Justice Committee

Oral evidence: Court and tribunal reforms, HC 1886

Tuesday 25 June 2019

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Watch the meeting

Members present: Robert Neill (Chair); Bambos Charalambous; David Hanson; Victoria Prentis; Ellie Reeves; Ms Marie Rimmer; Andy Slaughter.

Questions 180 - 241

Witnesses

I: Jodie Blackstock, Legal Director, Justice; Penelope Gibbs, Director, Transform Justice; Professor Richard Susskind; and Lisa Wintersteiger, Chief Executive, Law for Life.
Examination of witnesses

Witnesses: Jodie Blackstock, Penelope Gibbs, Professor Susskind and Lisa Wintersteiger.

**Chair:** Welcome, ladies and gentlemen. Thank you very much for coming to give evidence to our Committee today. There is a new arrangement for the Committee room, for those who are unfamiliar with these matters. We will see how it works. It looks to be very good.

Before we start the questions, we have to declare our interests in the usual way. I am a non-practising barrister and a consultant to a law firm.

**Victoria Prentis:** I am a non-practising barrister.

**Bambos Charalambous:** I am a non-practising solicitor.

**Andy Slaughter:** I am a non-practising barrister.

Q180 **Chair:** You have all submitted written evidence to us in various ways, which we have had a look at. For the record, could you introduce yourselves and your organisation?

**Penelope Gibbs:** I am Penelope Gibbs, director of a charity called Transform Justice.

**Jodie Blackstock:** I am Jodie Blackstock. I am the legal director of the law reform organisation Justice.

**Lisa Wintersteiger:** I am Lisa Wintersteiger, a chief exec at Law for Life. We incorporate the Advicenow platform.

**Professor Susskind:** I am Richard Susskind. I am the technology adviser to the Lord Chief Justice and the president of the Society for Computers and Law, but I speak on my own account, not on behalf of the judges.

Q181 **Chair:** Fair enough. That is helpful.

First, let’s have a look at the overall impact of the reforms, which we are all probably quite familiar with at this stage. In a few words—a quick summary—what is your overall view of the court reform programme so far?

**Penelope Gibbs:** I am by no means anti-digital processes. I absolutely see the need for back-office functions and files to be digitised and for very simple administrative hearings to be done in a digital way, but I am concerned that this programme is both undemocratic and anti-democratic. It started with a deal, and the principles of what the programme was, behind closed doors and not in the public domain. Since then, most of the proposals have not been subject to public consultation at all. Most of the proposals have not been subject to parliamentary scrutiny. It looks as if huge changes will be made still without
parliamentary scrutiny, because they will be put into secondary legislation or done by the Executive without consultation.

Q182 **Chair:** That is not different from any other policy changes, is it? Why is it particularly concerning to you?

**Penelope Gibbs:** It is not different from?

Q183 **Chair:** From many other policy initiatives. What is the particular concern that you have?

**Penelope Gibbs:** This will fundamentally change the way the justice system works and will involve the closure of hundreds of courts. It is a fundamental change and, as such, it should be subject to democratic processes.

Q184 **Chair:** That is helpful. We’ve got that. Ms Blackstock?

**Jodie Blackstock:** Justice’s position is that the justice system as it operates currently is outdated and is creaking under the pressure of repeated cuts and low investment. To that extent, the modernisation programme is welcome. It provides an opportunity to identify how a properly functioning justice system should operate. It must have that as its starting point and have it squarely in mind throughout. That is the thing we continue to impress on the HMCTS reform team.

For Justice, what that means is equal access to justice for all, with a fair procedure that involves effective participation in one’s case, which means simple and clear communication about the facts of the case, the law involved and the procedure, and support in navigating the process—legal support and emotional support, where that is necessary. That should be the case across all physical courts and digital procedures.

For most aspects of our life, we now operate online. At Justice, we do not see why, in principle, that should be different for the justice system, if it holds those key principles in mind and if there is end-to-end testing of each stage of the development, to ensure that it improves the system, rather than diminishes it.

There are difficulties in the way the process is currently being developed, but we feel that HMCTS is listening to us about those aspects in the engagement process that exists and is seeking to address them. We will continue to make that case to it as the programme develops.

Q185 **Chair:** What are those difficulties?

**Jodie Blackstock:** There is no end-to-end process at the moment, because technology is developing in tranches. That means that, although there is a lot of user testing, effectively it is done in a silo. Until the whole case in any jurisdiction, be it civil, criminal, family or administrative, is finally developed, we will not know whether it actually works. That is a problem with any technological development. We think, and we have said in our report “Preventing digital exclusion”, that there needs to be an
end-to-end process devised in at least one of these tracks, so that we can see whether the principles they are using in the technology will work for the entire case.

Q186 Chair: Richard Miller from the Law Society gave evidence to us. He said that it is perhaps not clear enough what the end vision is.

Jodie Blackstock: Yes.

Q187 Chair: I get the sense that you share that view.

Penelope Gibbs: In the Boston Consulting Group report that was done for the Government, the key issue is what the fundamental reason is. They were concerned that, if you go for trying to save money, you may sacrifice access to justice. Those were management consultants speaking there.

Q188 Chair: Making the system more intelligible cannot be a bad thing in itself, whatever the motive.

Penelope Gibbs: It would be fantastic to make the system more intelligible.

Q189 Chair: Lisa, what is your view?

Lisa Wintersteiger: We share the views of my fellow panellists, in many ways. For us, there is a core message about the countervailing priorities. In principle, the role of technology in improving routes to access to justice is crucial, in our view. We run services for relatively excluded people who access our service digitally, to good effect.

However, the programme is not happening in a vacuum. The loss of services around the justice sector means that there is a sense that the technology can be a panacea for the evisceration of the advice sector and the loss of legal aid. Our view is that you cannot do both. What we are seeing is modernisation developing in the context of a serious decline of access to justice for many groups. Offsetting modernisation with further losses—of frontline court staff, for example—is unlikely to achieve the access to justice outcomes that it is purported to present as a priority.

We know that there is an enormous problem around legal information for the public. There are very low levels of legal capability in the public realm. People are now being asked to access an increasingly digital-by-default system with very low capacity and no access to lawyers, and are expected to navigate that system.

There is also a real feeling that the appearance of simplicity is the solution. It might look really efficient if somebody can get through an application very quickly, but that does not mean that substantive justice is being done. We caution against a view of transactional technologies, without looking underneath at the substantive justice outcomes that are occurring for people, particularly the most vulnerable.
Chair: Professor Susskind, you have described the reforms as “our most promising solution” on access to justice and how we develop it. How precisely do you think that these reforms will improve access to justice? I can see that they have transactional advantages and simplicity, but what about the access to justice point?

Professor Susskind: Can I make a more general introduction, as others have, and then dip down? This is the world’s most ambitious court reform project. You might say, “Why be so ambitious?” In this country, we have always taken pride in being a world leader in our legal system. This modernisation—this upgrade—is long overdue.

With regard to the nature of the debate, I want to make the observation that, with technology, there is always a danger that things become rather polarised, with people thinking that technology is a great thing, on the one hand, or being deeply sceptical, on the other. I am sure that we can find many areas of agreement where technology will deliver the kinds of benefits we are after.

I will talk about the civil justice system, for the sake of argument. To answer your question, our trouble just now is that we have a system that, for most people, is way too expensive, takes far too long and is unintelligible to the non-lawyer. For people who are disabled, the courts are very inaccessible. In many respects, how we deliver justice seems out of step in a digital society.

What I and others hope—again, I am focusing on civil—is that the idea of online courts will bring two sorts of innovation. The first, which is quite controversial, is online judging. The idea is that, for low-value disputes, rather than taking a day off work, instructing a lawyer and spending time in the courtroom, people can submit evidence and arguments online and the judge can come to a decision online, in suitable kinds of cases. It seems to me that that becomes a more accessible process.

The second aspect of online courts is what I call extended courts. This is a fascinating challenge. In the internet era and the digital age, it seems to me that the challenge for us is not just to automate our old systems but to ask whether or not we can widen access and deliver a greater range of services. The notion of the extended court is that the non-lawyer can go online and receive guidance on, for example, what kind of legal problem they have, and what options and systems of resolution might be available to them. The vision is that they should be able to get basic guidance on some legal issues, too. More than that, there is a view that we could borrow some of the success of alternative dispute resolution, mediation and so forth. Wouldn’t it be wonderful to bake some of that into our court system—an extended court system—so that cases that do not demand judicial attention can be disposed of and settled earlier?

For me, the idea of greater access is helping people who would otherwise have no possible way of affording legal assistance to understand their legal entitlements and, hopefully, as I often say, to put a fence at the top
of the cliff, rather than an ambulance at the bottom. A lot of our current system is geared up to fairly considerable confrontation. We have an excessively combative system. I want a system where the social good that is access to justice is far more widely available, but at a proportionate cost. In broad terms, that is the aspiration of the reform programme. Whether this particular reform programme will deliver everything is a very different question, but it seems to me that the philosophy is sound.

Q191 **Chair:** It is about the philosophy. Fair enough. We will drill into some of the detail around those things later. Does anybody want to come back on that? We understand the broad philosophy behind it.

**Professor Susskind:** This is my coming-back opportunity. I just wanted to say—

Q192 **Chair:** No, I am going to cut you off now. We have limited time, Professor. These points will be picked up in due course.

**Professor Susskind:** Okay.

Q193 **Bambos Charalambous:** In 2016, the Government acknowledged that only 30% of the UK population were “digital self-servers”. That was the term they used. By that, they meant people who do not require any assistance when using the internet to engage with Government services. How do you think that a digital self-server should be defined in relation to court usage?

**Penelope Gibbs:** There is a crucial issue about legal capability, as well as digital capability. Lots of young people love using their smartphones to talk to their friends, but the evidence of Dr Catrina Denvir—

Q194 **Chair:** We will explore that in a bit more detail later. I am particularly interested in Mr Charalambous’s problem of digital self-servers at the moment. Do you have any views on that?

**Lisa Wintersteiger:** Some of the key issues are to be very mindful of not looking at digital inclusion as a binary: “Can I access the internet?” What we are looking for below that are questions around the skills to navigate the internet, the skills to navigate complex systems and the motivation to do so. Do I even want to use the law? Am I frightened by the law? These are the kinds of areas to look at. What kinds of social networks do people have to assist them? Will there be proxy use? It is very misleading to look at the figures we are presented with, which are in the territory of 85%. I hear Penny’s point. Some of the younger people who can get online struggle with the breadth of use of the internet they have. You can watch a YouTube video, but can you use a complex system?

Q195 **Chair:** That is helpful. Professor Susskind?
**Professor Susskind:** The figures you mention were published in 2016, but, interestingly, they were based, as I recall, on data from 2013, which of course is six years ago. Six years is a long time in internet usage.

I have always been less worried about digital literacy than about, frankly, regular literacy. I think Lisa is saying something similar. That is why some of the systems globally are being designed at the level of an 11-year-old’s reading age. For me, a lot of it is about confidence and literacy, rather than simple access to technology. If one is confident and literate, one has a great advantage.

That raises a huge issue of what is called design thinking; these systems must be designed with a particular class of user in mind, rather than for a generic internet user who happens to use games and the worldwide web. We have to think deeply and to consult widely with users, to understand their particular needs. It is hugely challenging, but it is changing over time, as we become a more digitally comfortable society.

**Lisa Wintersteiger:** Can I come back on the point about things changing over time? There is a real worry about that. The last OECD skills survey suggested that we are actually falling back. Unlike those in other countries, our young people have fewer skills than the older people in our population. There is real concern about the idea that technology will move things along and everybody will be fine, as our young people are more equipped. That is not the case. We have 9 million adults who lack very basic numeracy and literacy skills. They cannot read the back of an aspirin bottle. Many of them are young people. There is a worry that the notion that time will sort this out is not playing out in the evidence.

**Penelope Gibbs:** I want to reflect the evidence from Citizens Advice to your Committee. They talked about the digital skills of the kind of people who come to see Citizens Advice, who are the same people we are concerned about when it comes to access to justice online. The stats are that 23% of adults in the UK lack basic digital skills, but 46% of their face-to-face clients lack basic digital skills. Those are digital skills, not even legal skills.

**Chair:** I remember that.

**Bambos Charalambous:** What do you see as the reasons for digital exclusion? What reasons would the public have for digital exclusion? Would it be something like literacy, or would there be other reasons?

**Jodie Blackstock:** There is a range of reasons. For us, digital self-servers are those who can navigate online justice processes without the need for technical assistance. That incorporates legal capability in the definition. It has to assume not only someone who can access anything—a website—online, but someone who can process their legal case.

In our report “Preventing digital exclusion”, we identified a number of cohorts that are digitally excluded. That may be for literacy reasons, as
we have discussed, but it will also be geographic, because they do not have access to a suitable broadband link where they live. It will be because they are in detention, be it criminal or immigration detention, where there is still lack of access to digital online services. In the criminal justice system, where everything is now done digitally, through case management, defendants who are remanded in custody do not have access to their case file online. That has to be sorted out, because at the moment defence lawyers have to print off cases and take them in physically, at their own cost.

Homeless people may have a mobile phone, but that does not necessarily mean that they can engage in making an application for housing. As homeless people, they have stigma attached to them, which may mean that it is less possible for them to go into community spaces to access public web facilities. Finally, for reasons that we all know, people who are elderly are still not engaging online as comfortably as they do on paper. All those groups need assistance to be able to engage in the same way as the rest of the population.

Professor Susskind: In many ways, the issue is what follows from the reality that some people are excluded. The strategy in the reform programme, which I support, is called assisted digital. We can disagree about how many people might fall into this category, but it means that people who are uncomfortable with using the systems themselves, or who are unable or lack the confidence to do so, have human beings on the phone or in face-to-face meetings to help them through. It is also the case that the old paper form-filling will be retained as two doors into the same system. There will not be parallel systems.

For me, the idea that many or some are excluded does not fundamentally challenge the notion that we should make our courts digital. It means that we have to make sure that the neediest, who are generally the elderly and those who are not well-off, actually receive digital assistance in the use of the digital process, remembering all the time that the people we are talking about, who are excluded by virtue of their literacy and other difficulties, are excluded under the current system, too.

Chair: It comes back to the advice. We will come back to that. Does anybody want to come in on this point, before I move on?

Victoria Prentis: In the group of people who are digitally excluded, has any work been done on different ethnic groups? I am thinking particularly of the Kashmiri-origin women—older women, in particular—in my constituency, whom I would probably describe as excluded, as a group. Has any assessment been done?

Jodie Blackstock: That must be right. I do not know whether an assessment has been done for that group. I would expect the advice agencies to be seeing the problem more.
Lisa Wintersteiger: One of the primary indicators is language skill—first language. Within ethnicity, some will be able to use the computer relatively well, but some will have real challenges around language.

Q198 Victoria Prentis: Has there been no assessment of issues relating to access to computers and the internet within different ethnic groups?

Lisa Wintersteiger: I am not sure.

Professor Susskind: I do not think we have data as granular as that. The question arises of whether or not those individuals can be what are termed proxy users; the women you are mentioning do not use systems, but their grandchildren do. They have access and can help them. When a lot of people talk about access to digital, they include the notion of proxy users.

Q199 Victoria Prentis: Wider family.

Professor Susskind: If you look at the national statistics on this, I do not think they go to that level of granularity. Certainly, when we did the research at the Oxford Internet Institute, we did not. I think there is very good reason to assume that the category you mention is digitally excluded, so they are most in need of support from us. That is why assisted digital is so important.

Jodie Blackstock: The point about language is a really good one. We did a report looking at the immigration and asylum system with a fresh approach. Technology provides the opportunity to translate forms. We recommended that the development of the online system for immigration cases ought to build that in, so that, whatever your language, when you come to this country and make an application, the system automatically enables you to engage in your own language and translates back for your lawyer as well. Obviously, that is quite a complex thing to do, but it seems to us a basic provision where technology should be able to assist.

Q200 Chair: Penelope wants to come in on this point.

Penelope Gibbs: I want to talk about some concerns about the assisted digital system that has been set up to help those who need assistance. One of the issues is about the phone calls. The phone calls are ordinary charges, which means that the poorest people in society pay the most for their phone calls. Quite poor people are doing it on a pay-as-you-go basis. When they phone about their case, they have to pay the charge, which you do not have to do if you phone up about universal credit. You can rack up £10, if you are on benefits, trying to talk about your case. That must be a considerable barrier. If people phoning about universal credit do not have to pay a charge, they should not have to pay one for the courts.

The assisted digital person-to-person service does not seem to be working. I calculate that, for over 100,000 online cases, there have been around 44 person-to-person meetings. This is offered to people who say,
“Even on the phone, I would like more assistance.” They are offered a one-to-one meeting with an adviser from the Good Things Foundation. Under that contract so far, only 44 people have had such meetings. That seems to indicate to me that the whole system is not facilitating those who might be digitally excluded getting help.

**Chair:** Ms Rimmer, you want to ask some questions around this. Perhaps the witnesses can elaborate their answers in response.

**Q201 Ms Marie Rimmer:** You were just talking about the face-to-face service. That was set up by HMCTS in response to concerns that the service was not available. The number is only 44 now.

**Penelope Gibbs:** Yes.

**Q202 Ms Marie Rimmer:** It was 14 when HMCTS set it up, which was last year.

**Penelope Gibbs:** Yes. I FOIed it, and it was 14. Then Lucy Frazer, when she was still the Minister, gave an updated figure of 44. It is in the online procedure rules briefing.

**Q203 Ms Marie Rimmer:** How does a person know that assisted digital support is available? Who should they contact?

**Lisa Wintersteiger:** It is quite difficult. The referral figures suggest that problem. You may be referred through the call centre. As we understand it, there are some real challenges in identifying properly people who might need assistance and, therefore, referring them on.

Our worry is the very large cohort of people whose compounded problems mean they never get that far. That is so important. The one message from us about the digital exclusion and digital assistance element is that it overlays compound social disadvantage. The indicator you want to look at, where you have real concentrations of problems, is poverty, and that is not being looked at. Protected characteristics are being looked at, but they may not determine how difficult it is for a person to seek digital assistance.

The other message for us is that people want to go to places and faces that they trust; 47% per cent of people go to family members, neighbours or churches. There is concern about the speed at which the commissioning for digital assistance has been moved forward, without a real evidence base to support that provision suiting the needs of a number of different communities.

**Q204 Ms Marie Rimmer:** Do we know how many of these trusted places exist? Do we know their locations? You say that they are in churches. I know of one.

**Lisa Wintersteiger:** We sit on a litigant-in-person engagement group. One of the concerns we have is that we had one report about the progress of assisted digital some months ago, when it was nine people,
and then complete silence. We understand that there has been a roll-out of Good Things with a number of community partners. That is as much as we know. It is a huge problem for us. We work with a number of community intermediaries, such as mental health trusts.

The other, compound feature for us is that so many public facilities are being lost. A library is not a given place any more; we know how much we have lost our public libraries. There is some occlusion of the facts around digital assistance. We would love to know more from the Department.

*Professor Susskind:* There are different levels at which we can have this conversation. It seems to me that the in-principle question is whether digital is a good thing and whether, for those who are excluded, assisted digital is a good thing. I strongly recommend to you that the answer to that is yes. At this stage, are we answering all the questions and objections that are being raised? I suspect the answer is no.

I put it to you again that all the people we are discussing today who are disadvantaged and excluded, and many more, are excluded under the current system. When people who have a difficulty go to a trusted friend—the proxy user point—they can go online quite quickly, and it very soon becomes apparent that there is a facility called assisted digital. Are we talking about whether there is a dispute or a disagreement about whether assisted digital is a good thing, or are we talking about whether it is being executed well?

Q205 **Ms Marie Rimmer:** Principle is one thing and practice is another.

*Professor Susskind:* That’s right. It is terribly important that the practice meets the needs of the excluded individuals.

I wanted to pass along that, in the six or seven projects I reviewed around the world in advance of this, a surprisingly small number of people take the digital assistance. You may say, “Only a self-selecting group of people actually use the system,” but most people’s experience is that, if they get the design of the systems correct, the direct user or the proxy user needs less assistance than the designers had expected. That is the practical experience we can report from around the world.

Q206 **Ms Marie Rimmer:** What knowledge do you have of the practical experience of homeless people, detained people and elderly people? How do they know where to go? Some of them probably do not have friends or family they can turn to. Where do they go?

*Professor Susskind:* All those people are excluded. My test again is: does the proposed reform represent an improvement on today? I say yes, because there is strong evidence that many homeless people have hand-helds. Look at what is going on in Uganda in a project called Barefoot Law where people are disadvantaged on a gargantuan scale, and law students are distributing mobile phones and offering access in a society that is far worse off than ours. If we can do it in Uganda under those circumstances,
it should not be beyond the wit of this highly-funded programme to ensure, not just in the legal sector, that we make these services available, maybe through public libraries, public spaces and Citizens Advice, for example.

The hard to reach are tragically hard to reach, and they are deprived of not just legal services but social services and, frankly, compassion from most of us in society. They are the ones to whom we should be directing our resources. My model in all of this is that we release funds that were used to help people who can now help themselves and help precisely those you mention.

Q207 **Ms Marie Rimmer:** My question was going to be whether you think the assisted digital process has been successful so far.

**Professor Susskind:** It is too early to know. I pass this along as a general message. We are on a journey. There is the notion that somehow you switch off the lights in the old system and switch on the lights in the new system. It is not a big-bang revolution. HMCTS says to you again and again, “This is an agile incremental process.” You might not like the terminology, but it is right. We are growing and learning.

I always say you cannot change the wheel on a moving car. You have a massive edifice just now, which is the Courts Service, and you are trying to change it. Some of it will go spectacularly well; some of it no doubt will fail. We have to learn and improve, and that is why ongoing research is very important. I am not sure that we yet have sufficient data, because it is very early days, to know whether or not the situation—

Q208 **Ms Marie Rimmer:** When do you think we will reach the point when the light comes on?

**Professor Susskind:** As I say, it is not a light coming on; it will be an increase in illumination. This is not a revolutionary once-and-for-all project. I imagine that in a couple of years we will have more data across the entire system on which we can base or assess success in a systematic way. I do not think the datasets are large enough. I may be wrong in that. You may ask how, if there is insufficient data, we should move forward, but that is the nature of innovation, and this is an innovation project.

Q209 **Ms Marie Rimmer:** It is an innovation, but people are going through the process now while the light is not switched on.

**Professor Susskind:** You are not using my metaphor correctly, and I am going to repeat it because that is unfair to me. I was saying that there are two different forms of technology project. There are some where you junk the old system overnight and a new system comes on. That is the revolutionary big-bang approach.

I am saying that it is not like that. We are transitioning from one system to another. That is the only way you can do it, and it will happen in
increments. We are at the foothills of what I believe in reality is going to be a project that will take 10, 15, 20 years. You are asking me now whether we have sufficient evidence on assisted digital to support some of the suggested claims. I am saying that I am not sure we have enough data yet because it is early days.

Q210 Ms Marie Rimmer: What do you have to say on this, Lisa?

Lisa Wintersteiger: Our huge concern is pace. We can begin to deploy some of the opportunities and take great care in looking at those who are excluded from the system and how we can meet those needs. There are many things that can be done to improve digital inclusion.

Q211 Ms Marie Rimmer: Can you tell us about that?

Lisa Wintersteiger: There are lots of different layers of support that people need. This is where we come to the nexus of social disadvantage, digital disadvantage and legal capability. People at times might just need somebody to sit alongside them and perform a basic task with them and help them with a key area, or they may need much more substantive assistance with a critically important life decision. Take the divorce application, for example. There is no flag system on it for people who may be experiencing domestic abuse. They will not know that they may be entitled to legal aid; they will not know, when they reach the pages on their financial or children’s arrangements, the gravity of some of the decisions they are making, because they have not had access to legal support; nor have they had access to more substantive legal information, unlike some of the equivalent jurisdictions that have both established PLE-federated education systems and a much more nuanced pathway to let people know what they need to know.

You can still do that for somebody who is incredibly vulnerable. You could have an intermediary who is reading off that information and signposting to support, but it has to be disaggregated, and at the moment it is a fast drive in one direction. Our great concern is that the pace belies the intention.

Professor Susskind: You are conceding in all of this—I think it is good—that assisted digital should work. Maybe it is not being executed well just now, and I am completely with you on that. It is also true to say that a lot of the observations you make and the ideas you have are untested. These ideas will always be untested until we have tested them.

Jodie Blackstock: I agree with everything that has been said. For us, another point—probably where we move into legal capability—is that it is not necessarily the case that people struggle to open a webpage; it is that they do not know what to put on the form. That is about advice on their legal case.

What has happened so far is a bit like what Lisa said about flagging for domestic violence. The build so far has not taken in sufficient flagging of procedural legal advice on how to fill in the form to enable people to
engage in it on their own. What we think, and we have been saying to HMCTS, is that assisted digital has to be a co-located service with legal support, as already happens at the Bromley-by-Bow centre. Frankly, it would probably be best if the legal advisers were the ones doing the digital assistance. There is no magic to showing someone how to open a webpage; any of us is capable of doing that, but what people need is guidance on what to add in the boxes they are filling in on that form.

Q212 **Ms Marie Rimmer:** It is understanding and knowledge.

    **Jodie Blackstock:** Yes.

    **Chair:** That brings us on to legal capability.

Q213 **Victoria Prentis:** We have dealt with quite a lot of this. Is there a formal definition for legal capability?

    **Lisa Wintersteiger:** It is the range of abilities—the beings and doings that people need to be able to cope with their common law-related issues. In terms of the challenges that creates, we know that the UK has incredibly low levels of knowledge and skills, and real challenges around attitudinal perceptions of the justice system. They create stratified problems with accessing the system.

    In terms of the digital shift, for example, lots of people do not understand that there is a civil justice system at all; it is not plain to them, so what you are doing is allowing those who are defending a claim, often the most disadvantaged, to be driven into the system on digital terms, whereas the vast majority of people would not know if there had been a breach of contract. They do not understand how that works, so they are already excluded.

    If you look further down, you see domains of capability that relate to very basic knowledge of rights and the substance of law and basic procedures, all the way through to, “Can you submit evidence? Can you speak on behalf of yourself?” You need a range of skills and knowledge to contend.

    **Penelope Gibbs:** There is a huge issue that relates to what Richard and Jodie said. We may have people on these systems and apparently able to do them and complete the form, but what are the justice outcomes? Are they the same online as they would be otherwise?

    The single justice procedure involves people getting criminal sanctions and criminal records. They now have a choice between doing a form online or on paper. What we do not know, because we have no figures for it and no research has been done, as far as I know, is whether more people are pleading guilty. Do they understand what a viable defence is? Do they understand what criminal records might be involved on paper, not on paper or not at all?

    In terms of mitigation, you are allowed to put mitigation for, say, being caught without a TV licence. Do we know whether more people are doing
it online versus not online? Do we know whether people understand what mitigation is in a criminal context? None of this stuff is known, yet we are encouraging people to do forms online that will give them a criminal record.

Q214 Chair: On the other hand, taking the example of TV licences, if we do it on that basis, we ought to have data on people who do not attend a physical court and, therefore, it is proved against them in their absence, and they never get an opportunity to put in any mitigation.

Penelope Gibbs: That is true. Most of them are proved in their absence anyway.

The majority of people who get charged under the single justice procedure do not respond, and that worries me too. We do not know how many of those are homeless and have mental health problems, or actually receive the charge and so on. Shouldn’t we look at whether the system as it stands works before we move to something radical online?

Q215 Victoria Prentis: Has any follow-up been done to see how many people open, read and can understand the letter that comes with the charge in it?

Jodie Blackstock: There has been user engagement, and I have seen some of the data on that. I do not know the statistics on how many people are opening and engaging, but there is qualitative information about the fact that they did not understand the form, and the Criminal Procedure Rule Committee, on which I sit, is looking at that form, along with lots of others.

In January, we produced a report called “Understanding Courts”. It relates to the point Penelope has just made. We need to look at the existing justice system anyway. We now have a single justice procedure on paper that is going online, replicating the paper form in an online form. The paper form is unclear. It uses the word “mitigation”. Does anyone know what that means when they are having to say whether or not they should have their sentence reduced?

There is already a lot we need to do with our justice system to explain it to the lay people it is designed for. It should not be that courts are places where legal professionals go to work; it should be where lay people can go to resolve their disputes in a language they understand. We know from our “Understanding Courts” report that the vast majority of people are completely baffled by the process they have to go through and the outcomes they receive, and that is across the justice system as a whole.

We need to use the opportunity of digitisation to ensure that the process is simpler. That means building in videos that explain what going to court and filling in a form involve. It means flags on the forms to identify whether you have a legal defence, and jargon-busting dictionary pop-ups. Technology has all sorts of elements that can improve the way our paper-based traditional system operates. We need to do far more work in that
space, acknowledging the baseline of a lack of understanding, as we improve legal capability.

Q216 **Chair:** Technology gives you an opportunity potentially in that regard to improve things.

**Jodie Blackstock:** Yes.

Q217 **Chair:** Professor Susskind, what is your view?

**Professor Susskind:** On the question about whether there is a definition of legal capability or capacity, there are three elements. The first is the ability of people to classify and categorise the problem they have. For most people who are not lawyers it is just a set of circumstances, and somehow you need to make sense of and broadly categorise the problem you are in.

The second capability is having access to and understanding of the law and being able to apply that to your circumstances. The third is the ability to prepare your argument. It is very early days, but we are seeing around the world that extended courts are helping out in many of those areas. Rather than having a flat document that says “mitigation”, you simply click and it explains what mitigation is. We are developing tools. It is often said by judges and others that the self-represented litigant will simply bring a grocery bag of documents to the courtroom, so we are developing tools that help people to create a timeline, for example. They might do that with family and friends who can help them through it.

To answer your question, how can we help people classify and analyse their problems and have sufficient access and understanding that they can apply the law to their problems and present their case? We live in a world of largely self-represented litigants. The reality we have to discuss is that our court system is very ill-suited today to self-represented litigants, so what tools and techniques can we give them? I am saying that the extended online court is a step in the right direction.

**Lisa Wintersteiger:** It is absolutely right that at the moment it is a terrifying system for people who are on their own. It is a system designed to work for lawyers and not for citizens. That is where we are, but there is a real danger that overlaying that system with a digital system will simply entrench the power dynamics that are already deeply imbalanced in the system.

Q218 **Chair:** That depends on how you design the system, doesn’t it?

**Lisa Wintersteiger:** That is precisely right. If we are talking about genuine user-centred design, it is about looking at the environment. I go back to the context that it is not happening in a vacuum. People lack access to services, and increasingly lack access to public spaces. There is the idea that, if we can just make it appear user-centred as an application, all the other issues will go away.
We know that some of the changes that are being implemented are deeply gendered and class influenced. When you have a system where you are proliferating new areas of law in the most vulnerable areas, particularly universal credit, welfare changes and immigration changes, that is new law hitting the most vulnerable people, who will not know how to use it or navigate it. It needs to be seen within a holistic set of changes and tested individually, and a genuine commitment to user-centred design needs to look at questions of power. It is often the case that in divorcing couples there is a power differential, and that is not being focused on.

Q219 **David Hanson:** We have had a good exploration of the advantages and disadvantages of online courts. I am particularly interested in whether, even if there is progress over, say, a two, three, four or five-year period in smoothing out some of the advantages and disadvantages, there will be groups of people for whom online court services will never be suitable. Are there groups of people for whom the barriers we have currently identified will never be overcome?

**Jodie Blackstock:** Yes, but that is also connected with the type of proceeding. There is not a one size fits all for all kinds of process. There are massive benefits to doing case management online, which is an improvement for the lawyers involved in cases. If I do not have to travel three hours to the Crown court in Maidstone for a five-minute mention and I can do it online, my situation is vastly improved. It means I can get on with the trial that I am supposed to be doing at the Bailey, for example. That is working. There were teething problems in the digital case system for crime, but there are lessons learned from that which are being resolved, and the system works.

It is very different if you look at the other end of the spectrum where proceedings for social security benefit appeals are put online and a large group of litigants in person are attempting to navigate that system. We have to look at all the different facets, from case management to online court proceedings, which we will be able to talk more about, and virtual or video-enabled hearings. All of them have different pros and cons depending on who their users are.

**Penelope Gibbs:** I would always be concerned about people with learning difficulties and learning disabilities who will always be a proportion of the population. In relation to these kinds of issues, particularly criminal sanctions or some civil processes, there will be a higher proportion with learning difficulties. To some extent they will always be excluded from the online systems.

**Lisa Wintersteiger:** There will always be some people who cannot use that system, and how we identify those people is going to be one of our greatest challenges. There are two features of vulnerability that need to be looked at very carefully, and they will shift and change. It is inadequate to refer to a particular group.
Some people are innately vulnerable by virtue of disability or age. There will be some who are vulnerable by virtue of their situation; they have just been through domestic abuse or they have just been made homeless. Being able to look carefully and in a nuanced way at how those two features of innate and situational vulnerability interact will give you the answer about who cannot use the system at any given time.

Q220 **David Hanson:** If we look not at where we are now but at where we might be in two, three or four years’ time, what would be the criterion—how would it be exercised—by which you would say, “I wish to have a non-online court hearing”? What is the thinking on that at the moment?

**Lisa Wintersteiger:** I would be asking about vulnerability. That is what you need to identify.

Q221 **David Hanson:** Are you aware of whether clarity is being sought currently by the Courts Service about those types of issues, or is it still a blanket approach?

**Lisa Wintersteiger:** There is insufficient clarity. Protective characteristics are being considered, but it feels as if the link between the situation and underlying vulnerability is not being considered. From our perspective, it feels like a system that is being designed as a transaction in the commercial sphere. If you do not take seriously the problem of capability in law in this country, you will fail people. That is where our big concern is; it seems to have been elided from the thinking in the design.

**Jodie Blackstock:** At the moment, I think the focus is on the user and what the user wants in the systems being piloted—for example, the Tax Chamber pilot, which was done with a very small group and is now being extended. It is a question of whether the person wants to engage in an online context because that is a civil matter. They get a choice, which perhaps they would not get so much in a criminal matter, although arguably they should.

There are lots of people who, despite falling under a label of vulnerability, may prefer to engage in an online space. I have spoken to people with autism who would much prefer to use an online system; they were very familiar with using a computer and the internet. People, however, are terrifying to them, so this has to be based very much on what a particular individual needs so that they can make an informed decision about the process they are going to go through, with assistance about what that system looks like.

Q222 **David Hanson:** Do you think we have clarity on the role of lawyers and advice services as online courts are now becoming the option?

**Penelope Gibbs:** I don’t think we do. In the case of criminal, there are no advice services. Either you find a lawyer on legal aid, if you are eligible for legal aid, or not. For none of the offences in the single justice procedure are you eligible for legal aid, so we do not know whether people with mental health problems and significant learning difficulties
are pleading guilty to offences without understanding what they are doing. I think that on the front of the form it says, “Go to the Citizens Advice Bureau,” but they won’t help. They are a great organisation, but they do not offer help on criminal justice matters.

**Jodie Blackstock:** This is something we have been doing quite a lot of work on. The obvious gap so far in the build is signposting to legal assistance. That is something we have been trying to build. The iterations are changing and are still not acceptable because the conversation with legal advisers about what their role is in the online space has not yet happened.

We are starting to see improvements in the layout of the design. “Find a lawyer” is now there on a big button at the front, but, if you click through, what are you supposed to do about it? We have to integrate two things: online guidance that is seamless in the form itself, to give people their own legal capability to understand the process; and, secondly, legal assistance, which may be from an adviser who is not a lawyer, such as an agency like Citizens Advice, or it might be signposting to an actual solicitor. How do we create the signpost to that? Ultimately, does it need a booking system and a video communication conference with that lawyer? That is the conversation we need now.

**Professor Susskind:** I have little to add. It is the case that there will be a small and diminishing residual group for whom digital online will be not appropriate, and assisted digital will help them through. My broad argument is that there are many more people who are excluded from the current system, including the physically disabled and, as Jodie mentioned, people with autism, for instance.

A different question, which maybe you are creeping towards, is, what cases are suitable for online treatment and what are not? Traditionally, the view was that in civil cases, if it is above £10,000, you should go to the traditional court system; if it is below £10,000, it is suitable for online treatment. I am not sure that is right. In some cases, because of the nature of the parties, they might need particular help. The case might raise an important social issue, or it might raise a difficult legal issue. There are some cases of very low value that we might want to put through the traditional system. More thinking needs to be done on what renders a case suitable for online disposal. I do not think it is just about the capabilities of the individuals; it is the nature of the dispute in question.

**Q223 Chair:** It is what is at stake in a number of ways.

**Professor Susskind:** That’s right. It may be not just what is at stake between the individual parties.

**Q224 Chair:** There is a broader principle as well.

**Professor Susskind:** Indeed.
Q225 **Andy Slaughter:** Do you know where we are with video hearings? Are they used significantly? Do they work? Does the technology work? It certainly never used to work in my day. You could spend most of the day trying to get it to work. I would have thought the benefit was fairly obvious in time saving and convenience. Does that change the nature of the hearing and possibly the nature of the outcome?

**Penelope Gibbs:** We do not have enough information on that. Video hearings in the criminal sphere are used every day for practically everything, apart from criminal trials, yet our evidence base for the effect on defendants, juries, judges and witnesses is incredibly thin.

The best evidence we have is a Government evaluation in 2010 of video hearings between a police station and a court for the first appearance of the defendant. That indicated that few of the people appearing from the police station were legally represented—we do not know why—and they got higher prison sentences. It could have been because of the lack of legal representation; it could have been because they were appearing on video. That is one bit of research.

Transform Justice did a piece of qualitative research that asked lawyers about their experience of working by video. What is definitely the case is that, if you make the lawyer interact with their client on video, you threaten the relationship between lawyer and client, because frequently they may never have met before and they have only 10 or 15 minutes to develop a relationship, understand what the case is about, talk about the evidence and give advice about plea. There is a dearth of evidence about what the difference is. A lot of people suspect that there is a negative difference in the case of defendants, maybe less so for witnesses, but we do not know.

There was a Government research report on vulnerable witnesses giving pre-recorded evidence by video. That was an excellent process evaluation, as it is called, but it did not actually talk about outcomes, so we still do not know whether vulnerable witnesses giving pre-recorded video evidence makes a difference to justice outcomes.

Q226 **Chair:** Some would argue that it must be better for them to give pre-recorded video evidence if they are a victim in a case and are afraid to go to court.

**Penelope Gibbs:** Absolutely, but it would be good to know, wouldn’t it, whether or not it made a difference to conviction?

**Chair:** In that context, yes.

Q227 **Andy Slaughter:** I am interested in everyone else’s view, but I am trying to get an idea of the change in relationship. Having witnesses give evidence from behind screens or remotely, for reasons the Chair has mentioned, has been going on for a long time, and it is often the subject of applications and discussions in court and so on. I am not so worried about that. I am worried about the changing relationships you get if
things are wholly or extensively online.

**Penelope Gibbs:** The 2010 evaluation indicated that changing the relationship between the person and the court could change the outcome that the person received. We need more research to understand that.

**Lisa Wintersteiger:** It is nascent. For some people, video links may well be a better option. It is a very distressing process for many people, particularly those on their own. The worry is that we are not disaggregating what happens when you receive legal support. It is either this or that. There is not a sufficiently nuanced and sophisticated view of what happens when you are receiving some sort of legal support and advice throughout that process, and you have video technology, as opposed to the either/or of the other. At the moment, the positioning is too binary and it makes it very difficult to see what is actually happening for different people in different contexts.

**Penelope Gibbs:** The evidence to your own Committee and other evidence in the public domain is that a lot of judges are very concerned that procedural justice is somewhat damaged if you are dealing with somebody by video, and people’s understanding, and judges’ own understanding of whether a person has mental health problems, difficulties in understanding or whatever, is lessened. The evidence of the judiciary speaks volumes.

**Professor Susskind:** The discussion so far has been on criminal, but, to touch on other areas, it is very clear, for example, if you look at conventional legal practice, that video technology is commonly used, and does not seem notably to diminish the relationship between the client and the lawyer. It is absolutely pervasive in a civil advisory context. But, as you know, in September 2018, HMCTS ran a pilot on a full video hearing in a tax tribunal, and I recommend to all of you the full evaluation of that by the London School of Economics. As you know, I am broadly in favour of technology. There were some technical glitches, but, by and large, it is fair to say that most people thought the convenience was palpable. One did not need to make a long journey and there was not the fear of appearing in person, and so forth. All that is documented.

Two issues emerge. One is the issue of the technology, which is changing. In 2010, the technology was very primitive. Now we have what is known as telepresence technology. I was speaking to someone recently using telepresence, and it actually offered them a cup of tea; it felt as if they were in the same room as me. The next time you look at good videoconferencing, just think that that is the worst it is ever going to be from now on. The technology is getting better and better. That is one variable. It does not necessarily mean that the technology of today is fantastic, but we are thinking strategically, and about long-term as well as short-term issues.

The second issue is proportionality. For certain kinds of hearings, it might not make sense, because of the nature and scale of the disagreement, to
congregate physically, and video will make good sense. It is a little like the answer to the last question. In a world where we can have online and video processes, which is not the same as an online court, as well as physical courtrooms, we need to be clear about which cases are suitable, and where we feel that the rights and entitlements of participants might be diminished. What are the cases where it makes sense from the point of view of proportionality and increasing access to use the new technology? I am sure more research needs to be done, but, as I say, I commend to you the LSE report in the context of the tax tribunal.

Chair: That is helpful, thank you.

Jodie Blackstock: It depends on the kind of proceeding we are referring to. The Tax Chamber research is very helpful as a starting point, although, unfortunately, it came down to only eight cases done online because of the technical difficulties of actually getting people into a virtual proceeding. There is more research being done on that, so it needs to be watched.

There is a big difference between a virtual proceeding, where all participants are online, effectively having a Skype call, and a video-enabled proceeding, where a defendant or an immigration appellant is appearing on a link for a bail hearing, when everybody else is in the courtroom. That is the place where Penelope is concerned, and we share those concerns, because that is where the research has not been done. The University of Surrey is reviewing the Kent magistrates courts’ use of video remand hearings at the moment, and there will be some research available on that by the end of this year. Whether it can look at outcomes in any particular way is unclear, because there are so many variables, but, hopefully, they will at least attempt to.

Q228 Andy Slaughter: The common feature in both examples is remoteness. If you have remoteness, it is more difficult to pick up when people are struggling.

Jodie Blackstock: Absolutely.

Q229 Andy Slaughter: Probably half the people I see as constituents—not half my case load, but half of those I see—are people who have fallen foul of the legal system. That may be because they have had bad, inadequate or no legal advice. We have been discussing court closures recently, but there are also front-office closures. At the moment, a lot of the existing system has been withdrawn, partly to pay for the new system, and, as a consequence, people fall through the net. By the time I see them, they have racked up huge costs and bills, are being sued and are getting the bailiffs around, and so on. What concerns me is that nobody has picked that up at any stage. There is a danger that, because people are more remote and are not there, judges or whoever are not seeing that.

Professor Susskind: Are you concerned with criminal or civil?

Andy Slaughter: Civil, almost entirely.
Professor Susskind: Okay.

Lisa Wintersteiger: That is the point about the range of provision. It has to be embedded within a range of provision. At the moment, the sense is that many of these digital opportunities are essentially a replacement for divesting, and that cannot be right. It is about assessing the opportunities within the context of wider channel support. That is what we would love to see, and there is a sense that it is not what we are seeing.

Professor Susskind: There is perhaps a confusion that I need to tidy up between virtual hearings and online courts. Most of the discussion over the future of civil is about online, not virtual. The virtual hearing, as well explained, comes in two sorts.

Q230 Andy Slaughter: Potentially worse.

Professor Susskind: Or potentially better, as I shall explain—I have not provided the evidence yet. The virtual hearing is one where either all or some of the participants are linked by video. For the online hearing, there is no hearing at all; the evidence and arguments are submitted electronically, and the judge responds electronically. You are no doubt right in your intuition that, in some cases, that might not be suitable, but we are also thinking about what I call the latent legal market, the innumerable cases today where people do not enter the justice system because they do not have access. It seems to me that the online process will greatly widen access, and there is strong evidence to support that from across the world.

Q231 Andy Slaughter: But what actually happens is that people are invited into the system without the skills, whether legal or IT skills or, maybe, analytical skills, so it is a false perspective that you are offering, isn’t it?

Professor Susskind: I want to challenge that and open it, because this is the nub of it. I have researched deeply into all systems around the world, and that is not actually how they work, so it is unfair to project a criticism of a system that does not exist. There is no online court that I know of where people are simply left to their own devices to submit evidence and arguments. All the plans of HMCTS are to provide considerable support, so I do not think that it is helpful. It what I call extended courts.

Let me give you one example: undefended divorce actions. It used to be that you filled out a form, or your lawyer helped you fill out a form, and you submitted it to the court. Forty per cent of them used to be returned by the court. The online version is a form that you fill in online, and we are all increasingly used to filling in forms online, and the return rate is now less than 1%. That seems an unarguably beneficial improvement.

Lisa Wintersteiger: Many of them are not self-represented, though. That is what is slightly misleading about that figure. Many of them are still receiving support; the vulnerable are not in there yet.
Professor Susskind: I accept that some of them are not, but it seems to me an undeniable improvement, from 40% down to less than 1%. We are trying to build a court system with features such as that, which makes interaction with the public court system increasingly helpful. I say again that it is not going to happen in one step. In Canada—I know Lisa has views on this—in the Civil Resolution Tribunal, they have something called solution explorer, which in a very friendly way takes a non-lawyer through particular categories of problem and offers them some kind of advice or guidance. It has been used over 60,000 times, and the level of satisfaction from users is very high indeed.

If we were just getting rid of courts or replacing courts with an online procedure, and parties were left to their own devices, I would share your scepticism, but the passion is for what I call extended courts, which is building a whole range. I say to you again that it will not be over two or three years. It will be over 10 or 15 years. Increasingly powerful tools will help people to understand their own legal position and the options available to them, as well as helping them to build their arguments and organise their documents.

It is also important to note that, in the tribunal system, they are exploring an entirely different way of interacting, called the online continuous hearing. It is a less adversarial process, almost like an email exchange between the tribunal judge and the parties. The tribunal judges will be able to nudge, encourage and inquire of the parties in relation to particular issues. No longer is there the notion that you are just left to present your best case, and the judge sits as an independent arbiter; it is more participative. Interesting issues follow from that; it is a more inquisitorial investigatory approach.

What I find exciting about it is that we are seeing new ways to solve old problems. I want somehow to inject into the room a sense of enthusiasm about all this, because our current justice system is in a parlous state. People are working very hard to try to think of new ideas to make it more accessible, but there is no alternative narrative. In many ways I agree with much of the negativity to my left, but I have looked deeply at all the reform proposals around the world, and the ones that I find the most compelling and exciting are the ones that say that, in a digital society, we might be able to use technology to help parties to formulate their arguments and place their cases before the court. Your hesitation is completely understandable, but I do not think that it reflects the reality of the dozen or so—there are not many—fascinating projects that are very promising indeed.

Q232 Chair: Negativity or otherwise, I understand that there is a genuine debate about it, and about how we assist parties through the system, which we have talked about. I want to move on quickly to another point.

We have looked at the issue from the point of view of parties to the proceedings, and whether they are enabled or assisted by it, but there is of course a public interest in justice as well. We operate in this country on
the basic common law principle that justice has to be seen to be done and must be open. The 2016 case of the *Times* newspaper and Abdul Aziz is pretty fundamental, isn’t it? It is not absolute, because there will be certain occasions when it is necessary not to have hearings in the open, for reasons of security, or other things. We all accept that it is not absolute, but it is the starting point. Are there ways in fact, looking at the positive, where some of the problems of open justice could be made better through technology?

**Penelope Gibbs:** If the new reforms made the justice system simpler and more understandable to the public, that would be fantastic. In terms of openness, the online processes pose the greatest threat to open justice. Even though it is not written down, my understanding of open justice is that you actually see the process of justice happening and see the decision-making process at all the key stages. You do not simply know what the beginning and the end are. These black box processes, where you cannot see what decisions were made in the middle, or any reasons why, from a public point of view are incredibly risky.

Again, I shall use a criminal example. With the single justice procedure, in terms of open justice, you cannot even go online tomorrow, google it and try out the form. They have not let one do that. There is no beta form where you can see what people are asked at every stage of the form. To me, that is the epitome of closed justice; we, as citizens, cannot even see the online form that people would be filling out, let alone outcome data or anything like that. The possibility is there, but seeing what happens in the middle of the process, and the challenge of making that open, is immense, as it is with all-virtual hearings, if we ever get to that point.

For public access to all-virtual hearings, where all parties are basically on Skype, they have floated that people should be able to go to a court and go to a booth where they would put on headphones and watch a screen where they would see the participants all in their different places. In terms of open justice, that is absolutely not the same experience as going into a courtroom, seeing everybody there, being able to ask the usher what is going on, and so on. From both points of view, for totally virtual hearings and online cases, there is a big threat to open justice.

**Q233 Chair:** In principle—although how many times have we been in a magistrates court and it has been absolutely empty throughout the whole proceedings? It is a matter of practicality sometimes as to what is actually being served in reality, as opposed to in theory, isn’t there?

**Jodie Blackstock:** The current reality is that the vast majority of legal proceedings in this country are not seen by the public because of the effort it takes to go into a courtroom. Maybe the criminal courts are the most populated by the public, but district judges chambers in a county court never have members of the public in them, and it is incredibly rare for them to be at tribunal proceedings. We have an opportunity to do
something about that, and it needs innovation and imagination. I do not think that a video kiosk in a court building is the way to do it.

This hearing right now is being streamed online; any member of the public can click on the link and watch what we are saying. Why can we not do exactly the same for any court proceeding, wherever it is happening—be it in a public court building or in a virtual proceeding, where everyone is taking part virtually? There is no reason why that cannot happen, other than the cost of it, of course. If Parliament can manage to do it, perhaps the court system can as well.

Open justice is fundamental to public confidence in the administration of justice. It demonstrates that the system is fair, the law is being applied properly and the reasoning is sound. We have to ensure scrutiny by the media—by the legal journals—to make sure that decisions are made correctly, and we have to impress on HMCTS that it needs to be done. There is a project attempting to do it, currently looking at how to list all cases, so that everyone knows what cases are happening and what the outcomes are but, as Penelope says, that is probably not good enough. We need to know the process in between.

There is no reason why we should not have a downloadable PDF of what the single justice form looks like, and every other form that is available. I do not know whether it is available, but every other criminal justice court form is available through the Criminal Procedure Rule Committee. Probably it is an anomaly, rather than anything else.

**Penelope Gibbs:** There should be a beta copy of every single online process. I ought to be able to go through the divorce form online, just as a citizen, to see what it is like. I ought to be able to go through the single justice procedure and the social security appeal tribunal—all of them—so that we can all see what they involve.

**Chair:** That is a fair point.

**Lisa Wintersteiger:** To come at it from the user perspective, on the one hand intelligibility is an absolute core tenet of the rule of law. It is worrying for us that we know from the data that so few people understand anything about the justice system. While open justice is incredibly important, we need to unpack where it sits in relation to the questions of rule of law.

I was looking through our user feedback before I came here. When we asked them what they would advise another unrepresented litigant, lots of people said, “Go and have a look.” They are not interested in the wider question; they want to know what they are going to face. They are frightened, and they think it is a good idea for somebody else to have a sense of what it feels like and looks like. In the same breath, though, they say, “Find out everything you can. Go and read online and ask whoever you can.” What do we mean by intelligibility? How do they use it
and what do they want to see? Going back from that, what are the sorts of tools we might want to deploy and in what parts of the system?

**Professor Susskind:** I do not think that open justice is just about intelligibility. It is fundamental that our legal processes are visible; they build confidence in the system and are fundamental to the rule of law. We cannot have decisions made behind closed doors; I think most of us accept that.

I reiterate the point that was made at the outset, which is absolutely vital. Although the principles of open justice are important, they are not always overriding. Jodie is right to mention cameras in courtrooms. We actually make decisions that we will not have cameras in courtrooms, despite the fact that doing so would open out our system. We make decisions, and we make them on a couple of grounds and balance them against a couple of other issues. One is proportionate justice, and the other is distributive justice. Sometimes we think that actually it would not be proportionate to make the system open; at other times, we say that the cost of making it more widely available will mean that we may have to give up something in relation to open justice.

To reiterate a point that has been made, given the widespread connection to the internet, it should not be beyond our wit to use technology to make our system more rather than less accessible. There are two types of openness: real-time openness and information openness. Real-time openness is the ability to walk into a courtroom and observe. We have already heard, and you mentioned, Chair, that we should not exaggerate the extent to which that actually happens in practice. It is also interesting to notice that less than 50% of local newspapers have court reporters. Real-time is important and, in principle, our gut tells us that it would be good to be able to be in a courtroom and see it in action, but information transparency is important as well.

It worries me that, in most court systems around the world, it is hard to get information about what cases are coming through and what decisions are being made—still less, trend analysis and so forth. HMCTS has been put under a lot of pressure from people who are keen on detail to bake that into the design of the system. We want a system that will provide and make available as much information as possible so that we can slice and dice and examine it in all sorts of ways.

My overall conclusion, looking at all aspects of it, is that it should result in a system that is more open rather than less open. With online courts, for example, do we offer a service where we do not have real-time transparency but which is far more widely available to everyone, or do we say that we should keep the old system for a few people? We have to draw that balance. As you have said already, open justice is crucial, but it is not on all occasions overriding.

**Chair:** Understood.
Q234  David Hanson: I would challenge the comment you made about widespread access to the internet. I would really challenge that. There is no widespread access to the internet.

Professor Susskind: Can I respond to that? The national statistics are very clear: 90% of people have now recently accessed the internet. That takes us up to 95% with people who are proxy users; they are not users themselves, but someone else uses it.

Q235  David Hanson: I think you should come to some of the council estates in my constituency, where there is poverty and lack of access, and people do not have computers.

Professor Susskind: I am not denying that. I can tell you that only 44% of people over 75 have access to the internet, and that only 78% of people in economic categories D and E do. I do not know whether you are saying to me that the 90% is a fiction, or whether you are making the point again—it is an important point—that important classes of people who are economically disadvantaged, and who are elderly, currently do not have access. All the empirical evidence supports the notion that 95% of people in our community have realistic access to the internet.

Q236  David Hanson: Come to north Wales, and I’ll give you a tour.

Professor Susskind: I have no doubt that there are areas. I am saying to you that we need to think deeply about how we offer access to the remaining 5%. They should be our focus point, and that should be the focal point of Citizens Advice. There should be internet provision in libraries with assistance, and so forth. I am absolutely not saying that we should leave that 5% behind, but I want to stress that internet access is wider than you are suggesting.

Chair: Perhaps correctly. But the issue remains that you cannot exclude people.

Q237  Victoria Prentis: What we have to remember, though, is that users, particularly of the criminal justice system, are not necessarily in the category of people who find it easy. Has proper research been done on the actual users of criminal courts to see how good their access is to the internet and, indeed, how good their literacy is?

Lisa Wintersteiger: To go back to the report that Penelope raised, which is the most interesting and recent report, prepared by Catrina Denvir on behalf of the Civil Justice Council, what we do not know enough about is the interface between digital and legal exclusion. We need to know more. The real worry is that, as in the Welsh valleys, there is a plateauing. There are still around 10 million people who cannot access the internet, and we have not seen substantial changes for some period; we are stuck. What we do not understand is, even for people who have some basic use, how that interacts with a criminal matter, a divorce or another civil matter. That is deeply under-researched, and it is one of our
concerns. We need to do more scoping and understanding before we race ahead.

Professor Susskind: I agree, but it is interesting that, when you visit other countries, the level of internet usage is far higher. This is not just an issue for law. People who do not have access to the internet are deprived of access to medical guidance, shopping and so forth. We are falling behind many other European countries.

Chair: We are probably agreed about that.

Q238 Victoria Prentis: I think we all agree that access to physical courts is still necessary, however much we increase our use of online courts. We have been talking about court closures. We have talked extensively, while getting evidence for this report, about the new timeline that has been recommended—leaving the house at 7.30 in the morning and getting back at 7.30 in the evening. Do you think that is a helpful benchmark?

Penelope Gibbs: If you translated that through, and said that everybody had to accede to it, we would be closing half the magistrates courts in our country. That is a huge amount of time, not just for people with physical disability, but for those with mental disability and learning difficulties, as well as under-18-year-olds and people with children, and so on. We have to remember as well that, in criminal, we are asking witnesses to give up their own time. Frequently, they come to court, it is not ready and they have to come back another day. That is four hours in a day; even then, HMCTS says that 5% of people are not within that 7.30 to 7.30 barrier.

The balance between online and digital and closing the courts is not working. My understanding is that Northallerton court has already been closed, and no provision is set up for people in the Northallerton area to get to their nearest court—or video, for that matter. Nothing special has been set up in that area.

Q239 Victoria Prentis: I think the decision on Northallerton might have changed, but I am not sure.

Penelope Gibbs: I think there is going to be video, but I read in the local paper that the court has already been closed. Presumably, there are many people—defendants and witnesses—from that area, who are now faced with having to go a long way to their nearest courts.

Lisa Wintersteiger: I point to the poverty indices for about 14 million people in this country—one in five. What we are not seeing is a real assessment of what it means to get that far. How much does it cost? Is there viable transport in the area? There needs to be a more nuanced look at the real-time challenges that people have, particularly in relation to cost, travel and childcare. A hard rule is bound to leave some people without.

Jodie Blackstock: It certainly seems an unreasonable request that you should have a 12-hour period in which to go to and from court for the
vast majority of people, irrespective of cost. That will compound the problems that it leads to for people.

We produced a report in 2016 called "What is a Court?" It looked at using our justice spaces in a flexible way and where we really need those spaces to be. Do they have to look like an old, traditional court building? We recommended that justice go to the community. We can have the vast majority of hearings in community spaces—if they still exist, granted. There are community halls available, and hotel rooms, which we tend to use for inquiries and those kinds of proceedings anyway. Let’s do more of that.

We should not just have the binary argument of putting it online or keeping the creaking old wooden courtrooms. We need to use our imagination about what face-to-face proceedings need to look like. There is a new court design guide, which we are told is heavily influenced by the principles in our "What is a Court?" report. I have yet to read through it in detail, because it is very long, as perhaps it needs to be, but I would be very supportive of efforts to use more flexible spaces.

Q240 **Victoria Prentis:** I have been campaigning on this for years, ever since I arrived in Parliament, and your report is very helpful.

**Jodie Blackstock:** Thank you.

Q241 **Victoria Prentis:** Would you say that council chambers, for example, or offices within council buildings, would be useful in that respect?

**Jodie Blackstock:** Yes. The only important ingredient you need for a court hearing for the vast majority of cases is two entrances and exits, so the judge can go out one way and the public and witnesses can go out another. You have to think about the design of it to keep witnesses and parties apart, and you have to think about vulnerabilities and tensions between the parties and how they get into the building, of course, but that can be arranged in a flexible space. It is only in the most serious matters, where security is a feature and someone needs to be brought from a remand prison, that we need the traditional set-up. Justice is heavily opposed to the use of the secure dock in any event. We still think there are ways of doing that more flexibly.

**Professor Susskind:** We should not be shutting physical courts unless we have alternative provision. Justice’s report is great on that, and on what the alternative provision would look like. It will not surprise you to hear that one of the reasons why I am so keen on online provision is that I worry about the demands on human beings when they have to spend time in court.

**Chair:** That is a note of agreement that I think we can all take on board. Thank you all very much for your evidence, which has been very helpful to us. The session is concluded.