



Response to consultation on proposals on the provision of court and tribunal estate in England and Wales

Introduction

The Civil Justice Council (CJC) welcomes the opportunity to respond to this consultation. It will perhaps not come as a surprise that many of the points made here will mirror those made by the CJC, and some of the general points made by the senior judiciary, as part of the previous consultation in 2010. While some of the points made are familiar, it is important to note from the start, however, that there have been important developments in the civil justice landscape during the past five years, so that this consultation response is not a simple recitation of points previously made, but very much made in the context of where we stand now.

The single biggest of those developments is of course the establishment of the multi-disciplinary HMCTS reform project and its three strands of work in courts estate, the IT provision in courts and the way in which cases are handled, managed and heard. The senior judiciary is closely involved in and supportive of that work and concur with its aim of enabling efficiency in the court system while ensuring access to justice. And Lord Justice Briggs' review, looking at the structure within which civil justice is delivered and how the fruits of that reform programme may best be integrated into the present structure of the civil courts, is also considering more effective ways of employing judicial time and resource in delivering justice.

The scale of the cuts proposed in the paper is, however large – the 19 county courts and nine combined courts included equate to the loss of 139 court rooms – that is, 17% of the total, or almost a fifth of civil courtrooms in England and Wales. The CJC wished to emphasise the importance of basing decisions on the closure of courts on accurate data on utilisation and was surprised to read of a 53% utilisation rate in county courts. Though anecdotal, practitioner members have described their common experience of their case being stood down because of an overbooking of courtrooms. Reports in the press also point to a higher rate of usage in some of the courts included in the consultation package – most notably Chichester Combined Court, which had a 78% usage rate during 2014/15¹.

¹ www.lawgazette.co.uk/practice/fight-to-save-englands-busiest-doomed-court/5050958.article

Question 1: Do you agree with the proposals? What overall comments would you like to make on the proposals?

The CJC is broadly supportive of the proposals contained in this paper as clearly falling within the parameters of the HMCTS reform programme and its aims. A subsidiary aim of this part of that work must continue to be the provision of justice, and in particular access to local justice. With that in mind, local knowledge is paramount, and the CJC would urge the government to pay particular heed to the responses from local communities and their representatives and the detailed cases that they may make for the retention of a particular court building. This may be due to a combination of geographic or public transport factors, or utilisation rates or capacity at neighbouring courts. The CJC acknowledges however the continuing need for efficiency in the provision of justice, both in terms of speed but also in terms of the effective and efficient administration of the courts and in the utilisation of the court estate. The modern court estate must not only be aligned to local needs, however, but also be based on the needs of court users today, whether that takes the form of a court building with investment in up-to-date technology or virtual courts.

The CJC's support for the digitisation of courts has been well-publicised – in particular in relation to the publication of its report on *Online dispute resolution for lower value civil claims* earlier this year. It is true to say that accessibility is an issue with a wider meaning than simply access to physical buildings, and many aspects of resolving people's problems and their disputes can be resolved online – one obvious example being the submission of court forms online at a time that suits the individual (where a parallel might be drawn with tax returns). Nonetheless, there is a balance to strike, and digital access offers access to many but not all in society.

Question 2. Will the proposals for the provision of court and tribunal services have a direct impact on you? If yes, please provide further details.

These proposals will have a direct impact on the work programme of the CJC, as it continues to fulfil its function under the Civil Procedure Act of keeping an overview of the civil justice system - and on its members in their different roles as judges, lawyers and advisors within that system. More importantly, It will have a direct impact on users of the system, whose interest the CJC serves.

Question 3: Are there other particular impacts of the proposals that HM Courts & Tribunals Service should take into account when making a decision? Please provide details.

Digitisation of courts and ODR

As touched on in the introduction, while some of the CJC's thoughts in this consultation response reflect comments made during previous court closures, there have been considerable strides within the court system during the past five years towards a more

modern approach to the ways in which cases are heard and managed – and ways in which this might be digitised and modernised further in the future. The CJC has welcomed the Government’s positive response to the report of its own advisory group under the chairmanship of Professor Richard Susskind, *Online dispute resolution for low value claims*, and wishes simply to reiterate here its vision of a three tier system to resolve the problems of individuals and small and medium sized businesses efficiently and fairly. The CJC continues to recommend the inclusion of the online court system (HMOC) proposed and outlined in that report into the re-structured court and tribunal system, and would highlight in particular:

1. The emphasis on helping users to understand the options and remedies available to them in resolving their grievance, thus taking weight off the court system.
2. The recommendation that a new internet based court system be established with the purpose of resolving disputes online – rather than simply further suggestions for ways in which technology might be used within the existing court system
3. The group’s belief that the system proposed might also be extended to family disputes and other appropriate cases coming currently before tribunals.
4. Finally, the willingness of the ODR advisory group to collaborate with the Government in further exploring, testing and piloting ODR.

Travel times

A continuing theme in any set of proposals for court closures remains the importance of physical access to court buildings by its users. While the Minister refers in his introduction to his belief that the proposed closures leave 95% of the population able to reach a court building within an hour, the CJC remains concerned about accessibility for those without the use of a car. The Office of National Statistics shows that in 2001, 25% of households did not have access to a car in England and Wales.² A more detailed breakdown of that figure shows that those with protected characteristics under the Equality Act 2010 are disproportionately represented in that figure. For example, two fifths of women did not have access to a car when that research was done, as opposed to a quarter of men, and car ownership is lower among those with disabilities. Inequalities extend beyond the groups of disadvantaged included in the 2010 Act, however, with over half of low income households not owning a car and single households – including those with and without children – also less likely than average to own one.³

² www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/stb-2011-census-key-statistics-for-england-and-wales.html#tab---Car-or-van-availability

³ <http://poverty.org.uk/75/index.shtml>

On access to public transport, special concern must attach to areas with poor transport infrastructure and public transport links, often rural and less populated areas. Local knowledge of transport links and the geography of individual counties is, again, key and the CJC would urge the Government to pay careful attention to the responses and understanding of local communities and their representatives, including in some instances the local press. For example, a BBC report⁴ noted that the closure of Holyhead Magistrates Court and Llangefni Civil and Family Court would mean that few litigants in parts of North Wales such as Holyhead and Dolgellau would be able to reach the court within 60 minutes using public transport. In another example, the North West Evening Mail expressed concern that the closure of the court in Kendal would mean court users travelling instead to Carlisle or Barrow for appearances, with limited train and bus services between Kendal and Barrow. (It has also been observed that these closures would leave the second largest county in the country with only two courts.⁵)

The CJC has undertaken a brief search of other local news outlets, and pulled together a selection of those media reports in an Annex to this reply, detailing some of the other reports from national and regional newspapers and reporting outlets around England and Wales on the likely impact of particular court closures on local justice. While it does not pretend to be comprehensive, we hope that it does provide a series of snapshots of the sort of regional concerns that the Government may wish to take into account when making decisions on individual courts.

It should further be noted that any increase in travel times, as well as deterring those considering bringing a claim or defending one, is also likely to increase the costs of litigation, both in travel expenses, and also in the time spent by the litigant, their lawyers and witnesses in the case in reaching the nearest hearing centre. Concern has also been expressed about the impact on public authorities as officials make longer journeys to give evidence in court, with a consequent increase in the burden on, among others, police services.⁶

An attendant concern – though one with less of an impact on civil cases than those in the criminal and family arenas – are the security issues raised when the likelihood is increased of parties, witnesses and defendants using the same public transport to travel to a more far-flung court.

Jurisdictional needs

⁴ <http://www.bbc.co.uk/news/uk-wales-33960249>

⁵ www.thewestmorlandgazette.co.uk/news/13714216.KEEP_JUSTICE_LOCAL__Kendal_Town_Council_opposes_court_closure_plans/

⁶ www.spaldingtoday.co.uk/news/latest-news/court-closures-taxpayers-to-bear-brunt-1-6952551

The CJC also wishes to repeat the need to take into account the particular requirements of some jurisdictions. The Government should not lose sight of the increases in some areas of work, and sensitivities involved in some areas of law. For example, no impediment should be put in the way of domestic violence cases, and cases involving children and criminal cases should be kept separate as much as possible. The work of Lord Justice Briggs in reviewing the boundaries between civil and family courts and tribunals will be of relevance here.

Concerns may also relate to the layout of other civic buildings as courts; while it is eminently sensible for many civil and tribunal cases to be heard in other easily-reached public buildings, only court buildings designed and built for the purpose should be employed for certain types of case – for example, protection from harassment orders or where parties have been or are feared to be violent or may be subject to contempt committals. There are other areas more likely to involve vulnerable clients, already nervous about attending court and stressed even more by travelling further.

Investment

The CJC endorses the Government's expressed aim (on page 11 of the paper) to '[f]ocus our investment on improving the estate we need for the future', and particularly welcomes the Government's intention to reinvest capital receipts from the sale of any surplus assets as part of the funding for the reform programme'.

Investment in remaining court buildings is of central importance, to make improvements to those already in need of upgrading and repair, and to equip them for an increase in demand. 'Modern communication methods' do depend on robust IT systems and the necessary amount of IT support. They also depend on the availability of a good quality broadband service – something that will be of particular concern in rural areas, such as Suffolk.⁷

Question 4. Our assessment of the likely impacts and supporting analysis is set out in the Impact Assessment accompanying this consultation. Do you have any comments on the evidence used or conclusions reached? Please provide any additional evidence that you believe could be helpful.

The CJC notes the contents of the impact assessment included with this consultation, and would wish to emphasise the importance of the mitigations listed in paragraph 106 et seq. In addition to the broad points made in the earlier parts of this response - in particular in its response to question 3 - the CJC would highlight the following paragraphs.

- On travel time costs (para 40), it should be noted that lawyers' charges will also increase as a result of longer journey times.

⁷www.edp24.co.uk/news/politics/mp_fears_suffolk_court_closures_will_hit_access_to_local_justice_1_4236484

- At para 49, the CJC notes that the assessments have been made on the basis of no changes in court fees, which appears unrealistic given the recent successive increases.
- As acknowledged in paragraph 83, while some groups of people with protected characteristics 'are over-represented by the proposals', it should be borne in mind that other groups of disadvantaged people, e.g. those households with low incomes, are also disproportionately affected.

Question 5. Are there alternatives to travelling to a physical building that would be a benefit to some users? These could include using technology to engage remotely or the use of other, civic or public buildings for hearings as demand requires. Please explain your answer, with specific examples and evidence of the potential demand for the service where possible.

Here again, the CJC would simply refer the Government to the contents of its report on the *Online resolution of low value civil disputes*, and in particular the conclusions summarised on pages 2 -3 above. However, the information resources and other support services require adequate investment – providing a computer terminal will not help many court users on its own.

Question 6. Please provide any additional comments that you have.

Members of the CJC who are regular users of the court system wished to note their concerns about a reduction in the quality of court administration over the past two years. Examples given of problems encountered with increasing frequency are lost papers, delay, increased unexpected transfer between courts, shorter time slots and lack of personal access for assistance. Concern has been expressed that this trend might be compounded, rather than reduced, with further court closures unless systems are put in place to mitigate the increase in workload.

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