Show and tell: Pictures are necessary to explain the process of Reformed Courts to those who need support to use those processes by medConfidential, for the Justice Committee Inquiry into Court and Tribunal Reforms

1. To assist those who are digitally excluded, or those who require support to use digital services, those in civil society providing assistance and support must have some understanding of the processes involved. Such assistance/support cannot be provided solely by those who have had to use the systems, for real, themselves.

2. Images (photographs or screenshots) of the screens that people will see are necessary to produce documentation and guidance. Pictures, rather than words, are especially helpful to reassure the nervous that what they are seeing is what they should see. The importance of documentation is mentioned in multiple evidence submissions to the Committee (most notably by the Bingham Centre).

3. In his third Grisham Lecture, entitled “Justice Online: Are We There Yet?”, Joshua Rozenberg QC used images in the presentation accompanying his lecture to illustrate the process, making two asides about the process he had been forced to use in order to get them: (emphasis added)

   “…I decided to draw a line, because I don't actually want to get divorced, and if I had gone any further, I would have had to pay £550 and commit perjury, and I'm perfectly happily married...”

   And, during a later example: (emphasis added)

   “...Again, this was as far as I could get on the real live active system, any further and I would have had to make a statement of truth and pay a fee. So what I'm going to show you now are test screens. These were kindly provided to me by the Courts and Tribunals Service, and they they show you what you can expect if you go down this road now...”

4. In the first case, the only way he could get images to illustrate his presentation was by going through the actual divorce process himself (until he chose to stop), and in the second case, he asked HMCTS for the images he required. Such approaches may have been valid for a prototype or pilot, but they are not acceptable for a full service.

5. Members of civil society cannot discharge their role if the only way they are able to see a system is by peering over the shoulder of a client (who may themselves be in

---

2 [https://www.gresham.ac.uk/lectures-and-events/justice-online-there-yet](https://www.gresham.ac.uk/lectures-and-events/justice-online-there-yet)
3 Both quotes are as delivered in the lecture, times 15:18 & 19:07; the transcript is an abridged version.
legal jeopardy if they answer a question “inaccurately”, even if only to satisfy a question from their legal advisor), or by providing false information in the real, live, court process.

6. There are many examples where the requirements for testing and necessary documentation have already been met by digital systems elsewhere in Government.4

7. Civil society should be given access to a ‘test’ system, identical in operation and presentation to the system which their clients will use for real, so that staff can both experience the nuances of what questions are asked, in what context, and why – and also so they can create images for their own documentation, without the risk of accidentally initiating divorce proceedings in the process (the fee requirement makes this particular example unlikely, but not all systems involve paying a fee).

8. Recommendation: For every digital system used by the public, civil society organisations and representatives must have the means to produce their own images of what the user will see at any stage in the system.

Replicating precedent

9. The images used in Joshua Rozenberg QC’s lecture were created somehow; clearly someone can already create the images that were shared – that facility could be extended to civil society groups. (We think it unlikely that an HMCTS civil servant had a conveniently-timed divorce decision and simply took images on the ‘live’ system, with their own personal data, for use in the lecture.)

10. Should HMCTS for any reason not wish to provide wider access to the means used to create the images in this instance, and drawing on medConfidential’s work on the delivery of digital services in the NHS, one model that could be replicated is that of the “Open Access Test Environment for Spine”, run by NHS Digital.5 The Spine is one of the most sensitive critical national infrastructure systems the NHS runs – effectively, the database of every NHS patient – so the analogy may not be exact, but such a Test Environment is demonstrably a sufficiently safe approach.

11. The UK prides itself on upholding the principles of democracy and the rule of law. The standards we apply to and in the courts post-reform should be no lower because of the use of Algorithms, Digital / Data, or Artificial Intelligence – or whatever comes after today’s algorithms, data, and artificial intelligence.6

4 Here, for example, is the documentation for any entity wishing to test GOV.UK Pay, the online payments processor for HM Government:
https://docs.payments.service.gov.uk/testing_govuk_pay/#testing-gov-uk-pay
5 https://digital.nhs.uk/services/spine/open-access-test-environment-for-spine-opentest
6 To use the Ada Lovelace Institute terminology
12. Technology should support principles, democracy, and the rule of law – not be used as an excuse to abandon those things we hold most dear. And this must apply equally to the support mechanisms for these institutions.

About medConfidential

medConfidential is an independent, non-partisan organisation campaigning for confidentiality and consent in health and social care, which seeks to ensure that every flow of data into, across and out of the NHS and wider care system is consensual, safe, and transparent.

Founded in January 2013, medConfidential works with patients and medics, service users and care professionals; draws advice from a network of experts in the fields of health informatics, computer security, law / ethics and privacy; and believes there need be no conflict between good research, good ethics and good medical care.

medConfidential also engages with data use more widely across Government as, to the first approximation, the data of which institutions of State most want to make copies is your medical record. This work provides us with a wide range of interdisciplinary insight into the variety of ‘digital’ systems used by Government.