Written evidence from Equality and Human Rights Commission (CTS0075)

About the Equality and Human Rights Commission
The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited at UN level as an ‘A status’ National Human Rights Institution in recognition of its independence, powers and performance.

Summary
The Commission recognises that modernising the courts system may provide a number of opportunities to improve access to justice, for example by improving accessibility for some disabled court users. However, we have identified a number of concerns about the approach to the reform programme and the potential detrimental impacts on access to justice that may result. Our key concerns are:

- the lack of comprehensive evidence and impact assessment to underpin decision-making and ensure the courts modernisation programme does not disproportionately disadvantage people with characteristics protected under the Equality Act 2010
- the closure of courts on the basis of increased use in the future of online alternatives, which will necessarily exclude people with certain protected characteristics who cannot engage with these processes, before these measures are in place and before their impact has been properly evidenced and evaluated
- the potential detrimental implications of online and digital processes, including video links and online court procedures, on access to justice and fair trial rights

In our submission we set out the legal framework on equality and human rights relevant to the court reform programme in section A. We have provided evidence in relation to the impact of court closures (section B), the impact of online processes (section C), and the Government’s approach to assessing and evaluating the reforms (section D). We set out recommendations for the Government to take action in section E.

A. The legal framework

Domestic law
1. Access to justice is a fundamental right protected under the common law. The ability to seek legal redress for unlawful acts underpins the rule of law and protects our democratic ideals. It facilitates lawful economic and social relations between individuals and acts as a constraint on how those with power treat others. The courts have established that the right of access to justice must be a practical reality, and any statutory hindrance or impediment to it requires clear authorisation by Parliament.1

2. The common law right of access to justice is supported by the requirements of the European Convention on Human Rights (ECHR), which is given domestic effect by the Human Rights Act (HRA) 1998. Article 6 ECHR protects the right to a fair trial in both civil and criminal proceedings. Read with Article 6, Article 14 ECHR guarantees freedom from discrimination in relation to fair trial rights.

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1 R (on the application of UNISON) v Lord Chancellor [2017] UKSC 51.
3. Article 6(1) ECHR sets out the right of effective access to civil and criminal courts and tribunals, including the right to a fair and public hearing by an independent and impartial person. The European Court of Human Rights has established that litigants should have a “clear, practical and effective opportunity” to go to court.² Articles 6(2) and (3) ECHR guarantee specific minimum rights for those charged with criminal offences. These include the right to be informed in a language which they understand and in detail of the nature of the accusations against them, to have adequate time and facilities for the preparation of a defence, and to be able to examine witnesses against them.

International law

4. The UK has signed a number of international human rights treaties that recognise the right of access to justice. While the obligations that arise from these treaties do not generally create a separate cause of action for individuals in the domestic courts, they may be relevant when the courts interpret related domestic law including the HRA and the Equality Act 2010. The obligations in these treaties should also be used to guide and inform policy-making.

5. The International Covenant on Civil and Political Rights requires state parties to ensure there are effective remedies for individuals whose rights are violated (article 2(3)). Any person claiming such a remedy has the right to have their claim determined by a competent judicial, administrative or legislative authority.

6. The UN Convention on the Rights of Persons with Disabilities requires state parties to ensure effective access to justice for disabled people on an equal basis with others (article 13). This includes providing appropriate procedural accommodations to facilitate disabled people’s effective participation in legal proceedings.

7. The UN Convention on the Elimination of all forms of Discrimination against Women requires state parties to ensure women and men have equality before the law and benefit from equal protection of the law (article 15). Article 15(2) of the treaty requires that women and men have identical legal capacity in civil matters and the same opportunities to exercise that capacity. The CEDAW Committee has identified accessibility as one of six essential components necessary to ensure access to justice. This means that all justice systems should be secure, affordable and physically accessible to women, and adapted and appropriate to the needs of women, including those who face intersecting or compounded forms of discrimination.³

8. The UN Convention on the Elimination of all forms of Racial Discrimination requires state parties to guarantee the right of everyone to equality before the law, without distinction on the basis of race, colour or ethnic origin, including the right to equal treatment before a court or tribunal (article 5).

9. The UN Convention on the Rights of the Child requires state parties to ensure that children are provided with the opportunity to be heard in any judicial and administrative proceedings that affect them, either directly or through a representative or appropriate body (article 12). The best interests of the child should be a primary consideration in all actions concerning children, including in courts of law (article 3).

Equality obligations

10. It is unlawful under the Equality Act 2010 for the Ministry of Justice and its executive agency HM Courts and Tribunals Service (HMCTS) to discriminate in providing services or

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² De Geouffre de la Pradelle v France [1992].
³ UN Committee on the Elimination of Discrimination Against Women (2015), ‘General recommendation no. 33 on women’s access to justice’.
exercising public functions on the basis of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.

11. Discrimination can take a number of forms, including direct and indirect discrimination, discrimination arising from disability, and a failure to make reasonable adjustments. Indirect discrimination takes place when a provision, criteria or practice that applies to everyone has a disproportionate adverse impact on people sharing a particular protected characteristic. It can only be justified if it is shown to be a proportionate means of achieving a legitimate aim. The duty to make reasonable adjustments is anticipatory, which means that organisations must think in advance and on an ongoing basis about the requirements of disabled people and the adjustments that may need to be made.

12. In exercising their functions the Ministry of Justice and HMCTS are also required under the public sector equality duty to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity (which includes having regard to the need to remove or minimise disadvantage), and foster good relations. The duty requires public bodies to assess the impact of any new service or change to existing services on users who share protected characteristics, which must be taken into account when proposals are developed and then monitored and evaluated after they are implemented.

B. Court closures

13. Since 2010/11 the Government has closed more than 260 crown, country and magistrates’ courts with potentially negative implications on access to justice, particularly for people with certain protected characteristics.4

Prolonged journey times

14. In its decisions about court closures, HMCTS has proposed to use a benchmark that “nearly all users should be able to attend a hearing on time and return with a day, by public transport if necessary”.5 We are concerned about the interpretation of “reasonable” and the long journeys that are proposed in some of the recent consultations. For example, according to the Government’s analysis, following the closure of Northallerton Magistrates’ Court some users could be expected to make a roundtrip of more than 7 hours by public transport to attend an alternative court.6

15. That length of journey is very likely to be prohibitive for some users, particularly but not limited to disabled people. Research by the Commission in 2017 highlighted that disabled people often have very limited access to transport.7 The UN Committee on the Rights of Persons with Disabilities has questioned whether there are sufficient obligatory standards in domestic legislation to ensure equal access to transport for disabled people in line with Article 9 of the Convention on the Rights of Persons with Disabilities.8

16. The Government has identified that women with the protected characteristic of pregnancy and maternity may be disproportionately affected by court closures.9 Women may

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4 See response to written parliamentary question 123668, which identified 258 courts closed between 2010/11 and 2017/18, as at 29 January 2018. A further 4 magistrates courts were closed in 2018/19, see House of Commons Library (2019), ‘Constituency data: magistrates’ court closures’.
5 MJ and HMCTS (2018), ‘Fit for the future: transforming the court and tribunal estate’.
6 MOJ and HMCTS (2018), ‘Proposal on the future of Northallerton Magistrates’ Court’.
7 EHRC (2017), ‘Being disabled in Britain: a journey less equal’.
8 UNCRPD (2017), ‘Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland’.
9 MOJ and HMCTS (2018), ‘Fit for the future: transforming the court and tribunal estate’.
be also be disproportionately affected as they are more likely to have caring responsibilities – for example, almost 90 per cent of single parents with dependent children are women.\textsuperscript{10} The UN Committee on the Elimination of Discrimination Against Women has identified the lack of courts in rural areas and the time and money needed to access courts among the barriers that prevent women from accessing justice.\textsuperscript{11}

17. The impact of court closures is likely to be particularly pronounced in rural areas, where access to public transport is more limited. According to data from the Department for Transport, fewer than half of those living in the most rural areas have reasonable access to a regular bus service.\textsuperscript{12} People living in rural areas are also more likely to be digitally excluded – for example, 17 per cent of rural properties do not have access to decent broadband, compared with 2 per cent of urban properties.\textsuperscript{13} This raises concerns about whether online alternatives to attending court in person would mitigate the impact of court closures in these areas.

**Accessibility of receiving courts**

18. In some areas concerns have been raised about the impact of court closures on disabled people’s ability to access court buildings, where the alternative court is insufficiently accessible. For example, the Government has acknowledged that one of the alternative sites to Northallerton Magistrates’ Court, which was announced for closure in July 2018, “can only deal with non-mobile users by prior arrangement”.\textsuperscript{14} Research on the impact of court closures in Suffolk has highlighted that there are access issues for disabled witnesses at the remaining magistrates’ court in the county.\textsuperscript{15}

**Impact on local justice**

19. The Lammy Review of racial disparity in the criminal justice system drew attention to the importance of justice being more rooted in local communities, through measures such as holding hearings in local neighbourhoods and using non-traditional buildings like libraries and community centres.\textsuperscript{16} The closure of local courts is potentially detrimental to these efforts. For example, some research suggests court closures may have a negative impact on public engagement with the justice system, and on recruiting magistrates from more diverse backgrounds (the consultations on the latest proposed court closures did not consider the impact on judicial diversity).\textsuperscript{17} The Government has indicated that it will use alternative provision including community centres and village halls as alternatives to traditional courts, and we would welcome further detail on these proposals including any equality impact assessment the Government has carried out.\textsuperscript{18}

**C. The impact of online and digital processes**

\textsuperscript{11} UNCEDAW (2015), *General recommendation no.33 on women's access to justice*.
\textsuperscript{12} See Rural England (2019), *The state of rural services 2018 report*. Note that these figures have not been updated since 2012.
\textsuperscript{13} Ofcom (2017), *Connect nations report*.
\textsuperscript{14} MOJ and HMCTS (2018), *Proposal on the future of Northallerton Magistrates’ Court*, p9.
\textsuperscript{15} Olumide Adisa (2018), *Access to justice: assessing the impact of the magistrates’ court closures in Suffolk*.
\textsuperscript{17} Olumide Adisa (2018), *Access to justice: assessing the impact of the magistrates’ court closures in Suffolk*.
\textsuperscript{18} MOJ and HMCTS (2018), *Fit for the future: transforming the court and tribunal estate*. 
While we are not opposed to online and digital justice in principle, we are concerned about the lack of robust evidence underpinning the design and implementation of the Government’s proposals, and the potential detrimental impact on access to justice that may result.

Online justice procedures

The Commission understands that online alternatives to traditional courts have been implemented in some jurisdictions, including the single justice procedure, which allows people accused of certain offences to plead guilty online and choose to have their case decided by a single magistrate without going to court. The consultation on transforming the justice system in 2017 put forward initial proposals for an automatic online conviction procedure, with further detail to be set out in legislation. The more detailed legislative proposals were dropped at the 2017 general election and not re-introduced through the Courts and Tribunals Act 2018.

The equality impact assessment for the 2017 consultation acknowledged the proposals may result in indirect discrimination for some groups, including disabled people who were considered overall less likely to engage with online processes. The consultation committed to safeguards to mitigate these impacts but concluded that the “exact nature of any potential indirect impacts [could not] be fully assessed” prior to decisions about which types of cases were in scope. The lack of a comprehensive understanding by Government of the potential impacts raises concerns about whether the mitigations would be sufficient. We are not aware of any published evaluation of the impact of online conviction procedures on people with protected characteristics, or the implications for fair trial rights more broadly.

Relevant considerations for such an assessment would include whether there is an impact on people’s understanding of the process, including the consequences of pleading guilty, and on their ability to present their case effectively, including being able to raise mitigating circumstances or other relevant factors. It is important to emphasise that the consequences of conviction can be serious – for example in terms of current and future employment - even for offences that are considered straightforward or ‘routine’. It is essential that individuals who are unable to or choose not to use online processes, or who require assistance or reasonable adjustments, are not disadvantaged by using other routes - for example, by reduced penalties being offered only to those defendants who plead guilty online.

The increased reliance on online courts raises concerns about access to or take-up of legal advice, potentially increasing the risk that people engage in the justice system without legal advice. It may also result in a reduced role for the judiciary. Judges play an important role in identifying and addressing any avoidable imbalance in the situation of the prosecutors and the defendant, for example where a defendant has learning disabilities and/or mental health issues. Judges also have a role in determining any mitigating circumstances that should be taken into consideration at sentencing.

Online processes may have implications for open justice, which has been described as a fundamental principle of the common law. It is a general principle of our constitutional law that justice is administered by the courts in public and open to public scrutiny, and open

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20 Courts and Tribunals (Judiciary and Functions of Staff) Act 2018.
21 MOJ (2016), ‘Online convictions/statutory fixed fine impact assessment and equality statement’.
justice is an important aspect of public confidence in the justice system. At present, there is evidence of lower levels of confidence among some groups, including disabled people and people from Black Caribbean backgrounds.\textsuperscript{24}

**Video hearings**

26. There is limited available evidence or testing in relation to the impact of video hearings on access to justice. Some evidence indicates there may be a negative impact – for example, a study by Transform Justice indicated that video hearings reduced defendants’ understanding of the process.\textsuperscript{25} The report highlighted the negative impact on the relationship between lawyers and defendants, and identified that video hearings excluded defendants’ and witnesses’ family members and supporters from the process.\textsuperscript{26} Prior to this, an evaluation commissioned by the Ministry of Justice in 2010 identified that defendants appearing over video were less likely to be represented and more likely to plead guilty and to receive custodial sentences.\textsuperscript{27}

27. We note that the 2010 report recommended further exploration of the impact on court processes and outcomes, but we are not aware of any further formal evaluations by Government, with the exception of the process evaluation of video hearings in the tax tribunal.\textsuperscript{28} This research was small-scale (only two appellants were interviewed after their hearings, for example) and acknowledged the possibility of selection bias. It is important to note the researchers’ comments that they “cannot generalise the findings of the report to complex cases or to court users who may have particular vulnerabilities, such as defendants appearing from custody”.\textsuperscript{29} The report recommended that further developments should include a strategy to address user vulnerabilities in video hearings, or identify a ‘minimum standard of resilience’ for participants.\textsuperscript{30}

**Digital exclusion**

28. We are concerned that the same individuals who would find it more difficult to travel to court may also face difficulties accessing services digitally. For example, digital exclusion is more prevalent among disabled people and older people: 20 per cent of disabled people are identified as having never used the internet\textsuperscript{31} and fewer than half of people aged 65 and over have basic digital skills.\textsuperscript{32}

29. We welcome the Government’s commitment to ensure appropriate digital assistance is in place for those who need it. The effectiveness of these measures will depend on how individuals’ needs are identified and met. Further reasonable adjustments may need to be developed to facilitate effective participation for some users. We would welcome further detail about how assisted digital provision will secure equal access to justice, including the results and evaluation of HMCTS’ initial work in this area.

**Impact on disabled people**

\textsuperscript{25} Transform Justice (2017), ‘Defendants on video – conveyor belt justice or a revolution in access?’.
\textsuperscript{26} Ibid.
\textsuperscript{27} MOJ (2010), ‘Virtual courts pilot: outcome evaluation report’.
\textsuperscript{28} Meredith Rossner and Martha McCurdy (2018), ‘Implementing video hearings (party-to-state): a process evaluation’.
\textsuperscript{29} Ibid, p29.
\textsuperscript{30} Ibid.
\textsuperscript{31} Office for National Statistics (2018), ‘Internet users in the UK: 2018’.
\textsuperscript{32} Lloyds Bank (2018), ‘Consumer digital index 2018’. 46 per cent of those aged 65 and over did not have all five of the assessed digital skills, which are: managing information, communicating, transacting, problem solving and creating (which includes completing online forms).
30. The Commission is concerned that court reforms may have disproportionate impacts on disabled people with cognitive impairments, mental health conditions and neuro-diverse conditions, particularly in relation to their ability to participate in the criminal justice process. Existing evidence suggests there may be a high prevalence of impairments of this type among defendants, although further research is needed.\(^\text{33}\) Research by the National Institute for Health and Care Excellence in 2017 indicated that between 11 and 22 per cent of suspects detained by the police are at risk of vulnerability and require the assistance of an appropriate adult; almost 40 per cent of people detained in police custody have a mental health issue; 76 per cent of women and 40 per cent of men in prison on remand have a common mental health disorder; and up to 50 per cent of the prison population suffer from some degree of traumatic brain injury, with 90 per cent experiencing a psychiatric disorder.\(^\text{34}\) Further evidence indicates that the needs of defendants with mental health conditions, cognitive impairments and neuro-diverse conditions are not consistently understood or met by criminal justice professionals.\(^\text{35}\)

31. There is a small but growing body of evidence to suggest that court reforms may increase the prospect of unfairness. In 2017 the Magistrates’ Association highlighted the view of magistrates that court users were much more likely than the general population to suffer from difficulties with learning, communication, and mental health, which restricted their ability to engage face-to-face, concluding that “the use of video links risks exacerbating these challenges”.\(^\text{36}\) Following a survey of professionals and analysis of the international evidence, Transform Justice concluded that “alarm bells are ringing particularly loud about the use of video for people with mental health problems, learning disabilities, and autism”, highlighting the increased difficulty of identifying a defendant’s impairments or support needs when they appear on video.\(^\text{37}\) These findings echo the conclusions of a JUSTICE working party, including leading lawyers, representatives of the judiciary, the police service and specialist mental health professionals, that the digital reform programme “raises real difficulties for the proper identification of vulnerability amongst people summonsed to court… These procedures do not accommodate vulnerability and must be carefully thought through to ensure that assistance is available for those who are likely to need it, and that face-to-face court proceedings are clearly offered”.\(^\text{38}\)

The Commission’s inquiry

32. The Commission is committed to understanding the implications of the reform programme on access to justice for disabled defendants and on 1 March 2019 we launched a formal inquiry on this subject.\(^\text{39}\) Our research will examine the experience of adult defendants across the UK with cognitive impairments, mental health conditions and neuro-diverse conditions in the criminal justice system. We will focus on the pre-trial stage from charge through to trial or other disposal. It is at this stage of the process that remand decisions are

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\(^\text{33}\) See eg JUSTICE (2017), ‘Mental health and fair trial’. JUSTICE has made the case for accurate reporting by police and courts on the number of people identified as having a vulnerability in the criminal justice system.

\(^\text{34}\) NICE (March 2017), ‘Mental health of adults in contact with the criminal justice system’, p17.


\(^\text{36}\) Magistrates Association (2017), ‘Response to a new report on defendants appearing by video link’.


\(^\text{38}\) JUSTICE (2017), ‘Mental health and fair trial’.

\(^\text{39}\) Using its statutory powers under the Equality Act 2006, Section 16 and Schedule 2. For more information see EHRC (2019), ‘Inquiry: does the criminal justice system treat disabled people fairly?’.

In addition to considering the experience of defendants in England and Wales, the Inquiry will consider the experience of disabled accused in Scotland. Plans to modernise the courts in Scotland are progressing at a different pace to those in England and Wales.
made, pleas are entered and decisions are taken about the provision of adjustments for trial. The pre-trial stage is also a time when the use of video-link and online processes is currently more prevalent. As the Government works to expand the use of digital processes, the Commission aims to build the evidence base necessary to protect the rights of disabled people. This means ensuring digital processes are only adopted where they enable effective participation, and are used in conjunction with appropriate adjustments.

33. The inquiry will consider the adequacy of the duties owed by Government, public bodies and the judiciary to anticipate, consider and make adjustments for disabled defendants. We will further assess the existing legal framework to ensure compliance with these duties, including the extent to which guidance and policies across the criminal justice agencies meet the needs of disabled defendants. In addition to examining the adequacy of law and policy, we will engage with a broad range of professionals including judges, magistrates, court staff, solicitors, barristers, Crown Prosecution Service representatives, intermediaries, and liaison and diversion professionals, to understand the barriers disabled defendants face in practice and the adjustments that facilitate participation. More critically, our inquiry will seek the views of defendants with mental health conditions, cognitive impairments and neuro-diverse conditions. Through interviews and surveys we will seek to gain significant new insight into their experience of the criminal justice process, including appearing by video-link or entering a plea online.

D. Evaluating the reforms

34. The Commission is concerned about the limited evidence and impact assessment underpinning the court reform programme, and the lack of opportunity for public and parliamentary scrutiny. HMCTS described some of its research in response to the Public Accounts Committee, including qualitative user research and quantitative analysis of court users, but our understanding is that much of this has not been published.40

Approach to assessing impacts

35. HMCTS has acknowledged that it does not hold comprehensive data on court users on which to assess the impact of court closures.41 Instead, HMCTS compares the local population around a court with the regional population to determine whether certain groups are overrepresented.42 This approach assumes the characteristics of court users are reflective of the general population, and does not take into account whether certain groups are more likely to need to attend court as victims, witnesses or defendants. It does not reflect, for example, that young people, disabled people and people from certain ethnic groups are more likely to be victims of crime compared with other groups.43

36. The Government’s assessment of the impact of court closures focusses on the changes to users’ travel time to court, and does not explore other potential impacts. Research from the University of Suffolk has identified a wide range of potential impacts on access to justice, including an increase in non-appearances by defendants, low morale among criminal justice professionals, inefficiencies in court procedures, and disengagement with the criminal justice system, particularly among vulnerable people.44 The knock-on impacts for some groups may

40 HMCTS (2019), ‘Putting people at the heart of reform, response to PAC recommendation 2’.
42 Ibid.
43 Office for National Statistics (2019), ‘Crime in England & Wales, year ending March 2017: annual trend and demographic tables,’ table D1. For the year ending March 2018, 15.0 per cent of disabled adults were a victim of crime, compared with 14.3 per cent of non-disabled people. 21.9 per cent of people with mixed or multiple ethnicity were victims of crime compared with, for example, 14.1 per cent of those with White ethnicity. 20.2 per cent of people aged 16-24 were victims of crime compared with an average of 14.4 per cent for all age groups.
extend beyond travel duration - for example, women with young children may need to arrange and pay for additional childcare to accommodate longer travel to and from court, and disabled people may need to pay for overnight accommodation to be able to attend court on time. Research by the University of Suffolk has suggested that a disabled person on benefits would need to spend all of their disability allowance on travel in order to attend a five-day trial hearing, following the closure of local courts in that region.\footnote{Olumide Adisa (2018), ‘Access to justice: assessing the impact of the magistrates’ court closures in Suffolk’.}

\textbf{37.} The groups identified by HMCTS as being disadvantaged by court closures are disabled people and women with the protected characteristic of pregnancy and maternity.\footnote{Ibid.} The impact assessment does not consider whether other groups may similarly find long journeys to court prohibitive - such as older people or women caring for young children – or whether other groups may be affected for different reasons. We are particularly concerned that the recent consultations do not assess the potential impacts on children and young people, or make any reference to the impact of closing youth courts. The impact on those who work with court users, such as those who support victims of domestic abuse attending court, is also relevant to the overall assessment of how court closures may affect different groups.

\textbf{38.} The Government’s assessment of whether the proposals are proportionate is based on how many users are affected. This is not in itself an indication of the scale of the impacts or the extent to which different users would be affected. For example, HMCTS assesses that disabled people are likely to be put at a disadvantage due to longer travel times to court, but does not assess how or to what extent.\footnote{MOJ and HMCTS (2018), ‘Fit for the future: transforming the court and tribunal estate’.} In practice, the same journey for a disabled person may not only be longer but also more difficult or complicated, or potentially impossible if local transport is not accessible. While this may only apply to a relatively small number of users, the seriousness and extent of the impact on access to justice may be significant.

\textbf{39.} The PSED requires public bodies to consider whether they have sufficient evidence to consider effectively the potential impact of proposals on people with protected characteristics, including whether they have sufficient understanding of the different needs of these groups, and the particular disadvantages they may face. It is not sufficient for a body to say that it does not have the evidence required to meet the general duty: bodies must determine where there are gaps in their evidence base and identify how to address them. This could include collecting new sources of data, engaging with people with certain protected characteristics, or using external sources of information.\footnote{See eg MOJ and HMCTS (2018), ‘Proposal on the future of Northallerton Magistrates’ Court’.}

\textbf{Appropriateness of mitigations}

\textbf{40.} HMCTS has identified a number of measures to mitigate the additional difficulties users would face in travelling to court, including later start times and online alternatives to attending court in person. We do not believe that HMCTS can be confident these measures will be appropriate or sufficient, given the limitations in the impact assessment and the lack of consideration of other potential negative consequences.

\textbf{41.} We would also challenge the assumption that online alternatives will mitigate the impact of court closures, given they are in the early stages of development and roll-out. As the Public Accounts Committee has highlighted, HMCTS has delivered two-thirds of what was expected at this point in the programme.\footnote{See also EHRC (2018), ‘Consultation response: fit for the future, transforming the court and tribunal estate’.} HMCTS has proceeded with a significant
number of court closures in the meantime, despite extending the timetable for completing the reforms from 4 to 6 years initially, and then by a further year to 2023 as was recently announced.\textsuperscript{50}

Consultation and parliamentary scrutiny

42. The Government consulted on the broad strategy for the courts estate in 2018, but did not set out proposals or seek views on the introduction of planned reforms such as online courts or video hearings.\textsuperscript{51} Prior to this, in 2017, the Government consulted on a small number of proposals to modernise the courts - a process for automatic online conviction, the assisted digital strategy and panel composition in tribunals.\textsuperscript{52}

43. The Prisons and Courts Bill 2016-2017 provided more detail on the Government’s intentions, including provision for the expansion of video-link hearings and the introduction of online pleading and fully online courts. These provisions were not re-introduced following the last general election. The much narrower Courts and Tribunals Act 2018 contained a limited number of provisions largely focussed on the delegation of some judicial functions to court staff. While we understand that the Government still intends to legislate to modernise the courts system - as it committed in the 2017 Queen’s Speech and indicated in evidence to the Public Accounts Committee – we are concerned that the reforms have proceeded without a clear timetable for legislation.\textsuperscript{53}

44. Further, we are concerned that what one respected commentator has called a “drip-feed” approach to reform may reduce parliamentary scrutiny and increase the risk that an understanding of the cumulative human rights and equalities impacts of the proposals is lost.\textsuperscript{54} The lack of cumulative assessment risks the equality impact of the proposals being considered in isolation rather than as part of a series of changes that may interact and have knock-on effects on each other, and on other recent changes to the justice system including cuts to legal.

E. Recommendations

45. In order to address the issues we identify in our submission, we encourage the Committee to call on the Government to take the following action:

(i) The Government should collect comprehensive data about court users to enable a robust assessment of the equality impacts of court closures, and should not proceed with any further closures until it has done so.

(ii) The Government should establish a clear evidence base on the impact of digital justice processes, including video links and online court procedures, and establish the equality and human rights issues that need to be addressed before any new measures are introduced or existing pilots are extended.

(iii) On the basis of robust court user data and the evidence gathered on the impact of digital justice processes, the Government should undertake a cumulative impact assessment to ensure it understands the practical impact of the court reform programme in the round.

\textsuperscript{49} Public Accounts Committee (2018), ‘Report: transforming courts and tribunals’.
\textsuperscript{50} HMCTS (2019), ‘Press release: Additional year to deliver ambitious court reforms’.
\textsuperscript{51} MOJ and HMCTS (2018), ‘Fit for the future: transforming the court and tribunal estate’.
\textsuperscript{52} MOJ and HMCTS (2016), ‘Transforming our justice system’.
\textsuperscript{53} Cabinet Office (2017), ‘Queen’s speech 2017’. In evidence to the Public Accounts Committee the Government said it expected three areas to be covered in future bills: criminal procedures, online procedures and provisions on employment tribunals. See Public Accounts Committee (2018), ‘Transforming courts and tribunals, fifty-sixth report of session 2017-19’.
particularly for those who may have different needs arising from characteristics protected under the Equality Act 2010, and to ensure the changes are compliant with human rights obligations.

(iv) The Government should set out clear and detailed proposals for the court reform programme, and ensure that professionals, parliamentarians, relevant organisations, court users and the wider public are consulted on its intentions.