



Law Society
of Scotland

Consultation Response

Digital connectivity in Scotland inquiry

January 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Rural Affairs and Competition Law Sub-committees welcome the opportunity to consider and respond to the UK Government's *Digital connectivity in Scotland inquiry*.¹ The Sub-committees have the following comments to put forward for consideration.

General comments

We do not seek to comment in any detail on the technical aspects of this inquiry. However, there are legal and policy issues which merit further consideration. These are detailed below.

Access to justice is a key concern for us. In our response² to the Scottish Government's *Independent Strategic Legal Aid review* in 2017, we noted that independently commissioned research had identified a risk that people in rural areas who were eligible for legal aid would not be able to find solicitors to provide advice. We cautioned that if steps are not taken to remedy this it could result in a two-tier justice system. Where it is not possible to obtain advice in person easily, it is important that individuals have access to remote advice to fill the void.

Courts and tribunal services are increasingly moving to online systems, for example employment tribunal cases are now almost exclusively online. It is envisaged that criminal procedural courts will move to digital systems in coming years. Individuals and businesses seeking access to justice or wishing to defend a claim made against them will therefore require a good broadband connection. It should however be noted

¹ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/inquiries/parliament-2017/digital-connectivity-scotland-17-19/>

² <https://www.lawscot.org.uk/media/1179917/final-law-society-of-scotland-response-to-independent-strategic-legal-aid-review-call-for-evidence-aug-2017-corrected-.pdf>

that it is not only formal legal processes for seeking redress which rely on technology: many company complaints procedures are handled through digital channels which can facilitate cheap and effective resolutions for potential disputes.

We are also concerned about wider social questions around inclusion where so many aspects of day-to-day life rely upon broadband access and mobile phone coverage. This is not just a question of access to private goods and services but as outlined above, can include access to justice. There are many aspects of daily life where online access is a necessity and some digital services – eg online banking – may be more crucial to those in remote communities, who are likely to suffer greater connectivity issues, than those in urban areas.

Access to cloud-based software is growing in popularity both for individuals and businesses. Suitable access is to a large extent, dependent on good connectivity. We must continue to ensure access is available to all and take steps to improve connectivity to support that outcome. In some circumstances, individuals are facing significantly higher costs to obtain documents in paper form than in electronic form. Although we recognise the resourcing reasons behind such arrangements, this framework is predicated on an assumption that stake-holders will have readily available access to such electronic information and the necessary equipment. This may not necessarily be the case, for reasons such as physical geography and /or personal circumstances of individual users, over which individual users may have little or no control.

There is an increasing need for businesses, whether providing goods or services, to operate in an online environment. This applies to recruitment and management of personnel, sourcing of supplies and materials, and communications with advisers (such as accountants or solicitors), as much as to customer-facing aspects of the business such as online sales and service delivery. Poor access to efficient broadband services constrains the ability of businesses in remote communities to compete effectively with those in more populated areas.

Furthermore, the move to the online environment is also evident in the field of compliance. For example, monthly reporting for companies is moving to an online system and HMRC's online system is now the default option with a 'reasonable excuse' required for using paper forms.³ Effective broadband access is essential to businesses to meet their legal requirements. In addition, farmers are required to make claims for basic payment and other farming subsidy applications through online systems. This will be particularly prevalent within rural areas. Without a reliable broadband connection, farmers could find themselves unable to access funding which is essential to maintain a viable business.

We are concerned that the weakness of broadband in certain areas can give rise to issues of fraud. This has occurred in a number of cases where individuals have pretended to be from broadband services and providers, for example BT Openreach, and have falsely obtained customers' personal and financial details.

³ <https://www.gov.uk/file-your-company-accounts-and-tax-return>

It is important that all reasonable efforts are taken to ensure the greatest level of protection against such criminal activity is in place.

The growing transition to online platforms causes us concern in the field of compliance with the European Convention on Human Rights. We consider there to be potential for discrimination against certain individuals who may have limited or no access to online services, yet have no alternative means to access services offline or face higher costs for doing so.

Response

Q1. What level and standard of mobile and broadband coverage does Scotland need to achieve to maximise the economic and social benefits of greater connectivity? To what extent do current plans for the rollout of broadband and mobile coverage in Scotland meet these needs?

We have previously responded⁴ to the UK Government's consultation on Broadband Universal Service Obligations.⁵ We noted in that response that we are concerned that the 'universal service obligation' is not in fact intended to be universal. We continue to believe that all efforts should be taken to ensure that, at the least, a reasonable standard of mobile and broadband coverage is available throughout Scotland to individuals and businesses.

We note from Ofcom's Connected Nations 2017 Scotland report⁶ that "six percent of premises in Scotland still struggle to get decent broadband services", defined as "a connection which provides a download speed of at least 10Mbit/s and an upload speed of at least 1Mbit/s."⁷ We consider that all premises in Scotland should have access to this level of broadband services. Such access is crucial for the reasons detailed above. We do note that improvements have been made in terms of the availability of superfast broadband⁸ and coverage of full fibre services in Scotland⁹, however it is clear that there are areas in which basic levels of coverage are not being provided.

We also note that mobile voice services covers 87% of premises in Scotland, however, geographic voice and data coverage, in particular 4G coverage, still lags behind the rest of the UK. This is of concern. As

⁴ https://www.lawscot.org.uk/media/10569/cons_comp_rur_tech_iss-response-to-broadband-uso-consultation-on-design.pdf

⁵ <https://www.gov.uk/government/consultations/broadband-universal-service-obligation-consultation-on-design>

⁶ https://www.ofcom.org.uk/__data/assets/pdf_file/0022/108814/scotland-connected-nations-2017.pdf

⁷ *Ibid*, paragraph 1.2.

⁸ Defined as broadband services that deliver a download speed of at least 30Mbit/s.

⁹ Ofcom Connected Nations 2017 Scotland Report, paragraph 1.2.

with broadband coverage, it is crucial that Scotland has full coverage for mobile technology that can provide at least a basic level of service.

We note the terms of *Realising Scotland's Full Potential in a Digital World: A Digital Strategy for Scotland*,¹⁰ in particular the commitment to ensure that all premises in Scotland have access to broadband speeds of at least 30 megabits per second by the end of 2021. While this is a commendable target, we consider that the priority should be to ensure that all premises and individuals have access to a minimum basic level of service as detailed above.

Q2. What are the barriers (economic, technical, regulatory, other) to delivering superfast broadband and improved mobile coverage in Scotland? What steps could be taken overcome these challenges?

We note that Scotland's rural geography presents particular barriers for the delivery of superfast broadband and improved mobile coverage. Although the rural landscape cannot be overcome in itself, we consider that regulatory and technical measures may be used to overcome some of the challenges presented.

We tend to agree with Ofcom's comments¹¹, that regulatory solutions alone are unlikely to ensure the delivery of infrastructure to the most rural areas of the country. We are of the view that the Government should give consideration to the implementation of coverage obligations and introduction of subsidies to encourage investment in mobile and internet services.

In terms of competition matters, we consider internet access to be an essential facility, in the same way as household utilities or road and railway infrastructure. Fibre optic cabling presents the current equivalent in terms of physical infrastructure and we are therefore of the view that fibre optic cabling should be open to compulsory shared access for competitor providers. The Government may wish to consider vesting this in a public undertaking.

The extension of internet and mobile access, particularly against the background of the challenges faced in ensuring access at a suitable level in rural areas, also presents an opportunity for new technologies to be considered which may be better placed to ensure good quality services are available to all. New technologies may be able to provide more effective and efficient solutions to the challenges faced and we consider that it is important that other options are explored.

Public funding may assist in ensuring fair and equitable access to services across the country. Other EU member states facing similar difficulties to Scotland, which include sparsely populated geographical areas,

¹⁰ <https://beta.gov.scot/publications/realising-scotlands-full-potential-digital-world-digital-strategy-scotland/pages/1/>

¹¹ Ofcom Connected Nations 2017 Scotland Report, paragraph 1.8.

have required public funding to ensure widespread access to connectivity services.¹² Such funding requires to be carefully balanced with incentives for commercial investors.

We have no comment on the technical aspect of this question.

Q3. Is the level of funding for broadband and mobile phone coverage in Scotland sufficient given the geographic and demographic challenges Scotland faces?

We have no comment on this question.

Q4. How well do the different stakeholders (UK Government, the Scottish Government, service providers) work together? Are there ways these relationships could be improved?

We have no comment on this question.

Q5. What technology options are available to increase connectivity in rural, and other hard to reach, areas of Scotland? What support is needed to develop and deliver these solutions?

We do not seek to comment on the technological aspects of this question. We do note however the potential for alternative technological options to be considered. Lessons may be learned from other countries with similar geographical profiles, for example Iceland. It must be noted that there are a number of areas which are not remote or particularly rural, yet in which there is limited broadband and mobile phone coverage. We do consider that sufficient investment will be required across the country to improve services to an acceptable level.

For further information, please contact:

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¹² For example, see Finland's *Broadband 2015 Project*- <https://www.viestintavirasto.fi/en/steeringandsupervision/broadband2015.html>