

Discuss, with examples, how technology can be used to advance access to justice in the UK.

The decimation of the legal aid budget caused by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO') has had devastating consequences for those most in need of free legal advice and representation. Despite campaigns, strikes, and the fact that every MP has been given a copy of *The Secret Barrister*, which documents the effects of LASPO in harrowing detail, the Government has at present done little to remedy the situation. One way in which we can try to counter the brutal effect of these cuts is to harness the power of technology. This essay will discuss how technology can be used to advance access to justice for those who may otherwise be prevented from obtaining it.

In the future, the Ministry of Justice wants to introduce 'virtual hearings', conducted by audio and video link, for both criminal and civil proceedings, to 'make courts more convenient for all'.<sup>1</sup> It is true that the ability to give and hear evidence from the comfort of one's own home presents a tremendous opportunity to increase access to justice, particularly for the disabled and those for whom physically getting to court is especially difficult. Indeed, with the closure of more than 250 crown courts, county courts and tribunals in the last nine years,<sup>2</sup> for many people the journey to their 'local' court is prohibitively long and expensive. The opportunity to participate in legal proceedings via live link could therefore be extremely beneficial for those who would otherwise struggle to attend an oral hearing.

However, there are several problems with online hearings. As the Public Law Project has identified, online hearings via live link may affect the ability of other parties to test a witness' evidence, while the ability of a judge or jury to assess the credibility of a witness may be affected if he or she cannot fully assess the witness' body language and non-verbal communication.<sup>3</sup> The Immigration and Asylum Chamber of the Upper Tribunal has highlighted the importance of 'detailed scrutiny of the demeanour and general presentation of parties and witnesses' in immigration cases,<sup>4</sup> and the situation is much the same in

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<sup>1</sup> Ministry of Justice. 2016. *Transforming Our Justice System*. [Online.] [Accessed 29 April 2019.] Available from: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/553261/joint-vision-statement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf)

<sup>2</sup> Bowcott, O. and Duncan, P. 2019. Half of magistrates courts in England and Wales closed since 2010. *The Guardian*. [Online.] [Accessed 30 April 2019.] Available from: <https://www.theguardian.com/law/2019/jan/27/half-of-magistrates-courts-in-england-and-wales-closed-since-tories-elected>

<sup>3</sup> Public Law Project. 2018. *The Digitalisation of Tribunals: What we know and what we need to know*. [Online.] [Accessed 30 April 2019.] Available from: <https://publiclawproject.org.uk/wp-content/uploads/2018/04/The-Digitalisation-of-Tribunals-for-website.pdf>

<sup>4</sup> *R (Mohibullah) v Secretary of State for the Home Department* [2016] UKUT 561 (IAC) [90].

criminal trials, where the ability of the judge or jury to assess the demeanour of the defendant and of witnesses is crucial.

While there are therefore clear advantages to having the option of online hearings, it would be dangerous to impose a blanket policy that all hearings will be conducted online. Cases should be carefully analysed as to their suitability, as some cases will be more appropriate for online disposal than others. For example, although an independent review panel from the London School of Economics has recommended that a successful pilot of online tax tribunal hearings should expand,<sup>5</sup> it must be recognised that more sensitive criminal and immigration cases may require a more traditional approach.

However, live link technology has had excellent results in advancing access to justice through greater provision of free legal advice. The legal advice centre at University House in Bethnal Green uses Skype to give legal advice to visitors at the community centre and Citizens' Advice Bureau in Falmouth, Cornwall.<sup>6</sup> The director at University House claims a success rate of around 80% for disability benefit appeals made by the Falmouth residents the scheme has assisted,<sup>7</sup> showing that it is highly effective. Moreover, the fact that conferences are held in community spaces means that those on low incomes who cannot afford their own equipment with video link facilities are not disadvantaged. Given the uneven distribution of law centres across the UK (with 21 centres in London alone, yet only four each in the West, the Midlands, and the North East, and only one in the whole of Wales),<sup>8</sup> it is crucial that law centres in London are able to communicate with people in rural areas who have poor access to free legal advice, to prevent access to justice becoming a 'postcode lottery'.

Citizens' Advice has also developed 'CourtNav', an online tool which helps litigants-in-person

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<sup>5</sup> Ministry of Justice. 2018. *Implementing Video hearings (Party-to-State): A Process Evaluation*. [Online.] [Accessed 30 April 2019.] Available from: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/740275/Implementing\\_Video\\_Hearings\\_web\\_pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740275/Implementing_Video_Hearings_web_pdf)

<sup>6</sup> Smith, R. 2017. Video boots the radio star: the possibilities of Skype in delivering legal advice. *Law, Technology and Access to Justice*. [Online.] [Accessed 28 April 2019.] Available from: <https://law-tech-a2j.org/advice/video-boots-the-radio-star-the-possibilities-of-skype-in-delivering-legal-advice/>

<sup>7</sup> Ibid.

<sup>8</sup> Brooke, Sir Henry. 2017. Law Centres: Empowering the disempowered. *Henry Brooke: Musings, Memories and Miscellanea*. [Online.] [Accessed 28 April 2019.] Available from: <https://sirhenrybrooke.me/2017/06/18/law-centres-empowering-the-disempowered/comment-page-1/#comment-2037>

to self-assemble documents which they need for hearings.<sup>9</sup> There is online support from a lawyer throughout the process, and a lawyer checks that the documents have been completed correctly before they are sent to the relevant court.<sup>10</sup> The ability to access help from both an online tool and a human lawyer has had excellent results: in CourtNav's divorce petition pilot, 100% of users filed their divorce petitions without problems.<sup>11</sup> Since paying for legal advice on top of the £550 fee for processing a divorce is simply unaffordable for many, the opportunity to access free assistance for completing necessary documents is extremely valuable.

However, technology can go beyond simply facilitating contact with courts and lawyers. There is now a range of apps and websites which are programmed to provide free legal advice, with no need for users to communicate with a human lawyer. 'DoNotPay' is a free app which enables people who have received parking tickets to challenge their ticket using a 'chatbot'. The chatbot assimilates information from users by working through a series of guided questions, and it then draws up completed forms for users to print out and file at court. In the first 21 months of launching the bot, DoNotPay won 160,000 cases out of the 250,000 it contested, a success rate of 64%.<sup>12</sup> Similarly, the recently launched 'MyPay' website takes users through a series of guided questions to resolve their employment disputes over pay, calculating the sum they are owed and filling out a form which can be printed and presented to their employers.<sup>13</sup>

These initiatives show that harnessing interactive technology can result in machines performing the role of lawyers in appropriate situations. The development of technology which provides free, robotic assistance hugely improves access to justice for those for whom instructing a lawyer is financially impossible.

Overall, it can be seen that the use of technology is an important way to counter legal aid cuts and advance access to justice. The use of live links to provide remote access to courts

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<sup>9</sup> *Solicitors' Journal*. 2016. CourtNav to help litigants nationwide after successful pilot. [Online.] [Accessed 28 April 2019.] Available from: <http://solicitorsjournal.cyberduck.net/news/legal-profession/legal-aid/26034/courtnav-help-litigants-nationwide-after-successful-pilot>

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Gibbs, S. 2016. Chatbot lawyer overturns 160,000 parking tickets in London and New York. *The Guardian*. [Online.] [Accessed 28 April 2019.] Available from: <https://www.theguardian.com/technology/2016/jun/28/chatbot-ai-lawyer-donotpay-parking-tickets-london-new-york>

<sup>13</sup> Bowcott, O. 2019. Site launched to help workers claim uncollected pay. *The Guardian*. [Online.] [Accessed 30 April 2019.] Available from: <https://www.theguardian.com/money/2019/feb/13/site-launched-to-help-workers-claim-uncollected-pay>

and to legal advice makes it easier for those who would otherwise find it difficult to attend court or visit a legal advice centre to exercise their legal rights, and also reduces a 'postcode lottery' when it comes to law centres. Furthermore, interactive websites and apps reduce the need to find a lawyer willing to act pro bono, as robots can step in to perform the more administrative roles of lawyers and help people to fill in claim forms and other legal documents.

However, it must not be forgotten that 21% of people in Great Britain (approximately 11.5 million people) lack basic digital skills, while 9% of the UK adult population remains offline.<sup>14</sup> Research has shown that digital exclusion is linked to low incomes and poor education: of those who are offline, 80% had left school by the age of 16.<sup>15</sup> Since those with little income and a low level of education are among those most in need of free legal advice when they find themselves in difficulty, we must recognise that technology can only provide limited assistance when it comes to advancing access to justice for the poorest and most vulnerable in society.

Nonetheless, technology is a helpful way to improve access to justice for many. Alongside campaigning for better legal aid funding, we must do what we can to ensure that as many people as possible are able to make use of the benefits that technology can provide, so that justice really can be available for all.

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<sup>14</sup> JUSTICE. 2018. *Preventing Digital Exclusion from Online Justice*. [Online.] [Accessed 28 April 2019.] Available from: <https://2bqk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/Preventing-Digital-Exclusion-from-Online-Justice.pdf>

<sup>15</sup> Ibid.