JOURNAL OF
CROSS-DISCIPLINARY RESEARCH
IN COMPUTATIONAL LAW [CRCL]

Computational Law and Access to Justice

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Abstract

Increasingly claims are made about the potential for computational technology to address the access to justice crisis. Advocates for AI argue that computational tools can extend the protection of the law to the estimated 5.1billion people worldwide who are unable to secure meaningful access to justice, whilst also creating efficiency savings and reducing the cost of administering justice. Globally, court digitisation efforts are rapidly increasing the volume, granularity and accessibility of data about civil justice systems and the people who access them and in doing so, creating the datasets and the infrastructure needed to support the deployment of computational technologies at scale. What are the prospects for these developments to meaningfully improve access to justice? What research should be prioritised and what changes to policy and regulation are required? This paper argues that the potential for computational technologies to address the civil access to justice crisis is undermined by: i.) an impoverished understanding of the nature of the crisis – at both a theoretical and empirical level ii.) misalignment between the values that are currently driving the turn to computational law and the goal of increasing rights realisation and accountability and iii.) the failure to address the ecosystem factors (access to data, access to funding and regulation) that would support the development of computational technologies in the interests of access to justice. The paper concludes by suggesting next steps for the field.

Keywords: Civil Justice, Access to Justice, Data, AI, Law, Human Rights

Journal of Cross-disciplinary Research in Computational Law
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DOI: pending
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www.journalcrcl.org

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Introduction

Awaab Ishaak was two years and eight days old when he died in 2020 from an acute respiratory condition. For much of his short life he had been in and out of his local doctor's surgery with repeated colds and chest infections. The coroner's report into his death stated that his doctor had felt that he had visited the surgery more than other children his age. Six months before Awaab died, a health professional visited the housing association flat where Awaab lived with his parents – it was covered in black mould. Awaab's parents, refugees from Sudan, had first contacted their landlord in 2017 to ask for help to get rid of the mould. Instead, they were told to 'paint over it'. By the time Awaab was born in 2018, the mould was a persistent and recurrent issue. In 2019, Awaab's parents applied to be rehoused – this application was rejected. Appalled at what she had seen, the health visitor wrote to the family's landlords, raising concerns about the impact of the mould on Awaab's health- still no action was taken. In June 2020 Awaab's desperate parents finally instructed a solicitor to make a claim for disrepair - an inspection confirmed the presence of mould in the kitchen and bathroom, but still the landlord refused to act. The landlord's policy at the time was not to progress to repair and treatment until the case was concluded. By the time Awaab was taken to hospital in December 2020, no action had been taken to treat the mould, which had now spread to every single room in the flat.[1] An inquest into Awaab's death concluded that his death was caused by a 'severe respiratory condition due to prolonged exposure to mould in his home environment'.

Awaab's death was described by the coroner as a 'defining moment'[2] for the social housing sector. whose report urged government ministers to take action to prevent further deaths. Since news of Awaab's death was reported, campaigners and the public have petitioned for changes to the law. Even the Minister for Housing Communities and Local Government, Michael Gove, stated that the government 'should have legislated sooner'. **But whilst there are undoubtedly improvements to the law that could be made, there are already laws that should have protected Awaab.** The barrister who represented Awaab's family at the inquest into his death wrote that it was clear that the flat he lived in met the definition of being 'unfit for human habitation' when it was inspected on the 14 July 2020.[3] Awaab's death is directly attributable to the fact that his family, despite their best efforts, were unable to access the rights and protections to which they were entitled or to compel their landlord to comply with the laws that already exist.

Awaab's case is a paradigmatic example of what is increasingly referred to as the 'access to justice crisis'[4] in England and Wales. The preventable death of this little boy is a stark illustration of the consequences of our collective failure to ensure that the rights and protections of the law are accessible to all.

At an international level, the scale of the access to justice crisis is dizzying: a report by the New York University Center on International Cooperation published in 2019, estimated that globally 5.1 billion people[5] (some two-thirds of the world's population) are unable to secure meaningful access to justice. Government resources are finite, and the appetite for allocating funds to increasing access to justice varies from country to country. In England and Wales, swingeing cuts to funding for legal aid in civil and family matters since 2013 have reduced public access to information, advice and representation.[6] Researchers have argued that these cuts disproportionately impact women,

[1] Joanne Kearsley, 'Awaab Ishak: Prevention of Future Deaths Report' (2022) ⟨https://www.judiciary.uk/wp-content/uploads/2022/11/Awaab-Ishak-Prevention-of-future-deaths-report-2022-0365_Published.pdf⟩.

[2] Mark Brown and Robert Booth, 'Death of two year old from mould in flat is a 'defining moment' says coroner' (*The Guardian*, 2022) ⟨https://www.theguardian.com/uk-news/2022/nov/15/death-of-two-year-old-awaab-ishak-chronic-mould-in-flat-a-defining-moment-says-coroner⟩.

[3] Christian Weaver, 'Awaab Ishak's death shed light on a social housing scandal. Now we have a brief chance to fix it' (*The Guardian*, 2022) ⟨https://www.theguardian.com/commentisfree/2022/nov/23/awaab-ishak-death-social-housing-mould-family⟩.

[4] Each Other, ''Crisis' Over Access to Justice in the UK' (*Each Other*, 2017) ⟨https://eachother.org.uk/need-protections-right-access-justice-new-report-thinks/⟩.

[5] Task Force on Justice, 'Justice for All – Final Report' (New York: Center on International Cooperation 2019) ⟨https://www.justice.sdg16.plus⟩.

[6] Amnesty International, 'Cuts that hurt: The impact of legal aid cuts in England and Wales on Access to Justice' (Amnesty International 2016) ⟨https://www.amnesty.org/en/documents/eur45/4936/2016/en/⟩.

low earners and those from minoritised backgrounds.[7] Opposition party politicians recognise that the justice system is in crisis, but resist calls for additional funding.[8] In this context, many governments and some members of the judiciary are increasingly looking to computational technologies to provide 'effective and economical legal advice and dispute resolution',[9] and even advocating for the use of tools to 'take simple decisions at the different stages of the resolution process'.[10] These efforts are increasingly directed towards the parts of the civil justice system that deal with cases that are generally refered to as 'high volume, low (economic) value' cases – the same parts of the justice system that failed Awaab and his family. Since the COVID-19 pandemic – in an attempt to deal with significant case backlogs[11] – many justice systems have initiated or accelerated digitisation programmes that will transform their formerly paper-based processes into new, online end-to-end systems. In 2020, the EU Commission launched their 'Digitalisation of Justice in the EU initiative' with the express aim of 'bringing the digitalisation of justice up to full speed.'[12] These digitisation efforts are rapidly increasing the volume, granularity and accessibility of data about civil justice systems and the people who access them. In doing so, digitisation is creating both the datasets and the infrastructure needed to support the deployment of computational technologies at scale. How can we ensure that these developments will meaningfully address the civil access to justice crisis? What research should be prioritised and what changes to policy and regulation are needed to ensure that an increased role for computational technologies in both justice systems, and across legal services, addresses, rather than exacerbates this crisis?

In this paper, I will argue that the potential for computational technologies to address the civil[13] access to justice crisis is undermined by: i.) an impoverished understanding of the nature of the crisis – at both a theoretical and empirical level ii.) misalignment between the values that are currently driving the turn to computational law and the goal of increasing rights realisation and accountability and iii.) the failure to address the ecosystem factors (access to data, access to funding and regulation) that would support the development of computational technologies in the interests of access to justice. I will conclude by suggesting some next steps for the field.

Defining 'access to justice' : understanding the crisis

The concept of access to justice has been described as 'inherently ambiguous'[14] and difficult to define.[15] As a consequence, access to justice has been described as: 'a principle (both) widely embraced and routinely violated'.[16] The lack of conceptual clarity on what access to justice is (and

[7] Women's Budget Group, 'Gender gaps in access to civil justice: A survey of support services in England and Wales' (2023) ⟨https://wbg.org.uk/analysis/reports/gender-gaps-in-access-to-civil-legal-justice/⟩.

[8] John Hyde, 'Labour pledges 'repair job' for justice – but no extra money' (*The Law Society Gazette*, 2023) ⟨https://www.lawgazette.co.uk/news/labour-pledges-repair-job-for-justice-but-no-extra-money/5117483.article⟩.

[9] Sir Geoffrey Vos, 'Law Society of Scotland: Law and Technology Conference' (2023) ⟨https://www.judiciary.uk/wp-content/uploads/2023/06/Law-Society-Scotland-Law-and-Tech-Conference-2023.pdf⟩.

[10] Sir Geoffrey Vos, 'Speech by the Master of the Rolls to the Bar Council of England and Wales' (2023) ⟨https://www.judiciary.uk/speech-by-the-master-of-the-rolls-to-the-bar-council-of-england-and-wales/⟩ paragraph 23.

[11] Theresa Villiers, MP HC Deb 7 November 2023, vol 749, col 64: '*My constituent Paul Shamplina, the founder of the solicitors firm Landlord Action, believes that delays are worse than he has experienced in his 33 years in the sector. Other constituents have told me about bailiff delays in removing tenants who have not paid rent for many months... The Minister for the courts – the Under-Secretary of State for Justice, my hon. Friend the Member for Finchley and Golders Green (Mike Freer) – assures me that the courts are working flat out, that 1,000 new judges have been recruited and that digitisation is under way. That is welcome, but we need to make progress to ensure that our courts are working as efficiently as possible.*'

[12] European Commission, 'Digitalisation of justice in the EU' (2020) ⟨https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12547-Digitalisation-of-justice-in-the-EU_en⟩.

[13] The focus of this position paper is on the access to justice crisis in access to civil justice – by which I mean access to rights, protections and fair treatment afforded by civil, rather than criminal law.

[14] *KA v London Borough of Croydon* [2017] EWHC 1723 (Admin).

[15] See also Rebecca L Sandefur, 'Access to what?' (2019) 148(1) Daedalus 49.

[16] Deborah L Rhode, 'Whatever happened to access to justice' (2008) 42 Loy. LAL Rev. 869.

is not) impedes attempts to understand the current crisis and design solutions to ameliorate it. However, recent scholarship, driven by the imperative to develop empirical standards for measuring the impact of court digitisation programmes[17] has identified an irreducible minimum definition of 'access to justice' derived from existing case law and international treaties and frameworks.[18] Under this definition, 'access to justice'[19] means that all individuals, and a full run of cases are, on an equal basis. able to:

1. Access the formal legal system (*i.e.* access to courts, tribunals, ombudsmen schemes and court annexed mediation)
2. Access a fair and effective hearing
3. Access a decision in accordance with law; and
4. Access the outcome of that decision (remedy)

Crucially, the components of this definition are interrelated, mutually re-enforcing and indivisible. For example, an observable increase in individuals accessing the formal legal system is, of itself, insufficient to justify claims that access to justice has improved, unless there has also been an increase in access to decisions in accordance with law and the outcomes of these decisions.

Access to the formal legal system

Existing case law establishes that access to the formal legal system must be practical and effective and not 'theoretical and illusory'[20] for the full run of both individuals and cases. For a formal legal system to be judged practically accessible- it is established that formal mechanisms must both exist and be accessible to all individuals within their jurisdiction (not just citizens).[21] Whilst the right of access to the formal legal system is not absolute (it can be limited for example by the imposition of reasonable time limits on bringing a claim, or a requirement to pay court fees) any administrative barriers must be proportionate and not affect people's right to access the formal legal system. The right of practical access can require the state to take proactive steps to support people to access the formal legal system, e.g. funding legal advice and representation. States can establish procedures to regulate eligibility for support, but these processes must not be arbitrary or disproportionate, or interfere with the essence of the right to access the formal legal system.

It is also established that access to the formal legal system has an attitudinal dimension and that changes to policies and processes for accessing the formal justice system must consider their likely impact on behaviour in the real world.[22] For example, implementing or increasing court fees, or making changes to systems and processes that result in changes to public trust and confidence that deter people from bringing claims, can undermine the right of access to justice.

Access to a fair and effective hearing

The existing case law on access to justice gives primacy to the notion of an individual being able to put his or her case effectively. When the issues involved in a case are too factually or legally complex for an individual to present their case effectively, the courts have recognised a requirement for representation and legal aid.[23] An inquisitorial process does not necessarily negate this requirement. The right to a fair and effective hearing also requires the state to take proactive steps to ensure 'equality of arms' between the parties to a case. This means that both parties need to have a reasonable opportunity to set out their legal case in conditions that do not unreasonably disadvantage one of the parties. It requires those in charge of the formal justice system to make adjustments to support effective partic-

[17] Nathalie Byrom, 'Digital Justice: HMCTS data strategy and delivering access to justice' (2019) ⟨https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835778/DigitalJusticeFINAL.PDF⟩.

[18] This definition incorporates international Human Rights Treaties and frameworks (including the ECHR framework and ICCPR), which also emphasise timeliness, and the duty on authorities not to take actions or make omissions which unjustifiably hinder access.

[19] For a detailed exposition of this definition please see Byrom (n 17).

[20] See: *R (Gudaniviciene & Ors) v Director of Legal Aid Casework & Lord Chancellor* [2014] EWCA Civ 1622, (2015) 1 WLR 2247, 46.

[21] *Children's Rights Alliance for England v Secretary of State for Justice* [2013] EWCA Civ 34, [2013] HRLR 17, 38.

[22] *R(Unison) v Lord Chancellor* [2017] UKSC 51, 96.

[23] *R(Howard League for Penal Reform and The Prisoner's Advice Service) v Lord Chancellor* [2017] EWCA Civ 244, 41.

ipation, e.g. access to interpreters for people who have English as a Foreign Language, or provide reasonable adjustments to enable people with a disability to participate. In order to make a decision that is based on the merits of the case, rather than any other factor (see the section 'The need for an explicit focus on rights realisation' below), an effective hearing requires both that; individuals are able to present the information necessary to enable a decision maker to make a determination based on applying the law to the facts of the case; and that the decision maker is able to comprehend this information.[24]

Access to a decision in accordance with law

Access to justice requires not just that individuals are able to access the formal justice system and secure a fair and effective hearing, but that determinations made in respect of their case are in accordance with existing law. There is an established constitutional right of access to the courts, not as an end in itself, but in order to determine disputes in accordance with the rights prescribed by the legislature.[25] The constitutional legitimacy of Courts is inextricably linked to their ability to demonstrate the correct application of the substantive law to the facts of individual cases.[26] In English law, as in other common law jurisdictions, access to a court for the determination of disputes has been understood to be fundamental to the maintenance of the Rule of Law. This right can be traced back to the Magna Carta and has found expression in the writings of jurists including Jeremy Bentham, Sir Edmund Coke and Sir William Blackstone. This approach has been confirmed in human rights case law under Article 6 of the European Convention on Human Rights.

Access to remedy

Having received a decision in accordance with substantive law, it is vital that parties are able to access the remedy prescribed by that decision. In *R(Unison) v Lord Chancellor* [2017] UKSC 51, 96 it was established that the right of access to justice can be violated if changes to the system render it 'futile or irrational to bring a claim'.[27] Failure to put in place mechanisms for effective enforcement of decisions, will naturally impact on calculations made by litigants when deciding whether it is rational or not to initiate a claim and can therefore undermine access to justice.

The impact of the failure to accurately define access to justice on the development of the field of computational law

The failure to define the right of access to justice in the terms outlined above, has several serious implications for the development of the field of computational law. Firstly, the failure to agree a definition of what access to justice is (and what it is not) has impacted the data that is collected and available to understand the crisis, and to design and evaluate solutions. This is critical for the development of the discipline. Secondly, the failure to advocate for a conception of access to justice that considers each of the elements as indivisible, has resulted in the piecemeal development of tools and products without considering their impact on the right as a whole. Thirdly, an insufficient focus on rights realisation (access to a decision in accordance with law, and access to the outcome of that decision) undermines the ability of the field to develop research, products and tools that effectively address the access to justice crisis. These issues are discussed further below.

Impact on data collection

The failure to define access to justice in the terms outlined above has serious implications for the data that is

[24] This issue has been raised in the context of video-hearings: *R (on the application of Kiarie) (Appellant) v Secretary of State for the Home Department (Respondent) R (on the application of Byndloss) (Appellant) v Secretary of State for the Home Department (Respondent)* [2017] UKSC 42, 67.
[25] Alan Bogg, 'The Common Law Constitution at Work: R(on the application of UNISON) v Lord Chancellor' (2018) 81(3) M.L.R., 509–538.
[26] William Twining, 'Alternative to What? Theories of Litigation, Procedure and Dispute Settlement in Anglo-American Jurisprudence: Some Neglected Classics' in *Dispute Resolution. Civil Justice and Its Alternatives* (3, The Modern Law Review 1993) vol 56, 380–392.
[27] *R(Unison) v Lord Chancellor* (n 22) 96.

collected to understand the crisis. In the UK data is not routinely collected to monitor access to justice at a system level. The case management systems used by the courts and tribunals render it impossible to follow the journey of individuals from claim to outcome.[28] In the absence of data to record who experiences problems, who enters the formal justice system, the outcomes they secure, and where and if they drop out, it is impossible to understand at a system level who gets access to justice, and who does not. The problems are most acute in the areas of the justice system that deal with the majority of cases and the most vulnerable litigants[29] – the family and county courts and tribunals. The absence of routinely collected data, highlighted during the pandemic,[30] limits attempts to design evidence informed solutions and evaluate their impact,which is of critical significance to the development of computational law in the interests of addressing the access to justice crisis.

Further gaps in the data that is collected to understand the access to justice crisis, relate to the attitudinal dimension of access to the formal legal system- e.g. the impact of changes to the system on the willingness and ability to bring claims. This has clear implications for the design and development of computational tools aimed at tackling the access to justice crisis. The absence of data to understand public attitudes towards the use of computational tools across both justice systems and legal services, impedes the ability of the field to design tools that meet people's needs and diminish barriers to access.

To begin to address this gap, in 2022, I commissioned nationally representative research to explore public attitudes to the computational use and reuse of data held in court records (e.g. judgments and decisions).[31] The research combined polling with public deliberation to gather information on public attitudes to the re-use of court data for a range of policy relevant use cases, including to design research and tools aimed at reducing court backlogs – a key barrier to accessing the formal justice system.

In general, and in common with other studies that have explored the public acceptability of third-party re-use of data held by government, the research has identified overwhelming public support for robust governance, increased transparency and the use of data for applications with proven public benefit. In relation to specific policy relevant use cases, the research has identified qualified public support for using data to address court backlogs. Just over half of the respondents polled (56%) felt comfortable with court data being used to improve the way that courts are run. Only ten percent of respondents felt uncomfortable with data being used in this way.[32] Participants in the deliberative exercise expressed strong concerns about the existing court case backlog, and qualified support for the use of data to address these issues:

[28] In 2020 the Chief Executive of the Family Justice Observatory, a research institute dedicated to understanding and improving the family justice system argued that the absence of data on the outcomes of decisions made in the family courts was akin to: 'surgeons, deciding never to find out of their operations went'

[29] In 2019 a report published by the Civil Justice Council highlighted the 'data desert' at the heart of the civil justice system, which stymied attempts to recommend effective approaches to supporting vulnerable users: Reported in Mondipa Fouzder, 'Data desert on vulnerable individuals in civil justice system' (*Law Society Gazette*, 2020) ⟨https://www.lawgazette.co.uk/news/data-desert-on-vulnerable-individuals-in-civil-justice-system/5103153.article⟩. Attempts to understand the experience of minoritised groups when navigating the justice system have been undermined by the failure to routinely collect data on the demographic characteristics of users and the outcomes they secure. The Race Disparity Unit, charged with measuring and monitoring racial disparity across the justice system, was only able to return ethnicity data on one tribunal as part of its justice system audit updated in 2023 – the data relied on was from 2007 and 2012. See: Race Disparity Unit, 'Employment Tribunals' (2023) ⟨https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/courts-sentencing-and-tribunals/employment-tribunal-claims/1.5/⟩.

[30] Throughout 2020 the government worked with senior judges to introduce a series of measures aimed at protecting tenants affected by COVID-19. Despite assuring the Housing, Communities and Local Government Select Committee that these measures were protecting renters. HMCTS and the Ministry of Justice collected next to no data to assess whether they were working as intended. Instead it was left to journalists from The Bureau of Investigative Journalism, to manually fill basic gaps, such as how many tenants actually attend hearings to contest their eviction – see Maeve McClenaghan and Charles Boutard, 'Opening the door on closed door evictions' (*The Bureau of Investigative Journalism*, 2021) ⟨https://www.thebureauinvestigates.com/blog/2021-12-09/opening-the-data-on-closed-door-evictions⟩.

[31] Jennifer Gisborne and others, 'Justice Data Matters: Building a public mandate for court data use' (*Justice Lab*, 2022) ⟨https://justicelab.org.uk/resource/justice-data-matters-building-a-public-mandate-for-court-data-use/⟩.

[32] ibid 18.

> '*Anything that brings court cases to the forefront and gets them through quickly has got to be better because a lot of them seem to be so long drawn-out*' – Workshop 2, Group 2[33]

However, this support was qualified with the caveat that the use of data to speed up processes should not diminish the quality of justice delivered or result in the over-automation of processes at the expense of those who are disadvantaged or vulnerable.[34] Research of this kind is vital to ensure that the development of the field of computational law succeeds in diminishing, rather than amplifying attitudinal barriers to accessing the justice system.

Piecemeal development of tools that have an ambiguous impact on the right of access to justice

The failure to adopt a conception of access to justice that considers each of the four elements of the right as indivisible, has led to the development of piecemeal solutions that do not address system level challenges. At present, the computationally driven tools and projects that are developed, tend to claim they improve access to justice by increasing the number of people who are able to access one particular aspect of the right, e.g. access to the formal legal system.[35] The success criteria adopted to demonstrate the efficacy of these tools too often fail to consider the impact of these initiatives on the right of access to justice as a whole. If computationally driven projects increase the number of individuals accessing the formal justice system, but fail to ensure a fair and effective hearing, a decision in accordance with substantive law, or the outcome of that decision, they have not increased access to justice. There is an urgent need for those who are developing computationally driven products and tools to move to evaluation criteria that reflect the definition of access to justice outlined above before they are judged to have improved access to justice.

The need for an explicit focus on rights realisation

To ensure that the field of computational law develops to address, rather than exacerbate, the access to justice crisis, there is a need for the field to develop an explicit focus on ensuring that research, projects and tools promote rights realisation (access to a decision in accordance with law, and access to remedy/effective enforcement). In the UK context, researchers have increasingly characterised the crisis in access to justice in relation to social rights (housing, and welfare) as a crisis of accountability- whereby individuals are increasingly unable to secure access to decisions in accordance with law and effective remedies for harms.[36] Empirical evidence to support this claim is provided by research published by the Resolution Foundation in 2020.[37] This study explored the efficacy of various measures to ensure that firms comply with the National Minimum Wage and found that of those individuals who successfully brought employment tribunal claims in 2013, only half were paid in full and one third received no money at all.[38] Awaab's case, as described above, further illustrates this point: Awaab's parents were able to access legal advice and enter the formal legal system, they were even able to secure a decision in their favour following the inspection that was conducted. The challenge came in compelling the landlord to act on the findings of the inspection and address the mould that would lead to Awaab's death. In light of these precedents, it is vital that the field of computational law maintains a laser focus on the potential or likely impact of new research, products and tools on the goals of rights realisation and accountability. The challenge of developing and maintaining this focus is exacerbated by

[33] Gisborne and others (n 31) 29.
[34] ibid 29.
[35] Either by helping people to identify when they are experiencing a legal problem and prompting them to seek advice (see for example the SPOT legal tool developed by academics at Stanford and Suffolk Law School) or supporting case listing to reduce backlogs
[36] Katie Boyle, 'The practitioner perspective on access to justice for social rights: Addressing the accountability Gap' (*Nuffield Foundation*, 2019) ⟨https://www.nuffieldfoundation.org/wp-content/uploads/2019/11/Final-report-The-practitioner-perspective-on-access-to-justice-for-social-rights-1.pdf⟩.
[37] Lindsay Judge and Anna Stansbury, 'Under the wage floor: Exploring firms' incentives to comply with the minimum wage' (*Resolution Foundation*, 2020) ⟨https://www.resolutionfoundation.org/app/uploads/2020/01/Under-the-wage-floor.pdf⟩.
[38] ibid.

the values that have driven interest in the field, and the objectives of policy makers in supporting the widespread adoption of computationally driven tools and products, which do not always align with the goals of rights realisation and accountability.

Values driving the development of the field of computational law are imperfectly aligned with the goal of increasing access to justice

Researchers have argued that the law and technology movement has, to date, been dominated both by an 'efficiency' paradigm and by the idea that the goal of computationally driven technologies should be to promote parties to: 'reach an acceptable solution to a dispute, without necessarily ensuring or promoting justice in a wider sense.'[39] In the context of widespread concern about case backlogs, and restrictions on funding for public justice systems, the goal of encouraging parties to resolve disputes without recourse to the formal justice system in 'high volume, low value' cases has been embraced by policy makers and even endorsed by members of the senior judiciary. The Master of the Rolls, the most senior civil judge in England and Wales and a powerful advocate for the use of computational technology both in legal services and across the justice system, has written that: '*For small claims, the parties often want a swift, cost-free resolution, without much caring whether the outcome is robust and dependable. In large disputes and some other types of claim, the parameters will be different and the parties may be prepared to invest time and money in achieving a more just and perhaps objectively correct solution*'.[40] The objective of encouraging earlier settlement of disputes has also driven interest in case outcome predictive technologies, which are already embraced by insurers as a tool to promote earlier settlement of claims.[41] Whilst the goals of reducing the cost of the justice system and encouraging earlier settlement may desirable, they are, at present, imperfectly aligned with the goal of ensuring that resolution in accordance with existing law is reached, and that individuals are able to access their entitlements. Addressing the dissonance between the values that are driving both interest in and funding for the development of computational technologies, and those that underlie the right of access to justice and the maintenance of the rule of law, is vital to ensure that the field develops to address, rather than exacerbate the current crisis.

The imperative to address ecosystem factors

In addition to the above, ensuring that the field of computational law develops to address the existing crisis in access to justice, requires policymakers to attend to the ecosystem within which these tools are being developed. Examination of the development of case outcome predictive tools – 'statistical or machine learning methods used to forecast the outcome of a civil litigation event, claim or case'[42] – is instructive in illustrating the access to justice challenges created by the failure to attend to these factors. Even assuming the various issues around accuracy and leakage[43] reported in relation to these tools can be addressed, the failure to act to address inequalities in access to data, funding and gaps in existing regulation, undermine the development of the field in the interests of access to justice.

[39] Ayelet Sela, 'The effect of online technologies on dispute resolution system design: Antecedents, current trends, and future directions' (2017) 21 Lewis & Clark L. Rev. 635.

[40] Sir Geoffrey Vos, 'The Future for Dispute Resolution: Horizon Scanning, The Society of Computers and Law. Sir Brian Neill Lecture 2022' (2022) ⟨https://www.judiciary.uk/wp-content/uploads/2022/03/MR-to-SCL-Sir-Brain-Neill-Lecture-2022-The-Future-for-Dispute-Resolution-Horizon-Scannings-.pdf⟩.

[41] See for example, Sprout AI.

[42] Charlotte Alexander, 'Litigation Outcome Prediction, Access to Justice, and Legal Endogeneity' in David Engstrom (ed), *Legal Tech and the Future of Civil Justice* (Cambridge University Press 2023).

[43] Masha Medvedeva, Martijn Wieling, and Michel Vols, 'Rethinking the field of automatic prediction of court decisions' (2023) 31(1) Artificial Intelligence and Law 195, 2.

Unequal access to data

As noted above in the section 'Impact on data collection', in England and Wales, there is limited publicly available data on civil litigation. Judgments in the county courts and decisions from the employment tribunal are not routinely published.[44] The Registry Trust, the body responsible for maintaining the official statutory Register of Judgments, Orders and Fines is prohibited by law from publishing the details of claimants.[45] Even in the higher courts, the volume of judgments available varies considerably. A study in 2022 found that there are twice as many judicial review judgments available on Justis, a for-profit publisher, then there are available via the British Legal Information Institute.[46] As serious is the absence of data on the number and characteristics of cases and claims that settle before they reach court. In England and Wales, most cases in the civil justice system settle pre-trial- research published in 2019 found that across the years 2000-2018, on average only 3% of cases issued went to trial.[47] Where data at the scale needed to deploy case outcome predictive tools does exist, it is held by repeat players (such as insurance companies) and large law firms, who record their own data on cases and outcomes and legal publishers (Lexis Nexis, Thomson Reuters and Justis) who invest heavily in acquiring judgments, decisions and transcripts from the courts.

Inequalities in access to data has two important implications for the development of case outcome predictive tools. Firstly and obviously, the absence of agreed, authoritative, public data on the outcomes of civil cases across England and Wales will necessarily undermine the accuracy of the output of these tools. Secondly, unequal access to data means that the tools that are deployed are likely to be developed by and serve the interests of repeat players (e.g. insurance companies and law firms who either have access to their own data on which to build tools or who can afford to pay for the tools to be developed by private publishers). Unless disparities in access to data are urgently addressed, there is a danger that the development of case outcome predictive tools, and other computationally driven products that rely on access to large data sets, serve only to exacerbate existing inequalities of arms between well-resourced parties and everyone else.

Unequal access to funding

Asymmetries in access to funding for the development of computationally driven tools are likely to have similarly serious negative consequences for access to justice. Proponents of case outcome predictive tools have argued that these products could be used to scale and democratise access to the relational expertise currently provided by lawyers. However, researchers have found that those law firms that provide services to individuals and small businesses, who disproportionately bear the consequences of the access to justice crisis, are the least able to invest in the automation needed to build and deploy these tools.[48] In England and Wales, much of the investment in legal technology comes from venture capital and angel investment. Researchers Armour and Sako analysed investment in legal tech start-ups in 2021. They found that start-ups offering services in 'Big Law' secured nearly four times the amount of angel and venture capital investment as their counterparts operating in the People Law space ($175m USD versus $45m USD). Whilst Research Councils have invested funding in the development of research and innovation in artificial intelligence within accountancy, insurance and

[44] Michel Vols, 'European law and evictions: property, proportionality and vulnerable people' (2019) 27(4) European Review of Private Law, 719–752.

[45] Mick McAteer, 'Including claimant data on the register of county court judgments – a new year priority' (*Registry Trust*, 2024) ⟨https://registry-trust.org.uk/blog/including-claimant-data-on-the-register-of-county-court-judgments-ccjs-a-new-year-priority/⟩.

[46] Natalie Byrom, 'AI risks deepening unequal access to legal information' (*Financial Times*, 2023) ⟨https://www.ft.com/content/2aba82c0-a24b-4b5f-82d9-eed72d2b1011⟩.

[47] Grosvenor Law, 'How many civil cases actually go to trial?' (2019) ⟨https://www.grosvenorlaw.com/2019/11/14/how-many-civil-cases-actually-go-to-trial⟩.

[48] John Armour and Mari Sako, 'Lawtech: Leveling the Playing Field in Legal Services?' in David Engstrom (ed), *Legal Tech and the Future of Civil Justice* (Cambridge University Press 2023).

[49] See IK Research and Innovation, 'Next Generation Services Challenge fund provided by Innovate UK' (2022) ⟨https://www.ukri.org/what-we-do/browse-our-areas-of-investment-and-support/next-generation-services/⟩.

[50] Artificial Lawyer, 'The full list – Which law firms and tech companies won innovate UK funding?' (2019) ⟨https://www.artificiallawyer.com/2019/02/18/the-full-list-which-law-firms-tech-co-s-won-innovate-uk-funding/⟩.

legal services,[49] only 2.9% of the £20m[50] funding available was awarded to research and innovation in the areas of law that were formally funded by legal aid.

Regulatory gaps

In England and Wales, the only existing regulatory frameworks covering the development and deployment of case outcome predictive tools are the UK GDPR and consumer protection law. The majority of these tools are not covered by the legal services regulators, whose regulatory objectives include the promotion of access to justice, the rule of law and the protection of consumers, as the services they provide do not constitute a reserved activity under the 2007 Act.

The fact that these tools are not subject to regulation by legal regulators creates significant risk for consumers, as consumer protection and data protection law does not effectively respond to the source or the nature of harm. The way case outcome predictive tools are marketed means that products are not covered by UK GDPR restrictions on automated decision and profiling - reducing protections for consumers. Existing transparency requirements are inadequate, and the regulators are under-resourced to provide ex-ante protection. There is an absence of both accessible redress mechanisms and adequate forms of redress under existing legal and policy frameworks. In addition, international standards proposed or applied to the use of tools within the justice system[51] are not being applied when these tools are developed or deployed in the context of legal service delivery, despite the commensurate potential for harm. There is an urgent need to address these regulatory deficiencies.

Conclusion and next steps

To ensure that the field of computational law develops to address the access to justice crisis, there is an urgent need for the field to cohere around a definition of access to justice that maps to the existing legal standard outlined in this paper. Primacy must be given to developing research, products and tools that promote equality of arms and support rights realisation and accountability. Empirical measures should be adopted to assess the impact of these tools on the right of access to justice in the real world, alongside other factors. Addressing the access to justice crisis may mean challenging the dominant efficiency paradigm where it conflicts with the goal of ensuring that all people, and the full run of cases are able to secure access to justice.

The views and perspectives of the community of researchers and technologists specialising in computational techniques and data driven technologies are increasingly sought by policy makers. Two weeks ago, the UK Prime Minister Rishi Sunak praised legal tech company Robin AI for 'revolutionising the legal profession' in the preface to a safety summit whose invitee list was dominated by technology companies at the expense of members of UK civil society and representatives of marginalised groups. In this context, those working in the field of computational law have an increasingly important role to play in advocating to address gaps in evaluation, access to data, funding, public participation and regulation, and highlighting the risks, as well as the opportunities created by an expanded role for computational law.

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[51] e.g. by judges, administrators and law enforcement- see the EU AI Act, or The White House Executive Order on the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence

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