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Rural Access to Justice and Beyond: Dimensions of Access as a Criterion for Understanding Lay Users' Satisfaction with Remote Justice

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I. Introduction: Dysfunctionalities and Blockages and the Greater Use of Technology in Courts

The court reform programme in England and Wales has, since 2010, closed more than half of all courts,¹ as it shifted away from court buildings and hearings in person and focused instead firmly on the use of technology. This process could impact all who come into contact with the justice system, but most prominently removed courts from many rural areas and fundamentally changed the experience of the legal system for many rural residents. Such trends were impacted – and exaggerated – by the arrival of the Covid-19 pandemic. By the start of April 2020, all possession claims had been stayed in the courts and 90 per cent of all hearings were remote, with 33 per cent conducted by video, 45 per cent by audio and the remaining 12 per cent on paper.² Before the initial closure of the magistrates' courts, and as part of its consultation outlining proposals, the Ministry of Justice conducted an impact assessment into operational and geographical constraints.³ While travel time impacts were briefly discussed, the

¹ G Sturge, 'Court statistics for England and Wales' (House of Commons Library, 23 December 2021) at <https://commonslibrary.parliament.uk/research-briefings/cbp-8372/> (accessed 17 January 2022).

² HM Courts and Tribunal Service, 'HMCTS weekly use of remote audio and video technologies May 2020 to May 2021' (10 June 2021) at www.gov.uk/government/statistical-data-sets/hmcts-weekly-use-of-remote-audio-and-video-technologies-may-2020-to-april-2021 (accessed 17 January 2022).

³ Ministry of Justice, 'Decision Impact Assessment on Her Majesty's Court and Tribunal Service proposals on the provision of courts tribunal services in England and Wales' (Ministry of Justice, 2016) at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800874/hmcts-fit-for-the-future-consultation-response.pdf (accessed 17 January 2022).

Ministry of Justice accepted generally that national average travel times would slightly increase, but there was no mention of the travel costs or the value of this time on court users now having to make longer journeys to court. The travel times included and used in the assessments were at the time based on travel by both car and public transport using the (now defunct) Transport Direct Journey Planner tool, and calculated assuming an individual goes to court to arrive at 10am and leaves at close of business. Furthermore, based on this tool, the Ministry of Justice concluded that those living in the catchment area of the closing magistrates' courts will see their average public transport journey travel time increase by around 35 minutes under the preferred option.⁴ Aside from the assumptions made around capability, capacity and confidence to travel implicit in such moves, subsequent empirical research into the court closures has shown that estimates on the travel time impacts were grossly underestimated.⁵

The Association of District Judges wrote in their submission to the Justice Select Committee 'What might be viewed by some as a minor inconvenience of extra travel appears to have a disproportionate effect on court attendance.'⁶ Based on evidence from the County Court in Sheffield – when Oldham County Court was closed, and work transferred there – fewer defendants turned up to court, even when the stakes were as high as to save their homes. One of the original driving forces for the digital reforms was to mitigate the challenges of geographical access by using modern information and communications technology to improve access to justice. For remote physical locations, technology can aid and hinder, as we have seen during the Covid-19 crisis, which thrust new challenges upon us almost overnight. For example, the affordability issue persists, as there are a lot of assumptions being made about Internet connectivity and digital equality in relation to legal advice in England and Wales during the Covid-19 pandemic.⁷

The Covid-19 pandemic saw a greater use of technology in people's daily lives. According to Ofcom, by June 2020, more than seven in 10 adults were making video calls weekly during the Covid-19 crisis, compared to 35 per cent before the first UK lockdown in March 2020.⁸ However, what this estimate does not tell us is the extent to which that technology was being used and intergroup differences based on differing needs and geography, which then lead us to consider wider issues of access that have implications for remote justice during and (presumably) after the pandemic.

⁴ *ibid* 16.

⁵ O Adisa, *Access to Justice: Assessing the Impact of the Magistrates' Court Closures in Suffolk* (University of Suffolk, 2018).

⁶ R Lumb, *Written submission from The Association of Her Majesty's District Judges* (The Association of Her Majesty's District Judges, 2019).

⁷ See D Newman, J Mant and F Gordon, 'Vulnerability, legal need and technology in England and Wales' (2021) 21(3) *International Journal of Discrimination and the Law* 230.

⁸ Ofcom, 'UK's internet use surges to record levels' (24 June 2020) at www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2020/uk-internet-use-surges (accessed 17 January 2022).

Similarly, while we now have remote ways of adjudicating on cases via audio or video facilities, questions remain unanswered around how appropriate those uses of technology are for all lay users. Coupled with this are the ongoing concerns from practitioners (and their clients) around the risk involved in the loss of the client's voice in the court process, which was often the first (and only) time they had an opportunity to have their voice heard. With the loss of voice comes the loss of effective participation for lay court users in particular. As individuals, we do not engage and participate in the same way remotely as we do in person. Something we have all been able to relate to during the pandemic – meeting friends, family and colleagues online – is not the same as physically being together. We do not feel as present, we do not have the same connection. Advocates might get better at understanding the nuances of remote hearings, but for the client it will be their one chance, if they do have the technical equipment, the ability to use it and enough data. There is also a risk of loss of empathy, not just between judge and litigant but also between solicitor and client. A large part of what advocates do is to sit with clients, listen and stand alongside them – throughout their case, building rapport, getting to understand one another. Lastly, there is also the risk to open justice – ensuring accountability of the state in the way it adjudicates between individuals as well as a check and balance on its own powers. We have a shared culture of the courtroom. What do we lose when we shift the arena to online spaces – when we no longer have our day in court but, rather, have it in someone's front room.

As the distance between courts becomes greater, and the use of video and telephone technology become the norm, what is the impact? This chapter argues that this question ought to be considered in relation to five equity concepts drawn from the work of Penchansky and Thomas: availability, accessibility, accommodation, affordability and acceptability.⁹ Using three England and Wales case studies from our cross-disciplinary research and practice experiences, we highlight pertinent issues around remote justice that have implications for lay user satisfaction, and in particular implications for rural access to justice. As such, we address the impact that changes in policy have had on the justice system for rural areas, highlighting some of the differential impacts between rural and urban areas. As Qi and Craig show in chapter 14 of this volume, the United States and England and Wales have different levels of services as between rural areas and urban areas; there is a different experience of living and engaging with the state in rural and urban areas. The move to remote justice highlights one aspect of this. We briefly consider pressing challenges, such as the impact of physical distances and infrastructure in rural communities, greater use of technology and Covid-19, as well as austerity. While each of these case studies takes place in different timeframes and settings, they all provide useful examples when reflecting on the blockages and dysfunctionality that are likely to impede remote justice. And they help us to understand

⁹R Penchansky and W Thomas, 'The concept of access: definition and relationship to consumer satisfaction' (1981) 19(2) *Medical Care* 127.

how all, but most pertinently rural dwellers, are impacted by the shift away from face-to-face justice.

II. Defining ‘Remote Justice’ and What ‘Good’ Access to Justice Looks Like

Remote justice is typically used to mean virtual justice and includes the use of technology via online hearings in higher and lower courts to achieve just outcomes.¹⁰ When thinking about why remote justice has become important in the context of England and Wales, a good place to start is the Government’s digital reform programme (DRP), which started in 2016. Pinning down the impact of remote justice is a challenging task given its recent widespread and (ongoing) use in the legal system of England and Wales. While much has been said by commentators on the pitfalls of the DRP, not much research has been undertaken in uncovering the experiences and impacts of remote justice in a comprehensive manner, particularly for lay users. During the Covid-19 pandemic, a handful of rapid reviews and consultations undertaken by non-governmental agencies underscored this point to put a spotlight on the issue, but these findings have yet to stall the staunch supporters and implementers of the DRP.¹¹

The slogan for the Government’s DRP is an interesting one – ‘a justice system for those who need it most’.¹² From a human rights framework, one would hope that the justice system that is fit for purpose is one that is accessible to all rather than just those who need it the most. We opine that to take into account the needs of users – and in particular victims, witnesses and those who are vulnerable – we need an equity lens to further assess the extent to which remote justice works.

The Government goes on to state that they have a responsibility to ensure that a justice system that is fair is one that is accessible to everyone:

Our justice system defends our fundamental rights and freedoms. It is a cornerstone of our modern society and it must serve all those who call on it, when they call on it. From some of the most vulnerable people in our society, to families in crisis, victims of crime, claimants and commercial businesses – we have a responsibility to administer a justice system that is accessible to everyone and operates efficiently.¹³

¹⁰ For a discussion, see G McKeever, ‘Remote Justice? ‘Litigants in Person and Participation in Court Processes during Covid-19’ [2020] MLRForum 005 at www.modernlawreview.co.uk/mckeever-remote-justice/ (accessed 17 January 2022).

¹¹ N Byron, S Beardon and A Kendrick, *The Impact of COVID-19 Measures on the Civil Justice System* (Civil Justice Council, 2020); Fair Trials, ‘Justice under lockdown (England & Wales)’ (25 June 2020) at www.fairtrials.org/articles/publications/justice-under-lockdown-england-wales/; M Ryan et al, ‘Remote hearings in the family court post-pandemic’ (Nuffield Family Justice Observatory, 2020) at www.nuffieldfjo.org.uk/resource/remote-hearings-post-pandemic.

¹² HM Courts and Tribunals Service (HMCTS), ‘The HMCTS reform programme’ (9 November 2018) at www.gov.uk/guidance/the-hmcts-reform-programme.

¹³ *ibid.*

Nonetheless, what constitutes success for remote justice remains unclear for the DRP.¹⁴

A. What ‘Good’ Looks Like for Remote Justice

In 2021, the Ministry of Justice published its evaluation framework on the HMCTS reform programme, five years after the reform programme had commenced.¹⁵ The framework is based on a theory-driven approach (theory of change), whereby the reform programme’s activities and the expected results are examined, but whether this would yield convincing evidence of impact, particularly for lay users, remains to be seen. The lack of baseline data is telling:

Similarly, the scoping of the overarching evaluation began after the implementation of some aspects of reform. While this is often difficult to avoid in policy evaluation, a consequence is that baseline data was not collected prior to the start of the reform programme.¹⁶

Nonetheless, the Government are clearly optimistic about the DRP and have recently made some interesting but unsubstantiated claims of impact as there is a lack of publicly available data on user satisfaction.

Reform is already well under way and having a huge impact for the public ... Over 426,000 people have used our online services, keeping simple claims out of court and reserving judges and court space for the most difficult cases.¹⁷

Grand claims aside about the impact, there is plainly a dearth of research and evidence on remote justice, limiting our understanding of what works. Therefore, there is an opportunity to consider equity aspects to further develop the remote justice research and evaluation agenda, particularly in relation to user satisfaction – and with a consideration of rural experiences. In the next subsection, we propose and consider the dimensions of accessibility using the case studies.

III. The Dimensions of Access and its Potential Application to Improving Remote Justice

In the 1980s, two scholars, Roy Penchansky and William Thomas, developed a theory on access and consumer satisfaction in the health policy and health services research fields.¹⁸ These conceptual ideas on access and consumer satisfaction in

¹⁴ See McKeever (n 10).

¹⁵ Ministry of Justice, *HCTMS Reform: Evaluation Framework* (2021) at www.justice.gov.uk/publications/research-and-analysis/moj.

¹⁶ *Ibid* 13.

¹⁷ HM Courts and Tribunals Service (n 12).

¹⁸ Penchansky and Thomas (n 9).

the health fields have come to be known as the five dimensions of access. Access is conceptualised as a set of dimensions that closely connect users to the health-care system. In the same way, one can apply these concepts to the DRP and courts services. Going back to the Government's claim that over 400,000 people may have used the services, the five dimensions of access help to move the conversation from one solely about being faster and more efficient to deeper issues that relate to the differing needs of court users, which are likely to impact on user satisfaction and access to justice.

These dimensions of access can be a useful framework for assessing impacts, and exemplar questions to explore in future work are:

- *Availability.* Here we can consider issues like how adequate the supply of legal advice and representation in the system is. This is an important dimension, particularly in relation to lay participation where one is more likely to encounter non-professional court users navigating the remote court system. There have been urgent calls by the legal profession to address the evidence gap for litigants in person (LIPs) at remote hearings,¹⁹ and for those now described as Living outside of Legal Aid (LOLAs).²⁰ For LIPs and LOLAs, the availability of legal advice and representation becomes paramount.
- *Accessibility.* One question around understanding impact is to assess whether access and effective participation has improved because of remote justice. Here we can discuss the physical location of clients and the geographical distribution of remote hearing centres. Additionally, how the availability of technology infrastructure affects remote justice outcomes. For example, in cases where clients are offered a remote hearing centre, rather than connecting via their front rooms, how accessible is the location in terms of travel time costs; and if using their front rooms and personal devices, how robust is the Internet connectivity – an issue in many rural areas.
- *Accommodation.* How adaptable is the use of technology to the needs of vulnerable lay users, and what are lay users' perceptions and experiences of the adaptations, particularly for those with protected characteristics. Linked to this issue are concerns around the loss of client voice and the loss of empathy from virtual proceedings, particularly in sensitive cases. Building more empathy in the remote justice system calls for an understanding and a willingness to accommodate and listen to the experiences of lay users. While the reform programme has attempted to engage with stakeholders in evidence gathering, the majority of these stakeholders are often professional court users.²¹ Robust evidence gathering on remote justice calls for a reimagining of stakeholder engagement and a participative approach. There is available good practice on co-production and stakeholder participation in health justice partnerships as an example.

¹⁹McKeever (n 10).

²⁰Newman, Mant and Gordon (n 7).

²¹Ministry of Justice (n 15).

- *Affordability.* A key question here is the costs involved in accessing the remote justice arrangements and whether these costs disproportionately affect some lay users over others. Assumptions around ownership of the appropriate technology or the relevant fees to utilise it (such as subscriptions) might be made for all court users, despite the reality being more diverse and complicated. It is important to understand whether access to remote hearings affects lay users' ability and willingness to pay to use the system.
- *Acceptability.* This involves thinking through the attributes of lay users and whether the allowances are considered acceptable by those with protected attributes and characteristics. Not everyone has the same experience of using technology or of communicating remotely. Certain health conditions and disabilities, for example, might have a known effect on telephone or video chat proficiency amongst users. It needs to be probed how willing people would be to accept these difficulties for something as fundamental as justice services.

Now that we have presented these equity principles, we use the three case studies to buttress our points about the need to expand our understanding of accessibility to better and more fully capture the impacts of remote justice.

A. Case Study 1

The first case study, which is based in the English county of Suffolk, highlights the legal geography and infrastructure issues that persist with rural access to justice and court closures. Such considerations are also likely to impact users' experiences of remote courts.

Research on rural access to justice is sparse.²² The notion of rural neglect in the academic literature on studies relating to access to justice has been paid less attention than other areas of access to justice. Studies examining remote justice through a legal geography lens are even rarer. While there is a vast literature that examines spatial implications for public services such as hospitals and schools, to our knowledge, adequate consideration has not been given to the availability of infrastructure for remote justice in rural communities. Researching rural access to justice in a challenging socio-economic climate engenders a need for theoretical and empirical innovations. This is a view that we all share as scholar-activists.

One of the authors (Adisa) examined impacts of court closures in Suffolk in 2018. The county of Suffolk had lost two out of its three courts (Bury St Edmunds and Lowestoft), which closed in 2016. Suffolk was then left with only one magistrates' court, the Ipswich Magistrates' Court, which serves the whole of the county. Suffolk is a large rural county,²³ covering nearly 1,600 square miles, contains

²² See D Newman, 'Attitudes to Justice in a Rural Community' (2016) 36(4) *Legal Studies* 591.

²³ Rural is defined as those areas that surround settlements of over 10,000 people. In England, these areas account for 85% of the land area and 18% (9.3 million) of the population. Of these, 4.5 million live in rural towns and their fringes, 2.7 million in rural villages, and 1.6 million in rural hamlets and isolated dwellings (Government Statistical Service, 2017).

over 480 villages and hamlets as well as the large towns of Ipswich, Lowestoft and Bury St Edmunds, and has a population of around 750,000. Using a generalised transport cost model, Adisa estimated travel time costs impacts for users of magistrates' courts – victims, defendants, witnesses, some members of the general public, and legal professionals who use public transport to get to magistrates' courts. Generalised costs, defined as the sum of both the time and money cost for a journey, were expressed in units of time. Monetary costs include bus and train fares, or fuel costs. Non-monetary costs include overall opportunity costs (eg, time spent undertaking the journey, unreliability of bus/train times, frequencies of buses, ease and convenience of the journey, and so on). Non-monetary costs may consist of a larger part of the overall journey costs,²⁴ and can deter users from turning up to court.

The two dimensions of accessibility of greatest relevance here are affordability and accessibility. One of the key findings from this 2018 study was that the Suffolk court closure had significant travel cost impacts on defendants and their defence advocates. For example, following the Bury St Edmunds court closure, the generalised time costs of a defendant coming from a remote location daily doubled in almost all cases. For those living in rural areas, additional travel time and costs incurred in accessing magistrates' courts, following the closures of nearby courts, could help explain why there are vastly different experiences of the criminal justice system, either as a defendant or as a witness, compared to those living in large towns and cities.

Furthermore, the role of infrastructure (in this case public transportation) cannot be underestimated in getting to courts on time. Rural areas are very car dependent, as public transport is perceived as inadequate; however, many low-income households find it challenging to own or maintain a car. Research by the RAC Foundation showed the significant impact on low-income households of having to run a car. In 2012 it estimated that 800,000 car-owning households spent at least 31 per cent of their disposable income on buying and running a vehicle.²⁵

Use of video and telephone technologies was then proposed by the Government as a solution to reducing travel time burdens and other associated costs in getting to court even before the pandemic.²⁶ This is a solution that has now been propelled further, partly through necessity brought on by the pandemic and as part of the digital reform programme. However, ignoring issues about infrastructure for remote hearings is likely to create perverse outcomes for remote justice. The issues of affordability and Internet connectivity are very specific issues that need addressing for those in rural communities, and for the poorest in society.

²⁴ K Button, *Transport Economics* (Edward Elgar Publishing, 2010) 142–43.

²⁵ RAC Foundation, 'Poorest households sink deeper into transport poverty' (6 February 2014) at www.racfoundation.org/media-centre/transport-poverty (accessed 17 January 2022).

²⁶ P Gibbs, *Defendants on video – conveyor belt justice or a revolution in access?* (Transform Justice, 2017).

These concerns were echoed in the research that underpins this case study, as exemplified by the following observation from a member of the judiciary:

These reforms don't seem to consider real people. The huge majority of those that come to the courts are likely to not have Iphones, tablets etc. They are typically those that cannot afford to buy these things. Not having money and taking unlawful actions to gain it is often why they are in court in the first place. For example, say someone depends heavily on drugs and alcohol and resorts to repetitive shoplifting, asking them to plead online by going on the internet or calling a number is likely to not going to lead to compliance.

What emerges, then, are dangers for court users, which will apply across their experiences with the legal system while remote courts are in operation. Those in rural areas are likely to be most obviously affected.

B. Case Study 2

The second study considers the use of video and telephone technology in a real-life remote hearing case to which one of the authors (James) was privy. The Covid-19 crisis provided a window through which to view the use of video and telephone technology by court users, and an opportunity to assess its impact.

David Renton, a housing and employment barrister, describes a remote hearing he conducted during the pandemic and documents the impact it had on one of his clients (Mr Curlew):

Geoff explained to his father [Mr Curlew] the options (video on and off, mute) which were available on his phone. But how was Mr Curlew supposed to send messages to me if his only means of communication was through the same phone by which he would be listening?

Mr Curlew told me he would attend the hearing from his own car, with his mobile phone charging from its engine. At least, he would have peace and quiet there, he said.²⁷

The venue for this significant event was not a court but a car. If there is no court for you to attend, the court users may be reduced to such informal, unceremonious and fundamentally inadequate engagement. Renton unpicks how the remote hearing plays out, which provides a flavour of how disjointed and inadequate such hearings can be:

The court sent out advice on how to conduct an online hearing 'While a remote hearing may seem less formal than a conventional hearing', it began, before reminding participants of the need to approach the hearing in an appropriate spirit. 'All participants should ensure they are in a quiet room free from distractions and ensure that telephones are off or muted.' A sentence in bold warned us that recording a court hearing was a criminal offence.

²⁷ D Renton, *Jobs and Homes* (Legal Action Group, 2021) 57.

There was an awkward moment before the hearing began when half a dozen people had joined the call but neither Mr Makk nor Mr Curlew. My opponent connected. She had been trying through her computer but could not get it to work and joined us via her mobile. The image was clear but the sound cut in and out.

The last to join was my client. ‘Hello,’ Mr Curlew said, ‘hello, sorry I’m late, I couldn’t’ – before the clerk muted him. It was the last part he played in the hearing: although, of course, it was his family which was at stake, the future of his children.²⁸

The issues of availability, accessibility, accommodation, affordability and acceptability come into play in this one case study alone. The warning from the court suggests that a participant will have private space, a computer and a phone. However, Geoff did not have either private space or a computer. He had to sit in his car and use his phone to access his hearing. This meant he was not able to communicate with his legal advisor, nor could he participate in the hearing in a relevant way. The hearing was only partially available and accessible to him, and was completely unacceptable as a vehicle to deliver justice, as his circumstances describe.

Most County Courts did not have video-conferencing technology when the pandemic commenced and were ill-prepared for the management of remote hearings at scale. Social media were awash with lawyers reporting on their remote hearings, often presenting a positive transition to home and remote working and congratulating themselves on their success. Common themes included savings on travel, cost and efficiency. Most lawyers welcoming the new medium did not refer to their clients at all. In contrast, the guest blog of Professor Ceila Kitzinger for the Transparency Project²⁹ brought the effect of remote justice sharply into focus for one court user, Sarah,³⁰ whom Kitzinger had been assisting for just over a year in a serious medical treatment case concerning Sarah’s father.

The lawyers involved wrote their own account, stating how ‘comfortable and familiar’ it felt relatively quickly; they thought that witnesses might feel ‘less intimidated ... as they sat in their homes, responding to the questions, but not having the full glare of the court on them.’³¹ Their conclusion: ‘What did we miss? In truth, nothing that mattered’³² jars markedly with the feelings expressed by Sarah:

Skype took away from me the ability to look these people in the eyes – these people who have their opinions about my Dad and only knew him through third-hand notes. I wanted to look them in the eyes and make them hear the truth but I was looking at a computer screen.

²⁸ *ibid* 58.

²⁹ C Kitzinger, ‘Remote justice: a family perspective’ (Transparency Project, 29 March 2020) at www.transparencyproject.org.uk/remote-justice-a-family-perspective/ (accessed 17 January 2022).

³⁰ The name referred to in the blog post but not her real name.

³¹ Kitzinger (n 29).

³² N Khaliq and Sophia Roper, ‘Skype in the Court of Protection: The courts in the time of coronavirus’ *Local Government Lawyer* (27 March 2020) at www.localgovernmentlawyer.co.uk/adult-social-care/307-adult-care-features/43223-skype-in-the-court-of-protection-the-courts-in-the-time-of-coronavirus (accessed 17 January 2022).

In a court room people can see body language. They can feel the pain and emotion when you speak about that moment of utter desperation that you went through. But I was in a little one-inch box on a screen and being honest I bet half of them weren't even engaged in looking at it – as the judge couldn't monitor them to make sure they were paying attention.³³

Sarah noted how she felt like an outsider, which made her nervous and insecure; for Sarah, 'It felt like a second-best option. It didn't feel professional. It didn't feel like justice.'³⁴

Court often gives the opportunity of being heard, a novel and powerful experience for many. Sarah felt this was denied to her. She was invisible to the court: her camera off. This created a distance; a remoteness and a lack of the empathy that might usually be present. Housing solicitor Simon Mullings notes 'A person facing a court hearing for the first time in whatever role has a vast amount of culturally acquired knowledge to support them in finding their own place in the setting and narrative of court proceedings.'³⁵ He concludes that the introduction of new technologies into legal proceedings should only proceed if those technologies can be made to work to reduce structural power imbalances in society. The danger is that such technologies are deployed in a manner that enshrines and worsens such power imbalances.

If we consider the principles of availability, accessibility, accommodation, affordability and acceptability in relation to Sarah's case, we might conclude that the hearing was available and accessible and affordable in principle but it was not acceptable to Sarah.

Possession cases were stayed by the introduction of *Practice Direction 51Z: Stay of Possession Proceedings, Coronavirus* by the Master of the Rolls in March 2020; however, this was challenged in the case of *Arkin v Marshall*.³⁶ In April 2020, the representative body for housing lawyers, Housing Law Practitioners Association, put out an urgent call for evidence to its members included in the schedule of responses to the case and asked what the effect would be if cases were allowed to continue. The responses are relevant not only to the case itself, but also for the wider, more general, remote access to justice issues, as in the following example:

Face to face interaction facilitates both trust and effective and clear communication which is vital to vulnerable and often chaotic clients in stressful situations where their home is at stake. The use of other media, skype, or zoom can be outside of our client's capability whether this is due to their digital skills, digital media may not be available to them because of the cost and also the fact that Wi-Fi is not always stable. Our clients are more likely to have a phone but not necessarily a smart phone, and even if they do,

³³ Kitzinger (n 29).

³⁴ *ibid.*

³⁵ S Mullings, 'Fairness in new-tech court proceedings in the era of Covid-19' *The Justice Gap* (23 March 2020) at www.thejusticegap.com/court-drama-genre-familiarity-and-fairness-in-new-tech-court-proceedings-in-the-covid-19-crisis/ (accessed 17 January 2022).

³⁶ *Arkin v Marshall* [2020] EWCA Civ 620.

they may not have access to scanning and printing. Our clients are amongst the poorest in society.³⁷

Other responses discussed the high levels of clients with a mental-health diagnosis, for whom it could be difficult to engage in case management directions without their support worker or social workers present to assist them. The lack of such support was shown to make it hard for some clients to complete even rudimentary tasks, so put them in an unfair position. Further, some responses highlighted the challenges attending court hearings remotely: for example in a rural area, where a phone or Internet connection is unreliable and the signal frequently gets lost; or when clients are also apparently less likely to show up for the hearing due to nerves, when they lack the comfort of a lawyer's physical presence that they get in person.

Prior to the pandemic, video and telephone technology had been seen as part of a drive towards efficiency savings, as well as supposedly introducing convenience for court users. It has impacted rural court users most of all. It is now more widely experienced – and has thus become a more prominent issue due to the pandemic. And as more people are drawn into remote justice, the impact is clear: the personal accounts of court users and lawyers show that a great deal is lost when justice is remote. The case of *R (Unison) v Lord Chancellor*³⁸ established the principle that changes to the justice system should be assessed according to their likely impact on behaviour in the real world. The same principle applies here. Perhaps rural court users were easily ignored as this was not the experience of the majority; with remote justice increasingly mainstream, the flaws are more obvious for all to see.

C. Case Study 3

The third case study brings into sharp focus issues of social welfare that intersect with dimensions of access to legal aid and remote justice. One of the authors (Newman) looked at the impact of austerity on access to justice for social welfare law.³⁹ The study captured a diversity of experiences and purposively included rural areas and smaller towns, as well as the better-studied large cities. This case study includes original quotes from those working in or around these rural areas and smaller towns to give a flavour on remote justice. We include detail from those working in the advice sector, working variously in services funded by grants and local authorities as well as in pro bono capacities.

³⁷ *Arkin v Marshall*, CA B2/2020/0620 & B2/2020/0621, 122, at www.hlp.org.uk/cms/wp-content/uploads/2020/05/Arkin-v-Marshall-HLPA-evidence.pdf.

³⁸ *R (Unison) v Lord Chancellor* [2017] UKSC 51.

³⁹ The quotations reproduced in this case study are unused material from a larger project conducted with Jon Robins. See J Robins and D Newman, *Justice in a Time of Austerity* (Bristol University Press, 2021).

One key finding was that many people struggling with social welfare problems do not qualify for legal aid after the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and thus may never see a lawyer. Additionally, it was found that, outside of the large cities, the decline of a local advice sector and the move to remote provision were hurting those going through the justice system and experiencing social welfare problems.

Coupled with concerns around the replacement of a local advice sector with remote provision were questions around literacy. There were anxieties around digital literacy, but underpinning that, a more fundamental worry about literacy in and of itself. For example, this comment by an advisor sets out the fundamental issue literacy presents:

I have no doubt that literacy is the biggest problem for litigants-in-person now, for us, for here. But not only filling in the forms but understanding the forms. Writing statements coherently and legibly. They just wouldn't be able to do it.

Understanding the forms relating to a case should be seen as essential to any notion of access to justice. But if LIPs are having to manage their cases alone and cannot even comprehend the information they are reading, attempting to fill out or are providing to the court, their active participation in the justice system is going to be undermined.

The principles of availability, accessibility, accommodation, affordability and acceptability interweave with this concern. At the start, we mentioned that issues of availability, relating to how adequate the supply of legal advice and representation in the system is, are likely to affect outcomes for court users. The research upon which this case study is based demonstrates that this is already manifesting as an obstruction in the system.

The timing of this research has meant that it captured the roll-out of Universal Credit as a new way of claiming welfare benefits, which required claimants to have access online. Some areas had just piloted the scheme, others were just starting, while a few were anticipating it coming online. Those we talked to at all stages were disturbed – and were having to deal with worried clients – as a result of Universal Credit, with the online aspect of the benefit cited as the most common concern. Such fear is captured in this account from an advisor:

I've got a client who is just a man who has just had to go onto Universal Credit, and he's a very, very anxious client, so he's there absolutely in tears because he can't make any sense, because now all Universal Credit is done online. And he just can't do that. He can't manage getting onto the website, putting in some information, finding the right page, it's just impossible. So he tries to get his daughter to do it and he was distraught really, actually, trying to make it work.

This client was not confident enough to manage his own case. He had to rely on a family member to help him, who, luckily for the client, was willing and able to support him. Not everyone would have someone there for them.

What the dependency on support to take part in the benefit process speaks to is the coalescing of digital literacy with literacy in and of itself, which links to the

principle of accommodation. This was evident from the report provided by the following advisor:

We're already seeing the impact because of the introduction of Universal Credit ... everything is expected to be on the Internet. We're already seeing people failing to complete their journals and then being sanctioned. Failing to apply for Universal Credit, housing costs in time, which means ... their rent is straight into arrears because the housing benefit – what was housing benefit has not been paid. Although people are digitally excluded, they're also digitally not literate. So there's people that have literacy and numeracy problems anyway, but then they're expected to immediately know how to use the computer and access, and find their way around computer systems, and whatever sites they need to go on to.

Underpinning this case study on the intersections of social welfare and remote justice is the question of equity. The result of being unable to engage with the system for welfare benefits claims is to be sanctioned. There was a real risk of clients' losing essential entitlements due to an inhospitable system that fails to consider differences in experience and ability when it comes to using digital technology or filling out forms.

We were told that those living outside larger cities faced an additional burden in the shift to online access – connectivity issues. The following advisor outlines the problem:

The big problem in rural areas is the digital exclusion as well, because there isn't fast broadband, there isn't 4G – everything is expected to be done on the Internet these days. People are expected, if they haven't got Internet at home that they can access their local library, but their local libraries ... no longer exist. They're only in the three main towns: Brecon, Newtown and Welshpool – oh, and Llandrindod Wells. And if you look at a map, you can see lots and lots of villages and towns around it, they have to try and find their own way into one of those town to access the Internet.

The changing landscape of the advice sector has been affected by the issue of accessibility. For some clients, it was hard enough to find a library in which to access the internet; harder still to find an expert to guide someone through the process. The local advice eco-system has shrunk under austerity measures, so that towns such as the above have no legal aid lawyers, no Citizens Advice Bureaux, and no law centres.

Some providers were running outreach programmes into rural areas, which would otherwise leave residents lost in advice deserts. In the following example, one such advisor highlights some of the benefits of these services:

A lot of the clients we take on from those rural areas have got a number of problems when they first come to us. It's not just, 'Oh, I've got this form I can't fill in, can you help me?' It's, 'Well, actually I have got a form that I need filled in, but I can't get even to the outreach venue. Is it possible to have a home visit?' Even though, perhaps, it's still in the town itself for example. And then when you go there you find their housing is totally unsuitable for them. And then before you go, they start telling you about how much council tax they're paying. Well, actually, they should be paying quite a bit less.

Or they haven't heard of pension credit, so they haven't really got very much income, although, you know, they've just got the state pension which isn't really adequate and below the level of ... the income they should have. That's very typical of what we find in the rural areas.

Not only does an outreach service contact clients who might otherwise not get help, but the benefit of seeing clients in person rather than remotely is that the advisor can understand their wider context and the additional problems that the client may not mention but that might be important to their case (and general well-being). Through face-to-face meetings, the advisor may come understand the clustered injustices that could otherwise be missed through remote access.

What emerged across these interviews was how the loss of local advice, and shifts online, were deeply problematic to people's experiences of access to justice, especially outside of large cities. Through this case study, this loss of advice does not meet the accessibility, affordability, accommodation, availability and acceptability criteria – the supply of place-based legal advice and representation in the system is inadequate and this is having impacts on remote justice. Additionally, the shifts to online access failed to take into consideration the literacy levels of LIPs and the added costs to LIPs, which as a result is an unintended consequence of remote justice.

IV. Learning from the Case Studies

One of the aims of this chapter was to expand the conversations about how the concept of 'access' in equity terms could be applied to tackling the dysfunctions and blockages in the system as use of technology in the courts and legal system become more the norm. We have highlighted the value of considering availability, accessibility, accommodation, affordability and acceptability in access to justice. The case studies deployed in this chapter have demonstrated that there is clearly a need to understand, and importance in understanding, the different experiences of lay users in order to fully comprehend the impact of remote justice: this was true before the pandemic, when we conceived the idea for this chapter with a sole focus on rural access to justice, but it is especially pertinent in the world as shaped by Covid-19. Much has been written about the challenges of remote court hearings during the pandemic, as well as the need to engage with lay users involved in remote hearings and using the courts' online services. We support the calls for a participative rather than a consultative approach, which take into consideration these equity principles. These should take account of rural experiences, where remote access may increasingly become the norm given policies such as the court closure programme in England and Wales.

This chapter has proposed an agenda for research on remote justice in general and rural access to justice in particular, which has at its core the principles of accessibility, affordability, accommodation, availability and acceptability; and

these concepts deserve further exploration. We recommend that the Ministry of Justice's evaluation framework be augmented with these equity concepts to yield richer insights into user satisfaction. There is also scope for non-governmental organisations that are commissioning research in this area to consider the dimensions of access in their surveys, enquiring about lay user satisfaction and experiences of remote justice. As it stands, satisfaction survey participation for lay users remains low and the risks are high, meaning that more research is urgently needed in this area. Access to justice for all, and most particularly for those living in rural areas, risks being compromised by the shift to remote justice, so we need to take the threat more seriously and better understand how it impacts those brought into the justice system.