

**THE RIGHT HONOURABLE LORD JUSTICE FULFORD**  
THE INVESTIGATORY POWERS COMMISSIONER  
JUDGE IN CHARGE OF REFORM

28 July 2017

Dear All,

**Flexible Operating Hours Pilots**

In my capacity as the Judge in Charge of Reform, and in light of public comments – particularly from members of the legal profession – I thought it would be helpful to attempt to demystify the proposed Flexible Operating Hours Pilots. I regret the extent of the widely-broadcast misunderstandings and ill-informed comments from a range of sources.

The Judicial Executive Board has discussed the proposed pilots on a number of occasions. It is vital that we improve the use of the courts and tribunals' estate. We already struggle to maintain our buildings and it is hard to justify spending scarce funds on courts and tribunals that are not adequately utilised. We must use our assets to the greatest possible (but always sensible) extent, without asking anyone to work longer hours than at present.

How do we do this? One critical way is to try out these ideas, and to pilot different operating models, thereby enabling us to test our ability to increase the number of daily court sessions in particular court and tribunal buildings. But let me be clear from the outset, and forgive the early repetition: this is not a disguised attempt to persuade, or force, judges, court staff, legal professionals and others to spend more time at court than they do at present. We will test splitting court sessions in such a way as to enable a longer court day, populated by different people.

By way of example, at Blackfriars we will run a Crown Court list in the morning and a magistrates list in the afternoon/early evening, and vice versa. In Manchester and Brentford, in the Civil and Family Court, we will test adding either an early or a late slot onto the current court day that conveniently enables us to deal with particular kinds of work which lend themselves to a shorter, more flexible slot. None of the proposed six pilots involve tribunals work, because a tribunal pilot ran in Manchester earlier this year in the Immigration and Asylum jurisdiction, and we await its evaluation.

Therefore, the pilots will enable us to establish whether we can use our court estate more effectively, utilising a more flexible approach to the way court and tribunal buildings are used, in a way that I believe reflects the expectations the general populace have of modern public services.

Legal professionals have raised a number of concerns about flexible operating hours, and most particularly it has been suggested there will be an adverse impact on diversity in the legal professions and the judiciary. Concerns have also been expressed about the practicalities as to how greater flexibility in operating hours will work in practice.

We have listened to these concerns, but the whole point of running the six comprehensive, detailed pilots is to test fully all the concerns that have been expressed. We approach this project with an entirely open mind as to whether increased flexible operating hours is a viable goal, and whether it should form part of the ongoing transformation of the justice system. If it works, it works; if it doesn't, it doesn't. I am absolutely clear that a significant, detrimental impact on diversity in the professions or the judiciary is not a price the judges are willing to pay for more flexible operating hours. These pilots will simply help us understand if this would be the case.

Those of us who have been involved with the justice system for a few decades will recall that there have been previous initiatives over the years in which we have tried flexible court sittings; these were launched to a fanfare but then faded away with unclear outcomes. Why should it be any different this time? We are operating in a radically altered world, in which digital and IT changes are transforming the opportunities for moving cases readily between judges, advocates and venues far more readily than in yesteryear, and there is a marked improvement in our preparedness to operate outside jurisdictional silos. We will try out a far wider range of options than previously, with infinitely more sophisticated evaluation tools.

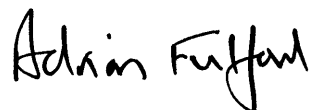
Developing that last point somewhat, a robust and independent evaluation is essential to demonstrating whether or not this idea has any utility. The project team has developed an 'Invitation To Tender' to secure experts in independent evaluation. There has been considerable engagement with legal professionals and the judiciary regarding the approach to evaluation, and I am confident that the tender has identified the key areas of concern which need to be included in order to provide a proper test. By way of example, the evaluation will investigate the broad impact on court users of these proposals, so that the diverse positions of litigants, professionals and all the agencies who are involved with the courts are assessed. It will consider the consequences for their work and personal lives, including childcare and other like

responsibilities. It will examine the time spent outside the courtroom by way of preparation and travel on the part of the lawyers and the judiciary. Put broadly, the evaluation will investigate sustainability, scalability and access to justice in all its ramifications.

We have established Local Implementation Teams (LITs) to support the planning and delivery of flexible operating hours in the six pilot courts. The LITs have demonstrated their utility over the years to provide an effective way of ensuring local projects are conducted effectively and I encourage you to support them in their work. I will look to attend some of the LITs in the very near future, to check on progress and ensure they are receiving the support they need to ensure this is a successful enquiry.

I repeat for one last time that these are pilots – no more, no less. If the ideas they explore do not pass muster, then they will fade into history at the end of the six-month period. However, if any of the models succeed, we will consider with HMCTS the circumstances in which we may repeat the relevant arrangements on a more regular basis. There is no plan for a national roll out of anything at present, but there may be some courts and tribunals in parts of the country where regular extended hours may properly assist in increasing access to justice and enabling us to use our buildings more effectively without a detrimental effect on those who work in our precious system.

Yours ever,

A handwritten signature in black ink that reads "Adrian Fuffard". The signature is written in a cursive, slightly slanted style.