

# Consultation Response

## Age UK's Response to the Ministry of Justice Consultation *Transforming our justice system: assisted digital strategy, online conviction and statutory fines*

November 2016

Ref 3816

All rights reserved. Third parties may only reproduce this paper or parts of it for academic, educational or research purposes or where the prior consent of Age UK has been obtained for influencing or developing policy and practice.

[Sally.west@ageuk.org.uk](mailto:Sally.west@ageuk.org.uk)

Age UK  
Tavis House  
1-6 Tavistock Square  
London WC1H 9NA  
T 0800 169 80 80 F 020 3033 1000  
E [policy@ageuk.org.uk](mailto:policy@ageuk.org.uk)  
[www.ageuk.org.uk](http://www.ageuk.org.uk)

Age UK is a charitable company limited by guarantee and registered in England (registered charity number 1128267 and registered company number 6825798). The registered address is Tavis House 1-6 Tavistock Square, London WC1H 9NA.

## Introduction

Age UK is the country's largest charity dedicated to helping everyone make the most of later life. The Age UK network includes over 150 local Age UKs, reaching most of England. Each year we provide information and advice to around 5.9 million people through web-based and written materials, and individual enquires by telephone, letter, email and local face-to-face sessions. We work closely with Age Cymru, Age NI and Age Scotland. A large proportion of enquiries to our Information and Advice services concern benefits so we are particularly concerned about the impact that changes to social security tribunals could have on older people and Age UK services.

In this response we focus on the impact for social security decisions and the plans to digitalise the process and move away from oral hearings. We respond to just two of the questions.

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

### The need for availability of oral hearings

The paper states that more tribunal decisions will be made 'on the papers' and, where cases are 'relatively straightforward and routine', they will generally be made based on representations made online. If it is felt that a judge needs to listen to the arguments, there will be more virtual hearings by telephone or video conference.

We are concerned about the impact of these proposals and we are also surprised that the consultation paper does not specifically ask for views about the overall changes. For example, on the face of it, whether or not an older person meets the criteria for a disability benefit may seem straightforward, but in reality this may need detailed understanding of the way health and disability affect a wide range of daily living activities. It is clear that there may be significant advantages to HMCTS from this approach and it will be positive for some individuals. However, Age UK feels strongly that the availability of oral hearings for appeals must remain as a central feature of the tribunals system where this is the appellant's preference.

Research looking at appeal tribunal outcomes from the Nuffield Foundation, published in December 2013<sup>1</sup>, found that it was '*clear that the form of the appeal coupled with the information contained in the submission affected tribunal decision-making. Where the information in the written submission is identical, the outcome was affected by the form of the hearing, with claimants two and half (2.5) times more likely to have their appeal allowed with an oral hearing (60%) compared with a paper case (24%).*'

---

<sup>1</sup> Understanding tribunal decision-making, Professor Cheryl Thomas and Professor Hazel Genn, the Nuffield Foundation and the UCL Judicial Institute, December 2013 [www.nuffieldfoundation.org/tribunal-decision-making](http://www.nuffieldfoundation.org/tribunal-decision-making)

The research suggested a key advantage of an oral hearing is that it can draw out vital additional and new information from the client. We are not convinced that this function could be undertaken remotely by 'specially trained case officers'.

The increased probability of success of oral hearings (and therefore an incorrect decision being changed) has also been noted elsewhere. For example, a 2010 Report by the Work and Pensions Committee recommended that DWP ensured claimants are made aware of the increased chances of success if they attend an oral hearing.<sup>2</sup>

We would argue strongly that, in the interests of access to justice, the ability to lodge and pursue an oral hearing of an appellant's appeal against a decision of the DWP, HMRC or a local authority must be retained. The complexity of systems such as social security, together with the complexity of appellants' individual life circumstances and abilities mean this avenue to redress should be maintained for those challenging decisions about their rights and entitlements.

### **Virtual hearings**

Hearings by telephone or video could work well for some older people. However, many have disabilities and impairments which will make it harder to use these forms of communication than on a face-to-face basis. There are also challenges for clients whose first language is not English and who require the services of an interpreter. It is unclear how telephone or video hearings will incorporate interpreters.

For those appellants who are online currently, many access the internet and digital services primarily through smartphones and it is unclear how HMCTS propose to enable video hearings through such devices. It is obvious that accessing alternative outlets such as libraries will not be suitable for hearing appeals and this does raise serious questions about access to suitable venues for online hearings. There are also questions about how easy it will be for representatives to be involved in virtual tribunals and whether third party organisations will be under pressure to provide suitable space and facilities for hearings.

### **Digitising the Social Security and Child Support Tribunal**

The paper sets out plans for digital services and states that Social Security and Child Support Appeal Tribunals will be 'one of the first services to be moved entirely online, with an end-to-end digital process' alongside assisted digital options for those who cannot access digital services. We question the merits of this given there is a high volume of appeals and many appellants are in difficult circumstances.

This is a particular concern, given on-going benefit reforms such as the roll-out of Universal Credit, including a digital-by-default approach, which has been subject to delays. To have an ambition to move the whole system to an end-to-end digital process during a period of changes which may lead to increasing numbers of appeals, poses some significant risks and challenges for HMCTS. Indeed, in the Senior President of Tribunals'

---

<sup>2</sup> <https://www.publications.parliament.uk/pa/cm200910/cmselect/cmworpen/313/313.pdf>

Annual Report 2014<sup>3</sup>, Judge Shona Simon when referring to other possible changes to the service, observed that in light of ‘changes to the benefit system which impact on the First Tier (Social Entitlement) Tribunal)... it would be sensible for these changes to be bedded in before further change is contemplated.’

## **Assisted digital support**

An end-to-end digital process will be welcomed by those who are confident and comfortable using digital services and, as the paper says this has the potential for providing faster and easier access. However, many older people are not online and around a quarter (26 per cent) of people aged 65-74 and three out of five (61 per cent) of those 75+ do not use the internet.<sup>4</sup> And at all ages, internet use is less common among lower socio-economic groups. For example, only around a fifth of those aged 75+ in socio-economic groups C2 and DE use the internet.<sup>5</sup> Internet use is also lower for disabled people.

We agree with the consultation paper when it states that the system must work for everyone and there should be face-to-face support as well as a telephone service and paper channels. However, there is limited information about how this will be provided and it is important that these options are not only available, but that people are actively informed about these and supported to use them. In our experience of other services, alternative options are not always offered up front.<sup>6</sup> We are concerned that some older people who are not online may be put off trying to access public services because they get the impression that they have to use a digital service. People who cannot or do not want to use a digital system should not receive a second class service.

## **Assisted digital and third party organisations**

The consultation paper states that third party organisations may be used to provide face-to-face assistance in some cases. Age UK Information and Advice services often help older people who want to claim a benefit or challenge a decision. However, services are already under pressure and if more people are likely to seek help specifically due to pressure towards online applications, then organisations will need the capacity to meet this demand. Any organisation providing support with challenging decisions needs to have considerable knowledge and skills in this area and be able to deal with clients with low literacy skills, language and communication difficulties and complicated life circumstances. And if people do not have digital access and appropriate skills they will be reliant on the third party throughout the process. This means they would have to make contact any time new information is received, or needs to be sent, through the digital system. So while we agree that there would need to be face-to-face assistance and that third party organisations may be able to provide this, HMCTS needs to test this carefully, fund it

---

<sup>3</sup> Senior President of Tribunals' Annual Report 2014 [www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Tribunals/SPT+Annual+Report+2014.pdf](http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Tribunals/SPT+Annual+Report+2014.pdf)

<sup>4</sup> *Internet Users in the UK 2016*, ONS (table 1B). Percentage who have used the internet in the last 3 months.

<sup>5</sup> Ofcom 2016 – data provided to Age UK.

<sup>6</sup> <http://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Communities-and-inclusion/Later%20life%20in%20a%20digital%20world%20Age%20UK%202015.pdf?dtrk=true>

adequately, and should not underestimate the support that people will need and the additional resources organisations will require to be able to provide this assistance.

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.

The Assisted Digital Impact Assessment rightly highlights that internet use reduces with increasing age and that disabled people are less likely to use the internet than those without disabilities. In terms of age, we would like to emphasise the figures set out in our response to question 1 showing a big difference in internet use among those aged 65-74 as compared to those age 75+. We also re-iterate that it will be important not only to make assisted digital options available, but to ensure that people take these up and feel comfortable using them. If changes go ahead these should first be tested and evaluated to ensure that older and disabled people who do not use the internet are not deterred from challenging decisions, and that if they do, outcomes are in line with those under the current system.