



Ministry
of Justice

Transforming our justice system: assisted digital strategy, automatic online conviction and statutory standard penalty, and panel composition in tribunals

Government response

February 2017



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Government response

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

February 2017



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Introduction and contact details

This document is the post-consultation report for the consultation paper, Transforming our justice system: summary of reforms and consultation.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Charlotte Bettley** at the address below:

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This report is also available at <https://consult.justice.gov.uk/>

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Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Background

1. The consultation paper 'Transforming our justice system: summary of reforms and consultation' was published on 15 September 2016, alongside a joint statement by the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals.
2. The paper set out our proposals for the future of Her Majesty's Courts & Tribunals Service: we want our justice system to be faster and easier to use, with improved experiences for those who use it, and better value for the taxpayer. Above all, our system must be proportionate, accessible and just.
3. The consultation sought views on three particular areas:
 - a. assisted digital facilities;
 - b. automatic online conviction and statutory standard penalty; and
 - c. panel composition in the tribunals.

The consultation period for responses on Assisted Digital and Automatic Online Conviction closed on 10 November 2016; the closing date for responses on Panel Composition was 24 November 2016.¹ This report summarises the responses received on those proposals and sets out how the government intends to proceed.

¹ These dates were extended on 17 October 2016 from the original closing date of 27 October 2016.

Summary of responses

4. A total of 790 responses to the consultation were received, including from legal practitioners and their representative groups, charities and other third parties, the judiciary and members of the public. A more detailed breakdown of the responses to each question is given below.

Responses to specific questions

Assisted digital

5. Assisted digital refers to the support arrangements we will put in place to help users to interact with us in the digital channel. It means that where Her Majesty's Courts and Tribunals Service (HMCTS) services have moved online, support will be available for people who have difficulty using technology. Assisted digital services are designed to meet the needs of the end user of a digital service, mainly unrepresented appellants, litigants in person (LIP) and professional users.

Question 1: Do you agree that the channels outlined (telephone, webchat, face-to-face and paper) are the right ones to enable people to interact with HMCTS in a meaningful and effective manner? Please state your reasons.

6. We received a total of 336 responses to this question. Of these, 47% of respondents agreed with the channels outlined, whilst 31% of respondents disagreed.
7. A large proportion of respondents who answered this question raised concerns about the digitisation of HMCTS services, rather than commenting on the assisted digital proposals set out in the consultation paper. As HMCTS services move online we will offer support arrangements to help people navigate the digital process, as well as retaining paper channels for people who require these where necessary.
8. Many respondents raised concerns about users who are likely to have difficulty using digital channels, particularly elderly people, people with disabilities, those without digital skills and those with poor literacy or English skills. Some suggested that the percentages given in the consultation paper for those who are 'digitally excluded' or could be 'digital with assistance' are likely to be much higher given the proportion of people with learning difficulties, mental health issues or poor English who enter the criminal justice system.

Our response:

- a. We will not mandate the use of digital channels for public users of HMCTS services. If a user does decide to engage digitally they will have a choice as to which assisted digital channel they can use to access support. These channels will include telephone, web chat and paper where needed or requested, and these options will be clearly signposted throughout our services.
- b. We recognise that the levels of digitally excluded and digital with assistance users will vary from service to service and our initial research confirms this. We also recognise the multiple and often complex factors influencing digital exclusion.

- c. Our assisted digital approach will be developed iteratively, with extensive input from service users. We will carry out piloting, user research and testing across the digital skills spectrum to make sure that our services meet the needs of our users, and continue to be improved following their launch. This will also help us to assess the level of demand for assisted digital support, which we anticipate will vary across different jurisdictions.
 - d. This research and testing will include, but will not be limited to, groups such as older users, users living in geographically remote areas, users with physical and cognitive disabilities, users for whom English is a second language and users with low or no digital skills. In line with the HMCTS Welsh Language Scheme, assisted digital services will be available in Welsh for those who require it through HMCTS Customer Service Centres and face to face provision.
9. Respondents also suggested that access to technology could be an issue for many users, even if they have the necessary skills: for example, some users may find the cost of technology prohibitive or may not have fast enough broadband in their area.
 - a. We will be procuring a network of partner organisations who will work with HMCTS to deliver face to face assisted digital services across the UK for users who do not have access to their own technology. These will be distributed across the country and we will ensure there is national coverage, even in rural areas. Paper channels will be maintained for people who need them, as necessary.
 - b. Face to face assisted digital support will be free for the end user of the service, and we anticipate that telephone calls to the Customer Service Centre will be low cost or free of charge.
10. Many respondents commented that whilst they agree with the proposed channels, the assisted digital solution will only be effective if it is adequately funded and resourced. There needs to be good availability of face to face and telephone support in particular, and telephone and webchat services should have published standards of performance. Staff must be knowledgeable and highly trained.
 - a. All our services will be assessed by the Government Digital Service (GDS) to make sure that our assisted digital support provision meets government standards and is appropriate for HMCTS service users. Extensive training will be provided to front line Customer Service Centre staff to ensure they are able to efficiently deal with assisted digital queries.
 - b. Providers of face to face support will be procured through the GDS Digital Training and Support Framework, and will therefore have been assessed as being able to provide a quality service. Requirements for providers will be set and governed by HMCTS, based on user needs which have been identified through our research.
 - c. HMCTS will use existing knowledge of digitally excluded areas to ensure coverage in high demand areas, and may procure multiple providers in order to meet demand. HMCTS has set aside budget to fund assisted digital and recognises this will be an ongoing business as usual cost post the Reform Programme.
11. A number of respondents focussed on the role of third party providers: some highlighted the fact that providing extra assistance could place an unmanageable burden on charities and organisations such as Citizens Advice. Others raised the need to quality assure third party providers, whilst some felt it wasn't appropriate to use them at all.

- a. HMCTS has budgeted for the delivery of face to face assistance through one or more partner organisations. We plan to use the GDS Digital Training and Support Framework to procure face to face assistance from a diverse range of suppliers who have been assessed as suitable for this type of support. The Framework will allow us to scale up or down our service requirements based on demand and user requirements, whilst providing value for money. A team of HMCTS contract managers will be in place to monitor usage, management information data and service level agreements including quality.
 - b. The procurement process for our partner providers will assess the organisation's capacity to support the expected demand whilst providing a high quality service to our users. Face to face assistance will be funded by HMCTS and will be free for users who require it. We will ensure that users who require face to face assistance or other channels are correctly signposted. The information provided by third party providers will be set by HMCTS and the quality of support will also be governed by set standards.
12. Some respondents felt that digitising HMCTS systems could reduce users' access to legal advice or representation. A number of respondents suggested that assisted digital channels should be able to provide users with legal advice as well as technical.
 - a. Assisted digital services will not remove users' right to representation: they are put in place to help unrepresented appellants and LIPs successfully navigate digital processes only and will not be providing legal assistance. Users will have the same opportunities to seek legal advice and representation as they do currently.
 - b. As well as providing assisted digital services to help users navigate digital channels successfully, HMCTS is ensuring all transformed services are easier to understand for end users by redesigning forms and guidance, implementing changes in line with Plain English guidance and undergoing extensive user research and testing with users of these services. We are transforming our services to meet the needs of the end users, and as a result our services will be more convenient, quicker and tailored to the needs of our users. Inclusive service design, incorporating the needs of the people who use these services, will benefit all users of HMCTS services.
13. Our assisted digital services will provide users with the help they may need to access our digital services. The following are examples of what a user's experience of assisted digital support might look like:
 - a. User 1 is a retiree. She wants to start the process of divorcing her partner. She has never owned a computer and only has a very old mobile phone. She understands that the digital divorce process would be much simpler and quicker than filling things out herself on paper, but she does not have access to a computer and is not comfortable with asking one of her friends for help. She calls the HMCTS Customer Service Centre for advice and is told that she can visit a local organisation for help with the digital process. She books an appointment while she is on the phone with the Customer Service Centre. She then visits the organisation to complete the online application, where she is taken through the digital process and offered ongoing face to face support throughout the remainder of the digital process.
 - b. User 2 has received an offence notice. It states he may respond online and refers him to a website to do this. The user owns a tablet but only uses this to communicate with friends and family on Skype. He is anxious about completing the

form alone and feels he will make mistakes. He therefore calls the Customer Service Centre and speaks to an advisor. The advisor identifies that the user owns suitable technology so offers to talk him through the online process over the phone. The user is talked through the process online, told how to view all evidence and case papers in the case, and how to enter any pleas or move onto the next stage of the process. The adviser does not give legal advice, advice on the merits of the case or which plea to enter. As with the current position, advice of that nature would be available from a legal professional.

Question 2: Do you believe that any channels are particularly well suited to certain types of HMCTS services? Please state your reasons.

14. We received 306 responses to this question. Many respondents highlighted the need for a wide range of channels, and that users must have a choice about which ones they can access. Respondents were pleased to see that face to face assistance will still be available, in particular for older users and those with disabilities or learning difficulties who may find engaging online or over the telephone more difficult. As highlighted above, respondents felt that face to face assistance would need to be well resourced and available to all, particularly in rural areas with poor transport links.
15. Telephone assistance was also frequently cited as an important channel, and some respondents suggested that webchat and email assistance would be useful for those who already have some level of digital skills. Many respondents stated that paper based channels will always need to be an option for those who cannot engage online.

Our response:

- a. Although it is not part of the assisted digital solution, paper channels will remain as necessary. We will support users to engage digitally but will provide alternative support if this is not possible.
- b. We are currently developing our assisted digital solution through user research, piloting and testing. This will be an ongoing process, but we do know that a telephone support service will be available through the introduction of a national Customer Service Centre function. We are also exploring the use of webchat, and envisage it will be supported by the Customer Service Centre.
- c. The Customer Service Centre and face to face provision (as detailed above) will be equipped with adaptations and adjustments to support users who require assistance with communicating. This will include, but is not limited to, support for users who are visually or hearing impaired, or who require someone else to act on their behalf.

Automatic online conviction and statutory standard penalty

16. The consultation paper proposed the introduction of an automatic online conviction procedure which would allow some defendants in appropriate cases to resolve their cases entirely online. Under this proposal, defendants who opt in to the online procedure and plead guilty will be offered the option to accept a pre-determined penalty (including the payment of any appropriate compensation and costs), be convicted and pay the amount immediately. We proposed testing the system with the following summary, non-imprisonable offences: railway fare evasion, tram fare evasion, and possession of unlicensed rod and line.

17. Whilst the consultation paper referred to a statutory fixed fine, we have changed the wording to refer to a statutory standard penalty. This is because the statutory standard penalty may be comprised of a number of elements – a Victim Surcharge, prosecution costs and compensation as well as a fine – as set out at paragraph 21f. We also propose to refer to the procedure as automatic online conviction to distinguish it from criminal court proceedings which might take place online.

Question 3: Do you agree with the principle of a statutory standard penalty process for those who enter an online guilty plea and are content to proceed with the process? Please state your reasons.

18. We received a total of 280 responses to this question. Of this, 59% of respondents agreed with the principle of the proposal, whilst 20% of respondents disagreed.
19. Many respondents who supported the proposal commented on the opportunities for increased efficiency both for HMCTS and for court users, stating that it had potential to be a sensible way of streamlining the process for certain, straightforward cases. Many were of the opinion that for low level offences which do not carry a sentence of imprisonment, users should be able to access a simple, quick procedure if they accept guilt and are willing to pay a standard penalty: this will also free up magistrates' time to focus on more complex cases.
20. Some respondents who opposed the principle raised concerns around the lack of judicial involvement in the procedure. These respondents suggested that in some cases there might be mitigating circumstances which a judge should take into consideration when setting an appropriate sentence. Similarly, some respondents have raised concerns about 'sentencing by algorithm', the idea that decisions currently made by judges will now be made by computer programmes.
21. Concerns have also been raised around the need for defendants to 'have their day in court'. Respondents have argued that this process will remove the right for defendants to defend themselves in open court. Some have expressed concerns that this policy may be in contravention of Article 6 of the European Convention on Human Rights (the right to a fair trial).

Our response:

- a. We have considered the responses in full and think it is possible to prosecute low level cases via an automatic online conviction procedure and impose an automated, standard penalty in these cases without compromising the principles of our justice system that have been raised above. As we design the process, we will consider the suggestions made by respondents on the model and for safeguards.
- b. The automatic online conviction procedure will contribute to the Government's aim of delivering a service that is just, proportionate, accessible to all and works better for everyone. The procedure will provide a more efficient and proportionate way of dealing with low level cases with no identifiable victim, freeing up magistrates' time and space in court buildings to be focused on more complex cases.
- c. Primary legislation will limit the offences which may be prosecuted via the automatic online conviction procedure to specified summary, non-imprisonable offences only. The actual offences would be specified in secondary legislation; in choosing whether to specify an offence, regard will be had to the discretion exercised in terms of sentencing. Only defendants who choose to plead guilty,

offer no mitigating circumstances and crucially, opt in to the automated process will be able to be prosecuted through this procedure (see point d. below). This will also only apply to defendants who are over 18 at the time of committing the offence. This procedure will therefore only apply to cases which already generally require minimum involvement from magistrates and would otherwise be decided by a single magistrate on the papers without the need for a court hearing through the Single Justice Procedure (SJP). We consider that it is in the interests of all court users to have clear-cut, wholly uncontested cases dealt with without any unnecessary delay, thus allowing magistrates more time to consider more complex cases.

- d. Defendants will continue to have the right to raise mitigating circumstances and have these and other relevant factors considered by a magistrate. If the defendant wishes to plead guilty but does not wish to accept the standard penalty or the automatic online conviction (for example, because they want to explain mitigating circumstances or provide information about their means and have that taken into account) they can instead choose to have a magistrate consider that information via the SJP, or have their case heard in court. Pleading not guilty would mean the case is automatically listed for trial before a court.
 - e. The online procedure is entirely voluntary: defendants will need to actively opt into this procedure and will have the opportunity to opt out and choose to have their case dealt with via the SJP or heard in court instead. They will be provided with all the information they need to make an informed decision as to whether they wish to follow this procedure, including details of the evidence against them, the potential consequences of choosing this procedure and the prospective fixed fine and other costs and penalties it will incur. We believe that the system will enable a defendant to make an informed choice as to whether to proceed (the voluntary nature of the process, and the provision of full information prior to accepting a conviction and standard penalty), which will meet the requirements of Article 6 ECHR.
 - f. An individual convicted through this procedure is not sentenced by a computer or algorithm. The detail of the penalty will be set out in secondary legislation and the amount of the standard penalty to be imposed on an offender will be specified for each offence. The total penalty will include a Victim Surcharge imposed, as now, as a percentage of the fine; a standardised amount of prosecution costs; and may include an amount to cover simple compensation for financial loss, where appropriate (e.g. unpaid ticket revenue) up to a specified level.
22. Some respondents have suggested that an online process may minimise the significance of these offences as it will allow people to commit offences without being subjected to the 'embarrassment' of being in the dock and sentenced in public court. In particular, respondents have stated that this process should not be used for serious or repeat offenders.
- a. As set out above, this procedure will apply to cases which already generally require minimum involvement from magistrates and would otherwise be decided by a single magistrate on the papers without the need for a court hearing. The defendants, therefore, to whom the scheme will apply are unlikely to be present in court under the current system as their case is most likely to be heard under the SJP.
 - b. In relation to transparency, we are currently developing a solution which will ensure that the principle of open justice is maintained as we move to digital channels. We will ensure that all interested parties, including victims, witnesses, the public and the press, will have access to case listings and outcomes where appropriate.

- c. We agree that this procedure would not be appropriate for serious or repeat offenders. As set out above, the procedure will be limited to summary only, non imprisonable offences which are specified as appropriate for prosecution through this procedure in secondary legislation. As set out in the Consultation Paper, prosecutors would have the discretion to decide whether a particular case is suitable for this procedure, including consideration of aggravating factors such as repeat offending.

Question 4: Do you think that there are any additional considerations which we should factor into this model? Please list additional considerations.

23. We received 248 answers to this question. A major concern raised by respondents is that some vulnerable users, in particular those with learning difficulties, mental health issues or poor language skills, may not understand the long term implications of pleading guilty and accepting a criminal conviction and the standard penalty. Some users may fear having to attend court and feel pressured to plead guilty and follow this process, even if they are innocent or have mitigating circumstances.

Our response:

- a. The system will safeguard vulnerable people as it will be designed to prevent users from pleading guilty without a full understanding of their decision and the potential consequences. Defendants will be presented with all the relevant evidence against them provided by the prosecutor when considering whether to choose the automatic online conviction procedure. Part of the process will be a 'decision tree', which will require the user to accept that they have understood the information presented to them, and thus ensure they are not wrongly pleading guilty. The potential consequences of a criminal conviction, such as the disclosure regime, will be clearly explained.
- b. The system will be designed to provide as much clarity as possible and will point users to sources of support where relevant: users will be advised to seek advice from Citizens Advice or a legal provider before proceeding, and will also be signposted to HMCTS Customer Service Centres which will be able to provide assisted digital support as well as answers to procedural queries. As set out in the Assisted Digital section above, users will also be able to obtain face to face support from a third party provider. Defendants will be presented with information on all the elements of the standard penalty that would be imposed and we will ensure that they are made aware of how the procedure they choose could affect the financial outcome, as the fixed fine and other elements of the penalty could vary from the amount a magistrate might set. This will be in plain English to aid users' understanding as far as possible. It is important to remember that users will need to actively opt into the procedure, and that alternative routes will be clearly explained.
- c. The development of the system will be user-led, which means that we will use feedback to develop the system incrementally, and enhance the system to make sure that it is fit for purpose as we bring more cases into scope. We will support users throughout their journey using a range of services, all of which are being developed with these groups in mind. In particular, we will ensure that our assisted digital support takes into account the needs of those who are elderly or have disabilities, those with poor literacy or English skills, and those who lack access to technology because of cost or geography. We will carry out extensive piloting, user research and testing across these groups and many others, and will continue to improve assisted digital provision on an iterative basis

- d. The courts will also have powers to set aside the conviction and start proceedings again in the event that it is subsequently proved that the defendant did not understand the consequence of their decision.
24. Some respondents to this question also raised general concerns about digitising the justice system. More specifically, some have raised the issue that those who cannot access digital channels – because of a disability, lack of digital skills or the cost of accessing technology – should not receive a lower standard of service.
25. Some respondents also expressed a desire for legal representatives or family members to be able to use the online system on behalf of defendants, something which they have suggested may alleviate some of the concerns around digitisation.
- a. As set out above, ensuring that all users will have access to fair and open justice is a key priority for HMCTS Reform, and we are developing an assisted digital strategy which will enable this. Users will be able to seek help to engage with the process through assisted digital channels if they wish. Users will also have access to our Customer Service Centres who can provide help and support with more procedural types of queries. Alternatively they can choose not to opt into the system and instead have their case dealt with through the SJP or heard in court.
 - b. Due to the fact that pleas made in this system will lead to a conviction, our security procedure will need to ensure that the right defendant is pleading. The system will be designed to verify who they are and that they are pleading in relation to the correct offence.
 - c. The integrity of the system's security would be greatly compromised if multiple users were allowed to access a single case file. This makes it undesirable to give family members additional ways to access a case file, independent of the defendant accessing their case.
26. Some respondents have suggested that many defendants are likely to plead guilty just to 'get the matter out of the way', even if they know they are innocent. In particular, this may apply to low-income defendants who could consider it cheaper to pay the standard penalty than to defend themselves in court and risk a higher fine for pleading not guilty.
- a. We have considered the potential for standard penalties to unduly incentivise defendants to plead guilty and will bear this in mind when setting standard penalty levels, subject to parliamentary approval of the legislation. Defendants who use the online automated system will receive clear on-screen warnings about their rights to a trial; the fact of a conviction which may in some circumstances be disclosable; and the financial implications of the standard penalty before they can opt into the online procedure. We consider that this provides the defendant with sufficient information about the implications of opting into this procedure. It will be made clear that not choosing to opt into the online procedure would mean the defendant's case would be considered by a magistrate or judge, who would be able to take the defendant's means into account and have discretion around additional penalties, such as prosecution costs or compensation. The system can also be designed to signpost defendants to sources of help such as Citizens Advice before making a decision.

27. Some respondents have raised concerns about cyber security: either around individuals falsely identifying themselves as the intended user so as to maliciously impose a criminal penalty or more general concerns about the inherent lack of security of IT solutions.
- a. We have taken these concerns on board and we will ensure that the system is designed to the highest standards of digital security. The defendant will be required to enter personal data to confirm that they are the intended user, this is likely to include their date of birth, prosecution Unique Reference Number and National Insurance Number.

Question 5: Do you think that the proposed safeguards are adequate? Please state your reasons.

28. We received a total of 261 responses to this question. Of this, 40% of respondents agreed the proposed safeguards were adequate, whilst 23% of respondents disagreed.
29. Of those who didn't agree with this question, one of the more frequently raised issues was around legal advice, and the concern that this process will remove necessary opportunities to access legal representation. A couple of respondents suggested that those who wish to opt in should be required to seek legal advice and prove they have understood the implications of pleading guilty.

Our response:

- a. Respondents will have 21 days from receiving notice of the conviction to obtain or request their own legal advice. In cases as straightforward as these, many defendants already proceed without legal representation. If a defendant wishes to, however, they will have the same opportunities to seek legal advice as they do currently. Consequently, although we have considered respondents' views in this regard, we are of the view that mandating the receipt of legal advice is not necessary. The implications of conviction will be clearly presented and defendants are also always entitled to ask for their case to be looked at by a magistrate, either through the SJP or at a hearing.
 - b. The system will signpost available sources of help, such as Citizens Advice, as well as HMCTS Customer Service Centres for advice or help.
30. A few respondents have voiced concerns about prosecutorial abuse, either through submitting sub-standard cases or by using the procedure for cases which should have judicial input, perhaps for efficiency and cost reasons.
- a. Only authorised prosecutors will be able to use this process. Defendants will be presented with all the relevant evidence against them. The system will be designed to ensure that a minimum level of information is submitted by prosecutors and where they fail to do so the system will alert the prosecutor to provide this. HMCTS will review sample cases as part of the quality assurance checks to ensure that cases meet minimum standards.
 - b. Prosecutors will be required to prepare all cases and supporting evidence to the same standard as they would for a case to be heard in open court. The prosecutor will not know how the defendant will plead or if they will choose to opt into the online system, have their case dealt with through the SJP or heard in court. This will help to ensure that prosecutors build fair cases with the necessary information and evidence for the defendant to make an informed decision about their case.

31. Whilst respondents have agreed the importance of the court being able to set aside the conviction in the event that the defendant did not understand the consequences of their decision, some have questioned how the court will know that this has been the case. If a respondent has not understood the implications of their plea, perhaps because they have mental health issues or learning difficulties, they are unlikely to have the resources to question the decision at a later date.
- a. We will ensure that the system is clearly signposted so that the defendant is aware that they will be convicted, and issued a penalty (and disclosure regime if appropriate). If a defendant fails to pay their penalty and there are enforcement proceedings in place, an enforcement officer could also signpost the defendant to options available to them (i.e. applying to the court to reopen their case where appropriate).

Question 6: Do you agree that the offences listed above are appropriate for this procedure and do you agree with our proposal to extend to further offences in the future, including driving offences? Please state your reasons.

32. We received a total of 265 responses to this question. Of this, 49% of respondents agreed with the proposal, whilst 20% of respondents disagreed.
33. Most respondents who were supportive of the procedure agreed that the proposed offences are suitable as they are simple and straightforward.
34. Some respondents raised concerns about these offences being the ‘thin end of the wedge’, and have stressed that the government should not extend the procedure to other offences without further consultation.
35. Respondents suggested a range of further summary-only offences which might also be suitable.

Our response:

- a. We are grateful for respondents’ various suggestions, which will help us to clarify what sort of offences might be suitable for this process in future.
- b. As set out in the consultation paper, we intend to test the operation of this new procedure with a limited number of offences in the first instance. These will be set out in secondary legislation, and so are subject to Parliamentary approval. Any further offences will also be included in further secondary legislation and will accordingly go through due Parliamentary process and scrutiny.
36. Representatives of the legal profession have expressed some significant concerns about the offences. For example, the Kent Law Society suggested that rail fare evasion could be an inappropriate offence for an automatic online conviction and standard penalty as the system would not differentiate between those who did not have the means to pay, and those who could afford to buy a ticket, but chose not to do so. Building on this, some respondents have raised concerns that the dishonest nature, and thus gravity, of the proposed eligible offences will be minimised by the online system. They fear that this will either engender less respect for the law or result in defendants not realising the seriousness of a conviction for these crimes.
- a. As set out above, the implications of using the online system will be set out clearly to users.
- b. We propose to limit the process to non-imprisonable offences. As regards the rail fare offences, this would mean that strict liability offences (failure to present a

ticket) would be in scope but offences requiring dishonesty/intentional evasion of payment would not be.

37. The extension of the procedure to driving offences has divided respondents; many agree that the process would be suitable for straightforward cases where there is no identifiable victim, but others are concerned that driving offences can be more complex than they first appear, and could lead to defendants being disqualified. Some respondents have also suggested that sentences for speeding offences require judicial discretion: for example, a driver should perhaps receive a more severe penalty for speeding outside a school during the afternoon than in the middle of the night.
- a. There is a wide range of summary non-imprisonable road traffic offences and we think a number of these are potentially suitable for the new procedure. We are aware that there are particular complexities around road traffic offences, and we plan to develop this policy in full collaboration with police prosecutors and other stakeholders. We will also take account of issues such as aggravation in certain cases; imposition of penalty points; and the requirements for judicial discretion around disqualification. We anticipate that there will be limitations on how this process can be used for road traffic offences.
38. Some responses suggested that the offences included in this scheme should instead be decriminalised and pursued through civil means.
- a. While these offences may be suitable for automatic online conviction, we would contend they are still criminal offences which can be sufficiently serious to warrant a criminal conviction and penalty, as Parliament decided when they were created.

Panel Composition in Tribunals

39. In the consultation document we proposed to amend the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008 to give the Senior President of Tribunals (SPT) greater freedom to adopt a more proportionate and flexible approach to panel composition, by:
- a. providing that a tribunal panel in the First-tier Tribunal is to consist of a single member unless otherwise determined by the SPT; and
 - b. removing the existing requirement to consider the arrangements that were in place before the tribunal transferred into the unified system.
40. Although paragraph 7.3.8 of the consultation paper made it clear that specialist expertise or knowledge would continue to be provided where it was needed, many respondents were concerned that single judges would routinely be assigned to hear cases where specialist expertise or knowledge was necessary.
41. It is not intended that single member panels will apply to every case or every jurisdiction, and we want to make clear that we have every intention that non-legal members (NLMs) will continue to be able to contribute their expertise in cases where the SPT considers it appropriate. Therefore, we will make it clear in the Order that the SPT may provide that a panel should consist of one, two or three members, as required, in order to determine the matters before the tribunal justly and fairly.
42. The proposals do not suggest a change to current arrangements that the determination of panel composition is the responsibility of the SPT. It is important to note that in giving effect to his functions, the Tribunals, Courts and Enforcement Act 2007 requires the SPT to have regard for the need for tribunals to be fair, accessible

and quick, and the “*need for members of tribunals to be experts in the subject-matter of, or the law to be applied in, cases in which they decide matters, and the need to develop innovative methods of resolving disputes that are of a type that may be brought before tribunals*”.

43. It is not the Government’s intention to prevent the SPT giving effect to these duties. Part (b) of the above proposal will provide the SPT with greater flexibility, allowing a more tailored approach. It is our intention that this flexibility, subject to decisions made by the SPT, will make sure that panel members are used in cases in which their expertise is specifically needed and in a way that takes account of the means by which tribunals will be able to engage with users in the future.
44. The proposals continue to allow the freedom for the SPT to set composition either on a case by case basis or based on case type. However, our proposed reforms will not change the circumstances where expertise is necessary to determine a case justly and fairly, for example, those involving particular health issues, and the provisions allow for NLMs to continue to provide their expertise in those cases.
45. In line with the courts system, the Lord Chancellor would have oversight of this process but panel composition is, and will remain, an entirely judicial decision. However, the removal of the requirement to consider how tribunal panels were formerly composed will provide greater flexibility to the judiciary in making these decisions. The Composition Order delegating authority from the Lord Chancellor to the SPT to determine panel composition is not focused on a single tribunal or a single type of case within a tribunal. Instead it sets out general requirements and considerations that must be able to apply to all tribunals and cases resolved within the unified system.
46. Looking to the future, online processes will enable earlier engagement between users and the tribunal, and information essential to the case can be gathered at an earlier stage in the process. In a tribunal system that will be more reliant on digital, non-physical processes, we consider that the way tribunal panels are composed, and the way that expertise is provided in those cases that will need it, will need to be looked at afresh to make sure they remain appropriate in the digital age. It is within this context that the consultation sought information on the factors that should be considered to determine the composition of tribunals.
47. Single member panels would only exist for cases for which the SPT has determined that there is no need for additional members. However we do envisage, even in these cases, that the SPT would ensure safeguards are in place to enable the tribunal judge to request additional expertise at any stage of the appeal if they think that is appropriate.

Question 7: Do you agree that the Senior President of Tribunals (SPT) should be able to determine panel composition based on the changing needs of people using the tribunal system?

48. We received a total of 576 responses to this question. Of this, 26% of respondents agreed with the principle of the proposal, whilst 55% of respondents disagreed.
49. A number of respondents challenged the notion of tribunal users’ needs having changed since the tribunals were unified in 2008, stating that users’ need for access to justice and just, fair decision making remains the same as always and is often best served by a three member panel.

Our response:

- a. We agree that users need tribunals to be fair and accessible, however the last decade has seen a huge shift in the way people obtain information, communicate with each other, and access government services. Our ambitious reform proposals will enable the courts and tribunals to meet the changing expectations of its users by introducing innovative digital services, increasing accessibility, making processes easier to understand, and saving time.
 - b. In a tribunal that will be more reliant on modern, digital, non-physical processes, we consider that the way tribunal panels are composed, and the way that expertise is provided, will need to be looked at afresh to make sure they remain appropriate in the digital age. However, the current provisions restrict the extent to which the SPT can do this, as they provide that the SPT must consider how tribunal panels were composed before they were transferred into the unified tribunals system.
 - c. Panel composition is, and will remain, a judicial decision – but we want to provide greater flexibility to the judiciary in making these decisions. Nothing in these reforms will change the circumstances where specialist expertise is needed but this added flexibility will enable the SPT to consider whether this expertise could be delivered in more innovative or proportionate ways according to the specific needs of the individuals involved and the matters the tribunal needs to determine.
50. Many respondents also queried how the SPT would determine panel composition in practice. Whilst some said that a default composition for different hearing types would be inappropriate given how varied each case is, others felt it would be inefficient for the SPT to make all decisions on a case by case basis. Many highlighted the difficulty of predicting whether specialist expertise would be required, given the frequency of evidence arising during a hearing which hadn't been included in the papers.
- a. These proposals will provide the SPT with greater flexibility to determine panel composition in whichever way he considers necessary to ensure that the best approach is taken. This could involve making provisions for entire case types, as is the current process, or on a case by case basis.
 - b. Subject to the SPT's determination, we believe that enabling panel composition decisions to be able to be taken on a case by case basis could contribute to a more proportionate decision making process than the current approach as it would ensure that panel members are only used in cases in which they are specifically needed.
 - c. There are already jurisdictions within the unified tribunals system – for instance, many cases heard in the Immigration and Asylum Chamber – which routinely use a single member panel but which have the option to include additional members with specialist expertise when required. As such, we do not agree that a process of including members on a panel on a case by case basis would necessarily be too difficult or inefficient to achieve, where considered appropriate.
 - d. An important part of the wider transformation programme is to improve and bring forward discussions between users and the tribunal about the dispute. Currently, the hearing is often the first time that a tribunal user will have directly engaged with the tribunal and this is the point that many of the details of the case – factors upon which the judgment may be based – become apparent. For cases that are submitted online, however, judges will potentially be able to engage with the appellant or their representative directly and at a much earlier stage and make sure they have all the necessary information to determine a case. In some straightforward or uncontested cases, this determination could potentially take

place without a physical hearing. For cases that do require a hearing, this early online engagement may mean that the judge already has the necessary information available to determine what specialist expertise is likely to be needed on the tribunal panel. If a judge realises during a hearing that a panel member may be needed, there is no reason that they should not, at that point, be able to request the input of an additional specialist. Whilst there is a risk that this could lead to an increased number of adjournments where this information is only identified at a late stage, we think this will be offset by improved case management and engagement between parties.

- e. In this context it will be for the SPT to consider how he could best give effect to any case by case determinations. Whilst the SPT is responsible for setting the composition and deciding the factors that should be considered, taking account of the wider reforms being implemented under the transformation programme, we consider that making decisions on a case by case basis could be done efficiently and in a way that takes into account the needs of the user and the issues raised in the case. We should make clear however that the SPT will continue to make decisions on panel composition and whilst we see potential benefits in making determinations on a case by case basis, the SPT is under no obligation to implement this approach.

51. The majority of respondents raised concerns that a single member panel would not be appropriate in particular jurisdictions. The jurisdictions of concern were almost exclusively cases heard in the Social Security and Child Support Tribunal, the Mental Health Tribunal, and the War Pensions and Armed Forces Compensation Chamber. For many respondents the Mental Health Tribunal was of particular concern given that the panel is often required to decide on a patient's liberty, and there are real risks to public and individual safety or wellbeing.

52. Many respondents said that these cases often involve the input of NLMs who are seen to represent the user, for instance a Disability Qualified Panel Member or armed forces member, and who provide to the panel an understanding of the types of issues that the user might face. A commonly held view is that these members can be of particular benefit in cases where the user is unrepresented as their questioning can help to draw out evidence from vulnerable or inarticulate users who might otherwise have difficulty making their case. Respondents stressed the importance of tribunals remaining inquisitorial rather than adversarial, and suggested that the removal of lay members could weaken this important distinction between tribunals and courts.

53. Respondents were also concerned that these case types often require medical expertise, and that a presumption of a single member panel would not be appropriate in these cases. For example, many respondents highlighted the need for independent scrutiny of evidence given by the Responsible Clinician or other Healthcare Professional which the legal member would not be able to do alone. This was supported by responses from a number of tribunal judges.

54. More generally, some respondents stated that a three member panel is the best way of achieving a balanced, informed decision and that without NLMs, users are less likely to have confidence in the result of their hearing and may consider that their case has not been fairly considered.

- a. We agree that NLMs provide a valuable contribution to the decision-making process in tribunals, helping to ensure that panel is well informed and that the decision reached is correct, as well as providing an alternative, non-legalistic

viewpoint. As stated in the consultation, these proposals would not prevent NLMs continuing to be used in those cases where their expertise is needed.

- b. Under the current legislative framework responsibility for panel composition lies with the Lord Chancellor but this power has been delegated to the SPT. It is, therefore, not a matter for the Government to determine panel composition in specific case types. The determination of panel composition is and will continue to be a matter for the SPT, who will be able to determine this in whichever way he considers necessary.
- c. We do not consider that the need for specific expertise in particular tribunal jurisdictions would prevent the SPT from basing panel composition decisions upon the changing needs of users, and as the wider transformation programme is implemented. The SPT has a statutory duty to consider the need for panel members to be experts of the law or the subject matter being heard and to ensure that the hearing is fair and efficient. The Government's proposals will not change these requirements and we would therefore expect that where a dispute hinges on factors that require specialist expertise, NLMs would continue to contribute to the determination of those factors.
- d. However, we recognise that the proposal to introduce a default of single member panels across the unified tribunal system has led to the assumption that this will apply in all cases. This policy is intended to encourage a more tailored approach to panel composition to make sure that panel members are only used in cases where their input is required. It is not intended that single member panels will apply to every case or every jurisdiction, and we want to make clear that we have every intention that NLMs will continue to be able to contribute their expertise in cases where the SPT considers this is needed. We will not, therefore, be introducing a default panel composition in the unified tribunals.
- e. We have considered all of the responses and note the concerns raised and the importance of the provision of specialist expertise in tribunal panels. However, our proposal to remove the current requirement of the SPT to consider historic panel arrangements does not prevent the provision of specialist expertise. We therefore intend to continue with the proposal to remove this requirement from the Composition Order.

Question 8: In order to assist the SPT to make sure that appropriate expertise is provided following the proposed reform, which factors do you think should be considered to determine whether multiple specialists are needed to hear individual cases?

55. Many of the respondents voiced their preference that panel members should continue to be included on a panel in any cases which currently routinely require non-legal expertise. In the main, the jurisdictions that were highlighted by respondents where this would be a concern were the Mental Health Tribunal, the Social Security and Child Support Tribunal and the War Pensions and Armed Forces Compensation Tribunal.
56. It appears that many of the responses received were strongly influenced by the proposal to introduce a default of single member panels for those cases where the SPT considers no independent expertise is needed to determine the case. For the most part, respondents have not taken into account the impact of the wider changes that will take place in unified tribunals and the potential changes in the way that users will be able to engage with tribunals following the implementation of the transformation programme. This has been addressed in paragraph 46. It is not intended that single member panels

will apply to every case or every jurisdiction. To make clear that NLMs will continue to contribute their expertise where needed we will make it clear in the Order that the SPT may provide that a panel should consist of one, two or three members, as required, in order to determine the matters before the tribunal justly and fairly.

57. Many respondents also raised specific factors that they believe should be taken into account by the SPT in his determination of panel composition. These factors varied widely across the tribunal jurisdictions and included a number of practical, social, medical, and legal considerations. Factors included whether a case is contested, whether disability or mental health is a feature, whether the user has representation, whether the user would need support to give evidence, the complexity or severity of the case, and whether the expertise of the panel member is specifically relevant.

Our response:

- a. We have carefully considered respondents' suggestions and in many cases agree that these would be sensible factors to take into account. Whilst the current legislative framework allows for the Lord Chancellor to determine panel composition, this power has been delegated to the SPT. It is therefore for the SPT to consider whether to give effect to any case by case determinations and whether any composition changes are needed in the context of the reformed tribunals system.
- b. The issues raised in response to this consultation, and views as to the factors that should be considered in determining panel composition, will be communicated with the SPT to ensure that he is able to give them full consideration prior to the introduction of any new panel composition arrangements.
- c. The SPT has, in the past, always consulted with both the tribunal judiciary and wider stakeholders before making any changes to panel composition, and we envisage that this will continue following any changes to the current Composition Order. The SPT will retain responsibility for panel composition, and we are confident that, with the greater flexibility afforded by these proposals, the SPT will continue to ensure that the appropriate expertise can be provided post-reform but in a way that is proportionate and tailored to the needs of the user and the case being heard.

Impacts and equalities impacts

Question 9: Do you agree that we have correctly identified the range of impacts, as set out in the accompanying Impact Assessments, resulting from these proposals? Please state your reasons.

58. Many responses to this question focused on the impacts created by increased digitisation. Some respondents felt that we had overestimated the number of users who will be able to use digital services with assistance, as the proportion of court users who are 'digitally excluded' is likely to be higher than for users of government services in general. Respondents also commented on the fact that there is limited cost data available for assisted digital as it is at an early stage in development.
59. Respondents who agreed that we have correctly identified the range of impacts commented on the fact that assisted digital will provide users with the support needed to follow new, online procedures, and that there will always be a range of options open to users as to how they choose to interact with HMCTS.

60. One impact of the assisted digital strategy which some respondents felt hadn't been fully considered is the impact on third party providers and their ability to cope with additional demand for support, particularly in rural areas with poor internet and mobile access.

Our response:

- a. As set out above, we intend to procure face to face assistance from a range of suppliers who have been assessed as suitable for this type of support. This will include assurance that the organisation can support the expected capacity for assisted digital users. HMCTS will use existing knowledge of digitally excluded areas to ensure coverage in high demand areas, and may procure multiple providers in order to meet demand. We will signpost users to HMCTS funded face to face assistance and this assistance will be free for users who require it.
61. On panel composition, many respondents raised the lack of detailed consideration of the impacts that a single member panel would have on each individual jurisdiction within the First Tier Tribunals. The impact assessment provided evidence of the impacts on jurisdictions that have previously reduced the number of panel members, but some respondents did not think these outcomes necessarily translate to other jurisdictions.
- a. We consider that data pertaining to where panel composition has changed in the past is good evidence as to how it might impact on other jurisdictions. We do, of course, recognise the differences in the nature of each tribunal and the issues they deal with and this will be taken into account in panel composition considerations.
- b. We acknowledge that we have not assessed the impacts of a single member panel in each individual jurisdiction. This is because the specific impacts will depend on whether and how the SPT decides to implement any changes to panel composition. It was never our expectation that this would lead to single member panels being used in all jurisdictions. The proposed introduction of a default of a single member panel was intended to encourage a more proportionate, tailored approach to panel composition. However, to make it clear that NLMs will continue to contribute their expertise where needed we are no longer proposing to introduce a default panel composition. Instead we will make clear that a panel should consist of one, two or three members, as required, in order to determine the matters before the tribunal justly and fairly.
- c. Given the statutory considerations that he must adhere to when exercising his functions, we are confident that the SPT will carefully consider any impacts relating to panel composition in each jurisdiction, as well as the evidence gathered from this consultation, before making any such changes. The intention is that panel composition will be set by the SPT either on a case by case basis or based on case type. In line with the courts system, the Lord Chancellor will have oversight of this process, enabling her to consider any jurisdiction-specific impacts at that point.
62. Many of the respondents agreed that reducing the number of members on a tribunal panel could reduce the time taken to list cases, but disagreed with the assumption that fewer panel members would necessarily speed up the decision-making process. Many thought that the lack of specialist expertise could result in an increased number of adjournments or appeals to the Upper Tribunal and therefore result in higher costs. Others commented that there could be an impact on success rates due to an increase in cases being heard on the papers.

- a. Many of these concerns were based on the view that a judge sitting alone would often need to adjourn in order to request the provision of additional expertise. In a reformed tribunal system, there will be greater reliance on early engagement and gathering of any necessary information can be achieved prior to a formal hearing. We consider that this early engagement will enable, in many cases, the ability to ascertain what expertise is likely to be needed prior to hearing the case, thereby mitigating the risk of a significant increase in adjournments. Specialist expertise will continue to be available and provided where it is needed and as such we do not foresee, as some respondents suggested, that this policy will lead to situations where a single member panel will need to understand or apply information that is not their field of expertise without being able to request a specialist. We do not therefore see any reason that a judgement should generally take longer to reach or that there will necessarily be an increase in the number of appeals to the Upper Tribunal or higher courts.
 - b. Closely linked with this, some respondents pointed out that the likelihood of a successful appeal following an oral hearing is greater than appeals decided on the papers, and that digitisation could therefore result in fewer successful cases. However, research funded by the Nuffield Foundation² looked into the reasons for this difference and found that the difference in success rates is largely due to the amount of information that is available to the panel, rather than the form of hearing. As the wider reforms are intended to enable earlier active engagement between the tribunal and its users and improve the ability of tribunals to gather the necessary information to decide a case at an early stage, we do not believe that there will be a difference between the outcomes of cases decided with or without an oral hearing.
 - c. As stated in the impact assessment, evidence from deportation cases in the Immigration and Asylum Chamber showed that the number of appeals to the Upper Tier did not increase as a result of a change to panel composition. HMCTS will continue to monitor these trends.
63. Respondents also commented that the impact assessment does not focus on user experience or access to justice. There were comments that a single member panel could render the tribunals more adversarial rather than inquisitorial, that users will not feel that a balanced view has been taken, and that users will not feel adequately supported. Concerns were also raised that changes to panel composition could result in increased costs to other public bodies as users are more likely to feel the need to instruct independent experts at public expense.
- a. Single member panels are already used in many jurisdictions across the tribunals system, and we have no evidence to suggest that this has made those hearings more adversarial or that users feel unsupported. Likewise, we are unaware of any documentary evidence to support the assertion that there would be an increased cost to other public bodies. Public funding is only available in a minority of cases, and where it is available, for instance in Mental Health cases, we anticipate that specialist expertise will continue to be available and provided where necessary to resolve the case justly and fairly. We do not therefore anticipate that there will be any increased costs to other public bodies.

² http://www.nuffieldfoundation.org/sites/default/files/files/Tribunal_decision_making_vFINAL.pdf

- b. We recognise that the needs of tribunals, and by extension the need for the involvement of NLMs, are likely to vary widely across different tribunal jurisdictions. The Composition Order is not focused on a single tribunal or a single type of case within a tribunal. Instead it sets out general requirements and considerations that must be able to apply to all tribunals and cases resolved within the unified system. In this context, the proposed reforms would not change the circumstances where particular expertise is necessary and NLMs would continue to provide their expertise where they are needed. The SPT is, and will continue to be, responsible for determining tribunal composition. In making this determination, he is required to consider the need for members of tribunals to have particular expertise, skills or knowledge, and for the tribunal to be accessible, and for proceedings to be fair. We are therefore certain that the needs of users will be carefully considered before any specific changes are made to panel composition.

Question 10: What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please state your reasons.

64. Many respondents commented on the equalities impacts of increased digitisation, arguing that digital services are much harder to access for those who are elderly or disabled, who have mental health issues, low literacy or learning difficulties, or who are on low incomes. These groups may struggle to use assisted digital facilities unless they are face to face, or may not be able to afford the cost of telephone calls. Those who cannot afford access to technology will also be disadvantaged.
65. Although some respondents commented that disabled users may benefit from automatic online conviction as they would no longer have to travel to attend court, many raised concerns about vulnerable users, such as those with learning difficulties, who may plead guilty without a full understanding of the process and implications. Some respondents also queried whether users without digital skills would receive a worse service as a result.
 - a. We have addressed these points in response to Question 11 below.
66. On panel composition, the majority of responses highlighted the need to consider the impacts on tribunal users who are affected by physical or mental conditions or disabilities. Many were of the opinion that users could be disadvantaged by changes to panel composition in Social Security appeals and the Mental Health Tribunal. There were concerns that a reduction in panel membership would result in a loss of input of medical, disability and mental health expertise that is needed to ensure a fair and informed hearing. Some commented that a single member panel would give rise to unconscious bias or that vulnerable users would have more difficulty in presenting their case without the extra support of panel members.

Our response:

- a. We acknowledge the concerns raised by stakeholders that there is a need to ensure the tribunals are accessible and that users are not disadvantaged by the reforms. We want to create a justice system that works for everyone, and that means creating a system that is just, proportionate and accessible. Tribunals deal with some of the most vulnerable people in society and we are committed to ensuring our services are accessible to all users and that no one is left behind. Systems are being redesigned based on user research to make sure that all users

will be able to interact effectively with the tribunals, whether digitally or in person, and that suitable support is in place for those who need it.

- b. Decisions have yet to be made as to how panels should be composed in each individual tribunal. However, the Government is very clear that it does not consider that a single member panel could or should be used in all cases. Full consideration will be given to the needs of all users, including those who are affected by physical or mental conditions or disabilities. The SPT has a statutory requirement to consider the need for tribunal members to be experts in the law or subject-matter being heard and to ensure that proceedings are fair and efficient. That will not change as a result of this policy. We can, therefore, be certain that specialist expertise will continue to be provided in those cases where it is needed. As set out in paragraph 41, we are no longer proposing to introduce a default panel composition and will make clear that NLMs will continue to contribute their expertise where needed in order to determine the matters before the tribunal justly and fairly.
- c. The removal of the SPT's requirement to consider how tribunal panels were formerly composed would enable a more novel approach, such as determining panel composition on a case by case basis, where appropriate. We consider that this approach would lend itself to consideration of the specific needs of the user, as well as the specialist contribution that is needed to reach a fair and informed decision. This would ensure that panel composition is always appropriate and that no users will be disadvantaged by the panel composition changes. However, it is a matter for the SPT as to whether he follows that approach.

Question 11: Do you agree that we have correctly identified the range of equalities impacts, as set out in the accompanying Equalities Impact Assessments, resulting from these proposals? Please state your reasons.

Assisted Digital

67. Many respondents to this question agreed that the range of equalities impacts had been correctly identified, but suggested that the extent to which users might find it difficult to access online services had been underestimated. Respondents suggested that HMCTS would be unable to provide the level of support needed, which would disadvantage those who are disabled, elderly, or on low incomes amongst others and reduce their access to justice. Those designing assisted digital services will need to ensure it meets users' needs and give more consideration to how people of different genders, ages and backgrounds interact with digital services.

Our response:

- a. Ensuring that all users will have access to fair and open justice is a key priority for HMCTS Reform, and our assisted digital strategy will help to enable this. We will support users throughout their journey using a range of services, all of which are being developed with these groups in mind. We will carry out piloting, user research and testing across the digital skills spectrum to make sure that our services meet the needs of our users, in particular those who are vulnerable. This research and testing will include, but will not be limited to, groups such as older users, users living in geographically remote areas, users with physical and cognitive disabilities, users for whom English is a second language and users with low or no digital skills.

- b. HMCTS is engaging with a wide range of stakeholders such as the judiciary and other government departments such as DWP and HMRC to ensure their views and experiences are captured and fed into the design of our assisted digital services. We are soon to begin engagement with welfare organisations and charities via our newly established Equalities Engagement Group, a forum which will provide an additional layer of assurance covering issues of equality and diversity in service design.
- c. It is important to note that we will not mandate the use of digital channels for public users of HMCTS services. If a user does decide to engage digitally they will have a choice as to which assisted digital channel they can use to access support. These channels will include telephone, web chat and paper where needed or requested, and these options will be clearly signposted throughout our services.

Automatic Online Conviction and Statutory Standard Penalty

68. Similarly, respondents who commented on the automatic online conviction equalities impacts stated that full consideration needed to be given to those who would not be able to engage with this procedure, in particularly the elderly or disabled. We need to ensure that these groups are not disadvantaged as a result of their lack of digital skills or access. Some respondents have also suggested that there might be a negative impact on those for whom English is not their first language.
- a. Although this scheme will exist purely online we will ensure that assisted digital provisions allow such individuals to interact with the system. This could include using the system with an assistant at face to face assistance points.
 - b. We will build the system so that it ascertains, at an early stage, whether or not users require interpretation services. If they do, it will direct them to contact the Customer Service Centre to arrange these facilities with our assisted digital services.

Panel composition

69. The responses, in the main, indicate that the equalities impacts that have been identified are correct but that there are some gaps in the analysis. The majority of responses have noted that the equalities impacts of the users has not been sufficiently considered. Others highlight that the diversity impacts on judicial office holders could be further broken down to consider the characteristics within each jurisdiction or of each type of member.
- a. These proposals will allow greater flexibility to the SPT in making panel composition determinations, but we do not yet know how any such changes are likely to be implemented. Whilst the Impact Assessment and Equalities Impact Assessment assume that the use of panel members will decrease, we cannot predict exactly which jurisdictions or which panel members will be affected. An assessment of the equalities impacts on each individual type of panel member or within each jurisdiction of the tribunals is therefore difficult to determine at this point, but can be assessed when the SPT determines panel composition.
 - b. The proposed reform will not be implemented until the SPT has had time to fully consider and determine the cases and circumstances that require multiple panel members. The SPT already has the authority to determine panel composition in the unified tribunals. In making this determination, whilst there is no legislative requirement for him to do so, the SPT in practice always consults with the tribunal judiciary and wider stakeholders to ensure that panel composition arrangements are appropriate and enable justice to be done. We do not expect that this will change.

- c. The proposals will provide the Lord Chancellor with some oversight of panel composition, and in line with the Public Sector Equalities Duty she will be required to consider the equalities impacts on any proposals put forward by the SPT. We will renew and update the Equalities Impact Assessment once the SPT has decided on any changes to panel composition in particular jurisdictions. This will be based on our further analysis of these changes and stakeholder feedback to any consultation undertaken by the SPT.

Conclusion and next steps

Assisted Digital

70. We have considered all the consultation responses in full, and will use them to inform the development of our assisted digital solution. Where HMCTS services have moved online, we will ensure that support is in place for people who have trouble with using technology, to enable users to interact with HMCTS in a meaningful and effective manner. In particular, we will ensure that our assisted digital support takes into account the needs of those who are elderly or have disabilities, those with poor literacy or English skills, and those who lack access to technology because of cost or geography. We will carry out extensive piloting, user research and testing across these groups and many others, and will continue to improve provision on an iterative basis.
71. We will work with third party providers to provide a national network of accessible, quality assured assistance. Telephone and webchat services will also be available and clearly signposted for those who already have access to IT but require extra support, and paper channels will be maintained for those who need them, as necessary.
72. As well as providing assisted digital support, HMCTS will make sure that its online services are easy for users to understand and navigate. HMCTS is researching the expected users for each service to identify their needs, and will test each service with these groups. The findings from research and testing will be fed back into the service design process, resulting in a higher level of accessibility. As a result our services will be more convenient, quicker and tailored to the needs of our users. Inclusive service design, incorporating the needs of the people who use these services, will benefit all users of HMCTS services.

Automatic Online Conviction and Statutory Standard Penalty

73. We are pleased that the majority of respondents on this section supported the principle of a statutory standard penalty option for those who enter an online guilty plea, and having considered the responses we have decided to continue with our proposals. As many respondents stated, this will streamline the process for certain, straightforward cases, freeing up magistrates' time to focus on higher priority areas.
74. As set out above, the online procedure will be entirely voluntary: defendants can choose to have their case dealt with at a court hearing or by the Single Justice Procedure. Defendants will always have the opportunity to present mitigating circumstances or provide information about their means, whether as part of the SJP or at court.
75. The system will be designed to safeguard vulnerable people by clearly stating in plain English all the relevant evidence against them and the potential consequences of a criminal conviction; users will be advised to seek advice from Citizens Advice or a legal provider before proceeding, and will also be signposted to HMCTS Customer Service Centres which will be able to provide assisted digital support as well as answers to procedural queries. If it is subsequently proved that the defendant did not understand the consequence of their decision, the courts will have powers to set aside the conviction and proceedings could be started again. In particular, we will ensure that our assisted digital support takes into account the needs of those who are elderly or have disabilities, those with poor literacy or English skills, and those who lack

access to technology because of cost or geography. We will carry out extensive piloting, user research and testing across these groups and many others, and will continue to improve assisted digital provision on an iterative basis

76. Given that conviction other than by a court represents a significant departure for the criminal justice system, we will carefully consider consultation responses as we continue to develop the model. Subject to parliamentary approval, we intend to proceed with the three offences listed in the consultation document: railway fare evasion, tram fare evasion, and possession of unlicensed rod and line. If successful we plan to include other similar offences, including certain road offences. We will need to look at these individually and in detail and consider sentencing practice before identifying exactly which ones are likely to be appropriate. We will produce an updated Impact Assessment once we establish which offences we will trial the new process with.
77. The drafting of the consultation suggested that “current early guilty plea discounts would continue to apply whether the guilty plea was entered online or in other ways”. Current discounts could apply to online pleas made in cases dealt with by a court, as now, but the current guilty plea system would not work with the automated standard penalty, as these penalties will be a standard amount. We have received representations on setting penalty levels and will be considering how we take these into account; consultees have expressed concerns about undue incentivisation of defendants, and also that fines should be maintained at a suitably deterrent level. We will take all these factors into account in considering how an appropriate penalty is arrived at for relevant offences.

Panel Composition in Tribunals

78. The consultation responses have indicated that there is a high level of concern around the proposal to introduce a default of single member panels in the unified tribunals, particularly in jurisdictions where there may be a high proportion of vulnerable users. The issues raised mainly centred on the need to retain expertise on the panel in order to reach a fair and informed decision, and the need to make sure that users receive sufficient support from the panel. Whilst we do not consider that there is anything in our proposals which would result in decisions being made without the appropriate expertise being drawn on where required, or users being left without the support that they need, we recognise the concerns at the proposed approach. We therefore do not intend to proceed with the proposal to introduce a single member panel as the default position in the unified tribunals. Instead, we will amend the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008 (the Composition Order) that the SPT may provide that a panel should consist of one, two or three members, as required, in order to determine the matters before the tribunal justly and fairly.
79. As now, the SPT’s existing duty to give consideration to the need for members of the panel to have expertise in the law or the subject-matter of cases will continue to apply.
80. We also propose to ensure that the determinations on panel composition made under the Composition Order contain appropriate ministerial oversight, by including a specific requirement for the SPT to consult with the Lord Chancellor on any future changes, in line with the approach taken in the civil courts.
81. We have carefully considered the consultation responses but believe the requirement for the SPT to pay regard to historic tribunal composition is an unnecessary restriction to the SPT to base decisions on what is the most appropriate and proportionate

approach in the reformed tribunal system. We therefore intend to amend the Composition Order to remove this requirement.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

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