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Remodelling social security appeals (again): the advent of online tribunals

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This article considers the introduction of online tribunal processes in social security appeals. In particular, it considers the changing landscape of social security decision-making, how online tribunals have been developed, and how online processes will differ to traditional tribunal appeals. The article also surveys the key issues raised by the introduction of online tribunals.

The role of technology in administrative and justice systems is increasing around the world.[1] In the UK, the Ministry of Justice (MoJ) and HM Courts and Tribunals Service (HMCTS) are implementing a wide-ranging court reform and digitalisation programme across the justice system.[2]Moving tribunals online is central to this agenda.[3] These reforms will be initially developed and piloted in social security tribunals and work has already begun in that respect. The Government's aim is that social security appeals will be heard and determined through a variety of methods—including 'continuous on-line hearings.' The intention is that greater use of digital technology will bring the judge and the parties together at a much earlier stage to resolve cases in the most appropriate way, whether via a hearing or through an online exchange.[4] The overall aim is to devise a flexible system which initially retains the confidence of all parties and the judiciary, then evolves to become the accepted standard for resolving disputes. The underlying intention is to widen access to justice and to make tribunal systems significantly more efficient in terms of time and resources.[5] However, there are concerns about the effects of technology on justice, especially when it is being introduced against the backdrop of austerity and a push for cost efficiency. There are also concerns that while the goal of widening access to justice is important, the overall effect may well be to limit such access to some people while expanding it for others.

This article considers the advent of online tribunals in the specific context of social security appeals. The first part outlines the challenges facing fair decision-making at the pre-tribunal stage, that is, the initial administrative decision-making and mandatory reconsideration (MR) stages. Owing to the recent introduction of MR, tribunals now occupy a different place in the wider dispute resolution process than they did just a few years ago. The second part considers the approach being taken by the MoJ and HMCTS to design online

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[1] For example, see: E. Katsh and O. Rabinovich-Einy, *Digital Justice* (Oxford: OUP, 2017); B. Barton and S. Bibas, *Rebooting Justice* (New York: Encounter Books, 2017).

[2] This reform agenda is discussed below. See generally: J. Rozenberg, *The Online Court: Will IT Work?* (2017); H. Genn, "Online Courts and the Future of Justice" (The Birkenhead Lecture, Gray's Inn, 2017) available at < https://www.ucl.ac.uk/laws/sites/laws/files/birkenhead_lecture_2017_professor_dame_hazel_genn_final_version.pdf> [accessed 22.03.2018].

[3] Ministry of Justice, *Transforming Our Justice System* (London: 2016), p.15. Our focus here excludes party-to-party tribunals, such as the Employment Tribunal—the focus is solely on claims concerning administrative decisions.

[4] J. Aitken, President of the First-tier Tribunal (Social Entitlement Chamber) in *Senior President of Tribunals' Annual Report* (2017), p.38.

[5] Sir E. Ryder, "Assisting Access to Justice" (University of Keele, 2018) available at <https://www.judiciary.gov.uk/wp-content/uploads/2018/03/speech-ryder-spt-keele-uni-march2018.pdf>, p.8 [accessed 22.03.2018].

tribunals and situates this approach within changing modes of digital government. The article then explores the main ways in which online tribunal processes will differ from traditional tribunal appeals. The final part of the article highlights key questions raised by the move to online tribunals.

Social security administration and decision-making

Social security policy is administered by officials within the Department for Work and Pensions (DWP), who take approximately 12 million decisions each year to determine whether or not claimants are eligible for benefits. The two benefits with the largest number of claimants are Employment and Support Allowance (ESA) and Personal Independence Payments (PIP). After a claim is made, an assessment will be undertaken, usually involving a 'healthcare professional' who is employed by a private provider under contract with the DWP.[6]Some decisions are refused and some of those refusals are disputed by claimants through MR (around 300,000 per year) and tribunal appeals (around 150,000 per year). The social security system has been undergoing a period of transformation since 2010.[7] The reforms, undertaken alongside a series of substantive policy shifts, have been carried out in a policy context dominated by austerity.[8]

There are often concerns with the quality of both the decision process and its outcomes and the adverse consequences for the individuals concerned – and this is where administrative justice and the need for tribunals comes in. In relation to initial decision-making and assessments, the contracting-out of assessments to private companies, such as ATOS and Maximus, has been widely criticised.[9] Criticism of initial decision-making has also emerged from the senior judiciary. Sir Ernest Ryder, the Senior President of Tribunals, has stated that most appeals are based on bad decisions,[10] He found that the quality of evidence offered by the DWP at tribunals would often be "wholly inadmissible" in any other court and that 60per cent of cases were "no-brainers" where there was nothing in the law or facts that would make the DWP win. This, the Senior President argued, meant poor decision-making led to "an inappropriate use of judicial resources, it's an inappropriate experience for the users, and the cost is simply not right." The DWP has defended its decision-making, and regularly attributes decisions overturned at appeal to new evidence—which was not before them—being presented at the tribunal. There have also been legal challenges to benefits decision-making. In 2017, the Administrative Court quashed a regulation relating to PIP decision-

[6] For general discussion, see R. Thomas and J. Tomlinson, "Mapping current issues in administrative justice: austerity and the 'more bureaucratic rationality' approach" (2017) 39 *Journal of Social Welfare and Family Law* 380, 396-397.

[7] For an overview, see N. Timmins, "The Coalition and Society (IV): Welfare" in A. Seldon and M. Finn (eds), *The Coalition Effect, 2010-2015* (Cambridge: Cambridge University Press, 2015); C. Beatty and S. Fothergill, "Welfare Reform in the United Kingdom 2010–16: Expectations, Outcomes, and Local Impacts" (2017) *Social Policy and Administration* (online pre-publication).

[8] This has, notably, included the expansion of the principle of welfare conditionality, including the use of benefit sanctions, see M. Adler, "A New Leviathan: Benefit Sanctions in the Twenty-first Century" (2016) 43 *Journal of Law and Society* 195.

[9] House of Commons Work and Pensions Committee, *PIP and ESA Assessments* (HC 829 2017-19).

[10] E. Dugan, "A Senior Judge has Suggested Charging the Government for Every "No-Brainer" Benefits Case it Loses in Court" (*BuzzFeed News*, 9 November 2017) available at <https://www.buzzfeed.com/emilydugan/most-dwp-benefits-cases-which-reach-court-are-based-on-bad?utm_term=.lfa9d2BEe#.nxV2m9Zrn> [accessed 22.03.2018].

making on the basis it was discriminatory.[11] In response, the DWP decided not to appeal the judgment and to review the case of every person receiving PIP—a total of some 1.6 million individuals.

In 2013, the DWP also introduced mandatory reconsideration to resolve disputes before they reach tribunals.[12] The justification was to resolve disputes quickly and reduce the volume of tribunal appeals.[13] Claimants can no longer appeal direct to a tribunal, but must first request a mandatory reconsideration.[14] Between 2013 and 2017, there were some 1.5 million mandatory reconsiderations decided. It transpired that mandatory reconsideration was in practice very quick: average monthly clearance times did not go above 20 days.[15] However, mandatory reconsideration has been criticised on various grounds. It has been suggested that mandatory reconsideration discourages many people from pursuing their claims before tribunals. There has been a steep drop in the volume of appeals lodged since the introduction of mandatory reconsideration. In 2014/15, appeal numbers were 73 per cent lower compared with 2013/14.[16] Mandatory reconsideration was intended as a filter but the concern has been that many cases that could succeed before tribunals fall away after the mandatory reconsideration stage. This creates the impression that the DWP is gatekeeping the tribunals system and taking advantage of claimant fatigue.[17] Particular concerns have often arisen due to the effect of mandatory reconsideration upon the behaviour of vulnerable claimants. Among the specific worries are that mandatory reconsideration decision notices often simply restate the same reasons as were given for the initial-decision without further detail, that the decision-making process is merely a "rubber stamp" exercise, that tribunals often reach very different conclusions to the mandatory reconsideration process, and that officials conducting reconsiderations prefer the evidence of a contracted-in assessor to other legitimate medical evidence.[18] Such concerns are underscored by the facts that mandatory

[11] *R. (on the application of RF) v Secretary of State for Work and Pensions* [2017] EWHC 3375 (Admin); The regulation in question was the Social Security (Personal Independence Payment) (Amendment) Regulations 2017, Reg. 2(4).

[12] It has been estimated that this review could cost £3.7bn by 2023, see "Personal Independence payments: All 1.6 million claims to be reviewed" (*BBC News,* 30 January 2018) available at <http://www.bbc.co.uk/news/uk-42862904> [accessed 22.03.2018].

[13] DWP, *Mandatory Consideration of Revision Before Appeal* (2012).

[14] Welfare Reform Act 2012, s 102; The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations SI 2013/381. A concurrent change was that whereas previously claimants lodged their appeals with the DWP, appeals are now lodged directly with the tribunal.

[15] DWP, *Employment and Support Allowance: Work Capability Assessments, Mandatory Reconsiderations and Appeals* (London: DWP, September 2017), p.7.

[16] The subsequent increase is largely accounted for by appeals lodged by claimants being transferred from Disability Living Allowance to Personal Independence Payments.

[17] A previous empirical study found that local authority officers could use administrative review to control claimants' access to tribunals, see T. Eardley and R. Sainsbury, "Managing Appeals: The Control of Housing Benefit Internal Reviews by Local Authority Officers" (1993) 22 *Journal of Social Policy* 461. Other evidence suggests that claimant fatigue often discourages people from challenging decisions, see S. Halliday and D. Cowan, *The Appeal of Internal Review: Law, administrative justice, and the (non-) emergence of disputes* (Oxford: Hart, 2003), pp.138-140; Oral evidence of HH Judge Robert Martin to the House of Commons Work and Pensions Committee inquiry, *Employment and Support Allowance and Work Capacity Benefits* HC 1212 7 May 2014, Q96. The Upper Tribunal has similarly expressed scepticism as to whether MR has any real advantages in reducing unnecessary appeals that have merit, see *R (CJ) and SG v Secretary of State for Work and Pensions* (ESA) [2017] UKUT 0324 (AAC) [26].

[18] Social Security Advisory Committee, *Decision Making and Mandatory Reconsideration* (2016).

reconsideration has the lowest satisfaction rating of any part of the DWP process and that there have been much lower success rates for claimants in mandatory reconsideration compared with tribunal appeals.[19] From 2013-2016 there were some one million mandatory reconsideration decisions, with17 per cent being decided in favour of the claimant. Appeals success rates have, by comparison, been around 40 per cent, rising to 65 per cent in recent years.

It is within this changing context of social security adjudication that online tribunals are being introduced by HMCTS. The task of creating an effective online process for social security tribunals has its own challenges. Many appellants are vulnerable and have physical and mental health issues. Furthermore, though the fiscal value of disputes in the tribunal may seem small, for many claimants the implications of appeals affect their living arrangements significantly. The challenge appears even more complex when it is considered that the UK's digitalisation reforms are, by some distance, the most ambitious attempt to introduce technology into any justice system. The next part of this article considers how the MoJ and HMCTS have approached the task of building online social security tribunal processes.

Developing online tribunals

Since 2010, there has been a significant reduction in the amount of public money that the Government is willing to spend on the justice system. Cuts to legal aid funding have increased the number of litigants in person. Many court and tribunal hearing centres have been closed and sold off. The whole of the justice system, including tribunals, has been subject to managed decline. There is a general concern that the justice system is in crisis and this has substantially reduced access to justice for many people.[20] The court and tribunal reform programme has been developed in response to these budget cuts and austerity. In light of this, the Ministry of Justice's court and tribunal reform programme aims to redesign and modernise the way in which people can access courts and tribunals by introducing online and digital processes. It is clearly motivated by intense pressure from the Treasury to reduce spending.

The programme was announced in September 2016 in a joint vision statement entitled *Transforming our Justice System* and published in the joint names of the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals.[21] This paper highlighted the need for radical reform required to modernise and upgrade the justice system through technology. The paper stated that there was a compelling case for reform of tribunals:

> Tribunals will be digital by default, with easy to use and intuitive online processes put in place to help people lodge a claim more easily, but with the right levels of help in place for anyone who needs it, making sure that nobody is denied justice.[22]

Tribunal judges and members will adopt a more inquisitorial and problem-solving approach, focused around the needs of individuals. Automatic sharing of digital documents with government departments will mean that all parties involved would have the right information in order to deal with claims promptly and effectively thereby saving time. People using

[19]Department for Work and Pensions, *DWP Claimant Service and Experience Survey 2014/15* (2016), p.85.
[20] See, e.g., JUSTICE, *Delivering Justice in an Age of Austerity* (2015).
[21] Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, *Transforming our justice system* (MoJ, 2016).
[22] Ibid., p.15.

tribunals are to have access to specialist judicial expertise using new tools and technology. The paper also announced that online dispute resolution would be tested in social security tribunal hearings, with people making their appeal and receiving a response online. A process known as "continuous online hearings" is to enable judges to gather evidence and make informed decisions at a pace that is right for the case and the parties.

The *Transforming our Justice* paper contained much aspiration and vision, but comparatively little detail on how online tribunals will actually work in practice. Indeed, a persistent concern is that important system-changing reforms are being introduced, but with a paucity of information being made publicly available as to what precisely is to be implemented and how. The reform programme has raised numerous questions as to how exactly it will work in practice. Yet, the MoJ and HMCTS have provided relatively little detailed information on what precise the reforms will entail and how they will be implemented in practice. The wider concern is that there is a fundamental lack of transparency concerning a major set of reforms that will radically restructure the legal and judicial processes by which individuals challenge administrative decisions.

Such concerns are legitimate. The lack of information also hampers the task of assessing the introduction of online dispute resolution. The reform project itself and the task of academic critique are both necessarily work in practice. Nonetheless, it is possible to make some headway by assimilating disparate sources of information to identify the general approach being pursued and to identify the key issues raised. By piecing together parts of this wider project, we can illuminate both how the distinctive and technology-based nature of these reforms might work in practice and the major threats and risks to its successful implementation. In order to do so, we first have to take something of detour into the world of public sector IT and design-thinking.

The advent of online tribunals has been conceived by the MoJ and HMCTS as, what may be labelled, an operational project. Understanding the digital 'transformation' project therefore requires closely examining, so far as it is possible to do so, what is happening within the MoJ and HMCTS.[23] The introduction of online tribunals is a major justice policy reform, but its success primarily rests upon government's IT capabilities. As a result, to understand the government's approach to building the tribunal, it is helpful to consider its broader approach to IT in the context of public service provision.[24]

Information technology and the public sector

The public sector is often perceived as a disaster zone for IT projects, with much talk of expensive failures and under-used services.[25] Historically, this was a problem in many countries. As regards the UK in particular, it has been described in such terms as 'ground zero for IT management failures'[26] and 'a world leader in ineffective IT schemes for government.'[27] IT failures within UK government have taken various forms: spiraling costs; delays; and the collapse of proposed reforms. The reasons for such failures have been multi-layered and

[23]This has created concerns about the lack of Parliamentary oversight.

[24] It is also helpful to consider the wider "design" context for administrative justice, see A. Le Sueur and V. Bondy, *Designing Redress* (London: Public Law Project, 2012).

[25] P. Dunleavy, H. Margetts, S. Bastow, and J. Tinkler, *Digital Era Governance: IT Corporations, the State, and e-Government* (Oxford: OUP, 2008).

[26] A. Clarke, "Digital Government Units: Origins, Orthodoxy and Critical Considerations for Public Management Theory and Practice" (2017) available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3001188> [accessed 22.03.2018].

[27] Dunleavy et al, above at n 25, p. 70.

complex.[28] Failure is not, however, the present tone of UK government IT operations. Against a backdrop of wide-spread condemnation of IT projects, growing expense, a global financial crisis, and various reports,[29]the Government established the Government Digital Service (GDS). Introduced in 2011 as 'Alphagov,' GDS is a unit within the Cabinet Office with a mandate across the whole of government concerning digital strategy, services, hiring, and procurement. Within a very short period of time, GDS was widely seen as the global leader in digital government. It topped the United Nations' e-government rankings.[30]

GDS is seen as the first of a new breed of e-government organisation which have now spread across the world: government digital units (GDUs).[31] GDUs have certain distinctive features: they operate at the centre of the administration; they adopt a unified approach across government and borrow heavily from the tech sector in terms of their operational style; they introduce 'startup' cultures associated with tech companies and prioritise user-centered design (adopting 'design thinking' approaches);they exhibit preference for data-driven decision making; and they combine in-house talent with contracted-in talent to pursue government-led projects. GDUs typically also set down criteria that all government digital services must comply with before they are put into action.

While GDUs are a growing trend internationally, they are still in their early days and there is limited research on them. Nonetheless, the rise of GDUs has effectively created a new 'government-IT orthodoxy'[32]This shift is defined by the following features. First, a preference for 'agile' user-centric development, with heavy use of prototyping. Second, changes in procurement methods, including more reliance on in-house talent and more engagement (when outsourcing is used) with small and medium-sized enterprises. Third, the use of 'open' standards which allow solutions to be shared and reused across government (GDS describes this approach as one which aggregates demand across government for common services but disaggregates the supply of these services). Fourth, the creation of government-wide policies on digital initiatives and, fifth, the building of a new culture around digital service.

Design thinking

A key part of the changing approach to government IT has been the use of agile, iterative design—in the academic literature, this is often referred to as a "design thinking" approach.[33] Though many lawyers will likely not be familiar with it, 'design thinking' is now a well-established field of study in its own right. Initially emerging in the 1960s and 1970s,[34] the notion of design as a 'way of thinking' was fleshed out by a range of important works in the 1980s.[35] While there is debate about the exact nature of design thinking and the methods associated with it,[36] the gist of the approach is to place emphasis on quick prototyping,

[28] Clarke, above at n 26.

[29] House of Commons Public Administration Select Committee*, Government and IT – 'a recipe for ripoffs': Time For A New Approach* (2010-12 HC 715-I); M. Lane-Fox, *Directgov 2010 and Beyond: Revolution not Evolution* (2010).

[30] Department of Economic and Social Affairs, *UN E-Government Survey 2016* (2016).

[31] Similar set-ups have emerged in the US, Canada, and Australia.

[32] Clarke, above at n 26.

[33]The literature on the application of design thinking to justice is well set out in S. Ursel, "Building Better Law: How Design Thinking Can Help Us Be Better Lawyers, Meet New Challenges, and Create The Future Of Law" (2017) 34(1) *Windsor Yearbook of Access to Justice* 28.

[34]*e.g.* H.A. Simon, *The Sciences of the Artificial* (Massachusetts: MIT Press, 1969)/

[35]*e.g.* P.G. Rowe, *Design Thinking* (Massachusetts: MIT Press, 1987).

[36] L. Kimbell, "Rethinking Design Thinking: Part 1" (2012) 4(2) *Design and Culture* 129.

frequent testing, and the user-perspective.[37] This is often expressed in the five-part, non-linear design process of empathising with users, defining the problem, ideating, prototyping, and testing. A wide range of specific methods—such as journey and stakeholder mapping—are now associated with and developed in accordance with the design thinking approach.[38] Alongside the development of design thinking as a mode of thought, there has been the contemporaneous application of it to a diverse range of pursuits including computer science, business, and management.[39] The preference for this approach is now exhibited across most of the parts of government that GDS has touched. The MoJ and HMCTS, under the supervision of GDS, have adopted this agile approach for their digital reform project. HMCTS' specific model has the following four stages:

1. **Discovery:** Finding out what the users need, what to measure and what the constraints are;
2. **Alpha:** Building a prototype, testing it with users and learning about it;
3. **Beta:** Scaling up and going public; and
4. **Live:** Learning how continuously to improve the live service

This approach has also been adopted alongside the government 'Digital Service Standard', which GDS state that 'all public facing transactional services must meet.'[40] This Standard includes requirements to 'understand user needs,' 'do ongoing user research,' 'use agile methods,' and 'iterate and improve frequently.' Alongside these processes and principles, there is a wide range of new methods—such as journey and stakeholder mapping—that HMCTS are using. This approach has been adopted to build the online appeals processes, something has synchronized easily with increasing emphasis placed on the 'user perspective' in administrative justice policy in recent years.[41]

It is unclear exactly how this design process has been working in practice as little information has been made public.[42] This reinforces the point made earlier about a lack of transparency concerning the reform programme. Indeed, it can be argued that there has not been sufficient public involvement and participation in the reform programme to date. Nonetheless, some fragments of information have been made public. For instance, there was specific 'discovery' process undertaken in relation to the appeal form, which is used to launch an appeal. For this discovery process, there were six sessions with overall 25 appellants, three HMCTS staff, and six welfare advisers. There was then 'alpha' testing of a prototype appeal form. For the alpha process, there was a total of 11 sessions with overall 45 appellants and 11 welfare rights group advisors. From these sessions—and other research—various customer experiences were mapped. The idea behind the process is to build lots of

[37] H. Plattner, C. Meinel, and L. Leifer (eds), *Design Thinking* (Berlin: Springer, 2011), pp. 14-15.

[38] R. Alves and N.J. Nunes, 'Towards a Taxonomy of Service Design Methods and Tools' in J. Falcão e Cunha, M. Snene, and H. Nóvoa (eds), Exploring Services Science, IESS 2013 (Vol, 143) (Springer, 2013).

[39] See *e.g.* F.P. Brooks Jr., *The Design of Design: Essays from a Computer Scientist* (Massachusetts: Addison Wesley, 2010); R.L. Martin, *Design of Business: Why Design Thinking is the Next Competitive Advantage* (Massachusetts: Harvard Business School Press, 2009).

[40] Gov.uk, "Digital Service Standard" available at <https://www.gov.uk/service-manual/service-standard> [accessed 22.03.2018].There is also a design manual available, which includes clear processes for system design and testing.

[41] For general discussion, see: J. Tomlinson, "The Grammar of Administrative Justice Values" (2017) 39 *Journal of Social Welfare and Family Law* 524.

[42] The best resource for this has been the *Inside HMCTS Blog.*

components and put them together. The appeal form, and other parts of the online tribunal process, have now entered 'beta' testing and will go 'live' in due course.

A key issue has been predicting digital capability among claimants. The MoJ's and HMCTS' starting assumptions about the digital capability and take up among claimants have been based on estimates drawn from the UK population.[43]Claimants that may have difficulty with using online systems can be divided into two categories: those who can use online systems, but only with 'assisted digital' support; and those who are completely 'digitally excluded.' HMCTS estimated the former category to be 37 per cent of the adult UK population, and the latter to be 15 per cent. As there is no specific data on digital capability amongst appellants, HMCTS took what demographic data does exist about this population to make more granular predictions about digital exclusion and assisted digital needs. Based on HMCTS modelling, the operative estimate is that digital exclusion is likely to be lower among appellants than it is among the general population but the need for assisted digital may be much higher. HMCTS has predicted that 65 per cent of appellants will require assisted digital and 5 per cent will be excluded. From this starting prediction, further research—including surveys—is being conducted. This approach reflects the growing emphasis placed on data in system design.

The method being adopted by HMCTS has some obvious benefits: it can lower the risk of large scale IT system failures; it puts the user at the centre of the system; and it increases the use of data in the design of the justice system.[44] At the same time, however, it is not a panacea. This process is still being done within the limits of the Department's 'business case,' which means expense of systems limits the influence of the approach. Moreover, working in an iterative way can make it difficult for external stakeholders, and researchers, to engage with the design process. The iterative method also means that when research is conducted internally, it is usually conducted on specific parts of the tribunal process; due to this, there remain a clear need for changes to be assessed in the wider systems in which they exist. Finally, there remains an old problem: the divide between departments. There is little sense in HMCTS and the MoJ designing a user-friendly tribunal procedure which is preceded by an MR system that is creating a barrier to the tribunal in many cases. Calls for 'joined-up' thinking in administrative justice are nothing new. Nonetheless, the lack of coordination between different government departments can undermine the user-centred approach that is being taken. The clear implication is that the MoJ should use the reform process more widely to enable effective cross-government co-ordination. There is little apparent evidence this has been the case.

Changing models and processes: traditional tribunals and online tribunals

How then will online tribunals operate in practice? There will be no single online tribunal procedure. Instead, it is better to understand the reforms as encompassing a range of fluid and developing processes that vary in the degree to which new digital methods are used and blended together with current procedures. This section compares the traditional approach to

[43] The methodology involves using the data from the 2015 GDS digital inclusion survey combined with demographic data of social security appellants to model their digital capability

[44] See generally, L. Sossin, "Designing Administrative Justice" (2017) 34(1) *The Windsor Yearbook of Access to Justice* 87.

tribunals with what the advent of online procedures will bring, and highlights some specific process changes.[45]

The traditional model and the online model

The 'traditional model' of tribunal procedure is based upon the following features: paper-based files; paper-based communications with and between the parties; physical oral hearings in a tribunal courtroom; and written decisions. This essentially court-based model has long been held out as the ideal way of hearing appeals. Having all the parties physically present in the same court room gives the tribunal the best opportunity to hear and evaluate the appellant's oral evidence, to consider documentary evidence, and to maintain an informed dialogue with the parties. The tribunal appellant or user has a face-to-face experience of the justice process. The tribunal will either immediately issue a short written decision or reserve its decision.

This model is widely used, with variations, across almost all tribunals, including social security tribunals. Over the 230,000 social security appeals received in 2016/17, some 90 per cent of appellants opted for an oral hearing.[46] The tribunal has long worked on the basis of a fully paper-based system. Hearings are informal and inquisitorial. Most appellants are unrepresented and the DWP is rarely represented at appeal hearings.

The traditional model is well-established, but has drawbacks. It is a "one size fits all" approach. Appellants either attend hearings or have their cases decided on the papers. Variations on the basic design are very limited. For instance, many vulnerable people unable to attend hearings may be able to participate through video-link or telephone hearings.[47] Traditional procedures can also be highly inefficient and time-consuming. There is typically little or no communication between the parties before the hearing. The hearing will usually be the first and only opportunity for the parties to exchange views and engage with the tribunal. Given the volume of cases and the need to list oral hearings, appeals can take some time to be heard and decided. In 2017, social security appeals took on average 20 weeks to be decided whereas immigration appeals took 51 weeks.[48] Many weeks of 'downtime' pass in which nothing is happening to an appeal other than delay. A major issue for many appellants is not knowing how their appeal is progressing through the tribunal process. Research by HMCTS has found that the most prominent difficulty for claimants is a lack of understanding about the appeals process and not knowing precisely which stage of the process their case has progressed to. Weeks can go by without any sort of update. The consequent risk is that claimants disengage, miss deadlines or do not turn up to their hearings. This can lead to adjournments and further delays, which can increase stress and anxiety for appellants.[49] Another drawback is that the demand on HMCTS to manage an

[45] For a fuller analysis of the changing models of tribunals in the UK, see R. Thomas, "Current Developments in UK Tribunals: Challenges for Administrative Justice" in S. Nason (ed.), *Administrative Justice in Wales and Comparative Perspectives* (Cardiff: University of Wales Press, 2017).

[46] Ministry of Justice, *Tribunals and Gender Recognition Statistics Quarterly, April to June 2017* (2017), tables S2 and S4. Social security appeals are heard by the First-tier Tribunal (Social Entitlement Chamber).

[47] Social security tribunals previously on occasion held domiciliary hearings by visiting the appellant's home, but such hearings are nowadays rarely seen to be appropriate or necessary, see: *KO v Secretary of State for Work and Pensions* (ESA) [2013] UKUT0544 (AAC), [7].

[48] Ministry of Justice, *Tribunals and Gender Recognition Statistics Quarterly, April to June 2017* (2017), table T3.

[49] R. Marchant, "Sometimes it makes sense to start in the middle" (*Inside HMCTS,* 3 February 2017) <https://insidehmcts.blog.gov.uk/2017/02/03/sometimes-it-makes-sense-to-start-in-the-middle/>[accessed 22.03.2018].

enormous number of paper files by itself generates complications, such as lost and mislaid documents thereby prompting complaints.[50] Overall, the traditional approach of tribunals represents an analogue model operating in a digital age: slow, costly, rigid, top-down, and not especially user-friendly. In this light, it is natural that policy-makers have increasingly sought alternative digital methods to make tribunals more accessible, efficient, proportionate, and flexible.

Online tribunal procedures will involve important changes to the traditional model. Initial applications and early stages of the appeals process will be transferred online. This could increase the practical accessibility of tribunals to users. Online submission means that appeals could be 'validated' more quickly meaning that they are less likely to be rejected as incomplete.[51] It could also enable users to track their appeals online to follow their progress. Online tracking of appeals could also help ameliorate the problem highlighted above by which some appellants disengage from the tribunal process. Users can be automatically notified through online, SMS, and email messages of the progress of an appeal. 'Push' and 'pull' messages can, through accessible language, notify the appellant when and how to submit evidence and when a hearing has been booked. With online links, these messages also give supporting information on the hearing format. An appellant can be confident that her appeal has been received and is receiving attention. Appellants can also have a better idea of how long the appeal will take and be informed of what is happening and will happen next.

Video link

Video link hearings have been used for some time in social security, immigration bail hearings, and Upper Tribunal error of law hearings. Social security tribunals have occasionally used skype to conduct hearings with claimants unable to attend the tribunal hearing centres in person.[52] Other jurisdictions, such as the US and Canada, have made increasing use of video link for live evidence.[53]

Video-link will now become more commonplace.[54] The advantage is that the parties can be brought together from remote locations at considerably less expense and more convenience than traditional hearings. Using video link in error of law hearings is relatively uncontroversial because the proceedings typically take the form of a dialogue or conversation between representatives and the judge, with the appellant making little, if any, active contribution. There have, though, been concerns about the increased use of video link where appellants make a direct contribution to the proceedings by giving evidence. The concern is that video link can reduce appellants' understanding and participation in the process. There has been some judicial unease about the unsatisfactory nature of video-link compared with

[50] Parliamentary and Health Service Ombudsman, *Complaints about UK government departments and agencies, and some UK public organisations2015-16* (2016), p.17.

[51] Validation requires that appeals comply with certain procedural requirements to be recognised as a valid appeal. For instance, that the particular type of initial decision is appealable and that the appeal was lodged in time. Moving such processes online means that appeals are less likely to be rejected as incomplete.

[52] Under the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules SI 2008/2685, r.1(3), a hearing includes video-link and telephone hearings. See also *Upper Tribunal Immigration and Asylum Chamber Guidance 2013 No 2: Video link hearings* (2013).

[53] M. Federman, "On the Media Effects of Immigration and Refugee Board Hearings via Videoconference" (2006) 19 *Journal of Refugee Studies* 433; I.V. Eagly, "Remote Adjudication in Immigration" (2015) 109 *Northwestern University Law Review* 933.

[54] In 2018, the first virtual tax tribunal hearing was held: "First virtual court case held using claimant's laptop camera", *The Guardian*, 26 March 2018.

live evidence.[55] By contrast, Lord Carnwath, the first Senior President of Tribunals, has stated that there is 'no reason in principle why use of modern video facilities should not provide an effective means of providing oral evidence and participation from abroad, so long as the necessary facilities and resources are available.'[56]

One issue to be investigated is how effectively video-link will used in first-tier tribunals, which primarily exercise a fact-finding role. There is a widely held assumption that this is best undertaken by hearing the evidence in person through an oral hearing.[57] There are usually three reasons associated with this. First, other means of providing oral evidence may be inadequate and thereby risk unfairness for appellants or reduce the ability of the other parties to test such evidence. Second, the judicial task of collecting and evaluating facts – especially the credibility of a witness – will often, if not usually, depend not just upon the content of the oral evidence, but also upon non-verbal forms of communication, such as the way in which the evidence has been presented and the appellant's demeanour.[58] Third, giving live evidence at a hearing is subject to a degree of formality and supervision by the tribunal. The tribunal can control the procedure to ensure that there is no misuse of the judicial process – aspects that will either be absent or reduced when video link is used. It remains to be seen how video-link will be used in practice. At present, the intention is to use video-link initially for case-management review hearings in immigration and asylum appeals. However, there is potential for wider use of video-link in substantive appeal hearings. What is required is detailed empirical investigation into the use of video-link and its appropriateness.

Continuous online hearings

Another option is 'continuous online hearings'. This format involves using online methods to bring the judge and the parties together at a much earlier stage to case-manage and resolve the dispute in the most appropriate and efficient way. A key feature is that the 'hearing' is not a single physical event in the traditional sense. Instead, the online hearing is a continuous iterative process that takes place over a number of stages thereby enabling the judge and the parties to refine and explore the issues. This process has been pioneered by the Traffic Penalty Tribunal and is to be piloted in social security appeals.[59]

It is envisaged that continuous online hearings in social security appeals will operate as follows. Appellants will commence their appeals online. The appeal will be assigned to a designated and private part of an online portal or dashboard to which only the parties and the tribunal can access. The appellant can upload evidence which is then instantly available to the parties to be reviewed and commented upon. The judge will case-manage from the outset and engage with the parties online to clarify disputed issues. This online dialogue between the parties would be led by the judge who would also make requests of the parties, and investigate and clarify the issues in the appeal. The parties would be notified of any updates such as updated evidence and messaging. If the appellant wanted an oral hearing, then this could be arranged (though it remains to be seen if the government's commitment to providing user choice sustains over time). However, in many appeals, such a hearing may

[55] *R (Mohibullah) v Secretary of State for the Home Department* [2016] UKUT 561 (IAC), [90]; *R (Kiarie and Byndloss) v Secretary of State for the Home Department* [2017] UKSC 42, [67].

[56] *R (Kiarie and Byndloss) v Secretary of State for the Home Department* [2017] UKSC 42, [103].

[57] *Secretary of State for the Home Department v Nare* (evidence by electronic means) Zimbabwe [2011] UKUT 00443 (IAC), [17].

[58] *R (Mohibullah) v Secretary of State for the Home Department* [2016] UKUT 561 (IAC), [90].

[59] The Traffic Penalty Tribunal also uses telephone hearings and, to a lesser degree, traditional physical hearings.

not be necessary. In common with the traditional approach in social security appeals, the judge would take an inquisitorial and problem-solving approach but the online process would enable this to be undertaken much more quickly. In many straightforward or uncontested cases, there would not be the need for a physical hearing and the decision would be produced online and instantly available to the parties. In social security appeals, non-legal tribunal members, such as medical and disability members, would be brought in to examine the evidence and contribute to the online process.

Experience in the Traffic Penalty Tribunal has found that online messaging has considerable advantages in terms of quickly narrowing down the issues quickly and enabling a focused exchange of views. Online messaging can significantly lower the costs, delays, and constraints that come with physical hearings. Having all the information and evidence together in a single online file as opposed to a paper-based file makes it far more easily accessible. An online system could also widen the accessibility of the tribunal process. It is envisaged that continuous online hearings will radically reduce the length of the appeals process in most cases from an average of 20 weeks to 1-2 weeks. It is this model that is being piloted in social security tribunals.[60]

Assisted digital

As noted above, it is unlikely that all appellants will be able and willing to use online tribunal processes. The MoJ has recognised the need to support people who have difficulty using technology, particularly elderly people, children, people with disabilities, those without digital skills and those with poor literacy or English skills. In February 2017, the MoJ published its general approach to 'assisted digital' services. It promised support for people who have trouble with using technology: '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.'[61] The stated intention is to ensure that assisted digital services are designed to meet the needs of the end user of a digital service, mainly unrepresented appellants, litigants in person and professional users.

An 'assisted digital' support programme is, then, being developed to help those who need support to use online systems. There is a dedicated team investigating this issue. This involves government working with independent suppliers to provide a network of accessible, quality-assured assistance: '[t]elephone 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.'[62]

As the assisted digital plan has developed, journey-mapping has been a commonly used method in designing the new system. This has involved creating hypothetical user profiles, with different characteristics, and defining their needs at each stage of the process. Assisted digital telephone services have already been developed. HMCTS has also awarded a 24-month contract to the Good Things Foundation, a charity that supports socially excluded

[60] J. Aitken, "Lessons from a trailblazer model" (Autumn 2016) *Tribunals* 11; *Senior President of Tribunals' Annual Report* (2017),p.15; F. Rutherford, "How remote working will give users and courts greater flexibility" (*Inside HMCTS*, 10 August 2017) available at < https://insidehmcts.blog.gov.uk/2017/08/10/how-remote-working-will-give-users-and-courts-greater-flexibility/> [accessed 22.03.2018].

[61] Ministry of Justice, *Transforming our justice system: assisted digital strategy, automatic online conviction and statutory standard penalty, and panel composition in tribunals: Government response* (2017).

[62] Ibid.

people to improve their lives through digital. Someone needing a higher level of support will be offered a face-to-face appointment with a Good Things Foundation Online Centre (which currently around 5,000 centres across the UK, including libraries, Citizen Advice, and community hubs). Triage mechanisms, referrals process, booking systems are also being developed. As with so much of the reform programme, it currently remains to see how exactly this will work in practice.

Survey of the key issues raised by online tribunals

It is not possible to assess a new tribunal process which is yet to be introduced. As noted above, a lack of transparency concerning how the process will work in practice is a major concern with the reform programme. In this final part of this article, we take a look forward and raise important questions that will need to be explored. We acknowledge that this is an initial and incomplete survey. Furthermore, new research questions will arise as the reforms are implemented.

Much of the digitalisation agenda is centred upon improving access to justice, providing better solutions for users, and reducing costs. The intended reforms may well enhance access to justice but there are also wider issues that will condition the effectiveness of online tribunals. As noted above, a major risk is 'digital exclusion'. How the digitally excluded are managed and how assisted digital works in practice will be of great importance going forwards. There are also multifaceted issues in respect of access to justice in an online context. Some social groups are either unable or unwilling to use the internet for important issues such as a tribunal case. Some people cannot afford internet access.[63] Some of those people may have access at a library or some other place, but their access – in terms of privacy, time and convenience –is likely to be less than those who have their own at-home connection. Beyond this, connection quality and coverage varies drastically across the UK.[64] Some people quite reasonably may not wish to have an important matter, such as their entitlement to social security benefits or immigration, determined online.

There are questions concerning fair procedures in online tribunals.[65] The online process, whether it has a new procedural code or not, promises huge changes in the tribunal process. This raises a host of questions. As noted above, one prominent example is the possible use of video technology in evidence-gathering. There is a range of questions about how these developments may be seen through the prism of the common law principles of procedural fairness, as well as how the use of technology may impact claimants' wider sense of procedural fairness.[66] However procedurally fair online procedures may be, there is nevertheless a 'human element' that must be considered. The physical architecture of a courtroom, for example, will often condition people's experiences and perceptions of their

[63] In 2015, of the 14 per cent of households in Great Britain with no internet access, some explained this on the basis of equipment costs being too high (14per cent) and access costs being too high (12 per cent), see: Office for National Statistics, "Statistical bulletin: Internet Access - Households and Individuals" (2015) available at <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2015-08-06> [accessed 22.03.2018].

[64] British Infrastructure Group, *Broadband: A new study into broadband investment and the role of BT and Openreach* (2016).

[65] In legal terms, it is important to keep in mind the common law principles of procedural fairness and the right to a fair trial under Article 6 ECHR.

[66] For an example in a different context, see: H. Wells, "The Techno-Fix Versus The Fair Cop: Procedural (In)Justice and Automated Speed Limit Enforcement" (2008) 48(6) *The British Journal of Criminology* 798.

treatment.[67] A tribunal hearing is the principal means by which an individual can participate in the process by which his or her legal rights and interests will be judicially determined.

There is also the procedural issue of determining which cases are handled under digital procedures. Are there some types of cases that would not be appropriate for online dispute resolution? If so, which types of cases? How precisely would those cases be identified – through a blanket policy or on a case by case basis? What approach will be taken when cases raises issues of the appellant's credibility? A key issue in social security cases will be whether appeals involving a medical element will be automatically diverted from an online process into an oral hearing. Another issue concerns the extent to which the choice between different procedures rest with individuals, the public body being challenged or the tribunal.

Many social security appellants do not want to attend a hearing. They are accustomed to having decisions on their benefits made without their oral input and many are happy to make their points on paper. At the same time, the Upper Tribunal has held that the overriding objective in the tribunal procedure rules to deal with appeals fairly and justly requires the tribunal to consider not merely whether it is convenient to decide an appeal on the papers, but whether it is also fair to do so.[68] There is a continuing duty on a tribunal to consider whether it is fair to proceed in the absence of an appellant.[69] There are circumstances in which a tribunal may well have to override an appellant's choice of appeal.[70] This approach will also apply to the choice between oral and online hearings. Yet, it remains to be seen how the balance will work in practice and how diverting appeals out of an online process would occur. A related point is that social security appeals operate in the context of an imbalance of power between the state in the form of the DWP and, on the whole, vulnerable claimants. Any system of online appeals must compensate for this imbalance in such a way that weaker parties continue to be assisted by the tribunal.

Another issue concerns the degree to which online procedures may influence substantive decisions. In theory, tribunals decide each case on its own individual merits irrespective of procedure. However, empirical research has clearly demonstrated that while process does not wholly determine outcome, process nevertheless conditions and shapes tribunal decisions. For instance, well-represented appellants experience greater rates of success than unrepresented appellants, though more recent research by Adler indicates that the "representation premium" has diminished because of tribunals adopting an inquisitorial approach.[71] A higher proportion of oral appeals are allowed than paper appeals.[72] Questions therefore arise concerning the degree to which digital procedures will influence the outcome of tribunal decisions. It might be that online appellants experience lower success rates than those proceeding through traditional tribunal procedures. It might turn out to be otherwise. This is a critically important issue. Irrespective of what other values are required of an administrative justice process, the need to ensure that decisions are accurate and correct decisions is the principal purpose of appeal pro. At present, we lack the data needed to

[67] L. Mulcahy, *Legal architecture: justice, due process and the place of law* (Abingdon: Routledge, 2010).
[68] *FY v Secretary of State for Work and Pensions* (ESA) [2017] UKUT 501 (AAC).
[69] *KO v Secretary of State for Work and Pensions* (ESA) [2013] UKUT0544 (AAC).
[70] *AT v Secretary of State for Work and Pensions* (ESA) [2010] UKUT430 (AAC).
[71] H. Genn and Y. Genn, *Effectiveness of Representation in Tribunals* (Lord Chancellor's Department, 1989); M. Adler, "Can Tribunals Deliver Justice in the Absence of Representation?" (ESRC, 2008).
[72] R. Thomas, "Immigration Appeals for Family Visitors Refused Entry Clearance" [2004] *Public Law* 612, 631-639; M. Elliott and R Thomas, *Public Law* (Oxford: OUP, 3rdedn, 2017), pp.709-710.

answer such questions, but it will be possible to investigate such questions as digital procedures are rolled-out.

There are also likely to challenges in translating legal process values –transparency, fairness, participation, judicial independence, and open justice - to the digital sphere.[73] How will these values be effectively respected into the digital sphere? For instance, the value of open justice be secured through an online process?

A key issue will be how 'users' engage with digital tribunals. From one point of view, 'users' are principally appellants. The focus on users stemmed from the Leggatt ethos that tribunals exist for users and not the other way round.[74] But, from a wider perspective, the term 'users' comprises any person or organisation that interacts with a tribunal. It therefore includes: claimants/appellants; other witnesses, including expert witnesses; advisors and representatives; government departments and public bodies; tribunal judges and non-legal members; tribunal administrative staff; and the public. Understanding the role of lawyers and other representatives in online tribunals will be important. Much of the discussion about digital tribunals appears to be operating on the premise that users will not need and will not have lawyers (or other representation). There are questions therefore around what role lawyers and representatives can play, and how procedures and outcomes differ depending on their presence or absence.

Nonetheless, the views of appellants will be of primary importance given that the purpose of tribunals is to provide them with a relatively quick, simple, informal and fair means of accessing justice. It will also be important to undertake research into the range of users to understand their views and experiences of online tribunals. There will be a real need to undertake research into how digital procedures affect the behaviours and understandings of users. For instance, how will judicial behaviour vary between traditional physical hearings and online hearings? To what extent does the opportunity of the judge and tribunal panel to meet the appellant face-to-face affect the hearing process and outcomes? How will this dynamic transfer to online procedures? Furthermore, it will be important to undertake research into different types of users and different types of tribunals. People who appear before tribunals are a very diverse group ranging from articulate people to vulnerable individuals with physical and mental health problems. The types of issues that tribunals deal with also vary enormously. It is therefore important that research engages with and takes account of such diversity.

Digital systems collect massive amounts of data. They can do this consciously through, for instance, asking for specific information on a form. But digital systems also create data through their operation (often in the form of metadata). Digitalising a tribunals system historically reliant on paper raises questions in relation to data collection and protection. From a research perspective, there is a potential bounty here too: the collection of mass data that is easily searchable opens clear gateways for new research, at a much faster rate.

Linked to questions about data, digital systems are open to many security threats. The widely-reported 2017 WannaCry ransomware attack demonstrated this.[75] Similarly, the episode of Facebook and Cambridge Analytica raised the issue of data security. The security of online system and of the data they hold is an important challenge. Security is also not necessarily a background issue which researchers concerned with tribunal effectiveness can

[73]For discussion of administrative justice values, see: M. Partington, 'Restructuring administrative justice? The redress of citizens' grievances' (1999) 53 *Current Legal Problems* 173; Tomlinson, above at n 39.

[74] A. Leggatt, *Tribunals for Users - One System, One Service* (Department for Constitutional Affairs, 2001).

[75] "Cyber-attack: Europol says it was unprecedented in scale" (13 May 2017, *BBC News*).

take for granted: procedures may have to be designed in a certain way for security reasons, and this may have consequences for accessibility. Many citizens also have security concerns about digital systems. This may have an effect on user-behaviour, which researchers concerned with tribunal effectiveness certainly have a stake in understanding.

There is also the challenge of ensuring systems are kept up to date. Technology ages quickly.[76] There is considerable sums being investing in digitalisation at present. Yet, updating, or renewing, technology also requires investment. Each iteration of the Apple iPhone, for instance, requires an extensive research and development programme. Tribunals are not iPhones but the underlying principle that technology needs constant renewal applies the same in both contexts. How are digital tribunal systems going to be updated in the longer term? The details of any strategy in this respect—and the level of funding underpinning it—will be important details.

The effects of the digitalisation of tribunals on the wider administrative justice landscape must also be monitored. Administrative justice is both a fragmented and integrated landscape. It is comprised of a range of different systems (internal review, tribunals, judicial review) and different policy areas (benefits, immigration, tax). Changes to one part of the wider landscape can have implications to another part. The introduction of digital tribunals prompt questions in this respect. There is plenty of room for creative improvements here too. It is widely recognised that government should learn from tribunal decisions to improve initial decision-making.[77] The prospect of digitalisation presents the opportunity to build in better and quicker feedback loops that consume less time, effort, and money. In the specific context of social security, there is a possibility that—next to an online tribunal procedure—mandatory reconsideration looks obsolete. Instead, feedback and learning from online tribunals could be better and certainly quicker than current tribunal timescales.

Efficiency is a key driver in the HMCTS-led reforms. Technology-based reforms tend to be based on the idea of frontloading investment and gaining long-term savings. That seems to be the case with *Transforming Our Justice System* too. At the same time, systems often work in unpredictable ways and contain hidden costs. If the value of efficiency is to be key driver, we must understand what efficiencies are actually generated and at what cost to other values, such as access to justice. There is also a need to understand false efficiencies. Sir Ernest Ryder, in March 2016, explained how Money Claims Online 'has been in operation since 2001 and has over 180,000 users annually. But once the 'submit' button is pressed by the user or their representative, a civil servant at the other end has to print the e-form, and make up a paper file. From that point on, we are back to square one: almost back to the Dickensian model of justice via the quill pen.'[78] There are two major 'risks' in respect of efficiency. The first is that the online system makes appealing so easy that there is an upsurge in cases which cannot be easily handled. The second is that the use of online systems will not be as broad as is predicted as there will be two systems—online and traditional—which inefficiently co-exist. This second 'risk' may lead to some appellants being pressed into using the online tribunal.

[76] Famously expressed in G. Moore, "Cramming More Components onto Integrated Circuits" (April 19, 1965) *Electronics* 114.

[77] See generally R. Thomas, "Administrative Justice, Better Decisions, and Organisational Learning" [2015] *Public Law* 111.

[78] Sir E. Ryder, "The Modernisation of Access to Justice in Times of Austerity" (The Ryder Lecture, University of Bolton, 2016) available at <https://www.judiciary.gov.uk/wp-content/uploads/2016/03/20160303-ryder-lecture2.pdf> [accessed 22.03.2018].

Overall, the introduction of online tribunals—both in the social security context and elsewhere—raise a wide range of questions. The principal issue is: how will the new online process work in practice? In this respect, as the Senior President recently observed, this is a challenge to which researchers can contribute.[79]

Conclusion

The advent of online tribunals promises a significant change to the social security adjudication landscape. That landscape has already seen wide-ranging reform in recent years. Many of those reforms—particularly changes to initial assessments and the introduction on mandatory reconsideration—have provoked concerns. To a certain extent, the MoJ must take responsibility for this. Announcing a wide-ranging set of reforms without much detail has prompted concern about the scale of the reforms and how they will work in practice. There has been little, if any, public involvement in or scrutiny of the reform programme. All of the work has been conducted behind the closed doors of MoJ and HMCTS. Having restricted legal aid so severely, there is a risk that the reform programme may also have a range of both intended and unintended consequences. At a minimum, it is therefore essential that the MoJ and HMCTS publish detailed plans about precisely which reforms are to be taken forward and how they will operate in practice. Tribunals remain an important means of providing redress for individual grievances and ensuring administrative accountability. Developing an online process for social security appeals is not straightforward. For those interested in the effectiveness of tribunal justice, there will inevitably be concerns that, in pursuit of cost efficiency, online tribunals will lead to a substantial weakening of the traditional tribunal process. Looking to the future, it will be essential that any reforms are subject to empirical scrutiny to understand how they operate in practice and whether the goal of access to justice has been advanced or hindered.

[79] Sir E. Ryder, "Securing Open Justice" (Max Planck Institute Luxembourg, 2018) available at <https://www.judiciary.gov.uk/wp-content/uploads/2018/02/ryder-spt-open-justice-luxembourg-feb-2018.pdf> [accessed 22.03.2018].