

Digital inclusion by design

Looking at inclusive design of digital products, services and platforms through a legal lens



What is digital inclusion?

Digital inclusion is needed to address digital poverty

Digital poverty means:

“The inability to interact with the online world fully, when where and how an individual needs to.”

The Digital Poverty Alliance

What is digital inclusion by design?

“Inclusive design is a human-centred design methodology that learns from diversity and uses exclusion as opportunities for innovation. We can apply this mindset to reframe the obstacles that prevent the offline population from going online into opportunities to innovate more inclusive and accessible digital products and services.”

How inclusive design can bridge the great digital divide, Capgemini, October 2020

Digital poverty drivers:

- No access to WiFi or another digital network
- No access to a connected device
- Cost of living crisis
- Insufficient digital skills
- Particular vulnerabilities

Digital poverty in numbers:

- 14 million people (27%) of the UK have very low digital capability
- 11.8 million (36%) of the UK workforce lack essential digital skills for work
- GOV.UK webpages are written for a reading age of 9

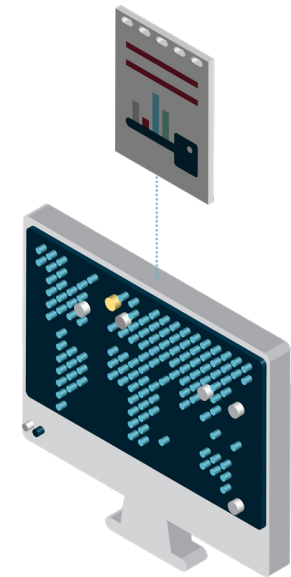
Sources: UK Consumer Digital Index, Lloyds Banking Group and GOV.UK



The legal lens

Legal, regulatory and wider considerations:

- **Non-discrimination** – the Equality Act 2010 is the cornerstone of UK legislation that prohibits discrimination against people with certain specified protected characteristics. Age and disability are the most likely protected characteristics to be engaged in the context of digital exclusion. For some protected characteristics, reasonable adjustments are required to ensure the risk of discrimination is addressed.
- **Vulnerable consumers** – UK consumer law protects vulnerable consumers, who are disadvantaged for one reason or another. Vulnerability is a looser concept than “protected characteristics”. In addition to permanent characteristics such as age, it might also include vulnerability due to socio-demographic characteristics, behavioural characteristics, personal situation, or market environment.
- **Accessible terms** – consumer law requires that B2C contract terms are plain and intelligible, and not unfair. Terms must be drawn up in good faith and must not create a significant imbalance between the parties to the detriment of the consumer.
- **Unfair commercial practices** – consumers are protected against unfair commercial practices including misleading or aggressive practices. Where a service, product or communication is directed at a vulnerable group, foreseeable vulnerabilities should be taken into account
- **Data protection laws** – where a contract involves the processing of personal data on the basis of consent, that consent must be given freely, on an informed and unambiguous basis. Clarity of messaging is important in this context. Ensuring that data privacy terms are in plain and simple language is part of meeting these standards.
- **Sectoral regulation** – sectoral regulation may add additional requirements in relation to dealing with consumers, such as the consumer duty in financial services regulation and licence obligations for energy suppliers concerning fair treatment of customers.



The legal lens

Facilitation through tech infrastructure and supplier arrangements:

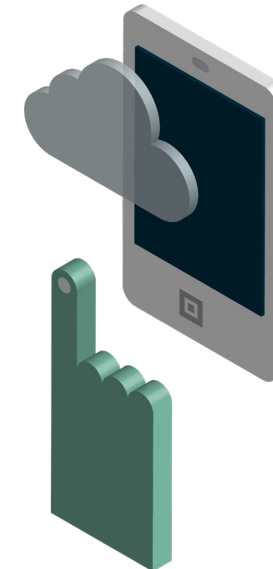
- **Inclusivity for the consumer** – optimising digital inclusivity for the end consumer may mean making changes in the way you contract with suppliers for the digital products or services in question. Do the terms of your contracts with upstream suppliers of digital infrastructure, software or other services encourage and promote digital inclusivity for the end consumer? This may need a specific assessment of where the end offer could be made more inclusive and what the source is of barriers to achieving that.
- **Accessibility of online content** – arrangements with a website or mobile app designer, for example, should ensure that the website or app to be created will meet accessibility requirements for disabled users. There may be a commercial choice to be made over whether they should be built to the basic standard needed for compliance, or whether an enhanced standard is desired.
- **Procurement terms** – ensuring digital inclusivity for the end consumer can be reinforced by working this objective into procurement terms. Tender processes can include specific questions about how the supplier's products or services address this, with points being awarded in tender scoring structures for higher digital inclusivity integrated into a supplier's bid. Contract terms can reinforce expectations and ensure ongoing consideration of this issue. Where intended standards around digital inclusion are above the legal minimum, this needs to be put on a contractual footing.
- **Supply chain KPIs** – performance measures can be included in commercial arrangements to ensure ongoing delivery of what is required for digital inclusion. This might include, for example, ensuring periodic review of best practice for accessibility, and upgrades to maintain that standard.



The legal lens

Reasonable adjustments and accommodation:

- **Protected characteristics** – interactions with customers that have certain protected characteristics need to incorporate reasonable adjustments to ensure that they are not discriminated against. This applies to customers with a disability. The characteristic of age does not trigger the reasonable adjustments requirement, but care is needed where the age of the customer may impact on how products or services are supplied to ensure there is no direct or indirect discrimination.
- **Accommodation of wider vulnerabilities** – consumers may also have vulnerabilities that are wider than the protected characteristics. Financial vulnerability, limited literacy, or a low level of digital skills can significantly impact on a consumer's ability to access digital products and services. Vulnerabilities may result in not having a smart phone to access digital services from, not being able to afford a broadband WiFi connection, or not being confident enough to trust using an online service.
- **Don't close out part of the customer base** – the assumption that an online offering is open to all may mean overlooking a significant proportion of the potential customer base. Consider how this might be addressed:
 - **Optimise accessibility** – make sure that products, services and platforms are as accessible as possible, and are built to industry standards that will enable compatibility and interoperability with, for example, software that a disabled person might use to access online content. Consider adding an option to hear text rather than reading it.
 - **Offer alternatives** – can customer interaction also take place offline? This might be in a retail space, over the phone, or by appointment.



The legal lens

“Plain and intelligible” consumer interactions:

- **“Plain and intelligible”** to the consumer – consumer law requires contract terms to be “plain and intelligible” as part of the overarching requirement of fairness. This is judged by reference to the consumers to whom the terms are addressed.
- **Consumer literacy** – make sure legal documents are written in a way that is as clear as possible for those who need to understand them. Familiarity with certain terminology within the business shouldn’t lead to an assumption that the same is true of customers.
- **Making terms easy to understand** – the following can help to ensure plain and intelligible terms:
 - Use simple words, short sentences, and add boxed-out explanations of concepts that might not be familiar to the reader.
 - Use layout, formatting and font size to make it easier to understand and navigate through the text. Consider visual signposting and graphics to summarise key terms.
 - Consider “layering” different levels of complexity or detail so that the consumer can click through to the level of detail that suits them.
 - Consider using smart tags and QR codes to link to information in video or picture format.
 - Consider market-testing the intelligibility of terms and conditions in the same way that products and services would be tested.
- These considerations apply to all consumer-facing pre-contractual documentation, including privacy notices, and customer service documents such as returns policies, as well as contractual terms and conditions of sale.



The legal lens

Regulators' enforcement priorities and risk:

- **Digitalisation versus digital exclusion** – As the world becomes ever more digital, awareness is growing of the need to be conscious of who might be excluded by a shift to digital products, services and methods of delivery, and of making sure that is avoided. Lobbying around these issues is getting stronger, particularly with vulnerabilities being increased first by the global pandemic and then by the cost-of-living crisis.
- **Regulatory objectives** – consumer protection is a priority for many regulators, being part of the public interest considerations that they are charged to protect.
- **Consumer law enforcement** – UK consumer law is about to be reformed, with enhanced enforcement powers including much greater power to impose financial sanctions. Regulators have become particularly alert to pressure selling and to the risks of dark patterns in consumer interactions.
- **Risks of getting caught?** – it is important to consider the enforcement priorities of regulators relevant to your business in relation to consumer protection and digital inclusion. The risk of complaints from consumers, consumer organisations or other lobbyists should also be part of this assessment.
- **Not just about risk** – compliance and enforcement risk is not the only consideration in deciding whether to worry about digital inclusion. There are much wider positive benefits flowing from investing in this issue – see [Why worry about digital inclusion?](#)



Why worry about digital inclusion?

- Building consumer trust
- Enhancing reputation
- Delivering on CSR and ESG – creating social value through equal access to opportunities and resources
- Activating an overlooked segment of your addressable market
- Ensuring efficiency of interactions
- Developing an enhanced understanding of your customer base
- Embracing opportunities for workforce upskilling
- Future-proofing your business

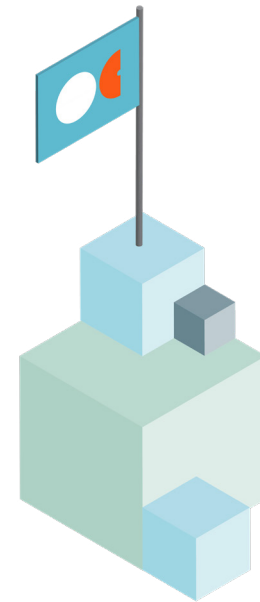


How we can help

Our experience and expertise around digital regulation, consumer law, procurement and supply chain contracting, discrimination laws and other areas makes us perfectly placed to support your business in the legal aspects of addressing digital inclusion.

We are founders of the **Lawyers for Digital Inclusion** action group which brings together lawyers from various leading and fast-growth businesses to focus on the significant opportunities for private practice and in-house lawyers to make a meaningful impact in relation to digital inclusion.

If you would like to discuss any of these issues further, are interested in our **Lawyers for Digital Inclusion** action group, or would like to speak to us about any aspect of Digital Inclusion, please do not hesitate to contact any of our **Digital Inclusion team** or your usual Osborne Clarke contact.



Transformation

We immerse ourselves in the global issues that are transforming the landscape of how we live, work and do business. Focusing on the transformation drivers that will have the biggest impact on our clients, we use this insight to help you thrive, ensure agility and strengthen the resilience of your business. We are at your side, working closely with you to bring value, share new products and apply digital solutions. Together we'll be ready for what's next.

osborneclarke.com/transformation

Please **contact us** if you would like to discuss how transformation applies your business – and how we can help.

Decarbonisation

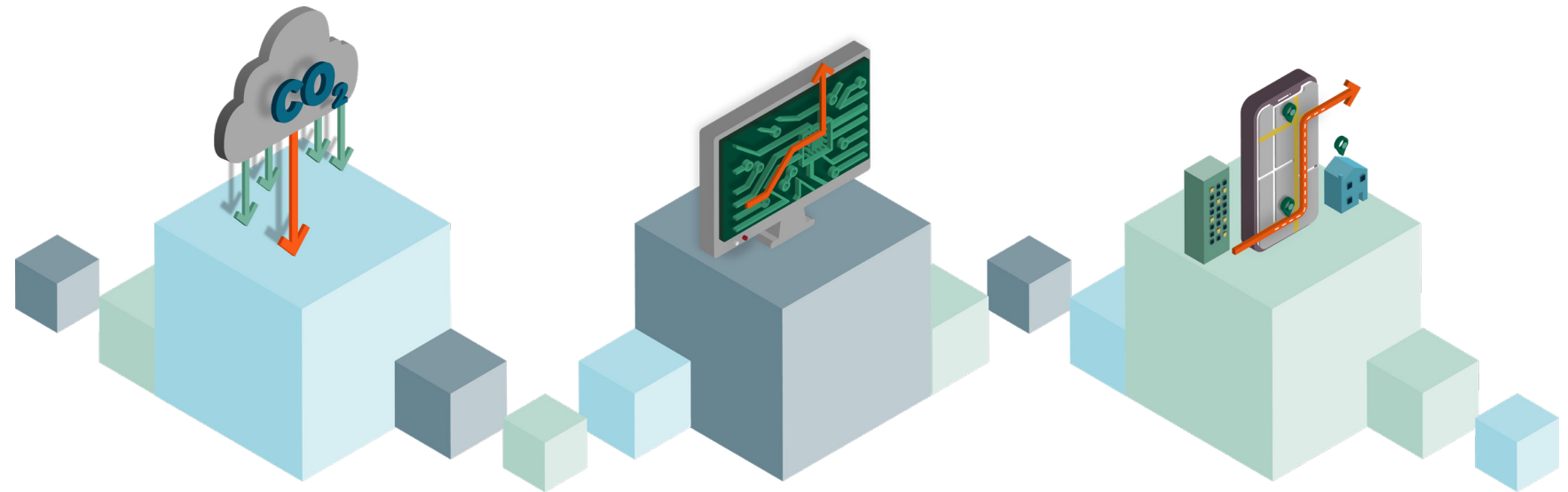
Carbon neutral imperatives are increasingly at the heart of business strategies. This will often require a radical rethink along your entire supply chain, from initial use of carbon all the way through to customer delivery. We will bring our expertise and track record to support you with every step along your decarbonisation journey.

Digitalisation

Businesses are fast being re-shaped to fully exploit the possibilities of digital technology, but timely delivery is vital. Our lawyers are experts in advising on delivering a digitalisation strategy: from procuring digital infrastructure and technology to implementing a data strategy, or responding to a cybersecurity crisis. We support you as you expand or transform your business through technology.

Urban Dynamics

The vast majority of businesses operate in and benefit from the urban environment. The extent to which you understand and engage with urban dynamics will have a significant impact on your continued success. We understand that the way in which cities are designed, built and managed offers extraordinary opportunities. Our legal advice is focused on helping you to realise these opportunities.



Find out more

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