

Report: Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice (Byrom 2019)



From the Executive Summary of [The Legal Education Foundation](#)'s report:

1.1 The Court System in England and Wales is undergoing a period of unprecedented change. In 2016, Her Majesty's Courts and Tribunal Service established a portfolio of change programmes which intend to introduce new technology, modernise the justice system and reduce costs. Cost reductions are expected to be realised through a combination of reducing staff, reducing the number of cases held in physical court rooms and reducing the court estate, as well as generating efficiency savings through reforming administrative processes. In

addition to introducing cost savings, the stated aim of the reform programme is to produce a justice system that: “works better for all involved, uses court time more proportionately and makes processes more accessible to users” (NAO, 2018:1).

1.2 The HMCTS Reform Programme aims to reduce demand on courts by moving activity out of courtrooms, expanding the use of video technology, introducing online end-to-end processes, promoting the use of online negotiation, mediation and settlement and developing new asynchronous processes (such as Continuous Online Resolution) for use in areas of administrative justice (starting with appeals made in respect of a subset of welfare benefits cases in the Social Security and Child Support Tribunal). The programme consists of individual “service projects” for example, the Civil Money Claims Online project, which is creating a new service for initiating and resolving low value civil money claims online and cross cutting projects, such as court closures (estates) and video hearings.

1.3 Those involved in the design and delivery of the reform programme have made explicit commitments to ensure that the programme: “improves or maintains access to justice” and results in a court system that is: “just, proportionate and accessible”. The judiciary have adopted a crucial leadership role in respect of the reform programme, and in keeping with this role, have proposed six criteria according to which the projects developed will be: “tested, and if successful, implemented” (Senior President of Tribunals, 2019:9), the first of which is: “1. Ensure justice is accessible to those who need it ie to improve or maintain access to justice.” In addition in summer 2018, HMCTS agreed to “...write to the (Public Accounts) Committee by January 2019, setting out how it will identify and evaluate the impact of changes on peoples access to, and the fairness of, the justice system, particularly in relation to those who are vulnerable.”(HM Treasury, 2018:49). The Ministry of Justice led response, published in February 2019, confirmed the intention to evaluate the impact of the reform programme within these terms and stated that scoping for this evaluation would be finalised in Spring 2019.

1.4 HMCTS have publicly committed to: “using insights from external research and academia to validate and challenge our approach”(HMCTS, 2018b:15). To assist in this, The Legal Education Foundation, together with UCL Laws and academics at the University of Oxford, brought together 38 national and international experts in online dispute resolution, public law, civil procedure, access to justice research, court

administration and evaluation to produce a set of recommendations to inform the development of a robust evaluation framework.

1.5 The paper is structured as follows. Sections 2-4 below set out the background to the current reform programme and the workshops before outlining the scope of the recommendations set out in this paper.

1.6 Section 5 presents the definition of “vulnerability” recommended by stakeholders, which is drawn from the extant law, procedural rules and practice directions, augmented by research on digitally excluded populations. Section 6 recommends that any evaluation relating to the fairness of the justice system should encompass an assessment of the impact of reform on those individuals with protected characteristics under the Equality Act 2010.

1.7 Section 7 presents an irreducible minimum definition of “access to justice” derived from case law, which is capable of acting as an empirical standard for the purposes of evaluation. 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

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). It is recommended 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 Sections 8-11 set out the justification for each of the components and recommends approaches to measurement. Section 12 summarises the recommendations contained within the paper.

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