turing Institute gets £48 million government funding boost.' 19 December 2018. Available at: <https://www.mpls.ox.ac.uk/news/the-alan-turing-institute-to-spearhead-new-cutting-edge-data-science-and-artificial-intelligence-research-after-ps48-million-government-funding-boost>

6.3 There is growing recognition across a range of sectors that investment in open/shared data by government departments and public authorities can deliver better services and generate economic benefit—to both the private and public sector.⁹⁰ For example, a report published by Deloitte in July 2017 estimated that the release of open data by Transport for London is generating annual economic benefits and savings of up to £130m a year.⁹¹ In a paper published in 2017, the Open Data Institute ('ODI')⁹² presented a typology of strategic interventions that have been deployed by government to improve consumer experience, facilitate efficient delivery, correct market failures, promote competition, effectively and efficiently manage data and deliver better policy, whilst promoting trust in the delivery of public services.⁹³ In the context of the ongoing reform programme, sharing data on the operation of new systems and processes will be critical to building trust in new systems and encouraging adoption of new digital processes—a key factor in the delivery of the business case. Whilst the reform programme may be considered a catalyst to improve processes for shared and open data in the justice space, there is a body of work already underway that HMCTS can draw on and learn from in the development of its open/shared data strategy.

A1 Existing initiatives in the justice space

6.4 In the UK justice space, various actors have promoted the role of open and shared datasets as critical to the delivery of a range of positive benefits, for both administrators and users of the justice system. In the criminal justice context, the National Policing Improvement Agency ('NPIA') began launching crime-mapping data in 2009 through maps.police.uk. After a Randomised Controlled Trial⁹⁴ revealed that the crime maps and policing information provided by maps.police.uk improved, rather than undermined individual's perceptions of both their neighbourhood and the local police,⁹⁵ police.uk was launched in 2011 to provide better access to local crime data. Successive iterations of the site expanded the types of data covered to include data on local Neighbourhood Policing Teams, crime prevention advice and local events. In May 2012, the site was further developed to include data on outcomes post reporting, using a 'fuzzy matching' technique to match individual crimes to their respective justice system outcome. In 2013, an open data portal and improved documentation on the Application Programming Interface ('API') was launched at data.police.uk, with the aim of making it easier for users to customise and download large datasets, and encourage re-use. The goals articulated for this work included: '1.) strengthened accountability and greater engagement by local communities, 2.) increased support for public service improvement by reducing bureaucracy and improving trust and confidence in the criminal justice system and 3.) support for Small and Medium Enterprises and other third parties to reuse open data and develop products and services based on this data'.

6.5 A recent report published by the National Audit Office stated that the Ministry of Justice has been working to produce a common platform to standardise data across the criminal justice system for many years. In 2015, the Ministry of Justice Digital and Technology team mapped services and dataflows across the criminal justice system to create a 'data exchange landscape map',⁹⁶ and began work to develop APIs with the aim of opening up data held in different systems. UK Research and Innovation ('UKRI') have made substantial investments in infrastructure to support the use of administrative data for research through the Administrative Data Research UK Programme which was launched in 2018.⁹⁷ In December 2018, UKRI announced a £39.3 million grant to The Alan Turing Institute to spearhead data science and artificial intelligence research in engineering, health, science and government. A proportion of this funding will be dedicated to transforming 'criminal justice, through developing the technical tools as well as the ethical foundations to prevent crime, identify and rehabilitate offenders and improve the operation of the criminal justice system'.⁹⁸

6.6 In Europe, the Publications Office of the European Union (the ‘Publications Office’), in their 2017 – 2025 strategic objectives⁹⁹ committed to the provision of open, structured legal data (judgments and legislation) based on common standards (structured metadata and content). In the document describing the benefits of their approach, the Publications Office stated that approaching their role in this way would result in (i) improved visibility of and trust in the EU justice system, (ii) more effective and timely communication between citizens and the justice system, (iii) increased ability to reach people where they search for content, providing improved discoverability of legal resources and materials and (iv) opportunities for structuring legal content in new ways for different audiences.

A2 Enabling legislation

6.7 Recent legislation has created an enabling environment for linking and sharing administrative data for the purposes of conducting research in the public interest.¹⁰⁰ The Data Protection Act 2018 enables personal data, including special category data to be processed for research that is in the public interest.¹⁰¹ The Digital Economy Act 2017 (the ‘DEA 2017’¹⁰²) facilitates the linking and sharing of datasets held by public authorities for research purposes. The DEA 2017 requires the UK Statistics Authority to publish a Code of Practice concerning the disclosure, processing, holding or use of personal information for research purposes. The Information Commissioners Office has been consulted by the government to ensure that the Codes of Practice developed under the DEA 2017 comply with the General Data Protection Regulation and the Data Protection Act 2018.

6.8 The Research Code of Practice and Accreditation Criteria,¹⁰³ sets out seven principles that must be adhered to by all parties who disclose, process or use data under the research power set out in the DEA 2017. Principle 4 provides further guidance on the definition of ‘research in the public interest’ stating that research in the public interest comprises research whose primary purpose is to:

- 6.8.1 provide an evidence base for public policy decision-making
- 6.8.2 provide an evidence base for public service delivery
- 6.8.3 provide an evidence base for decisions which are likely to significantly benefit the economy, society or quality of life of people in the UK, UK nationals or people born in the UK now living abroad
- 6.8.4 replicate, validate, challenge or review existing research and proposed research publications, including official statistics
- 6.8.5 significantly extend understanding of social or economic trends or events by improving knowledge or challenging widely accepted analyses, and/or
- 6.8.6 improve the quality, coverage or presentation of existing research, including official or National Statistics.¹⁰⁴

6.9 Further to this, under Principle 6, the UK Statistics Authority sets out accreditation criteria for data holders, data processors and research conducted under the research power conferred by the DEA 2017. Models for sharing data with researchers are available that comply with these criteria.

99 Publications Office of the European Union (2017). ‘Strategic objectives 2017-2025: Delivering services to European Union institutions, citizens and businesses.’ Available at: <https://publications.europa.eu/en/publication-detail/-/publication/d192d7e9-809a-11e7-b5c6-01aa75ed71a1/language-en>

100 Digital Economy Act 2017 Part 5, Chapter 5, available at: <https://www.legislation.gov.uk/ukpga/2017/30/part/5/chapter/5>

101 Data Protection Act 2018, Schedule 1, Paragraph 4, available at: <http://www.legislation.gov.uk/ukpga/2018/12/schedule/1>

102 Digital Economy Act 2017 Part 5, Chapter 5, available at: <https://www.legislation.gov.uk/ukpga/2017/30/part/5/chapter/5>

103 UK Statistics Authority (2018). *Guidance: Research Code of Practice and Accreditation Criteria*. Available at: <https://www.gov.uk/government/publications/digital-economy-act-2017-part-5-codes-of-practice/research-code-of-practice-and-accreditation-criteria>

104 Ibid.

A3 Existing models for making data available for research

6.10 There are a number of existing models across government for making data available to researchers – for example, the datalab established by Her Majesty’s Revenue and Customs (‘HMRC’) which provides researchers and academics with de-identified information for the purposes of producing ‘high quality analysis that benefits both HMRC and the wider research community.’¹⁰⁵ Whilst this initiative has been welcomed, an article reviewing the HMRC Datalab model published in 2019 raised concerns that the lack of remote access to the Datalab’s facilities means that ‘the cost of accessing the Datalab is unequal across researchers, depending on their distance from London. The restrictions on the location and opening hours of the Datalab contribute to slowing down the completion of research projects because the schedule overlaps with other activities performed by most researchers, such as teaching and academic seminars.’¹⁰⁶

6.11 In 2018 the Ministry of Justice (MoJ) created the Children in Family Justice Data Share (‘CFJDS’) using data from the family courts, the National Pupil Database, the Children and Family Court Advisory and Support Service (‘Cafcass’) and children’s social care. As part of a two month pilot undertaken in December 2018, researchers were allowed to access the CFJDS via a secure Micro DataLab, consisting of a laptop with no internet access based in the Ministry of Justice. In a report reflecting on the experience of accessing the CFJDS¹⁰⁷ the researchers welcomed the linkage of the data and the opportunity to utilise it for research, and recommended a range of options to both scale up access to the CFJDS by external researchers, and improve the analytical capability within the data analysis environment provided. Delivering these recommendations would have cost implications for the department. Further to this, work conducted by the Nuffield Foundation in preparing for the launch of their Family Justice Observatory emphasised the importance of mechanisms for shared data being able to facilitate remote access that will ‘enable the research and analytic community to safely and expediently access and use national core family justice administrative data assets, from a range of sites’.¹⁰⁸ This consideration was a key factor in the Foundation’s decision to invest in the development of a data platform hosted by the SAIL Databank at Swansea University.¹⁰⁹

6.12 The Secure Anonymous Information Linkage (‘SAIL’) Databank, based at Swansea University, provides researchers with access to linked administrative data at the individual level including population, health and social care data. SAIL has been cited internationally as a model of best practice in a range of areas, including evaluating privacy concerns when enabling data access, ensuring data use is appropriate, information governance and respect for privacy as well as the separation principle (which means that only the data provider sees the identifiable dataset) and public engagement.¹¹⁰ SAIL has developed a remote access technology and analysis platform which enables data to be accessed by approved researchers for approved research projects securely from anywhere in the world.¹¹¹ SAIL has recently acquired data from Cafcass which will be used to explore issues relating to the family justice system, as part of the Family Justice Observatory funded by the Nuffield Foundation.

A4 Stakeholder engagement and public trust

6.13 Successive publications have highlighted the vital importance of engaging stakeholders, including the public, in developing principles for open/shared data. The Open Data Institute, the Royal Society and the Wellcome Trust have developed approaches to meaningful stakeholder and public engagement.

105 Her Majesty’s Revenue and Customs (2019). ‘Disclosure of Information by HM Revenue and Customs: Policy and Legal Framework’.

106 Miguel Almunia, Jarkko Harju, Kaisa Kotakorpi et al. (2019). ‘Expanding access to administrative data: the case of tax authorities in Finland and the UK.’ *Int Tax Public Finance* (2019) 26, 661-676.

107 Matthew A. Jay et al (2019). ‘Using administrative data to quantify overlaps between public and private children law in England: Report for the Ministry of Justice on the Children in Family Justice Data Share pilot’ UCL Legal Epidemiology Group. Available at: https://www.ucl.ac.uk/child-health/sites/child-health/files/moj_report_-_final.pdf

108 Karen Broadhurst et al (2018). ‘The Nuffield Family Justice Observatory for England and Wales: Making it Happen’, p9.

109 See: <https://www.nuffieldfjo.org.uk/data-partnership>

110 Council of Canadian Academies, *Accessing Health and Health-Related Data in Canada* (2015). Available at: <https://cca-reports.ca/reports/accessing-health-and-health-related-data-in-canada/>

111 Kerina H. Jones et al (2014). ‘A case study of the Secure Anonymous Information Linkage (SAIL) Gateway: A privacy-protecting remote access system for health-related research and evaluation’ *Journal of Biomedical Informatics* 50 (2014) 196-204.

B Recommendations

- 6.14 HMCTS should publish its vision with regard to shared/open data and develop its overarching strategy in line with existing legal and ethical principles through a transparent and accountable process.
- 6.15 In terms of developing wider open/shared data principles: consolidating, publishing and consulting on the aims of the future open/shared data strategy with key stakeholders at the earliest possible opportunity is recommended. HMCTS should publish details of their approach across the ODI data spectrum with indicative timeframes for engaging stakeholders.
- 6.16 HMCTS should dedicate resource to reviewing national and international best practice, existing legal frameworks, engaging a wide range of stakeholders and publics and testing the acceptability of different models with stakeholders and the public.
- 6.17 Once draft principles are agreed, the datasets identified as a priority need by stakeholders¹¹² should be catalogued and used as a case study to evaluate the utility of the approach designed, starting with access to case level data.¹¹³
- 6.18 Existing models for sharing data with accredited researchers are available and should be utilised in the medium term to facilitate the delivery of HMCTS's public commitments to make data available for evaluation and research. In selecting a solution, HMCTS should prioritise solutions that have established protocols for accredited researchers, facilitate the linking of court data with other sources of administrative data and that are able to provide an infrastructure that facilitates secure researcher access from a range of sites. See for example, the SAIL Databank, and the forthcoming Administrative Data Research UK initiative hosted by ONS, which provides safe accredited access for approved researchers to administrative data.¹¹⁴

112 See Chapter 4, section H above.

113 As per the recommendation made by the Supreme Court in *Cape Intermediate Holdings Ltd (Appellant/Cross Respondent) v Dring (for and on behalf of Asbestos Victims Support Groups Forum UK) (Respondent/Cross Appellant)* [2019] UKSC 38. Per para 51.

114 See: <https://esrc.ukri.org/research/our-research/administrative-data-research-partnership/>

7 Establish a range of externally-funded data engineering fellowships to improve the preparation of new and existing datasets for internal and external use

- 7.1 As stated above at 5.3.3, the resourcing of roles to produce an external-facing data catalogue and embed the collection of data should be considered an urgent priority.
- 7.2 Data Engineering Fellowships should be funded for between 6 – 12 months. Consultation with internal and external stakeholders suggested that the key responsibilities, skills and person specification should be modeled on the recently advertised role of Ministry of Justice Lead Data Engineer (Band A).¹¹⁵ Key responsibilities, data engineering skills and the person specification are reproduced below at Appendix B.

¹¹⁵ See: <https://justicejobs.tal.net/vx/mobile-0/appcentre-1/brand-2/candidate/so/pm/1/pl/3/opp/23124-23124-Band-Ab-Lead-Data-Engineers-Ministry-of-Justice-Analytical-Services-Directorate/en-GB>

Appendix A: list of consultees

Name	Organisation
Prof Abi Adams	New College, University of Oxford
Mr Xavier Beauchamp-Tremblay	Canadian Legal Information Institute
Ms Julie Bishop	Law Centres Network
Lord Peter Coulson	Deputy Head of Civil Justice, England and Wales
Sir Ross Cranston	British and Irish Legal Information Institute
Dr Naomi Creutzfeldt	University of Westminster
Ms Renee Danser	Access to Justice Lab, Harvard Law School
Prof Noam Ebner	Creighton University Graduate School
Prof Cristie Ford	University of British Columbia
Prof Dame Hazel Genn	UCL Centre for Access to Justice, UCL Faculty of Laws
Dr Emma Gordon	Administrative Data Research Partnership, ESRC
Mr Richard Goodman	HMCTS
Ms Swee Leng Harris	The Legal Education Foundation and Bingham Centre for the Rule of Law
Ms Susan Hawley	Corruption Watch
Prof Andrew Higgins	Mansfield College, University of Oxford
Mr Daniel Hoadley	Incorporated Council of Law Reporting
Ms Rhiannon Hollis	Justice Select Committee
Mr Murray Hunt	Bingham Centre for the Rule of Law
Prof Peter John	King's College London
Ms Charlotte Kilroy QC	Doughty Street Chambers
Ms Sidonie Kingsmill	HMCTS
Ms Sara Lomri	Public Law Project
Prof Helen Margetts	The Alan Turing Institute and The Oxford Internet Institute
Mr Richard Miller	The Law Society
Dr Michael Molavi	The Bonavero Institute of Human Rights, University of Oxford
Prof Helen Mountfield QC	Matrix Chambers and Mansfield College, University of Oxford
Prof Linda Mulcahy	Oxford Centre for Socio-Legal Studies, University of Oxford
Mr Simon Mullings	Justice Alliance
Prof Kate O'Regan	The Bonavero Institute of Human Rights, University of Oxford
Mr James Palmer	HMCTS
Ms Rose Pennells	HMCTS
Ms Alison Pickup	Public Law Project
Mr Timothy Pitt-Payne QC	11 King's Bench Walk
Prof Jeremias Prassl	Magdalen College, University of Oxford
Mr Michael Reed	Free Representation Unit
Prof Judith Resnik	Yale Law School
Ms Erika Rickard	The Pew Charitable Trusts
Ms Rachel Robinson	Equality and Human Rights Commission
Mr Richard Rogers	The Civil Resolution Tribunal, British Columbia
Dr Meredith Rossner	The London School of Economics

Name	Organisation
Sir Ernest Ryder	Senior President of Tribunals
Prof Shannon Salter	The Civil Resolution Tribunal, British Columbia
Prof Amy Schmitz	University of Missouri
Dr Ayelet Sela	Bar-Ilan University, Israel
Mr John Sheridan	The National Archives
Mr Gavin Sheridan	Right to Know and Vizlegal
Dr Jack Simson Caird	Bingham Centre for the Rule of Law
Mr David Slayton	Joint Technology Committee, National Centre for State Courts
Ms Lauren Small	Ministry of Justice
Mr Sam Smith	medConfidential
Ms Amanda Smith	Ministry of Justice
Mr Giles Stephenson	Ministry of Justice
Mr Rob Street	The Nuffield Foundation
Prof Richard Susskind	President of the Society for Computers and Law and IT Adviser to the Lord Chief Justice
Dr Joe Tomlinson	King's College London and The Public Law Project
Dr Judith Townend	University of Sussex
Sir Geoffrey Vos	Chancellor of the High Court
Mr Alex Walters	JUSTICE
Ms Haile Warner	Ministry of Justice
Prof Patricia White	University of Miami School of Law
Mr Jules Winterton	British and Irish Legal Information Institute
Prof John Zeleznikow	Victoria University Business School

Appendix B: model job description for data engineering fellowships

Key responsibilities

- 1 Design processes to automatically transform data from existing operational systems and new digital services, to improve the accessibility of data, its structure, and its timeliness. This will build trust in our data across the department.
- 2 Use modern software development practices to improve the maintainability, agility, reproducibility and quality of our data transformation pipelines, including building automated tests.
- 3 Work closely with analysts and data scientists to understand user need, implementing data models which enable them to work faster and generate more powerful insights.
- 4 Transform government into a more agile organisation by helping to embed modern development practices.
- 5 Share knowledge of tools and techniques with the wider team and community.
- 6 Challenge entrenched practices and influence decision makers. Look for deeper underlying problems to solve, and larger opportunities for transformation driven by data.

Data engineering skills

- Strong knowledge, clear understanding and a track record of delivering automated data pipelines, ideally in cloud-based infrastructure or similar.
- Experience in working with and analysing large and complex data sources.
- Strong programming knowledge in high-level analytical languages (such as Spark, Python, R, Javascript, SQL etc).
- Track record of developing strong quality assurance and automated testing culture into analytical work, including producing robust and reproducible analysis using version control software.
- Enthusiasm for sharing knowledge and working in a multi-disciplinary team.
- The ability to quickly learn new languages and frameworks and willingness to pick the right tool for the job.
- Experience of mentoring and supporting your colleagues, whether one-to-one or in groups.

Person specification

Analysts and technical competency

- You should demonstrate that you have the data engineering skills outlined above
- Where relevant you must be able to demonstrate evidence of effective performance for the relevant analytical profession

Leading and communicating

- Clarify strategies and plans, giving clear sense of direction and purpose for self and team
- Be visible to staff and stakeholders and regularly undertake activities to engage and build trust with people involved in area of work
- Confidently engage with stakeholders and colleagues at all levels to generate commitment to goals
- Lead by example, role modelling ethics, integrity, impartiality and the elimination of bias by building diverse teams and promoting a working environment that supports the Civil Service values and code

Delivering at pace

- Get the best out of people by giving enthusiastic and encouraging messages about priorities, objectives and expectations
- Clarify business priorities, roles and responsibilities and secure individual and team ownership
- Maintain effective performance in difficult and challenging circumstances, encouraging others to do the same

Seeing the bigger picture

- Identify implications of Departmental and political priorities and strategy on own area to ensure plans and activities reflect these
- Ensures relevant issues relating to their activity/policy area are effectively fed into strategy and big picture considerations
- Bring together views and perspectives of stakeholders to gain a wider picture of the landscape surrounding activities and policies

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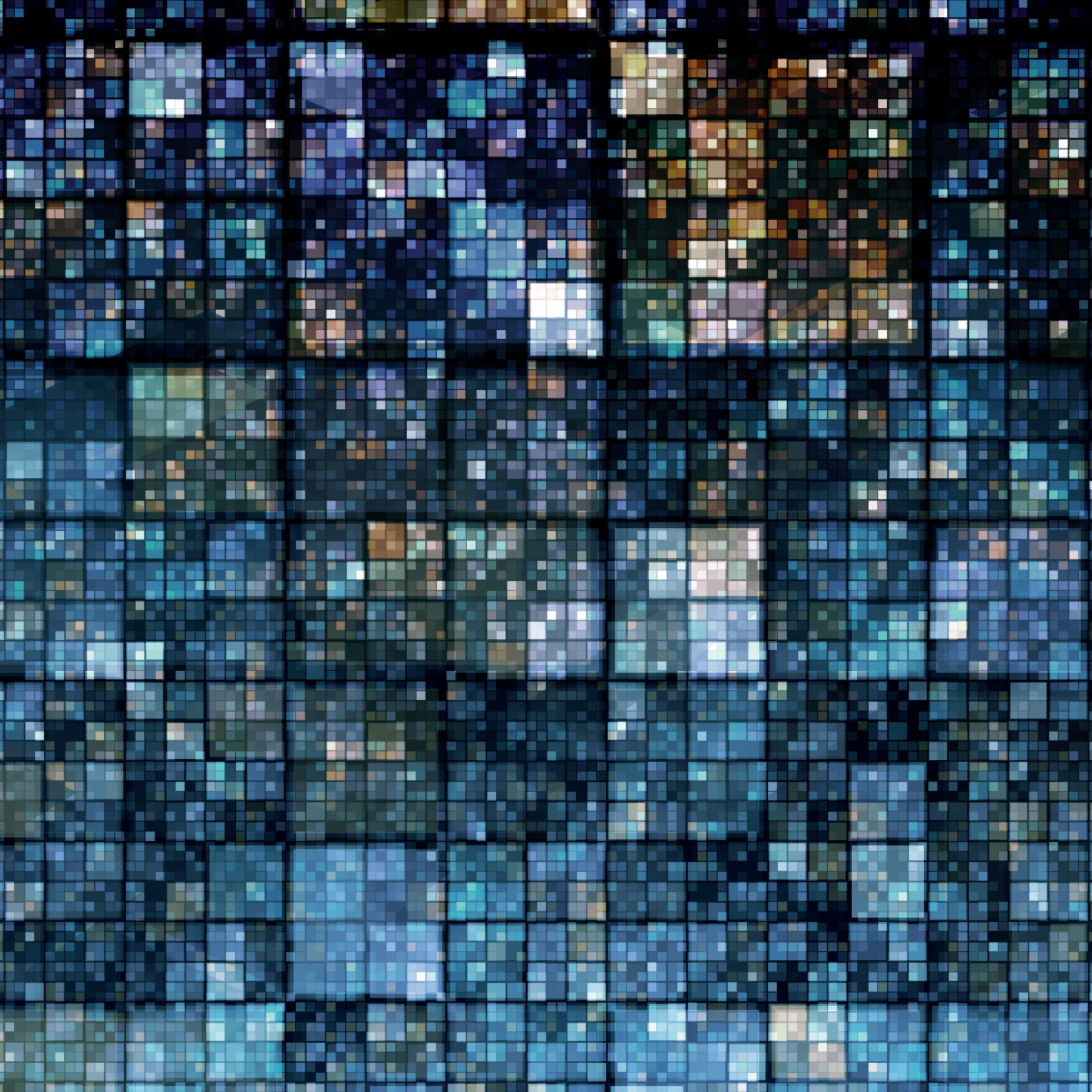
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Dr Natalie Byrom is Director of Research and Learning at The Legal Education Foundation where she leads a programme that aims to build the evidence base for what works in helping people to understand and use the law. Her PhD explored the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on access to justice for vulnerable individuals and groups. She is part of the BBC Expert Women Network and her writing has been featured in the national and legal press. She sits on the Administrative Justice Council and the Litigants in Person Engagement Group, a sub-committee of the Civil Justice Council.

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