Public Law Project roundtable: Preventing exclusion in an age of digitalisation

Rapporteur's briefing
Jo Hynes

July 2021

The Public Law Project (PLP) is an independent national legal charity. Our mission is to improve public decision making and facilitate access to justice. We work through a combination of research and policy work, training and conferences, and providing second-tier support and legal casework including public interest litigation.

Our strategic objectives are to:

o   Uphold the Rule of Law

o   Ensure fair systems

o   Improve access to justice

www.publiclawproject.org.uk

Introduction

The Government's commitment to digital justice has significant benefits but also poses significant challenges, not least in the form of digital exclusion.

As PLP outline in our recent report,[1] the risk of excluding individuals who lack the skills, confidence or hardware to engage with the justice system online is currently being addressed by HM Courts and Tribunal Service (HMCTS) through an 'Assisted Digital'[2] service called 'Digital Support'.[3] This is an important time for Digital Support, as it transitions from a long-running pilot into a national service, whilst also addressing the challenge of remote delivery created by the COVID-19 pandemic.

On 1 June 2021 PLP convened a two-hour private roundtable discussion between 17 stakeholders and interested parties (the 'Expert Group') chaired by The Rt Hon Sir Ernest Ryder, to explore the next phase of Digital Support. The discussion focused on four key themes of Digital Support – delivery, funding, additional support and objectives. These are summarised below.

The membership of the Expert Group brought to these discussions a wide range of experiences and expertise, and we are extremely grateful for their thoughtful contributions. As the discussion was confidential, no comments are attributed to any individual or organisation.

---

[1] Hynes, J. (2021) Digital support for HMCTS reformed services: What we know and what we need to know, available at: https://publiclawproject.org.uk/content/uploads/2021/05/210513_Digital-Support-Research-Briefing_v6_Final-draft-for-publicationpdf.pdf

[2] Cabinet Office (2013) Government Digital Strategy: December 2013, available at: https://www.gov.uk/government/publications/government-digital-strategy/governmentdigital-strategy#actions

[3] Good Things Foundation, who deliver the Digital Support service, produced a comprehensive pilot evaluation. See: Good Things Foundation (2020) HMCTS Digital Support Service: Implementation Review, available at: https://www.goodthingsfoundation.org/insights/hmctsdigital-support-service-implementation-review/

Delivery of Digital Support

A central theme of all the discussions around the delivery of Digital Support was the extent to which it can or should be separated from legal advice. Many members of the Expert Group felt that detaching the two made delivery more complicated and left providers less able to provide a coherent service. There was very strong support for delivering digital advice alongside legal advice, allowing users to move between different types and levels of advice smoothly.

The importance of a face-to-face service was also raised by members. In particular, many suggested that this in-person contact in a familiar location, co-located with other services, was absolutely essential. For some members, delivering Digital Support remotely would undermine its value, especially for the most vulnerable users. One member also highlighted the particular value of the initial appointment being face-to-face, as rapport and trust could be built here that would allow subsequent appointments to be delivered remotely more effectively. Similarly, a number of members advocated for the benefits of partnership working and collaboration between advice centres. The tender for the national service allows for such partnership and consortium working and covers England, Wales and the reserved tribunals in Scotland.

Keeping digital and legal advice within the same appointment and delivering Digital Support in face-to-face appointments wherever possible were not only seen as valuable components in their own right, but for many it was felt that they were the most reliable way to create an 'end-to-end' service. A majority of members supported the conception of Digital Support as an 'end-to-end' service, where advice providers were able to offer a continuous contribution to the Digital Support user.

Good triaging systems and capacity for Digital Support providers to offer effective case management were seen by several members as essential infrastructure to Digital Support delivery. More broadly, many members highlighted the importance of a well maintained legal information estate, including governmental and non-governmental websites, and effective information provision at Digital Support appointments. There was broad agreement that referral networks and clear signposting into and out of Digital Support services were absolutely vital to the success of Digital Support. This included making it as easy as possible for third parties, advisers and others, such as friends or family members taking on a supporting role, to be able to signpost to these services.

A number of members suggested there was an urgent need to streamline and improve the legal information already available online and to better utilise this asset alongside

Digital Support delivery. However, some members were concerned that the most vulnerable users would be less able to make the most of signposting services and it could lead to confusion and disempowerment if they were transferred between a number of agencies.

Several members highlighted the need for greater support and 'upskilling' of the staff in Digital Support participating centres. One member who acknowledged this need also suggested that if support staff required assistance with digital skills, then this was an indication either that the Digital Support process or the online court process itself was flawed.

Funding of Digital Support

The broad support in the Expert Group for Digital Support and legal advice to be provided together by accredited providers was countered by suggestions that HMCTS was unable to fund legal advice and the kind of 'end-to-end' support that many members said was needed. However, some in the group suggested that this rigidity could be challenged at a ministerial level.

Additional support

Throughout the roundtable discussions there were many references to the importance of acknowledging the wider needs (emotional, procedural and legal) of Digital Support users. Recognising and meeting these needs was considered crucial to the success of Digital Support appointments – a sentiment that is reflected in the Good Things Foundation's evaluation.[4] Early legal advice was regarded as an essential part of the 'jigsaw' of services that Digital Support slotted into. Indeed, there was significant thought given to how Digital Support could be understood in conjunction with services offering additional support, and an acknowledgement that Digital Support could not be delivered effectively without this consideration of wider needs.

Objectives of Digital Support

There was a general consensus in the group that there was a huge spectrum of need amongst Digital Support users. Not only were there particularly vulnerable populations that the service needed to support, but because there is a lot at stake with legal problems, many other people may need Digital Support. Even those with the greatest

---

[4] Good Things Foundation (2020) HMCTS Digital Support Service: Implementation Review, available at: https://www.goodthingsfoundation.org/insights/hmctsdigital-support-service-implementation-review/

capability may find themselves in a position where they need assistance, as a result of the complexity or emotional stress of their legal problem.

Many members highlighted that it was critical that we better understand this spectrum of need, including the nature of the target group for Digital Support, their behaviours and typical journeys into and out of Digital Support services. It was also raised that user needs will likely vary depending on the court or tribunal a user is accessing. An evidence base for this spectrum of need and what does and does not work via digital platforms was suggested as being vital as Digital Support develops. Headway into building this evidence base has already been made.[5] Nevertheless, one member expressed concern that the findings from this evidence base were not yet filtering through into the tender for the national Digital Support contract.

More broadly, a number of members cautioned against embedding and compounding existing problems and discrimination into this new service. They highlighted the fact that Digital Support overlies a landscape of long-term unmet legal need, poverty and systematic disadvantage, and for some communities the long-standing nature of these challenges means they risk not being sufficiently served by interventions like Digital Support. For several members, these challenges reinforced calls for a wider conceptualisation of Digital Support to include additional forms of support.

Some members conceived of Digital Support as a fairly narrow service to provide digital advice in isolation, but the majority of the group saw it as ideally a broader intervention. Others still suggested that it was not a case of an 'either/or' scenario, but considered that there were shorter-term solutions, such as improving the quality of and signposting to the current online legal information offering. One member highlighted the potential value in thinking about Digital Support in the context of other Assisted Digital projects and the possibility for cross-government working across these projects.

---

[5] See for example: Byrom, N. & Beardon, S. (2021) Understanding the impact of COVID-19 on tribunals: The experience of tribunal judges, available at: https://research.thelegaleducationfoundation.org/wp-content/uploads/2021/05/FINAL-Tribunal-Judges-Survey-Report-02-June-2021-.pdf and Nuffield Family Justice Observatory (2020) Remote hearings in the family justice system: reflections and experiences, available at: https://mk0nuffieldfjo6t5dfm.kinstacdn.com/wp-content/uploads/2021/05/remote_hearings_sept_2020.pdf

Concluding thoughts

Overall, there was a feeling amongst the roundtable participants that this was a time of opportunity that needed to be grasped in order to make Digital Support an effective intervention. The energy and expertise present in this group, and beyond, is an excellent foundation for the future national Digital Support service.

There was broad agreement on the challenges facing the service and overlapping visions, particularly from the advice sector, of what a sustainable and effective Digital Support service should look like. However, there were concerns that at present Digital Support is not yet designed fully nor conceptually clear in terms of how it fits into the wider justice system. This articulation will be vital going forwards in order to implement Digital Support successfully, and in particular, to be able to build in the right data collection and evaluation frameworks.

Public
Law
Project

The Public Law Project (PLP) is an independent national legal charity.
Our mission is to improve public decision making and facilitate access
to justice. We work through a combination of research and policy
work, training and conferences, and providing second-tier support
and legal casework including public interest litigation.

www.publiclawproject.org.uk