

How has the pandemic changed the way people access justice? Digitalisation and reform in the areas of Housing and SEND

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Executive summary & recommendations

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<https://www.nuffieldfoundation.org/project/delivering-administrative-justice-after-the-pandemic>



Executive summary of the research

We explored the impact that the pandemic has had on the delivery of, and access to, justice in the areas of housing and special educational needs and disabilities (SEND) in England. We chose to focus on these distinct areas of law as - before the pandemic - the Administrative Justice Council ([AJC](#)) had facilitated a familiarisation workshop between Ombuds and Tribunal judges. The aim of the workshop was to develop their relationships and to identify overlaps in administrative justice responsibility to assist help-seekers find the best pathway for their grievance in a complex system. The Housing Ombudsman and the Property Chamber were interested to work together; and in SEND, the Local Government and Social Care Ombudsman (LGSCO), the Parliamentary and Health Service Ombudsman (PHSO), and the SEND Tribunal expressed an interest to start conversations about raising awareness and supporting users navigate the respective pathways to redress.

Our project had three connected aims: (1) to better understand the effect of rapid digitalization on advice system, redress systems and users; (2) to identify the effects on access for marginalised groups; (3) to explore how trust can be built and sustained in a justice system affected by the pandemic.

Two areas of law: *Housing problems* can be varied and complex. The scope of our project includes only the housing issues that the Housing Ombudsman and the Property Chamber deal with. They can

relate to residential property, land registration, and agricultural and drainage matters. For *SEND* major reforms announced in 2014, under the Children's and Families Act 2014, have had little impact on a failing system. Appeals/complaints to the Tribunal and Ombudsman on *SEND* decisions have increased year on year, with a high success rate in both. The issues surrounding the provision of *SEND* have been compounded by a complicated redress system leaving parents and carers unclear of where to go to resolve their dispute with the local authority. The *SEND* system is under renewed scrutiny due to the recent *SEND* and alternative provisions Green Paper, in March 2023 the [SEND and AP Improvement Plan](#) was published.

Digitalisation during the pandemic: The pandemic emphasised the importance of online engagement and remote hearings. The courts and tribunals reform programme was already underway by the start of 2020 and the digitalisation agenda was fast-tracked by the pandemic. Some jurisdictions were able to adapt more quickly than others to online delivery and some groups of users coped better with the move to remote interaction and remote hearings. Existing digital tools and an appetite for development of an online system helped the tribunals realise which parts need improvement.

Experience of remote services during the pandemic was not positive for those trying to access local authority services with either *SEND* or housing problems. In some cases, remote working was not properly implemented with phones not effectively redirected to those working at home. Backlogs in complaints exacerbated delays in handling both housing and *SEND* issues at local authority, Tribunal and Ombuds stages.

While judges' experience of remote hearings was extremely positive in the main and some users, especially *SEND* users, found that remote hearings made it easier to attend a hearing, there were significant issues of inequality of digital arms and online/remote appearance. Many *SEND* appellants were accessing the hearing via smart phones and found it difficult to identify other parties. Local authority representatives often joined by phone rather than video, making it difficult to understand their input. Dual screens and reliable broadband are crucial to effective engagement and not many litigants in person have these. Large digital bundles (all the paperwork combined in one electronic file) pose a significant problem for those without access to dual screens and reliable broadband and make effective engagement difficult and stressful.

Pathways to justice. In our [first report](#), we mapped help-seekers' journeys in the areas of housing and *SEND*. We presented the 'ideal case' of pathways for people seeking help, broken down into distinct steps. In reality, as our empirical data shows, the process of help-seeking is not straightforward: steps do not always happen in a clear sequence as we portrayed them in our map; some people do not pursue a problem; others give up, some jump steps, etc. More work is needed to understand the pathways to justice, particularly once people start an online process.

Our data exposed that the pathways to Tribunals and Ombuds are not easy to find even in normal times. The pandemic exacerbated this with the introduction of remote working which was not always efficiently operated. Not everybody is able to cope with online access and the pandemic made it difficult to access help and face-to-face support from trusted intermediaries in the community, particularly affecting the most vulnerable, especially the homeless. On the other hand, our data showed that access was improved for some people who have travel or mobility problems.

For those help-seekers who do manage to identify a pathway to bring their complaint, the process is not straightforward or user-friendly. Many people struggle to understand what will happen and what is expected of them or their representatives. While GOV.UK pages are a useful starting point they do not provide all the support that people need to progress complex, time consuming, and stressful applications. Signposting to expert and specialist websites can be very helpful in providing people with the knowledge, skills, and confidence to navigate these processes. There are several specialist websites that can provide support, for instance IPSEA and SENDIASS for SEND; Shelter and Crisis for Housing, and Advicenow for courts and tribunals that provide resources which support people every step of the way and increase their knowledge, skills, and confidence. Crucially, these websites are constantly updated. For example, Advicenow updated information on access to courts and tribunals throughout the pandemic and provides helpful advice on going to a court or tribunal or attending online hearings. Earlier signposting to them from GOV.UK would be helpful for users – and crucially for those supporting users with low digital capability- and for councils, Ombuds and Tribunals.

For some issues, the person with the problem has several choices about where to go and it is often very difficult for them to assess the best route. Rapid access to specialist websites or local advice can be very helpful. Clear advice on Ombuds and Tribunal websites is also helpful. The recent evaluation of Housing Right [courses](#) (funded by the Ministry of Justice) to raise awareness of rights among trusted intermediaries supporting people in the community, including the new networks of NHS Social prescribing Link Workers are a great resource. This has demonstrated the effectiveness of awareness raising among crucial intermediaries as a way of reaching the most vulnerable and hardest to reach.

Vulnerability: The term ‘vulnerability’ is often used to understand the complex nature of different situations people find themselves in. But defining vulnerability is difficult, not least because vulnerability can stem from external influences, and depends on historical, cultural, social, environmental, political, and economic conditions of a given setting. Already marginalised communities were likely to be affected the most by the pandemic. We know from historic research pioneered by Dame Professor Hazel Genn and since updated in successive legal needs surveys that the poorest in society have the greatest incidence of problems with potential legal solutions. We know that they often experience them in clusters and that they are the least able to recognise or frame their

problem or to take effective action. We know that a high proportion of people in any event do nothing in the face of a justiciable issue. [Recent research](#) (Mulqueen *et al* 2022) is exploring the importance of trusted intermediaries in reaching the most vulnerable and hardest to reach. We know relatively little about how members of these groups are accessing the justice system, and what can be done to improve their capacity to obtain advice, support, and redress. Our data has shown that detecting vulnerabilities early on is important as these will impact on how a person navigates through the system and how they will experience it. The very process of pursuing rights through unfamiliar and complex procedures is stressful as many of the interview testify and even those who are normally digitally capable will feel situationally vulnerable, struggling to understand and comply with a complex and often opaque process.

Trust in justice: Our research suggests that in the current context, as in many other justice-related arenas, procedural justice is important to people's perceptions of the fairness not only of the process, but also of the outcome. And, as always it needs to be seen and experienced, and not just done. It is critical that authority figures in these contexts - judges, caseworkers and so on – are given the tools to behave explicitly in procedurally fair ways (that is, there may be a need for both generating awareness and delivering appropriate training). There is a striking difference between the experience of users who experienced clear explanations of what was going to happen in the process, especially in a remote hearing, and those who were just plunged into it.

Recommendations

To preface our recommendations, it is important to acknowledge that resources of institutions are limited, and individuals are doing their best with the resources available. While it is true that some organisations are already implementing best practices, it is important to note that not all organisations are following suit. With that said, we would like to make the following recommendations:

1. Continuing monitoring and evaluation of online courts and tribunals systems to identify pain points and to identify improvement measures is important; sharing of data in the wider justice sphere and collaboration with other organizations will help to develop better strategies.
2. The central resource of GOV.UK with additional signposting to specialist websites and general websites should assist better signposting by local authorities, schools, and housing associations on where a help-seeker can get help for their problem, setting out the process of how and where to appeal and where to get assistance.
3. In addition to better signposting on GOV.UK local authorities should be encouraged to provide signposting to specialist and general websites that offer comprehensive, regularly updated help on where to get legal advice to help resolve the help-seeker's problem.
4. Ministry of Justice (MOJ) and HM Courts and Tribunal Service (HMCTS) should ensure that GOV.UK pages on access to justice topics include signposts to online organisations (such as

IPSEA for SEND, Shelter for housing and *Advicenow* for courts and tribunals generally) that can help those who are digitally capable and those supporting users who are not digitally capable. Signposting to these websites would help to manage expectations of users: explaining stages of the process, timelines, and tasks needed throughout the process.

5. Digital Assistance contracts, such as [*We Are Digital*](#), should be linked to more advice sector organisations, who help provide digital and legal support for those who need it. We welcome the partnerships that are already in place, but a wider reach is needed.
6. HMCTS to evaluate the help-seekers' journey through the appeal process and identify where help-seekers drop-off the system.
7. As HMCTS have opted for a multi-channel approach to online reform, there should be assessment of the feasibility of people's ability to use digital bundles and provision of paper bundles in appropriate cases.
8. Ombudsman schemes and Tribunals should continue collaboration on better understanding their remits and overlaps and communicating this simply and clearly on their websites and on other relevant public resources. Further, to share best practice with other jurisdictions to create a better joined-up administrative justice system and a stream-lined journey for help-seekers.
9. MOJ/HMCTS to identify trusted intermediaries such as those in the NHS (social prescribing linkworkers) and local authorities and develop work to increase their awareness of vulnerability and how it can connect to HMCTS support.
10. The concept of procedural justice needs to be made real in the everyday world of users by showing respect, clear explanations of what is going to happen and what has happened in their process. Especially, in remote hearings an expressed recognition of the difficulties help-seekers are encountering needs to be acknowledged.
11. Awareness raising of the importance of user-perceptions of the interpersonal process and to ensure basic criteria are met (being heard, being treated respectfully, having a voice, expressing genuine intentions, and demonstrating reliable behaviour) throughout their engagement with the justice system.

For any questions you might have, please contact Professor Naomi Creutzfeldt

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