

Title: Transforming our justice system – Overarching IA IA No: MOJ018/2016 Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: HM Court and Tribunal Service (HMCTS)	Impact Assessment (IA)		
	Date: 15 September 2016		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Courts Reform Policy – courtsreformpolicy@justice.gsi.gov.uk			

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2014 prices)	In scope of One-In, Two-Out? Measure qualifies as
-£61m	N/A	N/A	No

What is the problem under consideration? Why is government intervention necessary?
A fair and functional justice system underpins every civilized society. It determines guilt and innocence in criminal cases, adjudicates on disputes between individuals or businesses, protects vulnerable children and allows the public to hold the Government to account. Our current system does all this, but the Government, in partnership with the senior judiciary, believes it can be made faster and more accessible with better outcomes for users while providing better value for the taxpayer. Many changes are needed to realise this vision of a modern day justice system. Government intervention is required because many of the required reforms would require legislative changes which only the Government can deliver.

What are the policy objectives and the intended effects?
The Government's proposed reforms are intended to ensure our courts and justice system remains:

- Just: decisions and outcomes are fair, the judiciary are supported by processes which are modern, transparent and consistent, and like cases are treated alike;
- Proportionate: the cost, speed, complexity, and degree of adversarial protection are appropriate;
- Accessible – the system is affordable, intelligible and available for use by all, convenient for those who cannot easily attend in person, and supports those not comfortable with the law or technology.


What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Base Case/Option 0: HMCTS would continue to function as at present.
- Option 1: Provide additional assistance to court users who have difficulty using digital services;
- Option 2: Allow online guilty pleas and fixed fines for some minor offences; and
- Option 3: Change the rules on the composition of tribunals to reduce average number on a panel.

Options 1-3 are preferred as they best meet the policy objectives.

Does implementation go beyond minimum EU requirements?	No				
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 14/9/16

Summary: Analysis & Evidence

Policy Option 1

Description: Providing extra assistance to people who have difficulties using digital services

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -£61m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£6m	

Description and scale of key monetised costs by 'main affected groups'

The basic administrative running costs of a 'face to face' assisted digital service and paper channel have been estimated as averaging between £5m-£9m per annum.

Other key non-monetised costs by 'main affected groups'

HMCTS may incur additional costs from implementing and setting up the proposed assisted digital services and from running a webchat service above the basic administrative costs identified for the 'face to face' service and paper channels. Assisted digital services may make court users more aware of the support available elsewhere in the justice system, organisations that offer this may incur resource costs if they see an increase in demand. Legal service providers may lose business if court users decide to become 'litigants in person' due to becoming more confident and digitally self-sufficient

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

None identified.

Other key non-monetised benefits by 'main affected groups'

Assisted digital would be an 'enabler' of savings for HMCTS as it would allow a large number of court users to move from the current paper channel to the more cost effective and efficient digital channel. Assisted digital would allow court users who are not digitally self-sufficient to have effective and timely access to justice, enable them to experience the benefits of a modernised court system and help give them the confidence to become digitally self-sufficient users both in the justice system and for other online services.

Legal service providers may decide to rival the government offered assisted digital service with a private sector alternative. Firms may use this a loss leader to gain assisted digital users as clients to advise/represent or, if there is enough demand, they may offer it as a paid-for service. If some users gain the confidence to become digitally self-sufficient, legal firms may have to provide less pro-bono services.

Key assumptions/sensitivities/risks

That the demand for assisted digital services may be higher or lower than anticipated. Demand for assisted digital services may not drop off as quickly or as consistently as assumed. Assisted digital services may not be flexible or nuanced enough to provide the most efficient and cost effective assistance to court users.

Discount rate % 3.5%

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 2

Description: Allow online guilty pleas and fixed fines for some minor offences

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

None identified

Other key non-monetised costs by 'main affected groups'

The cost to HMCTS associated with the development and maintenance of the online plea and automated fixed fine sentencing tool. At this early stage of policy development, it has not been possible to quantify costs and benefits: instead we have provided qualitative assessment of the impact. There may be increased costs to prosecutors resulting from new tasks around the decision to decide on plea / sentencing pathway.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

None Identified

Other key non-monetised benefits by 'main affected groups'

HMCTS would accrue savings from the reduction in Magistrate's and court staff's workload, and from reductions in estate space needed: Magistrates' time would be freed up for more complex cases, and space made available in the courts' estate. As above, these have not been quantified at this point.
 Faster process for defendants: sight of expected penalty before accepting the charge/fine
 Time saved by defendants no longer having to wait for sentencing related correspondence and decisions to be made.
 Increased choice of routes in the justice system.

Key assumptions/sensitivities/risks

Discount rate (%)

Effective safeguards are needed to the mitigate risk of defendants making uninformed decisions, or being inappropriately channelled into the process.
 If some of those who want to engage digitally are unable to, access to justice would be compromised and volumes would be impacted: assisted digital arrangement will need to be put in place.
 It is assumed that a prosecutor will make the decision to filter cases into this process.
 The concept of an 'algorithm' to determine suitability of cases for the process / penalty (i.e. driving offences) may invite challenge.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 3

Description: Change the rules for tribunal panel composition so that some cases that currently require non-legal members no longer do so.

FULL ECONOMIC ASSESSMENT

Price Base Year 2014/15	PV Base Year 2016/17	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
Reduced costs paid to non-legal panel members would financially benefit HM Courts and Tribunals Service (HMCTS). Such costs are currently £21m. Scenarios suggest that a 75% reduction in the non-legal member (NLM) sitting days would result in costs of around £16m, £11m with a 50% reduction and £5m with a 25% reduction in NLM sitting days.					
Other key non-monetised costs by 'main affected groups'					
There may be costs to HMCTS associated with supplementary training for judges in order to mitigate the risk that judges take longer in making a decision due to a lack of expertise on the panel. However this risk would also be mitigated by the intended flexibility in requesting additional panel members where it is required.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
Benefits to HMCTS could be around £16m if there was a 75% reduction in the number of NLM sitting days. Other scenarios could include savings of around £11m with a 50% reduction and £5m with a 25% reduction.					
Other key non-monetised benefits by 'main affected groups'					
A reduction in the use of multi-member panels may mean appeals could be dealt with more quickly due to less discussion. Cases could also be listed more quickly as there is only the need to find availability for a single rather than multiple panel members. This could improve the end-to-end process time of the appeal so benefitting users. There would also be a reduction in costs to HMCTS associated with lower expenditure on travel and subsistence, training, appraisal and general administration.					
Key assumptions/sensitivities/risks					Discount rate(%)
The scenarios above assume that panels would generally have fewer members but there is a risk that there could be an increase. It has also been assumed that fewer members would speed up decision making. Further risks include an increase in the number of appeals to the Upper Tribunal, a change in the number of successful appeals or an adverse impact on the experience of panel users. However, examples from the SEND and Immigration and Asylum Chamber (IAC) suggest these should not be significant.					3.5

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs:	Benefits:	Net:	

A. Background

1. A fair and functional justice system underpins every civilized society. It determines guilt and innocence in criminal cases, adjudicates on disputes between individuals or businesses, protects vulnerable children and allows the public to hold the Government to account.
2. Our current system does all this, but we want it to be better; faster and more accessible, and with better outcomes for users, and providing better value for the taxpayer. There are also many changes needed to realise the vision of a modern day justice system which have been set out in the joint statement of the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals.
3. The Court Reform consultation document outlines all of the changes we are making to improve our system and achieve that vision. As part of this consultation, the Government is inviting views on certain specific measures. This overarching Impact Assessment (IA), which accompanies the consultation document, sets out the main issues associated with the specific measures on which the Government is seeking views during the consultation period. The specific measures are:
 - Providing 'assisted digital' facilities;
 - Allowing on-line guilty pleas and fixed fines for some minor offences; and
 - Simplifying tribunal panel composition.
4. The rest of this IA begins by explaining the policy rationale and objectives which underpins the consultation and described the key stakeholders that would be affected. It then provides an overview of each measure and summarises the impact of each of the proposals on society, focusing on the monetised and non-monetised impacts
5. Further detailed discussion of each of the Government's proposals are set out in the individual IAs.

B. Policy Rationale and Objectives

6. All the measures in the Court Reform consultation are based on a clear set of principles. These are that the justice system should be:
 - **Just:** decisions and outcomes are fair, the judiciary are supported by processes which are modern, transparent and consistent, and like cases are treated alike;
 - **Proportionate:** the cost, speed, complexity, and degree of adversarial protection make sense and are appropriate to the nature and value of the dispute at issue;
 - **Accessible** – the system is affordable, intelligible and available for use by all, convenient for those who cannot easily attend in person, and supportive of those not comfortable with the law or technology.
7. In practice, for most court and tribunal users, these principles will deliver **swift and certain justice**.
8. Further details of how each of the specific measures described in this IA meet with the wider principles and objectives of Justice and Court reform consultation can be found in the individual IAs.

C. Affected Stakeholder Groups, Organisations and Sectors

9. A list of the main groups and stakeholders who would be affected by the proposals described in this IA is shown below:
 - HM Court and Tribunal Service (HMCTS), which administers the justice system;
 - The judiciary, including magistrates and judges who preside over trials in the criminal and civil courts, and the Non-Legal Members (NLM) of tribunal panels;
 - Civil and criminal court and tribunal users including members of the public and businesses;

- Legal Service Providers, especially barristers and solicitors, who provide advice and representation to parties involved in legal disputes in the civil and criminal courts;
- 3rd Sector bodies and commercial organisations who offer help and support to people in the justice system;
- Assisted Digital Providers, who will supply assisted digital services for the digitally excluded; and
- Taxpayers, who ultimately meet the costs of HMCTS.

D. Description of Options Considered

Base Case

10. IA guidance requires that policy and legislative proposals are assessed against a defined 'base case'. For the purposes of this IA, the base case comprises of the following elements:

- Court users who find using digital services difficult would need to continue to engage with paper and in-person processes across the justice system.
- Guilty pleas for some criminal minor offences would continue to be made at Magistrates Courts.
- Cases in the First-tier Tribunal and the Upper Tribunal would be heard by panels with the existing member composition.

Option 1: Provide 'assisted digital' facilities

11. Improving technology and putting more services and processes online is key to our reforms; for most people, this will make court and tribunal services more accessible and easier to deal with, and will fundamentally change the way that users interact with the justice system. We recognise that not everyone will be able to engage with these new processes, and that to maintain access to justice for everyone will require taking steps to provide support to those people who need it to interact with the new system. To ensure we meet the needs of everyone who engages with the system, we are seeking views on a package of 'assisted digital' support which is likely to comprise of the following elements: face to face assistance, for example, in completing and submitting online applications on behalf of a member of the public; a telephone help service offering similar advice; 'web chat' services to guide people through online processes; and access to paper channels for users who require it.

Option 2: Create online convictions and statutory fixed fines

12. For certain routine, low-level summary, non-imprisonable offences with no identifiable victim, we propose to implement a system whereby defendants will be able to resolve their cases entirely online. They will log on to an online system to see the evidence against them before entering a plea. Defendants who plead guilty will have the option to go through the online system where they can view the penalty, accept the conviction and penalty, and pay their fine online, allowing their cases to be resolved immediately and entirely online, with no need for the involvement of a magistrate.

Option 3: Simplify tribunal panel composition

13. One factor in taking a proportionate approach to tribunal cases is related to the panels that make decisions in tribunals. Most tribunals currently reflect historic arrangements that may be out of date and do not tailor the expertise of the panel according to the case. We propose to revise the current arrangements for setting panel composition to make sure that this reflects the needs of the individual case and that appropriate expertise is focussed on those cases that need it.

Preferred Options

14. The Governments preferred options are 1-3 inclusive as these best meet the policy objectives.

E. Cost and Benefit Analysis

15. This overarching IA summarises the main monetised and non-monetised impacts of the above policy options on individuals and groups in the UK. The costs and benefits of each policy option are compared to the "do nothing" option. IAs place a strong emphasis on valuing costs and benefits in monetary terms. However, there are often important aspects of a policy that cannot readily be monetised – e.g., the effects on particular groups of society or changes in equity and fairness.

16. More detailed analyses of the costs and benefits for each option can be found in the individual IAs.

Net Impact of options 1-3

17. Table 1 summarises the net impact of the preferred options.

Table 1: Summary of Main Impacts

Table 1 : Summary of Main Impacts, Best Estimates, Options 1-3				
		Costs	Benefits	Net Impact (10 year NPV)
Assisted Digital	Monetised	<ul style="list-style-type: none"> There would be a monetary cost to HMCTS of between £5m-9m from implementing and running assisted digital support. It is too early to estimate these costs precisely. 	<ul style="list-style-type: none"> None at this stage 	-£61m
	Non-Monetised	<ul style="list-style-type: none"> Legal service providers might experience a fall in demand as more court users carry out proceedings themselves. 	<ul style="list-style-type: none"> HMCTS would benefit from more people being able to use digital services, which generally are cheaper to run. These have not been quantified at this point. Court users with difficulty using digital services would gain access to HMCTS digital services, and therefore benefit from a simpler, faster and more efficient service. 	Positive
Online Convictions & Fixed Fines	Monetised	<ul style="list-style-type: none"> None at this stage. 	<ul style="list-style-type: none"> None at this stage 	N/A
	Non-Monetised	<ul style="list-style-type: none"> HMCTS would need to design, produce and maintain software to allow guilty pleas to be entered on-line. HMCTS and prosecutors may have to do more work to determine if a defendant is suitable for an online guilty plea. Defendants may seek support from 3rd sector organisations and assisted digital providers for help when making an online 	<ul style="list-style-type: none"> HMCTS would benefit from a fall in court demand and from better case management. Magistrates, legal service providers and 3rd sector organisations would spend less time on more simple cases. Defendants would benefit from the quicker resolution of their cases and from not having to travel to court. Defendants might find the justice system easier to understand and would have greater certainty as to the 	Positive

		plea which may impose a burden	punishment they would receive.	
Tribunal Panel Membership	<i>Monetised</i>	<ul style="list-style-type: none"> ▪ Depending on the reduction in sitting days, NLMs would receive between £0-21m in lower fees. 	<ul style="list-style-type: none"> ▪ Depending on the reduction in sitting days, HMCTS would save between £0-21m in lower fees. 	Neutral
	<i>Non-Monetised</i>	<ul style="list-style-type: none"> ▪ Panel judges would have to receive supplementary training ▪ There may be an increase in the number of appeals. 	<ul style="list-style-type: none"> ▪ HMCTS would benefit from paying less NLM expenses. ▪ Tribunal cases could be listed more quickly allowing for swifter justice. ▪ Tribunal users would benefit from quicker decision-making. 	Neutral/ Positive
Net Impact	<i>Monetised</i>	N/A	-£61m	-£61m

F. Assumptions and Risks

18. All of the above estimates are based on assumptions and are therefore subject to an elements of risk. The individual IAs for each measure provide further information on these for each specific issue.

G. Wider Impacts

19. While the four options described in this IA would apply to all, it is important to consider whether they would put those sharing a protected characteristic at a particular disadvantage when compared to those who do not share that characteristic. Such an effect could amount to indirect discrimination.

20. The IAs and EIAs for each of the options considered in this document consider the wider impact of the proposals in light of the MoJ's duty to pay due regard to the Public Sector Equality Duty.

H. Implementation

21. The IAs for each of the specific options described in this document provide more information about how the preferred options would be implemented.

I. Monitoring & Evaluation

22. The IAs for each of the specific options described in this document provide more information about how the preferred options would be monitored and evaluated.