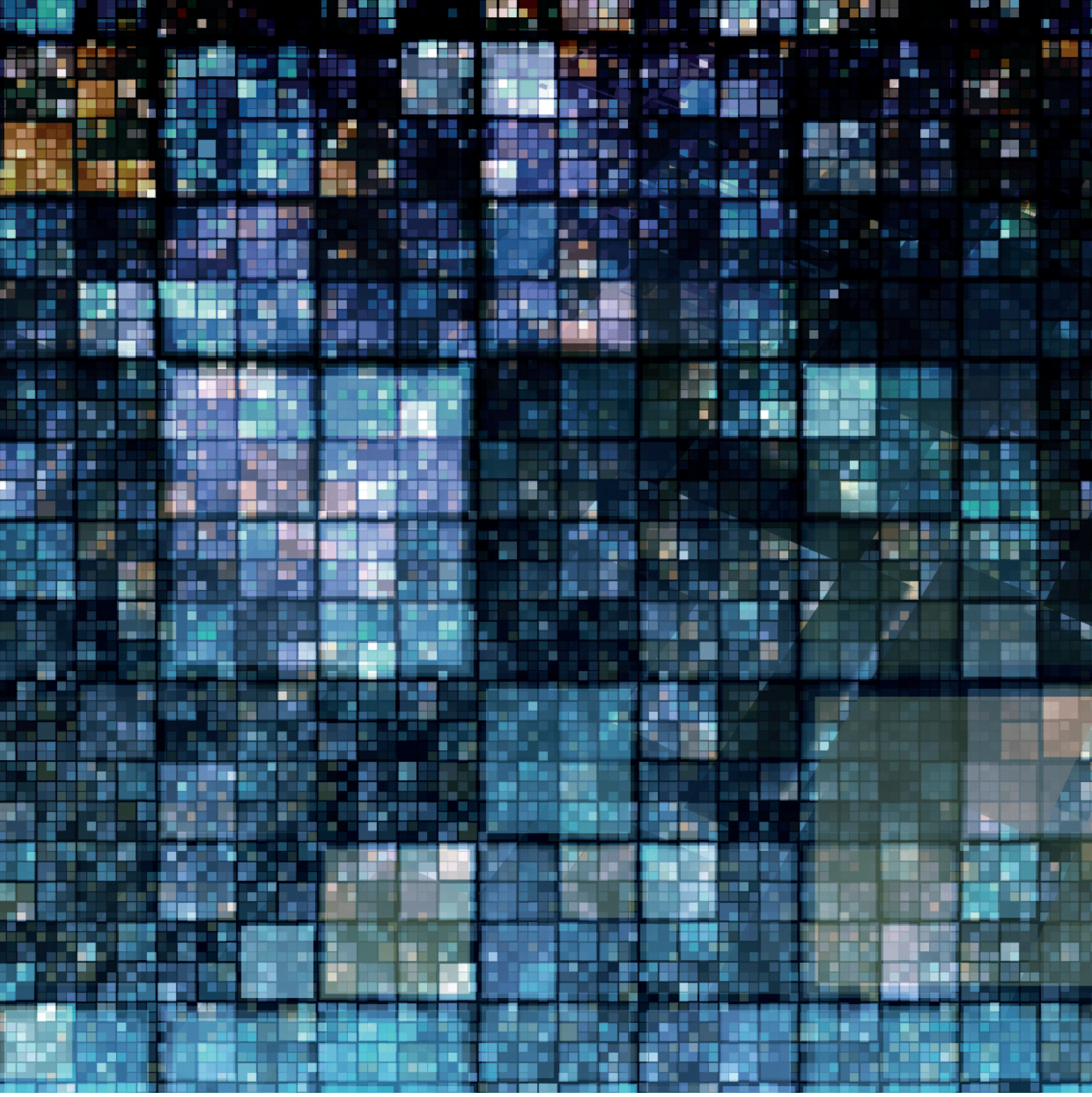

Digital Justice: HMCTS data strategy and delivering access to justice

Report and recommendations

Executive summary

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The Legal Education Foundation
October 2019

The Legal Education Foundation

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October 2019

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Executive summary

A Background

I The court system in England and Wales is undergoing a period of rapid and extensive change. The ongoing £1 billion programme of court reform is unprecedented in scope and pace and has been described as the most ambitious in the world.[1] The programme encompasses multiple elements including automisation of case management; the widespread use of video conferencing; new facilities for parties to file applications online and upload documents; workforce changes and estates consolidation in the context of a court system which currently deals with four million cases per annum. In whole areas of the justice system, such as divorce and civil money claims, and certain types of social security and child support tribunal cases, physical and remote hearings will be reserved 'only for those cases that cannot be otherwise resolved'.[2] The stated ambition of these reforms is to create 'a courts and tribunal system that is just, proportionate and accessible to everyone'.[3] In delivering these changes HM Courts and Tribunals Service ('HMCTS') have pledged to 'maintain or improve access to justice'.[4]

II Whether access to justice is 'maintained or improved' through reform is both an empirical and a legal question. In order to test, review and, where necessary, improve systems to meet this commitment, a robust strategy for data collection, analysis and sharing must be in place. Data must be collected to confirm that existing legal duties relating to access to and the fairness of the justice system, as well as obligations under the Public Sector Equality Duty are met. The collection and publication of this data is critical to building trust in reformed processes and encouraging adoption of new services.

1 HMCTS Chief Executive, Susan Acland-Hood (2018). 'Modernising the Courts and Tribunals Service: Future of Justice Conference.' 14 May 2018, presentation available at: https://www.ucl.ac.uk/laws/sites/laws/files/ucl_foj_01_03_acland-hood.pdf

2 Sir Geoffrey Vos, Chancellor of the High Court (2018). 'The Foundation for Science and Technology: Debate on how the adoption of new technology can be accelerated to improve the efficiency of the justice system.' 20 June 2018, p2. Available at: https://www.judiciary.uk/wp-content/uploads/2018/06/speech-chc-the-foundation-for-science-and-technology.pdf

3 The Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, September 2016. *Transforming Our Justice System*, p5. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf

4 Senior President of Tribunals (2018). *The Modernisation of Tribunals 2018: A Report by the Senior President of Tribunals.* p9. Available at: https://www.judiciary.uk/wp-content/uploads/2019/01/Supplementary-SPT-report-Dec-2018_final.pdf

III In recognition of this, HMCTS have committed to (i) facilitating an overarching evaluation of the impact of reform on 'access to, and the fairness of the justice system, particularly in relation to those who are vulnerable'[5] and (ii) ongoing evaluation and iteration of reformed services in light of insights gathered from data, including using data on the demographic and protected characteristics of users of the justice system to inform service design[6] and identify and tackle disproportionalities.[7] They have also committed to working with researchers and academics to design and test their approach to evaluation. This report, based on extensive stakeholder consultation with the judiciary, policy makers, national and international experts in evaluation, public justice system digitisation, public law and equality and diversity monitoring recommends an approach to data collection for service design, iteration and ongoing evaluation.[8] The adoption of this approach will enable HMCTS to design inclusive services, demonstrate that reformed processes uphold access to justice, meet their legal obligations and strengthen public trust and confidence in the justice system.

5 See Ministry of Justice, 'Evaluating our reforms: Response to PAC Recommendation 4, January 2019.' Available at: https://www.gov.uk/government/news/moj-response-to-public-accounts-committee-transforming-courts-and-tribunals (accessed 7 February 2019).

6 See Susan Acland-Hood, 'Susan Acland-Hood sets out our priorities for the next phase of courts and tribunals reform.' *Inside HMCTS Blog.* Available at: https://insidehmcts.blog.gov.uk/2017/10/26/susan-acland-hood-sets-out-our-priorities-for-the-next-phase-of-courts-and-tribunals-reform/

HMCTS. *Reform Update: May 2018.* p20. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711535/HMCTS_Reform_Update_May_2018.pdf

HMCTS (2019). *Putting People at the Heart of Reform: Response to PAC recommendation 2,* p6, para 22. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775594/Public_Accounts_Committee_Recommendation_2_31_Jan_2019.pdf

7 Ministry of Justice (2019). *Evaluating our Reforms: Response to PAC recommendation 4,* p2, para 6. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775588/Public_Accounts_Committee_Recommendation_4_31_Jan_2019pdf.pdf

8 The approach to developing recommendations is described at Chapter 2 and a full list of those consulted is available at Appendix A.

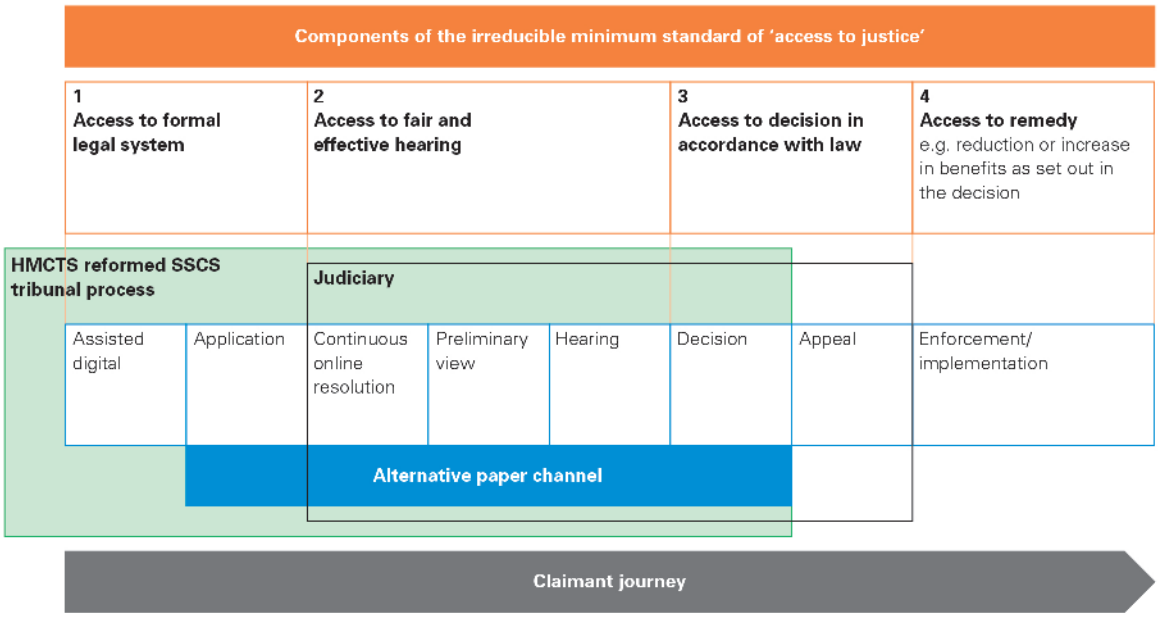
B Understanding the impact of reform and designing services that deliver the goal of maintaining or improving access to justice

iv Stakeholder proposals for delivering HMCTS's commitments to both overarching and project level evaluation are developed from the definitions of 'access to justice' and 'vulnerability' that are set out under existing substantive and procedural law (Chapter 4).

v Stakeholders have identified an irreducible minimum standard of 'access to justice' under English law, which is capable of acting as an empirical standard for the purposes of iterating reformed services and evaluating the impact of court reform. *The components of this irreducible minimum standard are: (i) access to the formal legal system, (ii) access to an effective hearing, (iii) access to a decision in accordance with substantive law, (iv) access to remedy.*

vi The four components of the access to justice standard are interrelated, mutually supportive and non-divisible.[9] Figure 0-1 below shows how the standard maps to an individual project. Stakeholders agreed that any evaluation of reform must examine the impact of reformed services on each of these four components to arrive at a determination regarding the impact on access to justice. *Assessments of the impact of reform on access to justice must be based on a holistic evaluation that explores the progression of a full range of cases and individuals through the system from claim to outcome. These proposals should be adopted in both the overarching evaluation of the reform programme, and at the individual service level, to guide the design, testing and iteration of projects.*

Figure 0-1 **Mapping the minimum standard of access to justice to a reformed service**



9 For example, an observable increase in individuals accessing the formal legal system, of itself, is insufficient to justify assertions that access to justice has improved under reform.

vii In addition to the requirement to monitor the impact of reform against the access to justice standard established by law, HMCTS's obligations under the Public Sector Equality Duty, its commitment to monitor disproportionality and accepted good practice also require that data on the protected characteristics of users is captured and monitored. This collection will enable review and, where necessary, adaptation and improvement of new processes and services to meet obligations.[10] In practical terms, for each service that is being reformed, 13 data points relating to individuals using the system should be collected. These are summarised below at Figure 0-2.

Figure 0-2 **Minimum data required to measure vulnerability**

Individual attributes to be captured		Data in practice directions used to identify vulnerability?	Data related to digital exclusion?	Data needed to monitor duties under the Equality Act 2010?
1	Age	✓	✓	✓
2	Disability[11]	✓	✓	✓
3	Employment status/income	✓	✓	✗
4	English as a foreign language	✓	✗	✗
5	Gender reassignment	✗	✗	✓
6	Highest level of education (proxy for literacy)	✓	✓	✗
7	Postcode (permanent address, to identify whether in a care home, homeless, in an area of low internet coverage etc.)	✓	✓	✗
8	Pregnancy and maternity	✗	✗	✓
9	Race	✗	✗	✓
10	Religion or belief	✗	✗	✓
11	Sex	✗	✗	✓
12	Sexual orientation	✗	✗	✓
13	Fear or distress connected with the case e.g. domestic violence/abuse, in detention, survivor of trafficking/trauma	✓	✗	✗

10 See guidance for public bodies provided by the Equality and Human Rights Commission available at: https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty and the work of the Race Disparity Unit.

11 This should include detailed information on the nature of the disability, as different conditions are likely to impact on vulnerability in different ways.

C Further areas of priority need

viii The adoption of stakeholder proposals for evaluation and public commitments made by HMCTS in relation to evaluation necessitates the creation of mechanisms to follow individuals and cases as they progress through reformed systems. In light of this, it is recommended that HMCTS consider the benefits and risks of introducing unique identifiers for individual users of the justice system. Experts in privacy law and data ethics should be consulted to ensure that the data associated with unique identifiers is captured, stored and utilised in a manner that respects established legal and ethical requirements.

ix Stakeholders made specific recommendations regarding the data and methods needed to monitor and evaluate the impact of reform on access to the formal legal system, access to a fair and effective hearing, access to a determination and access to remedy. These are presented in *Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice*[12] and summarised in the following paper (Chapter 4, sections D-E5).

x Three further areas of priority need were identified by stakeholders: (i) reforming the system for providing free, public access to judgments, (ii) improving access to court listings and (iii) providing free access to certain types of case level data, including transcripts and statements of case (Chapter 4, sections H1-H3). In relation to the need to reform the system for making judgments available to the public, stakeholders' concerns related to the coverage of existing free to access databases, the comprehensibility of content to those without legal training and the format in which judgments are published.

D Delivering HMCTS's commitments to facilitate evaluation and developing principles for sharing data

xi The current Data Access Panel is unlikely to cope with increased demands for data. Urgent attention must be given to designing a medium-term solution for data sharing that reduces the burden on HMCTS. However, in the short term it is recommended that the appropriate standard for approving or denying requests to access data should be based on the robustness of the research design (Chapter 5).

xii Existing models for sharing data with researchers are available and should be utilised in the medium term to facilitate the delivery of HMCTS's public commitments to make data available for evaluation and research. UK Research and Innovation has made substantial investments in infrastructure to support the research use of administrative data.[13] HMCTS should publish its vision with regard to data and develop its overarching strategy in line with existing legal and ethical principles through a transparent and accountable process. HMCTS should dedicate resource to reviewing national and international best practice, existing legal frameworks, engaging a wide range of stakeholders and publics and testing the acceptability of different models with stakeholders and the public (Chapter 6).

12 Natalie Byrom (2019). *Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice.* Available at: https://research.thelegaleducationfoundation.org/research-learning/funded-research/developing-the-detail-evaluating-the-impact-of-court-reform-in-england-and-wales-on-access-to-justice

13 See: https://www.adruk.org

E Table of recommendations

1	HMCTS should consider the benefits and risks of introducing unique identifiers for individual users of the justice system…Experts in privacy law and data ethics should be consulted to ensure that this data is captured, stored and utilised in a manner that respects established legal and ethical principles. The public acceptability of the creation of individual identifiers should be tested prior to their introduction. (4.32)
2	HMCTS should commit to embedding the collection of the thirteen data-points relating to vulnerability (outlined…in Figure 4-2) into each service. The collection of this data should take place at the earliest possible opportunity in the user journey, whether this is initiated through digital or paper processes…It is recommended that HMCTS commit to embedding the collection of this data into reformed services before they reach public beta stage. Those services already in public beta stage should be prioritised for immediate work to embed the collection of this data. (4.33)
3	[HMCTS should commit to the ongoing collection of data on] the characteristics of users initiating and defending cases via different channels to identify and monitor disproportionalities, e.g. individual vs bulk claimant, geo-demographic characteristics of claimants and defendants, represented vs unrepresented. (4.34.1)
4	[HMCTS should commit to the ongoing collection of data on] the types of cases initiated via different channels to identify disproportionalities and refine services. This data should be presented at a level of specificity that would support useful analysis, e.g. for a money claim, the amount, type of claim and amount claimed. (4.34.2)
5	HCMTS should publish and consult on the metrics/data proxies used to assess the cost and effort associated with initiating and defending a claim via different channels. Once these metrics are agreed, the data collected should be analysed and reported on according to both case type and user characteristics. (4.35)
6	[HMCTS should commit to] capturing data on subjective perceptions of procedural justice using standardised tools, replacing the user satisfaction survey currently used. (4.36.1)
7	[HMCTS should commit to] working with experts in ODR to develop objective indicators of procedural fairness for new online processes, and using this data to augment the data captures on subjective perceptions of procedural fairness. (4.36.2)
8	[HMCTS should commit to] sharing data collected on the impact of design architecture and behavioural 'nudges' incorporated into forms and reformed processes with researchers to validate and check assumptions and build trust in new processes. (4.36.3)
9	[HMCTS should commit to] working with expert stakeholders to identify proxies for user engagement with reformed processes, e.g. management of information such as volume and quality of evidence provided, uptake of procedural safeguards etc. (4.36.4)
10	[HMCTS should commit to] collecting data on patterns of engagement by users with legal advice and representation across paper and reformed processes to test the assumptions underpinning pilots. (4.36.5)
11	[HMCTS should commit to] collecting data on the characteristics of users and cases 'triaged' to different processes, to assist the judiciary in understanding whether the Practice Directions they have made are being applied correctly and to assist in the training of Authorised Officers who are intended to assist with these processes. (4.36.6)
12	[HMCTS should commit to] collecting data on the outcomes of cases e.g abandoned/withdrawn/settled/ determined and the amounts awarded/settled for across the different processes, e.g. Continuous Online Resolution, Online Civil Money Claims. (4.36.7)
13	HMCTS should commit to collecting data on the characteristics of users and cases that reach judicial determination and analyse this data against the types of users that initiate cases, to explore patterns in the characteristics of users and cases that reach the judicial determination stage. (4.37)
14	HMCTS should capture and publish data on applications for enforcement, time from decision to enforcement and whether enforcement proceedings are defended across both paper and reformed services as part of any evaluation of the impact of the reform programme on access to remedy. Examples of data to be captured (in the context of Civil Money Claims) could include: whether enforcement is applied for; type of enforcement applied for (warrant of execution, attachment of earnings order, third party debt order, charging order, bankruptcy petition); whether an application for suspension of a warrant/variation of order is made and whether an application notice, certificate of cancellation or satisfaction is applied for by the defendant. It has been claimed that enforcement is easier following mediation—or less necessary because people comply more willingly with negotiated settlement agreements. As such, data comparing compliance with ODR settlement terms to compliance with determinations should be captured. (4.38)
15	HMCTS should conduct an urgent review of their internal position with regard to data and prioritise the production of an external-facing data catalogue. This catalogue should: • list what data is held • explain who is responsible for each dataset • detail where the data is stored and who stores it • provide an indication of the relative quality of different datasets • explain who is currently allowed to access the data and for what purposes • describe existing arrangements for accessing data and detail any charges associated with access to particular types of data. (4.57)

E **Table of recommendations service** continued

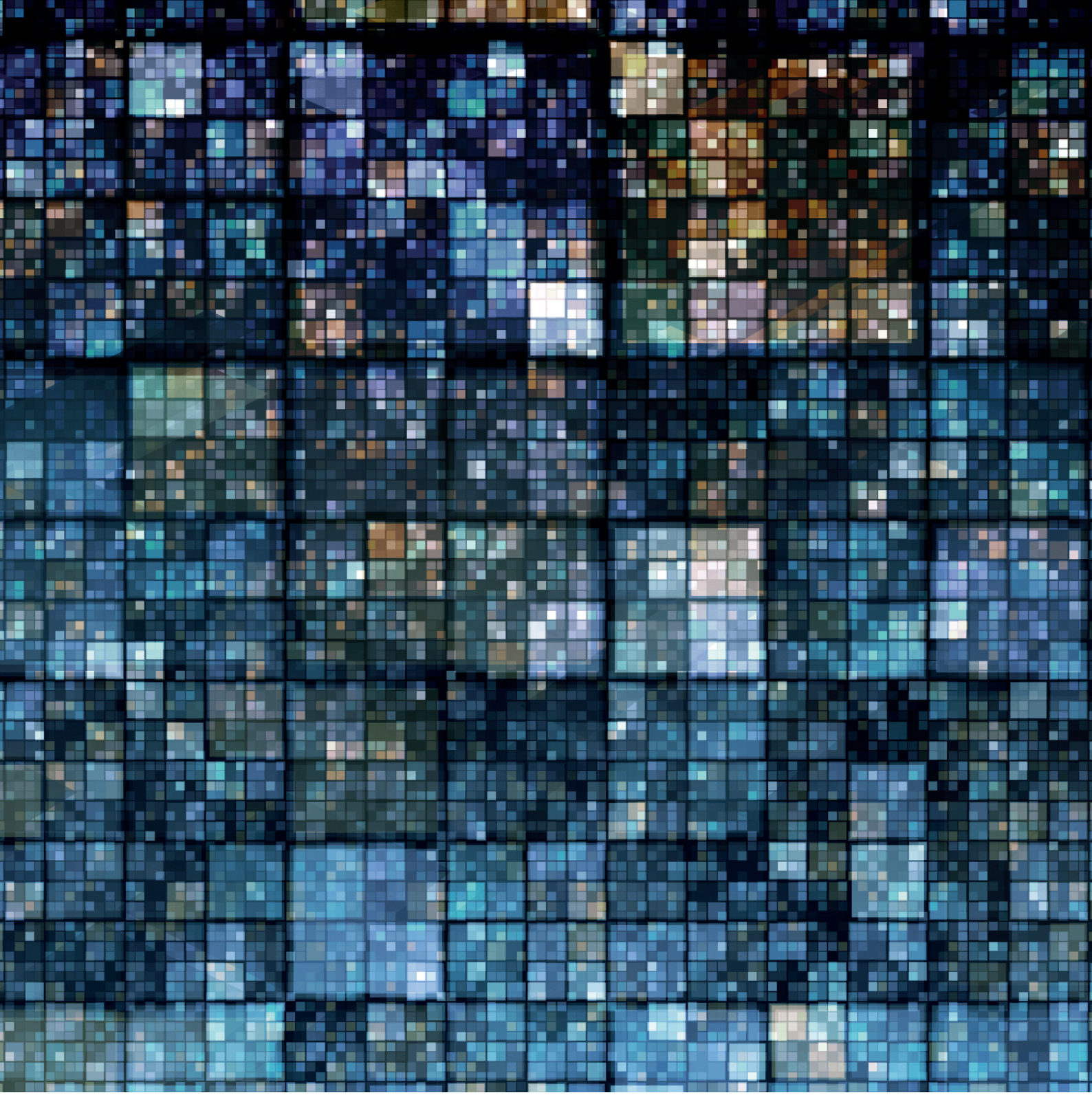
16, 17	HMCTS should work with the judiciary and colleagues in the Ministry of Justice to commission an independent report which reviews the current arrangements for disseminating judgments to the public and maps the information flows from courts to publication. On the basis of this report, HMCTS and the MoJ should engage with key stakeholders to develop a publication solution that delivers free and comprehensive access to judgments in a structured machine-readable format. (4.58, 4.59)
18	HMCTS should consider approaches to meeting the other areas of priority need identified by stakeholders through a transparent process as part of the development of the HMCTS data strategy. Tools such as the ODI Data Ethics Canvas could be deployed to devise an approach in partnership with internal and external stakeholders. (4.60)
19	The appropriate standard for approving or denying requests to the access data should be based on the robustness of the research design, rather than utility to the business. A central sponsor in HMCTS must be resourced with adequate additional funding to deliver this function if volumes of requests increase as expected in line with the rollout of reforms. (5.3.1)
20	Functions and roles should be clearly articulated and resourced, particularly with regard to Quality Assurance, GDPR and Privacy Assurance. (5.3.2)
21	The production of an external-facing data catalogue to guide applications should be prioritised as a matter of urgency. Data Engineering Fellowships should be established to deliver this work (see Chapter 7 below). Work to engage external funders where needed to deliver this should be prioritised. (5.3.3)
22	Minutes of future Data Access Panel ('DAP') meetings should be made publicly available: at present DAP is purely an email group supported by a small secretariat and leadership function in the Analysis and Performance team. Minutes should be recorded and information on accepted and rejected applications should be made publicly available, as per the UK Statistics Authority Code of Practice T6 on Data Governance. (5.3.4)
23	Scenarios (including resource implications) should be urgently developed for how to handle increased demand in 2019 and meet HMCTS's public commitments in the near term. (5.3.6)
24	HMCTS should publish its vision with regard to shared/open data and develop its overarching strategy in line with existing legal and ethical principles through a transparent and accountable process. (6.14)
25	In terms of developing wider open/shared data principles: consolidating, publishing and consulting on the aims of the future open/shared data strategy with key stakeholders at the earliest possible opportunity is recommended. HMCTS should publish details of their approach across the ODI data spectrum with indicative timeframes for engaging stakeholders. (6.15)
26	HMCTS should dedicate resource to reviewing national and international best practice, existing legal frameworks, engaging a wide range of stakeholders and publics and testing the acceptability of different models with stakeholders and the public. (6.16)
27	Once draft principles are agreed, the datasets identified as a priority need by stakeholders[14] should be catalogued and used as a case study to evaluate the utility of the approach designed, starting with case level data.[15] (6.17)
28	Existing models for sharing data with accredited researchers are available and should be utilised in the medium term to facilitate the delivery of HMCTS's public commitments to make data available for evaluation and research. See for example, the services funded as part of ADR UK (including, for example, the Office for National Statistics Secure Research Service and the SAIL Databank) that provide safe accredited access for approved researchers to administrative data.[16] (6.18)
29	Data Engineering Fellowships should be funded for between 6 –12 months. Consultation with internal and external stakeholders suggested that the key responsibilities, skills and person specification should be modelled on the recently advertised role of Ministry of Justice Lead Data Engineer (Band A).[17] Key responsibilities, data engineering skills and the person specification are reproduced below at Appendix B. (7.2)

14 See Chapter 4, section H below.

15 As per the recommendation made by the Supreme Court in *Cape Intermediate Holdings Ltd (Appellant/Cross Respondent) v Dring (for and on behalf of Asbestos Victims Support Groups Forum UK) (Respondent/Cross Appellant)* [2019] UKSC 38. Per para 51.

16 See: https://www.adruk.org

17 See: https://justicejobs.tal.net/vx/mobile-0/appcentre-1/brand-2/candidate/so/pm/1/pl/3/opp/23124-23124-Band-Ab-Lead-Data-Engineers-Ministry-of-Justice-Analytical-Services-Directorate/en-GB



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