

Written evidence from Just Fair

Our Submission

1. Just Fair is a UK charity that is working to realise a fairer and more just society by monitoring and advocating economic and social rights in the UK. We ensure that law, policy, and practice comply with the international human rights obligations. We are committed to increasing public awareness of international human rights law and the capability to use it.
2. This submission is written by Just Fair and is a response to the Justice Committee Inquiry on Court Capacity.
3. This submission looks at the economic and social rights implications of the digital transformation of the court estate and access to justice. We make recommendations based on human rights measures we think should be taken by the UK Government going forward to ensure no group of people is disproportionately affected or disadvantaged by the move to the digital transformation of the court estate.

Executive Summary

4. The UK Government is increasing the use of technology in the justice system in England and Wales. While digital technology is regarded as an integral part of everyday life, and remote, virtual and online proceedings bring benefits to some people, research shows that certain groups of people do not have access, or are unable to use, digital processes.
5. Inequalities based on disability, age (and other protected characteristics) and/or socio-economic status are leading to people being disproportionately impacted by the “digital divide”. As a result, people across the UK have been experiencing a number of violations of their socio-economic rights, including their rights to health and social security and protection from non-discrimination.
6. Human rights are an essential part of access to justice. Social and economic rights are afforded to all without discrimination and are included in a number of international human rights standards that successive UK Governments voluntarily ratified and with which the UK Government is obliged to comply. In particular, the UK has ratified

seven legally binding international human rights treaties which relate to economic and social rights and protect all people.

7. The digitisation of the justice system needs to have human rights at its core in order to adequately respond to the needs of the population and to ensure that all people including those with protected characteristics are not discriminated against. Digitisation of the justice system must be focused on ensuring fair access to justice for all.

Human Rights Framework

8. The UK Government's human rights obligations should inform any decisions and steps it takes in the digital transformation of the court estate. Under international human rights law,¹ the UK Government is under a legally binding duty to respect, protect, and fulfil the enjoyment of economic and social rights.²
9. According to the principle of non-discrimination, the UK Government is obliged to respect, protect, and fulfil economic and social rights without discrimination.³
10. The Equality Act 2010 ('the Equality Act') protects people from discrimination on the basis of nine protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation). The UK Government's justice system will be more effective if it considers how to mitigate the disproportionate impact of the "digital divide" on groups who share different protected characteristics.

¹ International Convention on the Elimination of All Forms of Racial Discrimination (CERD), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD)

² ICESCR

³ The UK has voluntarily agreed to the legal obligation to prohibit or condemn direct and indirect forms of discrimination. These obligations are in the following international human rights agreements: the Convention on the Elimination of All Forms of Discrimination against Women (Article 1), the International Covenant on Economic, Social and Cultural Rights (Article 2(2)), the Convention on the Rights of Persons with Disabilities (Article 2) and the International Covenant on Civil and Political Rights (Article 4(1)). The principle of non-discrimination is also in regional human rights law such as the European Convention on Human Rights (Article 14), and domestic human rights law such as the Equality Act 2010.

11. The grounds of discrimination prohibited under international human rights law are broader than under the Equality Act; for example, they include socio-economic status⁴ and nationality.⁵
12. The UK Government must take specific, positive measures to ensure the protection and equal enjoyment of rights for groups particularly affected by the current crisis,⁶ such as disabled people.⁷
13. The Equality Act contains the Public Sector Equality Duty (PSED), which requires all public authorities carrying out public functions to take active steps to consider equality when exercising their functions.⁸
14. Section 1 of the Equality Act provides a useful framework for public authorities to have due regard to the desirability of reducing the inequalities of outcomes resulting from socio-economic disadvantage when taking strategic decisions on exercising their functions ('the socio-economic duty').
15. According to the principle of non-retrogression, the UK Government cannot take unlawful regressive measures that prevent or reduce the enjoyment of economic and social rights, such as the right to mental and physical health.⁹

Digitisation of the Court Estate and Economic and Social Rights

16. In 2016, following the UK Government's White Paper, the Ministry of Justice and Her Majesty's Courts and Tribunals Service (HMCTS) started a programme of court reform, 'Transforming our justice system', which proposed reforms including increasing the use of technology in the justice system in England and Wales.¹⁰ Plans for a new "Online Court" for certain civil proceeding means that people are required to interact with digital processes, such as an online justice system, to make

⁴ Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination, 2 July 2009; Human Rights Committee, General Comment No. 36: Right to Life, 3 September 2019

⁵ Nationality encompasses migrants, refugees, asylum-seekers, stateless persons: see Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination, 2 July 2009

⁶ Human Rights Committee, General Comment No. 18: Non-discrimination

⁷ Article 11 CRPD

⁸ Section 149 of the Equality Act 2010

⁹ Article 12 ICESCR; Committee on Economic, Social and Cultural Rights, General comment No. 3: The nature of States parties' obligations, 1990

¹⁰ Ministry of Justice, 'Transforming our justice system: summary of reforms and consultation' (2016) https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/supporting_documents/consultationpaper.pdf

applications and claims, or resolve disputes. The HMCTS reform programme aims to “benefit everyone who uses it”.¹¹

17. Use of remote, virtual, and online proceedings is expanding across the justice system. Restrictions imposed as a result of the COVID-19 pandemic has led to an increase in the use of digital processes in the justice system. In April 2020, The Economist newspaper reported that in the UK, and on average, about 200 cases a day were being heard at least partially via conference-call and video link, however, by 31 March 2020 this number had increased to around 1800 cases.¹²
18. Everyone has to be able to access and participate in the justice system, including people who are unable to interact with online processes. The Bach Commission, which compiled evidence on the crisis in the justice system stated that “Technology has the capacity to enhance, empower and automate, but it also has the potential to exclude vulnerable members of society”.¹³
19. “Digital exclusion” includes “those who lack access either to the internet or to a device, or the skills, ability, confidence or motivation to use it”.¹⁴
20. JUSTICE identified that online proceedings, “the archetypal modernised justice proceeding”, present challenges for the “digitally excluded”.¹⁵
21. Responses to a variety of surveys carried out in the North East of England by Just Fair and other organisations suggest that the primary barrier to digital inclusion is lack of access to the internet, mainly due to unaffordability of internet and data packages. Our research has found that other barriers include lack of access to laptops and smart phones, poor accessibility for those with visual impairments and learning difficulties,

¹¹ HM Courts and Tribunals Service, ‘The HMCTS reform programme’ (9 November 2018)

<https://www.gov.uk/guidance/the-hmcts-reform-programme#our-reform-programme>

¹² The Economist, ‘How covid-19 is driving public-sector innovation’ (4 April 2020)

<https://www.economist.com/britain/2020/04/03/how-covid-19-is-driving-public-sector-innovation>

¹³ Bach Commission, ‘The Right to Justice: The final report of the Bach Commission’ (September 2017) http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf

¹⁴ Justice, ‘Preventing Digital Exclusion from Online Justice’ (April 2018) <https://justice.org.uk/new-justice-report-on-preventing-digital-exclusion/>

¹⁵ Justice, ‘Preventing Digital Exclusion from Online Justice’ (April 2018) <https://justice.org.uk/new-justice-report-on-preventing-digital-exclusion/>

concerns around privacy, and in some cases a lack of confidence to use the technology available.

22. There are an estimated 15.2 million people in the UK who either have no, or limited use of the internet.¹⁶ Over 11 million adults in the UK lack basic digital skills such as being able to complete online forms and locate websites.¹⁷ The North East of England has the highest proportion of internet non-users in the country, 12.1% for the region in 2018.¹⁸ As of August 2020, 18% of Londoners “lack one or more basic digital skills, and large areas of London currently don’t have full fibre connections to homes”.¹⁹
23. According to the Good Things Foundation, 90% of people who do not use the internet are likely to be disadvantaged in some way.²⁰ Our research finds that elderly adults, asylum seekers, disabled people, those on low incomes and those experiencing homelessness are amongst those at risk of digital exclusion.²¹ The Good Things Foundation’s data, shows that 64.4% of non-users are aged 65 or over; 47.7% of non-users have a disability or long standing health issue; 49.5% of non-users are in DE social class; and 44.5% of non-users have an annual household income less than £11,500.²² The UK Government must comply with its obligations under a number of

¹⁶ Good Things Foundation & Professor Simeon Yates, ‘The real digital divide? Understanding the demographics of non-users and limited users of the internet: an analysis of Ofcom data’ (June 2017) https://www.goodthingsfoundation.org/sites/default/files/research-publications/ofcom_report_v4_links.pdf

¹⁷ Administrative Justice Council, ‘Digitisation And Accessing Justice in the Community’ (April 2020) <https://ajc-justice.co.uk/wp-content/uploads/2020/04/Digitisation.pdf>; Justice, ‘Preventing Digital Exclusion from Online Justice’ (April 2018) <https://justice.org.uk/new-justice-report-on-preventing-digital-exclusion/>

¹⁸ ONS, ‘Exploring the UK’s digital’ (4 March 2019) <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04#the-scale-of-digital-exclusion-in-the-uk>

¹⁹ Mayor of London, ‘Digital access for all’ (7 August 2020) <https://www.london.gov.uk/talk-london/economy-skills-work/digital-access-all>

²⁰ Good Things Foundation & Professor Simeon Yates, ‘The real digital divide? Understanding the demographics of non-users and limited users of the internet: an analysis of Ofcom data’ (June 2017) https://www.goodthingsfoundation.org/sites/default/files/research-publications/ofcom_report_v4_links.pdf

²¹ Just Fair research; Also see UN Independent Expert on the enjoyment of all human rights by older persons, “‘Unacceptable’ – UN expert urges better protection of older persons facing the highest risk of the COVID-19 pandemic’ (2020)

²² This data may vary as a result of COVID-19; Good Things Foundation & Professor Simeon Yates, ‘The real digital divide? Understanding the demographics of non-users and limited users of the internet: an analysis of Ofcom data’ (June 2017)

binding human rights laws, and recognise the rights of people with protected characteristics, when digitally transforming the justice system.

24. The Equality and Human Rights Commission (EHRC) reports that a “wide gap in internet usage between disabled and non-disabled people has persisted”.²³ Disabled people make up a large proportion of adult non-internet users meaning they will be disproportionately face difficulties in accessing information.²⁴ According to a recent survey by the Glasgow Disability Alliance, only 37% of their members have home broadband, and for those who do have it they may lack the skills or confidence to use the internet.²⁵
25. While HMCTS has said that paper processes will continue to be available in the justice system,²⁶ the Second Report on the Court and Tribunal reform by the House of Commons Justice Committee found that “Poor digital skills, limited access to technology, low levels of literacy and personal disadvantages experienced by particular groups create barriers to access to digital justice services. HMCTS has not taken sufficient steps to address the needs of vulnerable users, particularly as regards an absence of adequate legal advice and support”.²⁷ As a public body, HMCTS is failing to comply with the principle of non-discrimination, as recognised in international and domestic law.
26. According to research conducted by the Administrative Justice Council, modernisation of the justice system for areas of social welfare law must acknowledge “the greater need for assistance, support and advice throughout the digital justice process to ensure access to justice and a quality service”.²⁸ It is widely documented that certain groups

²³ EHRC, ‘Being disabled in Britain: A journey less equal’ (3 April 2017)

<https://www.equalityhumanrights.com/sites/default/files/being-disabled-in-britain.pdf>

²⁴ Just Fair, ‘Written Submission to the inquiry into the unequal impact: Coronavirus and the impact on people with protected characteristics by the Women and Equalities Select Committee’ (July 2020) <https://committees.parliament.uk/writtenevidence/3531/pdf/>

²⁵ Glasgow Disability Alliance, ‘COVID-19 supercharges existing inequalities faced by Glasgow’s 150,000 disabled people’ (28 April 2020) <http://gda.scot/our-community/news/2020/4/28/covid-19-supercharges-existing-inequalities-faced-by-glasgows-150-000-disabled-people>

²⁶ HMCTS, ‘Reform Update’ (Summer 2019)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/806959/HMCTS_Reform_Update_Summer_19.pdf

²⁷ House of Commons Justice Committee ‘Court and Tribunal reforms’ (Second Report of Session 2019, October 2019) <https://publications.parliament.uk/pa/cm201919/cmselect/cmjust/190/190.pdf>

²⁸ Administrative Justice Council, ‘Digitisation And Accessing Justice in the Community’ (April 2020) <https://ajc-justice.co.uk/wp-content/uploads/2020/04/Digitisation.pdf>

of people who are disadvantaged and marginalised by the digital divide are those people who are disproportionately affected by the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The removal of public funding for many areas of social welfare law, including welfare benefits and family adds further stress both physically and mentally, for those who are trying to pursue justice without legal aid.²⁹ The UK Government's failure to take steps to resolve the problems caused by LASPO is regressive and fails to comply with its obligations to respect and fulfil economic and social rights.

27. The digital transformation of the court estate must be accompanied by adequate legal advice. Research shows that the shrinking of the legal advice sector in social welfare law, which is a result of legal aid cuts, has implications on the right to health of people seeking welfare advice.³⁰ For example, the Advice Services Alliance and Low Commission found that where people received welfare advice, their health improved; they had “lower stress and anxiety, better sleeping patterns, more effective use of medication, smoking cessation, and improved diet and physical activity.”³¹ The combination of digital exclusion in a digital justice system, together with limited legal and welfare advice, violates the UK Government's obligation to respect, protect, and fulfil the right to mental and physical health³² of all people without discrimination.³³
28. Finally, in accordance with international law, the UK Government's budgetary decisions around the digitisation of the justice system, must comply with human rights obligations, even in times of economic crisis.

²⁹ EHRC, ‘The impact of LASPO on routes to justice’ (Research report 118 , September 2018) <https://www.equalityhumanrights.com/sites/default/files/the-impact-of-laspoon-routes-to-justice-september-2018.pdf> ; Administrative Justice Council, ‘Digitisation And Accessing Justice in the Community’ (April 2020) <https://ajc-justice.co.uk/wp-content/uploads/2020/04/Digitisation.pdf>

³⁰ Administrative Justice Council, ‘Digitisation and Accessing Justice in the Community’ (April 2020) <https://ajc-justice.co.uk/wp-content/uploads/2020/04/Digitisation.pdf>

³¹ Advice Services Alliance and The Low Commission, ‘The Role of Advice Services in Health Outcomes’ (June 2015) <https://www.thelegaleducationfoundation.org/wp-content/uploads/2015/06/Role-of-Advice-Services-in-HealthOutcomes.pdf>

³² Article 12 (ICESCR)

³³ Article 2(2) (ICESCR)

Recommendations

- The UK Government should comply with its human rights obligations under international and domestic human rights law where it makes decisions or takes steps to digitally transform the justice system.
- The UK Government should not make budgetary decisions which are regressive and prevent or hinder the enjoyment of economic and social rights.
- The UK Government should collect and make available in the public domain disaggregated data on the use of digital technology in the justice system, to support research by external experts.
- The UK Government should collect and make available in the public domain disaggregated data on the level of demand for digital assistance across all areas of social welfare law. The aim of this must be to assess the impact on the provision of legal advice services created as a result of an increased digital demand on front line service providers as digital justice processes are introduced in the justice system.
- The UK Government should increase funding for social welfare advice and legal support across all sectors providing front line advice services to the members of the public.
- The UK Government should minimise obstacles for certain groups of people identified as those who are digitally excluded. The UK Government should provide inclusive, assistive technologies and alternative accessible processes to ensure all people are able to effectively access the justice system.
- The UK Government should recognise that the costs of bringing digital skills and access to certain groups of people are justified.
- The justice system should be accessible to all people, including but not limited to through Easy Read formats, braille, British Sign Language and in hard copy – to address digital exclusion.
- Develop a process to monitor and evaluate the economic, social, and cultural rights impacts of measures taken in the digitisation of the court estate.
- Develop a process to incorporate economic, social, and cultural rights into UK domestic legislation so as to continue to improve protections for all people.
- Section 1 of the Equality Act 2010 should be implemented in England and Northern Ireland to minimise socio-economic disadvantage. The same duty was introduced in Scotland in 2018 under the name ‘Fairer Scotland Duty’ and is scheduled to be introduced in Wales in March 2021.