



**Prison Reform Trust response to Ministry of Justice consultation:
Transforming our justice system**

The Prison Reform Trust is pleased to respond to this consultation, and has done so where we are able. Our response relates only to the criminal courts. We are pleased to note that the 'vision' does not include the youth justice system, as we consider the proposals contained therein inappropriate for children.

We appreciate the need for greater efficiencies across our justice system. To ensure our justice system is just, proportionate and accessible – and to maintain our international reputation as one of the finest justice systems in the world (page 3, foreword by Sir Oliver Heald QC MP) – it is of utmost importance that access to justice is realised by the most vulnerable citizens in our communities – whether they are witnesses, victims or the accused. The use of technology can no doubt help to deliver greater efficiencies. However, to ensure the vulnerable accused do not fall prey to the exigencies of a swift and efficient resolution, robust safeguards need to be in place to secure informed decision making and a comprehensive understanding of the implications of decisions made.

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

Response: we agree in part. A significant proportion of people accused of crime are likely to need support to engage with HMCTS in a meaningful and effective manner. For many individuals, in the absence of effective safeguards, such as robust screening to identify needs and the provision of necessary support, the use of technology will be inappropriate and may lead to miscarriages of justice.

It is well established that high numbers of people in contact with criminal justice services have multiple needs, many of which are directly related to their ability to interact with HMCTS in a meaningful and effective manner using the methods described at 2.4 & 7.1.5.

For example, literacy rates amongst prisoners are low, with around half at or below Level 1 in reading and four-fifths at or below Level 1 in writing; around a third of prisoners have an IQ of less than 80, and it is generally acknowledged that between five and ten percent of adult offenders have a learning disability. For many, such low levels of IQ will mean they need support with reading, writing, communication and

comprehension. People with a learning disability may be acquiescent and suggestible; they may fail to understand what they are accused of and the implications of decisions they are being asked to make. In the absence of adequate safeguards, a person with learning disabilities and/or autism might, for example, plead guilty, in order to expedite proceedings in the hope of being allowed to leave police custody and to return home quickly, without appreciating the implications of entering a guilty plea (paragraph 2.4, 'using technology to make processes more efficient' refers: '...offenders will be able to plead guilty, be convicted and sentenced all on the same day...'). Many people with mental health problems have conditions that fluctuate, meaning that they might engage well with technology on one occasion, but not on another – even on the same day.

The high use of IT 'platforms', such as iPhones and computer games, especially amongst young people, and the use of assisted technology such as voice recognition suggests (and often requires) a high level of technological competence. It should not, however, be assumed, that such competence is transferable across different contexts. An individual may be a 'digital self-server' in a context with which they are familiar, and be 'digitally excluded' in a context with which they are unfamiliar, such as the justice system (7.1.3.). It is not simply their ability to use digital services, but their ability to do so in a context they understand, with capacity and in an informed manner. People with a learning disability have poor 'adaptive' ability – meaning they find it hard to transfer or adapt prior learning to new situations; the same can also be said of some people with a low IQ.

The question of maturity, especially amongst young adults, will also need to be taken into account. The Transition to Adulthood (T2A) Alliance, a coalition of criminal justice, health and youth organisations, has helped to establish a growing consensus that criminal justice system responses to the offending behaviour of young adults should reflect their variable developmental maturity and make allowances for their specific age-related needs. This consensus is underpinned by research on brain development in young adulthood suggesting that impulse control, reasoning, and decision-making capacities are in formation through the mid-20s.

The proposals will need to have regard to the high prevalence of atypical brain development among the young adult offender population. Research shows that young people whose offending persists into adulthood are more likely to exhibit neuro-psychological deficits, including cognitive difficulties with thinking, acting, and solving problems, emotional literacy and regulation, learning difficulties and language problems associated with Attention Deficit Hyperactivity Disorder (ADHD), autism, learning and language disorders and head injuries. Taking head injury as an example, the prevalence of Acquired Brain Injury among young prisoners is estimated to be between 50-60%. A recent Justice Committee report on young adults highlighted the consequences of traumatic brain injury, which include 'poor memory; reduced concentration capacity; reduced ability to process different streams of information; poor initiation and planning; lack of self-monitoring;

decreased awareness of one's own or others' emotional state; and particularly, poor social judgments.'

We agree that not everyone will be able to engage with proposed new processes and that steps will need to be taken to provide support to people who need it (1.8 & 7.1.2.). Liaison and diversion services are important in this regard. The intention, by Government, is that all police custody suites and criminal courts will be fully served by liaison and diversion services by 2020/21. Where they exist, liaison and diversion services work with justice staff to help identify individuals with particular support needs, including mental health problems, learning disabilities, communication difficulties and autism. Once identified, liaison and diversion staff can advise on necessary support and when more specialist help might be required. In the absence of such services, it is unlikely that the particular support needs of the vulnerable accused will be recognised or met.

The channels outlined at 7.1.5., if made accessible to the user in a timely way and delivered to a high quality, may help individuals educated to degree level who are also 'digital self-servers', and individuals educated to degree level who can be 'digital with assistance'. For the reasons given above, it is unlikely that many people in contact with criminal justice services will be able to interact with HMCTS in a meaningful and effective manner using these methods alone. Robust screening and, where appropriate, additional and specialist support will be necessary.

Question 2: Do you believe that any channels are particularly well suited to certain types of HMCTS service? Please state your reasons.

No response.

Question 3: Do you agree with the principle of an online conviction and statutory fixed fine process for those who enter an online guilty plea and are content to proceed with the process?

Question 4: Do you think that there any additional considerations which we should factor into this model?

Response to Questions 3 and 4: we agree in part. We refer to our response to Question 1, above, concerning the high number of accused with support needs, which, if left unmet, are likely to have a negative impact on their ability to engage with HMCTS in a meaningful and effective manner and, potentially, will increase the risk of miscarriages of justice. In particular:

- The proposed safeguards do not make provision for defendants with particular needs and, as such, do not 'allow defendants to make an informed decision' (7.2.4 v.) or ensure full understanding of the implications of decisions made
- Being able to 'seek help' (7.2.4 vi.) to engage 'with the process through assisted digital channels' is unlikely to be adequate for many defendants who need support with communication and comprehension

- While we welcome the power of the court to ‘reverse a conviction’ ‘in the event that the defendant did not understand the consequences of their decision’ it would be more efficient to have in place robust measure to prevent such an eventuality by, for example, ensuring individuals are assessed by liaison and diversion services (see response to Question 1), and provided with necessary support
- Many offenders will need advice and support to create and ‘agree a repayment plan’. For example, individuals with learning disabilities often find it hard to budget and to manage their finances; others are likely to be on low incomes and some will be in debt. Research on prisoners and financial exclusion found considerable differences between women and men in prison. For example, more women than men said they felt unsure about managing money (40% and 24% respectively) and fewer women than men had bank accounts (Prison Reform Trust, 2010).

Overall, women’s offending is different to men’s in that offences committed are more frequently so-called low level offences, and the drivers to their offending are different. Women who offend are, as a group, more vulnerable than men who offend and frequently have high levels of unmet need – for example, mental health problems; daily living support, such as money management and debt, and support for families; substance misuse problems; and difficulties with their housing/tenancy. The offences in scope (7.2.5.) are low level offences, and it would be important to ensure that women are not, by default, brought into the justice system and placed at greater risk by being unable to pay the statutory fixed fine.

Question 5: Do you think that the proposed safeguards are adequate (paragraphs ix above)?

Response: No; see our response to Questions 1, 3 and 4.

Question 6: Do you agree that the offences listed above are appropriate for this procedure and do you agree with our proposal to extend to further offences in the future, including driving offences?

Response: our response is conditional on there being adequate safeguards to protect the high numbers of accused with particular support needs.

Speedy justice can be beneficial to all parties; however, the process must retain flexibility so that more time and resources can be given to those cases or individuals that require it. Judicial discretion is important in ensuring individuals are dealt with fairly and effectively as well as efficiently. To achieve fairness for all, especially our most vulnerable citizens, additional time and the necessary personalised support to ensure full understanding, including implications of decisions made, and technological support should be an anticipated and integral element of the process. We are further concerned that, in the absence of further detailed consideration and adequate safeguards, virtual hearings will disadvantage vulnerable defendants.

