**Online criminal court**

**Background**

The government is keen to replace postal and physical justice with online justice. They are creating online justice processes in the civil and criminal spheres.

Already it is possible to both plead guilty and be convicted of a motoring offence online. If you are convicted of speeding or another minor traffic offence, you are encouraged to go online and, if you plead guilty, to pay the penalty and receive the conviction online. If you plead not guilty, you go to trial in the magistrates’ court in the normal way.

The abandoned Prisons and Courts bill suggested an expansion of this system to more crimes, to be agreed under secondary legislation. This proposal was in the Queens speech in June 2017 as part of a new, slimmed down, Courts Bill.

There is no research on the success or otherwise of the existing online criminal court, nor on the single justice procedure in the magistrates’ court. This procedure means that many non imprisonable offences, where the defendant pleads guilty, are dealt with by a magistrate sitting alone in a closed court. He/she deals with each case administratively (on the papers) aided by a legal adviser.

What the government is proposing

The government would like to replace the single justice procedure with a wholly online system for those who plead guilty. *“Around half of all cases heard in magistrates’ courts in England and Wales are summary-only, non imprisonable offences where there is no identifiable victim and could potentially be tried under this procedure”.* If primary legislation is passed, the government has committed to getting agreement to particular offences going online via an “affirmative procedure” ie secondary legislation. The offences which were previously suggested were: failure to produce a ticket for travel on tram/train and fishing with an unlicensed rod and line.

Under the online system, those who are charged with the offence will be offered the opportunity to go online, to see the evidence against them, plead guilty, be convicted and pay a standard penalty. Those who don’t want to use the online procedure, but still plead guilty, will go through the existing single justice procedure (SJP). The offences so far proposed are non-recordable offences. These are not entered on the police national computer (so do not appear on a DBS check) - but offenders are subject to the rehabilitation of offenders act, which necessitates declaration of the criminal conviction to employers for a certain period.

How might the new process affect vulnerable people

There is no published research on the vulnerability of those who use the current online court for driving offences so we don’t know whether they find it easy or difficult to participate. HMCTS is committed to providing assistance to those users who find it hard to use digital services. They will provide telephone, webchat, face to face and paper help to those who seek it. They will not provide legal advice, but defendants are free to use a lawyer if they wish.

In their response to their consultation[[1]](#footnote-1) the Ministry of Justice gave an example of the help they could offer someone who had received online notice of their prosecution:

*“User 2 has received an offence notice. It states he may respond online and refers him to a website to do this. The user owns a tablet but only uses this to communicate with friends and family on Skype. He is anxious about completing the form alone and feels he will make mistakes. He therefore calls the Customer Service Centre and speaks to an advisor. The advisor identifies that the user owns suitable technology so offers to talk him through the online process over the phone. The user is talked through the process online, told how to view all evidence and case papers in the case, and how to enter any pleas or move onto the next stage of the process. The adviser does not give legal advice, advice on the merits of the case or which plea to enter. As with the current position, advice of that nature would be available from a legal professional”.*

Concerns remain as to how someone who has a hidden disability, or someone who has English as a second language will cope. Many people may have no knowledge of the criminal justice system before they come to fill in the online form. Yet admission of guilt may involve a considerable final financial penalty.

The potential human rights challenges posed by the online court have been analysed by Sebastian Walker in a recent article[[2]](#footnote-2). Mr Walker suggests that the online court process may not necessitate personalised legal advice ie a lawyer *“but more detail is necessary as to what steps will be taken to ensure that an accused receives sufficient, and effective, legal advice. Will the constituent elements of the individual offence, and any defences, be properly explained to them? And will the long term legal implications of a criminal record? The only information that it was clear from the Prison and Courts Bill an accused will have before they plead is the penalties they will consent to”.*

Mr Walker highlights concerns that vulnerable people may not understand the implications of a decision to plead guilty and that the lower penalties offered through using the online system may offer an “improper incentive” to plead guilty. The Bill suggested that those who went through the online process would be offered an opportunity to have their conviction reviewed. This is welcome given it has previously been difficult to overturn a conviction following a guilty plea. But as Mr Walker points out *“if it becomes a substantial hassle to appeal a conviction or penalty there is a significant chance that for the vulnerable such safeguards will simply not be effective”.* The case of Robert Rowland[[3]](#footnote-3) Illustrates how an educated man of means can end up pleading guilty to a crime they did not commit. Mr Rowland got on his usual bus to discover that he had forgotten his wallet. The bus driver, who recognised him, said he could travel for free. A few minutes later an inspector got on the bus and accused Mr Rowland of evading his fare. Despite having a good excuse, Mr Rowland was prosecuted for fare evasion, and received instructions by post on how to plead guilty. Mr Rowland thought the easiest and quickest thing to do was to admit guilt by post. It was only when he received a bill for £750 that he realised his mistake and successfully appealed the conviction.

It is perfectly possible to persuade someone of perpetrating a crime they did not commit. The incentive to plead guilty via the online court will be strong. And even for those who do admit their guilt, the online court will offer limited possibilities for mitigating the sentence. Defendants will be asked to enter any mitigating circumstances in an online box but, in the absence of legal advice, they may not know what is relevant.

The future for the online criminal court

Proposals for expanding online criminal convictions will be tabled as part of the new Courts Bill. More detail will be available at this point. Meanwhile HMCTS are working on converting from paper to online the forms which people have to fill in if their case is going through the single justice procedure.

**Automatic online pleas**

There is no provision currently to plead guilty or not guilty online, or in writing, for most offences. But the government proposed in the Prisons and Courts Bill that defendants would be able to plead online for any offence, at any age from ten upwards.

What was being proposed

The bill proposed that every person charged should be offered (in reality probably encouraged) to indicate their plea in writing, by which they meant online. No offender can plead until they are formally charged, but the bill suggested that police officers, civilian staff working for the police, the court or a prosecutor should explain to those who are charged that they will be able to indicate their plea online and how to do so.

The assumption behind the proposal is that the plea hearing in the magistrates’ or crown court is a purely administrative hearing, that people know whether they are guilty or not, and that no debate, discussion or legal advice is usually necessary.

However research suggests that entering a plea is a complex decision which is, or should be, subject to advocacy in the courtroom. Transform Justice’s research on unrepresented defendants in the criminal courts[[4]](#footnote-4), suggested that entering a plea was one of times where those without a lawyer were most disadvantaged. Unrepresented defendants did not understand when they had a viable defence and should plead not guilty, but also pleaded guilty when the evidence against them was overwhelming, thus losing credit for an early guilty plea.

The other risk in putting pleas online is that the ability to challenge the charge is eliminated or delayed. The Leveson report emphasises the problem of people being wrongly charged (either over or under charged) and of the inefficiencies this causes – particularly if a charge is downgraded on the day of trial leading to the defendant pleading guilty. Sir Brian wrote: *“any failure to charge appropriately has a considerable impact throughout the life of that case... For example, in the first quarter of 2014, 15% of all ‘cracked’ trials in the Crown Court were due to guilty pleas entered to alternative new charges offered by the prosecution for the first time on the day fixed for trial. A further 4% of cracked trials were primarily due to late guilty pleas being entered to new charges, previously being rejected by the prosecution... In such cases, although there will have been room for different decisions to be made prior to the date of trial, the seed for potential waste has been sown from the outset and could have been avoided had the initial charging decision been appropriate”.*

It seems likely that vulnerable defendants may be particularly disadvantaged by online pleas. They may be more liable to influence and pressure to plead guilty whether from police or peers and less able to understand the implications of pleading guilty, particularly in the absence of legal advice.

Providing the means to, and encouraging, defendants to plead online may lead to more defendants representing themselves (either just at that stage or throughout the process), since the process of “doing it yourself” may appear easy. The criminal justice system is complex and its sanctions are life changing. Particularly for serious offences, defendants should be not be entering a plea unrepresented. For all offences, vulnerable defendants should be entering their plea without professional legal advice.

Criminal Records

One of the challenges of any online criminal system for defendants is that the implications of pleading guilty can go way beyond paying a fine or similar. If the offences which go through the online court or single justice procedure are not recorded on the Police National Computer (as seems likely) they will not be revealed in DBS checks, but these offences may need to be declared for months/years after conviction depending on the rehabilitation period.

All offences recorded on the PNC can potentially come up on DBS checks. Anyone who wants to apply for a range of jobs from traffic warden to childminder needs to get a DBS check. So an online plea of guilty is likely to have serious implications for employment prospects. This means that the online plea app needs to explain in quite a lot of detail what a criminal record is and its ramifications.

Conclusion

Online criminal processes offer convenience for defendants. The online criminal court and the digitisation of the single justice procedure offer those who are used to using apps and computers the opportunity to enter information much more quickly and easily. The government has given assurances that those who do not have access to the web, will be able to use paper or face to face procedures.

Online pleas will also be convenient for those online. As soon as formally charged, someone will be able to get on their smartphone to say whether they are guilty or not guilty. This will save them going to court for the plea hearing. Going to court often involves missing work or having to find childcare. So for some, particularly those who are certain whether what they want to plead, online pleas offer great advantages. But for vulnerable people who don’t understand the law, or whether they have a viable defence, there are risks they will guilty when they are not and vice versa.

1. Transforming our justice system: assisted digital strategy, automatic online conviction and statutory standard penalty and panel composition in tribunals MoJ February 2017 [↑](#footnote-ref-1)
2. The Prisons and Courts Bill: Online courts and the right to a fair trial Archbold May 2017 [↑](#footnote-ref-2)
3. 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 [↑](#footnote-ref-3)
4. http://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL\_Singles.pdf [↑](#footnote-ref-4)