



March 2018

CJC response to the HMCTS consultation:

FIT FOR THE FUTURE: TRANSFORMING THE COURT AND TRIBUNAL ESTATE

Opening remarks

The Civil Justice Council (CJC) welcomes the opportunity to respond to further proposals affecting the future court estate. The Council last commented in 2015 - details of that response can be found here: <https://www.judiciary.gov.uk/wp-content/uploads/2011/03/response-to-consultation-on-proposals-on-the-provision-of-court-and-tribunal-estate.pdf>.

The current set of proposals include regional consultations on the closure of eight different court centres (including two County Court ones), but this response is confined to the overarching paper. That paper concerns the principles HMCTS is following in its estate strategy, and against which closure recommendations are assessed.

Many of the views of the Council remain the same as those expressed in 2015. We acknowledge and broadly endorse the continuing need for efficiency and modernisation in the utilisation of the court estate. However, there is an important balance to strike between digital services and paper processes and physical hearing centres.

The CJC is supportive of the HMCTS reform programme. For example, in November 2016 we published our comments to the MOJ paper: *Transforming our Justice System*¹ and points from this can be found within this paper. We also published a report on *Online Dispute Resolution for Low Value Claims*² and responded to Lord Justice Briggs' Civil Courts Structure Review³

It is important to remember that accessibility is an issue with a wider meaning than simply access to physical buildings.

The Chairman of the CJC, the Master of the Rolls, has not been involved in the preparation of this response as he has engaged with the proposals as a member of the Judicial Executive Board.

¹ <https://www.judiciary.gov.uk/wp-content/uploads/2011/03/cjc-response-on-transforming-justice-nov2016.pdf>

² <https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>

³ <https://www.judiciary.gov.uk/wp-content/uploads/2016/04/cjc-odr-advisory-group-response-to-lj-briggs-report.pdf>

Answers to the specific consultation questions

Q1. What is your view of our proposed benchmark that nearly all users should be able to attend a hearing on time and return within a day, by public transport if necessary?

The CJC does not agree with the proposed benchmark which is too vague in its scope and requires clarification. We suggest that 'nearly all' should be substituted with a minimum percentage of court users. We also suggest that 'on time' does not provide sufficient certainty when taking into question the differing hearing start times, particularly given earlier attendance times often provided by court order. We also propose that 'public transport' requires further consideration into the cost and 'real time' journey lengths which can be affected by timetables, availability and traffic. The CJC urges HMCTS to provide a detailed analysis of the specific effect court closures will have on the local population of those courts being considered for closure and pay careful attention to any responses from local communities and their representatives. There still remains a need for a substantial proportion of court users to attend final hearings who should be able to do so with relative ease.

According to the consultation paper, 310 operational court and tribunal buildings providing face to face services will be within 15 miles of another HMCTS location after these proposed closures. This leaves 29 with longer journeys to make up. Whilst the Council does understand there will be less need for physical attendance at court centres through increased digital use and accepts that travel times are not the complete picture, there will always be hearings where attendance is required and there needs to be a maximum specified time period identified for journeys to court or for many (particularly those living in rural areas) this will act as a barrier to access to justice. Further consideration also needs to be given to the cost of public transport as many court users are of limited financial means, for instance it would be inappropriate for housing possession actions to be heard at centres which require people who are already in rent arrears to spend significant amount of money to attend very important hearings. It would also be difficult for single parents on benefits to bear the cost of expensive travel or to find additional childcare for longer periods away from home. All assessments must be made by reference to the cost of peak travel – when that is what will be involved.

Finally, equalities obligations may also require consideration of a more sophisticated benchmark. A simple time-based benchmark may adversely affect, for example, disabled users more than others; the benchmark that is arrived at should be tested against an equalities impact assessment.

Further detailed consideration on this point can be found in the individual response provided by one of our members, HHJ Barry Cotter, from Bristol Civil Justice Centre.

Q2. What is your view of the delivery of court or tribunal services away from traditional court and tribunal buildings? Do you have a view on the methods we are intending to adopt and are there other steps we could take to improve the accessibility of our services?

The CJC is supportive of the reform programme and modernisation of the court estate provided that accessibility is not compromised.

There is an assumption about the proposed reforms that they will cut the need for parties to attend court. In the civil world there are people, such as those facing the loss of their home or bankruptcy, that must be able to attend. For instance, in the family field it is accepted children disputes will require the parents' presence. It follows that those who will continue to

attend will be from the lowest 25/30% by way of income and those least able to master IT, pay extensive travel costs or childminding fees. One of judicial member's experience is that the further away from court the less likely a party is to attend or even defend a case. Therefore, it is important to emphasise that there will still remain a need for a substantial proportion of court users to attend final hearings in relative ease.

Digital services have the potential to improve accessibility for many people, although clearly the Assisted Digital project will play a very important role in helping those people who can use digital services if they receive support; and ensuring the system can cater for those for whom it proves inaccessible.

In 2012 the National Digital Strategy estimated that 18% of the population were 'digitally excluded'⁴. Assistance will need to come in a number of forms to improve familiarity with and confidence in using IT. However, there will be some that will always require face to face assistance or guidance at the beginning or during the process.

Any new technology must have adequate investment and a sensible pilot period. The forthcoming pilot in the tax tribunals on virtual hearings will, by way of example, be informative, and must be fully evaluated in terms of technical proficiency and user experience and feedback.

We refer the Government to the work of our Online Dispute Resolution for Low Value Claims working group⁵ and the aforementioned response to *Transforming our Justice System* where we state that the transformations are 'a huge undertaking and the scale and challenge of that undertaking should not be underestimated. Achieving a transformation requires other areas to be addressed too: examples include increasing public legal education, the availability of legal advice, improving publicly funded legal assistance and addressing the impact of court fees.'

In our 2015 response we highlighted the issue of domestic violence cases, and this would be an example of the type of civil proceeding that would need to be in a court building, and not 'pop up' accommodation, along with breaches of orders for certain types of case e.g. gang or anti-social behaviour injunctions

Finally, those working on the front line in the existing system have experienced issues with the quality of video links in court rooms, and these require further investment as part of the reform programme.

Q3. What are your views regarding our analysis of the travel time impacts of our proposals? Are there any alternative methods we should consider?

Please see the answer to question 1 above.

Whilst it is understood that HMCTS does not want to place too much great an emphasis on travel times due to the changing nature of courts (and therefore some reduction in the anticipated need for physical attendance at court buildings) it would be helpful to keep a target travel time to ensure accessibility. It is suggested that journey times should not exceed four hours a day (2 hours each way) by car or public transport.

⁴ <https://www.gov.uk/government/publications/digital-landscape-research/digital-landscape-research>

⁵ <https://www.judiciary.gov.uk/reviews/online-dispute-resolution/>

Q4. Do you agree that these are right criteria against which to assess capacity? Are there any others we should consider?

The CJC supports the criteria which have been drawn up in principle, although clearly the forthcoming pilots will help to determine the right balance to be struck between digital services and physical services. The pilots for the virtual hearing centre and flexible operating hours pilots will be particularly informative.

Q5. What is your view on the proposed principles and approach to improving the design of our court and tribunal buildings? Do you have any further suggestions for improvement?

The CJC supports the design decision principles in principle. One area where we have a concern is on there being too rigid a focus on court utilisation rates – hearings represent only a proportion of a judge and staff's workload, and there are simply not the judicial resources to sustain a very high utilisation rate.

The introduction of 320 building champions will provide additional support and is welcomed to provide identification of maintenance and repair issues in the court estate that need to be addressed.

The CJC agrees with HMCTS that supplementary court and tribunal provision should be envisaged in the design and adaptation of courts in the future

Access to Justice must remain at the forefront of HMCTS' plans.

Q6. What are your views on our approach to people and systems? How do we best engage with the widest possible range of users as we develop scheduling and listing systems? What factors should we take into account as we develop our plans?

Listing remains a challenge, as does collecting accurate utilisation figures (our 2015 response highlighted some discrepancies). This is an area where the judicial and professional engagement groups for the reform programme will be invaluable. In the civil jurisdiction, listing will always have to be a highly flexible process; having to adapt to very late settlements or requests for adjournments from parties.

This will involve close liaison with on-site judiciary - hour-to-hour on occasions. Therefore, the move to centralise listing for groups of courts (as mentioned in the paper) may not in practice prove as efficient an approach as it may sound in theory. We welcome the crucial recognition that listing is a judicial function, but to enable that function to work well in practice, the relationship between judges and listing staff must be supported; physical proximity can play a part in developing or maintaining mutual respect and a sense of shared endeavour.

Assisted digital serves are important and our views on this are elaborated on later in this paper and in previous reports and consultation responses.

Q7. Do you have views on our approach to evaluating proposals for estates changes or any suggestions for ways in which this could be improved?

The CJC welcomes HMCTS' proposal to publish its evaluation matrix to show how decisions are formulated in developing the reforms. Also welcome is the intention to hold and publish an independent review of reforms to the court estate. The commissioning of academics to evaluate proposals would offer objectivity and increase confidence that reforms are being independently analysed.

The evaluation of individual reform projects, e.g. virtual hearing centres, will also be important.

Q8. What is your view on our proposed approach to future estates consultations?

The CJC welcomes HMCTS's promise to understand the range of factors set out in section 5.3 of the paper following before any court or tribunal is proposed for closure.

In relation to the new approach of a rolling programme of consultations, this is logical now that the national strategy and reform principles have been set out – they provide a context against which specific local court closure proposals will be measured. That said, the experience of earlier closures must inform later proposals – for example whether travel times for court users are borne out, or the extent to which remaining courts are able to effectively absorb the work of a court that has closed.

Q9. What is your view on how these proposals are likely to impact on groups of court and tribunal users with particular protected characteristics as defined in the Equality Act 2010? Are there any sources of evidence or research that you think we should consider?

The CJC's support for digitisation is well documented, as is our concern that the reform programme is sensitive to the needs of the digitally excluded. We hope that the research report commissioned by the CJC on assisted digital (due to be published shortly) will assist HMCTS understand the needs of court users requiring assistance. This is to further an area that is the subject of a review in progress by the charity JUSTICE. It is also important that there continues to be close use by HMCTS of the expertise available through the LIPEG in this area.

Our members are eager for more data to be collected on the characteristics and needs of court users which should be used to help drive and inform future decisions on assisted digital systems and other services. It is imperative that there is additional support available for those that are classed as digitally excluded or that have protected characteristics.

The digitisation of court systems offers an unparalleled opportunity to collect and analyse demographic data about court users, which will allow better targeting and provision of services.

Q10. Do you have any other comments on our future estates strategy?

On page 11, HMCTS describes the intention to move a number of administrative ('back office') functions from courts and tribunal hearing centres.

CJC members have encountered and reported problems in relation to contacting courts. In theory, a digitised system and dedicated telephone services should make it easier for people to call or e-mail court staff, and in time to track their case electronically. Monitoring and evaluation is needed to ensure that the practice meets that expectation.

The court of the future aspirations are laudable and welcome, but there needs to be an acceptance (which the rhetoric on this topic should reflect) that some of those aspirations will be medium and long term goals, as the existing estate is gradually improved, modernised or replaced.