



Civil Judicial Ways of Working (JWoW) December Communication

1. Introduction

Thank you to all those who responded to the Civil JWoW document, which was distributed to the Civil judiciary in April of this year. The aim was – and remains - to ensure that Reform is a collaborative exercise in which the views of the judiciary are made known and, where practicable, acted upon. The LCJ's and SPT's July communication to all judicial office holders contained the key themes to emerge from the analysis of the survey responses, whilst their November communication shared progress on how we and other members of the senior judiciary have acted on what you said about cross-jurisdictional topics such as Training, Estates and IT systems.

This message is to tell you more about what you, collectively, said about the Reform proposals specifically for the Civil jurisdiction, how those views are being acted on, and what you can expect to see over the course of the next year.

2. Current State

Before highlighting the JWoW responses on particular topics, and the progress made in the discussions with HMCTS, it is worth noting the current state of the Civil jurisdiction, because in our view, it highlights the need for Reform.

The number of Civil claims is increasing year on year. This inevitably affects the ability of the system to deal timeously with the increased workload. HMCTS timeliness measures are not currently being achieved. In addition, because of the pressure on judicial resources, it looks quite likely that there will be an under-sit for this year.

We believe that this background demonstrates the need for Reform.

3. The JWoW Process

The JWoW documents summarised the Reform proposals for the Civil jurisdiction and set out changes to how the Civil judiciary might work in the future. You gave your views on what was proposed through responding to the survey and attending the events which were held across the country.

Since then, a huge amount of work has been done by the Civil Judicial Engagement Group (JEG), Judicial Executive Board (JEB) and Judicial Reform Board (JRB) to ensure your views are reflected in the next stage of Reform. You will find details of the membership of these bodies as Appendix 1. Your responses were meticulously analysed to find common themes, new ideas and overall sentiment to help identify the most important points of feedback for the Civil jurisdiction. The Civil Executive Team and the Civil JEG used that information to inform the priorities and topics for discussion.

In order of importance, the priorities that were identified for the Civil jurisdiction were: 1) staffing in the Courts; 2) the proposed Courts and Tribunals Service Centres ("CTSCs"); 3) Listing; 4) the Estate; 5) the scope and limits of Video Hearings; 6) the proper use of Legal Advisers (case officers); and 7) effective IT systems. Of these, the Estate is a matter being dealt with across all jurisdictions, so it gets only a brief mention below.



Between August and October, the senior judiciary and HMCTS have participated in a significant number of meetings. In Civil, the 'Priorities' document formed the basis of these discussions. We went through each of the 7 topics in detail to reach common positions with HMCTS on how Reform will be implemented so as to ensure that the ideas from the judiciary were properly taken into account. These positions have led to positive updates to the Reform designs, delivery plans and (in some instances) have been used to inform development of the next iteration of the Programme Business case.

4. Priority Topics Discussed

4.1 Priorities 1, 2 and 3: Staffing, CTSCs and Listing

As a number of you acknowledged, it is beyond doubt that reductions in staff at Courts are an integral part of HMCTS' Reform proposals. The nature and extent of those changes are not yet finalised, so – other than expressing your general thoughts about the effect on the service provided - you were not able to comment in any detail. However, following discussions centred on an illustration, using the Civil and Family Court in Bristol, which was taken as an example of how the staff reductions may operate in practice, the Civil JEG made suggestions on how the proposals could be improved to make them more workable. The proposals are being reworked by HMCTS.

You queried the effect of staff reductions on listing and, if the administration of listing is a function that is to be split between the Courts and the CTSCs, a number of you asked how that process would work in practice. You suggested that not enough Listing Officers are being identified as being required in the Courts.

There was also a wider concern about the interface between the Courts and the CTSCs. The vital work on providing detail on what functions will remain at Court, what functions will be moved to the CTSCs, what the interface will be between the two, and how that interface will work in practice, on a day-to-day basis is ongoing.

HMCTS have responded positively to all of these points.

They are building the model for the future staffing at Courts (including listing) and CTSCs, by reviewing the workload of all administrative tasks, to reach an estimate for required staffing levels. The business case assumptions will not be used as a 'top down' target to be met come what may. The Civil JEG will discuss staffing in the courts once the proposals are provided and will inform HMCTS of their views on the required roles and appropriate staffing levels needed to support the judiciary.

It is agreed that all Courts will be staffed to agreed minimum levels, and the staff will be carrying out agreed roles, to ensure that the judges can work effectively and efficiently.

Work is ongoing on the detailed design of the CTSCs. This will be discussed with the JEGs, to reach an agreed, effective and responsive system of communication between the CTSCs and the Courts, and a structure to deal with the handover from one to the other.

It is agreed that all Courts will have an appropriate number of Listing Officers based at the court; that those fulfilling that role will be fully supported; that any listing work performed at the CTSCs is fully integrated with the listing at the relevant Court; and everything will be designed to ensure the judges retain proper judicial control of all listing functions.



Future decisions about where listing takes place will be taken on the basis of an appraisal of the most suitable location. HMCTS will define this with the judiciary. There is no expectation that most listing work will be completed in CTSCs: it is accepted that intimate knowledge at a local level is often critical to effective listing.

It is expected that new scheduling and listing tools will support Listing Officers and make the process more efficient. Staffing decisions should be reviewed once more is known from testing about the software's capabilities and how they might evolve.

4.2 Priority 4: The Estate

The Estate was a topic raised by many of you in survey responses and at events. The message this month from the LCJ and SPT explained what has been agreed about the Estate, namely that both capital and day to day maintenance budgets will be spent as they were in the last financial year.

We are acutely aware that many Civil Courts around the country are in a very poor state of repair and do not provide a proper working environment, either for you, the staff or the court users. This was a point made repeatedly in your JWoW responses. It remains a priority on our part to ensure that the existing condition of the Civil Courts is significantly improved as part of Reform.

4.3 Priority 5: Video Hearings

Video Hearings was a matter on which many of you commented. A variety of concerns were raised under this general heading, including the importance of maintaining open justice, and the viability of Video Hearings in cases where there is contested evidence. One common theme was that they were being proposed in the name of cost reduction but at the risk of justice.

As to open justice, it is right to acknowledge at the outset that HMCTS agrees that all Video Hearings would have to take place in public (preferably in open court or in some other way in which the proceedings can be viewed by the public via screens). HMCTS is working, assisted by the Video Hearings judicial working group, on further proposals for this. Accordingly, everything we say below about Video Hearings is on the assumption that those hearings are, in one way or another, open and accessible to the public.

Most of you expressed the firm view that final hearings (i.e. trials involving oral evidence) are not suitable for Video Hearings. You explained that a judge needed to see the parties, to watch as well as to listen, and that meant being able to watch not just the witness but also the parties, the representatives, and the supporters in court. You also expressed concern that, if witnesses were giving contested evidence in Video Hearings, there was a greater risk that their evidence might be tampered with or manipulated, because it would not be clear who else was in the room and who else was behind the camera. You were also worried about the loss of the necessary gravitas of the proceedings; and have expressed your concerns relating to security and confidentiality of the court processes, including the ease at which they could be recorded and posted publicly on social media.

Many of you accepted that some kinds of hearings, particularly those involving legal representatives only (such as directions hearings, or specific interlocutory applications) are at least potentially capable



of being dealt with by way of Video Hearing. There was also some recognition of their potential benefit for vulnerable parties, and parties and witnesses who cannot travel to court.

Between March and July there was a small pilot in the First-Tier Tax Tribunal. This demonstrated, amongst other findings, that the technology utilised required further development: 3 out of the 8 cases could not proceed because of technical issues of one sort or another. The Tribunal judges involved in the other 5 were cautiously positive about the experiment. The litigants themselves were positive about the video hearings.

It has been agreed that the decision as to which *categories* of hearing could take place by way of Video Hearing will be for the senior judiciary (at Head of Division level). Thereafter, in an *individual case*, it will always be for the judge to decide whether a particular hearing may be conducted by way of Video Hearing.

In October, the Civil JEG discussed and approved a proposed pilot for Video Hearings in Manchester and Birmingham, limited to applications to set aside default judgments. One area for evaluation will be the impact of Video Hearings on the judge. The Tax Tribunal pilot and judicial experience of the use of video-link suggest that Video Hearings bring different physical and mental strains on judges which need to be understood and addressed.

HMCTS had made a general assumption that it will be possible to hear 25% of specified money claims up to the value of £25,000 that are contested and reach a final hearing by way of Video Hearings. There has been some questioning of that assumption and it has been revised to 10%. However, we can see that, overall, the various strands of Reform will mean that fewer cases will reach a final hearing stage: in particular, it is expected that, as a result of the OCMC project, there will be more successful mediations and more of the smallest disputes being resolved without an oral hearing.

You can be reassured that participation in Video Hearings is not being forced on anyone, and safeguards as to the process – and participation in it – are being built into the pilot (and the similar Family pilot). Much will depend on the quality of the IT and equipment. For the reasons outlined above, we are a long way from the possibility that any final hearing with contested evidence will be regarded as suitable for a Fully Video Hearing.

4.4 Priority 6: Case Officers/Legal Advisers

Many of you expressed concern about the use of Case Officers/Legal Advisers within the Civil jurisdiction. There was unease about blurring the separation of powers if Legal Advisers carry out any form of judicial function.

However, others pointed out that, to a limited extent, this had already happened, through the use of Legal Advisers in the County Court Money Claims Centre (“CCMCC”) at Salford to carry out more straightforward tasks (a change which pre-dated Reform). The CPRC and the Civil JEG have recorded that these modest changes, now some 4 years old, appear to have worked well. Many of you (particularly DJs) have therefore welcomed the prospect of more routine work being undertaken by Legal Advisers.

One potential source of confusion has been in the nomenclature. Since Legal Advisers exist and already have powers under the CPR, it was thought sensible to keep that name for the purposes of



Reform, particularly as HMCTS has agreed that, within in the Civil jurisdiction, the work done by these members of staff will only be done by those with legal qualifications.

In addition, concerns were raised about the location of Legal Advisers, their training, their supervision and the proper definition of their work scope.

There is agreement that in Civil, since all 'Case Officers' will be legally qualified, they will be referred to as 'Legal Advisers'. Although there has been a very recent concern expressed about this title, it is much the best name because Legal Advisers already exist at CCMCC and HMCTS plans to add to that existing pool to undertake the new work for OCMC.

The use of Legal Advisers at the CCMCC has proved successful thus far. Although an aggrieved party has a right to a complete rehearing in front of a judge following the decision of a Legal Adviser, this remedy has been taken up in just a handful of cases. We think the success of the role so far has been due to the training that has been provided and the careful and cautious accretion of powers, approved in stages by the CPRC. The most recent expansion occurred in the summer of 2018.

In October, the JEG has approved a 'Test' relating to the work of Legal Advisers within OCMC. Since that is itself a pilot, it is a good place to test out what work can be done by Legal Advisers and the inter-relationship between the Legal Adviser and the judge. Amongst other things, within OCMC, the pilot will give Legal Advisers the power to give directions in any claim for up to £300. Again, that is subject to an automatic right of reconsideration by a judge.

Work remains to be done on co-location and management. HMCTS will continue to develop its proposals in conjunction with the Civil judiciary. The legislation currently going through Parliament may provide this clarity. The extent to which the use of Legal Advisers in the Civil jurisdiction will lead to any judicial savings remains to be discussed and agreed: some savings will plainly result (indeed, they have already begun) but they may be modest.

It is agreed that there needs to be investment in recruitment and retention of Legal Advisers, and in their training. The role will continue to need high quality staff capable of carrying out the work which they are authorised to do. Once trained, it is anticipated that they will be co-located with judges: indeed, they will often be working with judges on particular cases or types of case, and therefore co-location will be important.

4.5 Priority 7: Effective Digitised Systems

You have questioned whether delivery of the necessary IT is achievable.

'Common Components' will support the IT infrastructure for use across Civil, Family and Tribunals jurisdictions (CFT) to ensure digital case progression and judicial case management and to reduce the amount of paper and paper files used. This system is also intended to support paperless hearings for appropriate cases. You told us that your principal reservations on technology are the reliability of new IT systems and the need for them to be user-friendly. You felt strongly that the new system must enhance current ways of working.

The trenchant view, shared by many, was that IT of sufficient quality, and the provision of proper training was vital to the success of reform.



We agree that IT that is fit for its purpose is an essential element of Reform. An effective digitised system promises a major improvement to how judges are supported in the Civil jurisdiction. Any future system will learn from similar implementations, such as the use of CE File in the Rolls Building and DCS in the Crown Court. The judiciary will continue to be closely engaged in the development and testing of the Common Components (including the Judicial User Interface). It is expected that this will lead to a much better system than CE File.

The current programme business case contains an assumption that better technology will generate a 10% efficiency saving across much Civil work. It is agreed that this is a broad assumption to which many parts of Reform will contribute. How far it is achievable will need continued attention and measurement.

In their November communication, the LCJ and SPT made clear that HMCTS has committed to providing robust, fit for purpose technology designed with judicial input. Suggested system functionalities have since been accepted by HMCTS, please see Appendix 2. As requested by many of you, judges will be able to guide the design of the Common Components through the Judicial User Interface Group. For the identification of the members of this, and other Reform Groups associated with the Civil jurisdiction, please see Appendix 3. Additionally, judges will be closely involved in the testing of the Common Components. The Civil judiciary (and indeed those in the Family and Tribunal jurisdictions) will be able to benefit from the time savings associated with a robust and fit for purpose digital system which has been designed to their needs.

There has been some confusion about what HMCTS mean by 'Assisted Digital.' In our discussions with HMCTS, it has been used to mean the assistance to be provided to both those with some digital competence *and* those with none. An important element of Reform is to create a digitised Civil jurisdiction, so a denial of digital assistance to those without the necessary equipment or skills of their own would be a denial of access to justice.

5. The Next Year

Much remains to be done. HMCTS updates the business case for Reform on a regular basis, in the course of which they revisit the assumptions made on the Programme. HMCTS is currently developing the latest iteration to reflect these changes in Programme Business Case 5 (PBC5), to be agreed with HM Treasury.

The pace at which Reform is implemented is expected to increase over the coming year. You will continue to see the progression of OCMC and the start of the new Enforcement projects over the next 12 months. More significantly perhaps, there will be ongoing work in several cross-jurisdictional projects noted above, including CTSCs, Courts, Scheduling & Listing and Video Hearings.

Your input into the design of specific projects and their testing, through working groups, and your involvement of training development via the Judicial College, will be critical. There will be further communications to the Civil judiciary on these changes. At the Civil JEG meeting in December, how best to engage further with you was discussed.

6. Conclusion



Reform will only succeed with the continued input of judges' knowledge and experience. The efforts of the Civil judiciary involved in Reform are greatly appreciated. You are asked to continue putting any issues forward to any of the judges who are listed in the appendices to this communication who can then feed the points into their respective working groups.

We want to give you our assurances that we are working hard to reflect the Civil judicial views in our discussions and deliberations, so as to maintain the immutable principles of Civil justice. With the increasing workloads in the Civil courts, and heavier demands upon you all, it is crucial that reformed systems work effectively and reliably. That is our objective, and it is shared by HMCTS.

With Very Best Wishes,

Sir Terence Etherton, Master of the Rolls

Lord Justice Coulson, Deputy Head of Civil Justice



Appendix 1

Membership Bodies

Body	Members
Civil Judicial Engagement Group (JEG)	Deputy Head of Civil Justice, Civil JEG Chair
	Birss J
	Simler J
	Yip J
	Bird HHJ
	Cotter HHJ
	Godsmark HHJ
	Klein HHJ
	Baldwin DJ
	Hovington DJ
	Jenkins DJ
	Langley DJ
	Middleton DJ
	Phillips DJ
Civil Executive Team	Bird HHJ
	Coulson LJ
	Jenkins DJ
	Simler J
Judicial Executive Board (JEB)	Lord Chief Justice, JEB Chair
	Master of the Rolls
	President of the Queen's Bench Division
	President of the Family Division
	Chancellor of the High Court
	Vice-President of the Court of Appeal (Criminal Division)
	Chair of the Judicial College
	Senior President of Tribunals
	Senior Presiding Judge
	Vice-President of the Queen's Bench Division
	Deputy Senior Presiding Judge
	Chief Executive of the Judicial Office
Judicial Reform Board (JRB)	Senior President of Tribunals
	Deputy Senior Presiding Judge
	Jenkins DJ



Body	Members
Judicial Reform Board – Courts (JRB-C)	Deputy Senior Presiding Judge
	Deputy Head of Civil Justice
	Cobb J
	Jenkins DJ
Judicial Reform Steering Group	Arbuthnot SDJ (MC)
	Cobb J
	Deputy Head of Civil Justice
	Jenkins DJ
	King JP
	Norris J
	Robinson DJ (MC)
	Senior President of Tribunals
	Chamber President Sycamore
	Deputy Senior Presiding Judge
Judicial Ways of Working Group	Arbuthnot SDJ (MC)
	Bird HHJ
	Davis DJ
	Earl HHJ
	Gray UTJ
	Jenkins DJ
	King JP
	Norris J
	Sapnara HHJ
	Simler J
	Chamber President Sycamore
	Deputy Senior Presiding Judge
	Worster HHJ
	Zucker RJ



Appendix 2

The Judicial User Interface should be able to carry out the following functions:

- Remote access;
- Indexing functionality and information to aid document filing;
- Search;
- Note-taking, highlighting, cutting, and pasting (editable PDF if PDF is the file format);
- Allowing for multiple documents to be opened simultaneously;
- Allowing for early accessibility for allocated parties;
- Allowing for the adding or subtracting of documents without altering the established pagination;
- Access to court calendars via icons;
- Date and directions functionality;
- Alerts / notification systems;
- Consistent pagination for all parties to ensure the smooth-running of referring a witness to a document;
- Case summary; and
- Miscellaneous categorisation for papers that do not fit elsewhere.



Appendix 3

Reform Judicial Working Group Members

Group	Member
Civil Enforcement Project	Eastman Master
	Hammond DJ
Civil Money Claims (CMC) Project	Birss J
	Lethem DJ
Judicial User Interface Group	HHJ Berkley
	DJ Corkill
	Tribunal Judge Carlin
	Tribunal Judge Froom
	DJ Nightingale
	HHJ Pearce
Scheduling & Listing Working Group	Brooks TJ
	Chambers HHJ
	Cobb J
	Ikram DJ (MC) (SDJ)
	Richardson HHJ
	Swann REJ
	Thirlwall LJ
Video Hearings Working Group	Cutts J
	Cobb J
	DJ Marshall Phillips
	DJ (MC) Crane
	Regional Employment Judge Swann
	Thura Win JP