

Submission to consultation on transforming the justice system

From: Penelope Gibbs, Director of charity Transform Justice www.transformjustice.org.uk

Penelope@transformjustice.org.uk

Assisted Digital

The measures put forward to give help to those who need assistance with online court processes are welcome. The offer of face to face, telephone or webchat assistance is good, but we would recommend that advice from trained lawyers should also be available due to issues detailed below.

We would also counsel that it is essential to design services around the user, and find out through consumer research at what point consumers need most help and what kind of help they most need and appreciate. All possibilities need to be extensively tested in real world situations.

Online conviction and statutory fixed fines

Lack of understanding of a viable defence

Transform Justice has a number of concerns about this proposal re online convictions mainly based on research conducted on unrepresented defendants http://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL_Singles.pdf. Unrepresented defendants struggle considerably with many aspects of the justice system. One of the aspects they sometimes find hardest to understand is whether to plead innocent or guilty. They know what happened, but not whether they have a good legal defence. Our interviewees said unrepresented defendants in the court context often pleaded guilty when they had a viable defence, or not guilty when the case against them was overwhelming. In the context of a court, there are at least judges and legal advisors who can explain the law and its implications. Online it would be challenging, if not impossible, to explaining the nuances of what makes for a valid defence. The difficulties faced, by even highly educated people, in understanding the implications of pleading guilty is illustrated by the case of Robert Rowland <http://www.standard.co.uk/news/london/mayfair-businessman-slapped-with-750-bill-after-being-allowed-to-ride-bus-for-free-by-the-driver-a3384966.html>. A bus driver allowed Mr Rowland to get on board a bus without a ticket since he had left his wallet behind. An inspector found Mr Rowland without a ticket and prosecuted him. When Mr Rowland got his summons he got the impression that the fine would be £250. He pleaded guilty (online/by post), just to save hassle but, after the case was heard in his absence he received a request for £756.50. He then appealed, and eventually TfL dropped the case. This illustrates the importance of making clear to defendants all the financial and other implications of guilty pleas and the importance of pleading not guilty when you have a valid defence.

Lack of third sector/pro bono services to help defendants

The impact assessment suggests that the reform may impact third sector organisations – “defendants may seek their advice before making a decision on accepting an online guilty plea followed by automated sentencing”. It suggests there may be an “increase in demand” for these services offered by third sector organisations. Were these services to exist, an increase in demand may indeed be a risk, but Transform Justice’s research suggests that there are no third sector organisations offering services to unrepresented defendants involved in ordinary criminal proceedings (there are a tiny number of services offering pro bono assistance with appeals). Should these reforms be introduced, we would suggest the setting up and funding of such third sector services as a matter of urgency.

The risk of a criminal record

Another concern is that it would be difficult for any online process to explain the implications of a criminal conviction (ie a guilty plea) in terms of criminal records. If anyone were to plead guilty online, it would be important to spell out what impact that conviction might have on their future travel, education and employment prospects. Both the implications of rehabilitation periods and DBS checks would need careful explanation, given how restricting they are, particularly to job opportunities. Given the very damaging effect of criminal records on life chances, the online information would need to be very clear on this matter – it should not be in the small print, or something you would have to click on a link to find out about. It should also spell out possible life outcomes, not just the process implications of a criminal record.

Do defendants understand the charge?

If this online process were to be extended to other offences, it would be crucial to ensure that defendants had a full understanding of the charge they faced. Our research on unrepresented defendants suggested that such defendants often do not understand the charge, and thus also do not understand whether another charge might be more relevant. An advocate will know what charges are appropriate and will often suggest a different, lesser, charge.

Lack of information re cost

It is also of concern that the cost of this innovation is not available. “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”. Without having any costings, it is very difficult to evaluate the benefits of reform.

Implications for open justice

Another challenge will be to respect the principles of open justice, but be mindful of the stigma anyone accused of committing a crime attracts. Currently any member of the public can witness hearings in the magistrates’ court, when defendants enter their plea. It is public knowledge to those who visit the court, but few cases are publicised through media articles, so knowledge is usually restricted to those (few) who observe courts. With the online court system, open justice will only be maintained if information about each case is put in the public domain. If the names of every defendant pleading guilty/not guilty online were made publicly available, for instance through a government website, this would make information on those accused of crimes far more public than it is now. Some people might feel that all information about those accused of crimes should be available online, but we do not agree – we have concerns that such information might prejudice employment and other opportunities.

The trend to interview witnesses in advance/outside the court-room

The vision statement refers to the importance of making it easier and less stressful for witnesses to give evidence, particular when they are vulnerable. Transform Justice shares the desire to improve the experience of giving evidence, but is concerned that the means being promoted may be antithetical to achieving justice for those witnesses. It is not clear what the impact on juries may be of not seeing nor hearing direct from witnesses. Judges encourage juries to appraise evidence given in advance/from another location/behind a screen in the same way as evidence given in open court with no special measures. However, many lawyers believe that jury members are nevertheless prejudiced against evidence given using special measures. Before such special measures are

extended, we would urge the government to research their effect on juries and, in parallel, explore ways of improving the experience for witnesses of giving evidence without special measures.

Children

Transform Justice urged HMCTS to exclude child witnesses and defendants from any online conviction programme. The youth justice system is separate to the adult system and the needs of children are different. All children accused of crimes are currently entitled to legal aid, and thus to expert legal advice. Even with this advice, they struggle to understand and to participate in the criminal justice process. We feel it would be inappropriate for any crimes of which children are accused to be conducted online at any stage.