



## Fit for the future: Transforming the court and tribunal estate: Consultation response

### Introduction

We are responding as LawWorks (the Solicitors Pro Bono Group), but also on behalf of the **Litigant in Person Support Strategy (LIPSS)**, a national partnership working together to improve the experience of people facing the legal process alone. We do this by improving access to information, practical support, advice and representation. We cover Civil and Family Courts and Tribunals in England and Wales. The Strategy partners include Law for Life, the Personal Support Unit, RCJ Advice, Bar Pro Bono Unit and the Access to Justice Foundation. The charities came together in 2014 in response to the increasing numbers of vulnerable people facing the prospect of court proceedings without advice or support. (Strategy partners may also be submitting individual responses; for example PSU wish to raise particular issues about the Wandsworth Court closure).

In some respects we welcome the strategic approach adopted by this consultation. Previous consultations on court closures and estate rationalisation (this is the fourth programme of closures since 2010)<sup>1</sup> have focused primarily on the existing capacity, utilisation and costs within the courts estate. In this consultation, by contrast, the strategy works to and develops a set of stated “overarching principles”: “ensuring access to justice, delivering value for money and enabling efficiency in the longer term” with a focus on maximising the quality and capabilities of larger hearing centres, alternative access to the court system, enhanced digital channels, and service transformation predicated on a “re-investment” approach.

Evidence from difference sources and projects shows that the number of litigants in person has risen significantly over the last five years (although there is no single centrally collated research/survey on the precise number), with a recognised impact on the courts and judiciary, and evidence of cases taking longer and costing more to resolve.<sup>2</sup> Family, housing, consumer or other legal issues can have a huge impact on individuals’ wellbeing, income, confidence and security, all the more so where they are unsupported in the court process. This is a growing problem, with (for example) over 80% of family cases now having at least one party unrepresented.<sup>3</sup>

In respect of this consultation we recognise that balancing access and provision is a difficult challenge; there are no easy or cost-free solutions. The LIPSS partners have been committed to working closely with HMCTS on the court reform programme and are exploring ways in which digital technology can improve access to justice. We have identified national ‘core’ elements of how better to support litigants in person through self-help resources, access to initial legal advice and support, and pro bono representation in court or tribunal. Building on this approach to service design at national level, we want to explore with HMCTS – working in partnership with others - the key components of a successful coordinated approach to meet the needs of litigants in person ( a ‘LIPSS approach’) at a local level.

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<sup>1</sup> Since 2010, 103 magistrates and 54 county courts have closed

<sup>2</sup> <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07113>

<sup>3</sup> Source: National Audit Office analysis of data from HMCTS Family cases database

## General Comments

We welcome the Ministry of Justice's (MoJ's) decision to establish clear principles to inform the estates reform programme: ensuring access to justice; delivering value for money; and enabling longer term efficiency. The starting point should be that the justice system – including our system of courts and judicial independence – is something to be proud of; it forms the foundation of a fair and democratic society operating under the rule of law. As Lord Neuberger said in his Tom Seargent Memorial Lecture “citizens must have access to the courts to have their claims, and their defences, determined by judges in public according to the law ...Courts exist to resolve disputes, and also to vindicate rights – and to do so in public.”<sup>4</sup> One aspect of access to justice is being able to get to a court within reasonable distance without incurring unreasonable expense. It is also important that Courts function well as civic hubs and are fit for purpose and for the needs of users.

Cost and usage should not be the only factors to consider in the estates strategy, but rather that the estate can be managed in an effective way to help the judiciary deliver a world class and accessible justice system. Access to justice and the corresponding utilisation of court buildings can ebb and flow with a range of factors (some external), including the provision of legal aid, the costs system, listings procedures, crime levels and other demand side issues. What matters is that the Courts work well, and are able to meet the needs of users, this means ensuring that the building estate is matched with the appropriate resources to make the best use of all of HMCTS' assets.

JUSTICE's Working Party's report on “What is a Court?”<sup>5</sup>, on which this consultation draws heavily, looks at how courts can better meet the needs of litigants in person, including the importance of a customer-facing information and services at all venues and proper funding of IT - both for remote access and for all stages of the user journey and case management process. JUSTICE's vision is that the HMCTS' estate could be more flexibly deployed to facilitate buildings as “justice spaces” capable of providing a range of dispute resolution services, including for regulators and other public, professional or trade bodies.

The ‘Fit for the Future’ Strategy also fits into the Ministry of Justice wider reform programme, most recently summarised in *‘Transforming our Justice System’* which outlines an ambitious £1billion plan to modernise the system through IT, and incorporates Lord Justice Briggs proposals to deliver an online court for low value civil claims.<sup>6</sup> The vision is heading in the right direction, but the practical implementation needs resources, careful management and regular engagement with stakeholders and third sector organisations working with court users. The Briggs review itself was quite specific and directive about the importance of Public Legal Education (PLE) to delivering a system in which processes are understood, expectations managed, outcomes can be perceived as fair, and courts can play their proper and appropriate role in the community<sup>7</sup>.

We would sound a warning about the model of service transformation becoming too dependent on asset disposals and re-investing the proceeds from sold buildings. We note concerns recently expressed in Parliament that this approach may not be producing the returns that have been modelled for, with a significant number of buildings left in a state of dereliction, unsold or disposed of at well below market value. For example, a recent report from Parliament's Environmental Audit Committee found that “the Ministry does not know which of its court and tribunal estate fall in conservation areas and that it does not monitor the condition of its sold courts and tribunals. Derelict buildings pose risks to society and impact negatively on high streets and town centres, and local authorities which are already stretched for finances, have had to step in to rectify the situation.”<sup>8</sup> There have also been a number of replies to Parliamentary questions and FOI request responses on the high maintenance costs and poor sale proceeds; recent answers suggest that HMCTS is running continual maintenance costs of around

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<sup>4</sup> Neuberger “Justice in an Age of Austerity” <https://www.supremecourt.uk/docs/speech-131015.pdf>

<sup>5</sup> Justice: *What is a Court* <https://justice.org.uk/what-is-a-court/> b

<sup>6</sup> *Transforming our Justice System* [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/553261/joint-vision-statement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf)

<sup>7</sup> Briggs Review <https://www.judiciary.gov.uk/civil-courts-structure-review/civil-courts-structure-review-ccsr-final-report-published/>

<sup>8</sup> Report Environmental Audit Committee <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/545/54502.htm>

£200,000 annually for buildings that have yet to be sold,<sup>9</sup> and that of the sale of 126 court premises in England and Wales since 2010 the total gain to date has been around £34m – with each selling for little more than the average house price.<sup>10</sup> Ely Magistrates' Court was disposed of for just £1, Rochdale Magistrates' Court was sold by auction for £6,316 and the sale of Consett County Court made only £13,735. (Note - We appreciate however that in the case of Ely that this was an arrangement made with the City Council to use the building as a community hub.)

The court estate has shrunk significantly over the past few years. Since the government abolished the last vestiges of local courts ownership and management structures in 2005,<sup>11</sup> court closures have accelerated at a significant rate such that there are now 250 fewer courts in England and Wales. This Strategy includes separate appended proposals to close two more London courts, Wandsworth County Court and Blackfriars Crown Court, and Magistrates or combined civil and criminal Courts in Cambridge, Northallerton, Banbury, Maidenhead, Chorley and Fleetwood. As we have not responded individually to each consultation, we provide comments on these closures under our response to **Question 10**.

We would emphasise though that we are not disputing the proposed or past closures per se, our concern rather is with quality and outcomes from the justice system, its accessibility for users as a whole and delivering value for money under the wider reform and modernisation programme. Where there is clear evidence that poor facilities and building stock issues leave some courts working badly, the closure and re-investment route may be the best option. For example, the consultation makes a strong case for moving some tribunal work from small unsuitable venues to larger hearing centres. However, with any reassignment or integration of work there must be careful consideration of the capacity of the remaining courts to take on the work load, and transition plans in place ahead of any closures so that parties are not left uncertain of what is happening. Attending court can already be an extremely stressful process, and it should not be made even more so due to uncertainties about where the case might be heard or a risk that the hearing might be cancelled or moved at the last minute. We explore these practical challenges, especially for litigants in person, in our answers to the questions below.

**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 consultation document rightly acknowledges that different court users have different needs. However, we question the strategy's assertion that a "target travel time" as used in previous consultations is too arbitrary a benchmark for access to justice, or that the aim of users being able to attend a hearing on time and return "within a day" allows for greater consideration of the needs of different court users. What is proposed instead by this consultation is an extremely low benchmark – it may well be theoretically possible to travel significant distances to a hearing and travel back within a day, but that does not mean it is practical for many users. At the very least it should be considered whether someone with a severe disability, for example, could complete the proposed journey in one day, on public transport, when taking into account tiredness, pain or discomfort experienced after a contested day at court. There should also be an assessment of the impact for vulnerable groups in society, such as those on low incomes who will be more likely to rely on public transport to get to and from the court, and to include consideration of the reliability of public transport in this assessment.

The proposal for closure of Northallerton Magistrates' Court, for example, provides a concerning illustration of the travel times and issues that may be involved. According to the consultation document, this closure would mean a user from Richmond in Yorkshire attending one of four alternative courts, with public transport travel times - one way - ranging from 2 hours 22 minutes (Teesside) to 3 hours 22

<sup>9</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-03-06/131159>

<sup>10</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-02-08/127599/>

<sup>11</sup> The Court Act 2003 implemented the recommendations of the Auld Review in establishing the Court Service as the Agency responsible for all courts.

minutes (Harrogate). It seems that these travel times are based on assumptions that users have easy access to a regularly served bus stop and a reliable public transport network; in a rural area like North Yorkshire this is simply not the case. Similarly in the case of Cambridge, whose magistrates' court is earmarked for closure, the journey times in the consultation are calculated from the towns in Cambridgeshire (Huntingdon, St Neots, Ely), not from the countryside. Assessment of travel times should also take into account that increased distances will mean increased costs for users.

When looking at issues of distance and deciding on "strategic locations", it is not sufficient just to balance "current workload" with opportunities for consolidation in multijurisdictional centres. Instead HMCTS should look at the locational implications and systemic barriers for specific user groups and specific types of proceedings. For example, when faced with possession proceedings a litigant may require several attendances at court before the proceedings can be finally resolved. Often, the first court hearing will be adjourned whilst outstanding issues are resolved, such as benefits claims being processed, further employment found or where somebody is due to return to work in the near future and will then be in a better position to repay any arrears. It is not unusual for there to be two or three court hearings before a final decision is made, and at each one the attendance of the individual is required. How realistic is it therefore to expect a litigant in this position to be able to spend a whole day travelling to and from court whilst also dealing with their financial issues?

Furthermore when consolidating, closing or amalgamating particular court centres it is not simply a question of moving the hearing centres but also losing or re-organising the facilities that go with them. For example, the amalgamation of Scunthorpe and Grimsby Court facilities in 2017 has also seen the closure of the County Court Enquiries Desk to the public (CCED) which members of the public can only call now by phone. However, local advice agencies dealing with court users say that the HMCTS back office services admit they cannot deal with the calls due to staff shortages. There is no telephone in the building they can use to contact the CCED. One partner agency in the Lincolnshire area has provided us with the following examples.

A client called concerning allocation of a form i.e. C8 (confidential contact details) to be printed in an emergency case, CCED replied saying that they were 11 days behind with paperwork so client can just write a letter to the District Judge.

When an agency was requesting an emergency hearing for protection of a child and family from harm, CCED replied they had 3 already that day and there were now too many for them to handle in a day. They had to demand papers to be put in front of a DJ.

A Client living in Louth was given a 10am hearing, she explained that there was a problem with the public transport and could get in for 10.20am. The court office said they would make a note of this, but when the client came for her hearing it had already been heard in her absence. She had to ask permission to make another hearing the next day which was again given for 10am. The court can only make a block booking for first thing and are not able to take account of anyone who has to travel on public transport from another town.

Distance not only affects litigants but also those supporting them. Litigants in person can find court proceedings very daunting and may bring a family member or friend with them for support. In our experience litigants in person who find themselves in difficult circumstances often suffer with anxiety and depression exacerbated by the stress of the court proceedings, and they may be highly dependent on the support of another person to come with them to help them deal with the very stressful situation.

We are particularly concerned about the potential loss of access to information and enforcement of legal rights in rural communities, given the challenges that already exist in rural locations in terms of dispersed populations, transport, technology and broadband and mobile connectivity. It should also be borne in mind that 49% of rural households have access to a bus service, compared to 96% of urban households.<sup>12</sup> Looking at the geography of court locations, and emerging anecdotal evidence from our local partners, it is becoming apparent that there are emerging issues in the following areas:-

- North Wales: Closures of Courts in Holyhead, Llangefni, Conwy, Prestatyn and Dolgellau have left large areas of rural North Wales without reasonable access to Magistrates', County and Family Court Services;
- East Anglia and Lincolnshire: Research on access to justice in the east region counties suggests the closure of courts in Lowestoft, Sudbury, Bury St Edmunds, Thetford and Kings Lynn have had a significant impact.<sup>13</sup>
- Cumbria: The closure of the Magistrates and Family Courts in Kendal (despite the court building being a modern recently opened facility) and closures in Workington have left residents having to travel significant distances to access remaining court facilities to Barrow.

**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?**

We support the Strategy's focus on both alternative provision beyond the traditional court building, and improving accessibility of HMCTS services through remote communications and digital channels. However implementation is dependent on resources, engagement with users and effective partnerships with a range of statutory and non-statutory agencies to deliver tailored legal support, information and public legal education. Although there is no consultation question which specifically refers to online court processes and virtual courtrooms or flexible operating hours, these are connected issues which we will touch on in our response to this question (and also our answers to questions 4 and 6).

### ***Pop up Courts and "supplementary provision"***

In principle we support the ideas and proposals developed in this consultation around "supplementary provision", ranging from establishing local video-links for victims and witnesses to holding hearings in civic buildings, including community centres, village halls, church halls, conference centres and hotels as alternative locations (including so called "Pop-up Courts"). The JUSTICE Report also endorses a "peripatetic" model and suggests that "if 'pop-up' courts can be nimble and light then they will be able to move around and adapt to different environments. If they become institutionalised they will be unable to serve their purpose. In most cases, all that will be required for a 'pop-up' court is the judge and his or her materials, the parties, a suitably arranged room with modular furniture and a good Wi-Fi connection."<sup>14</sup> JUSTICE goes on to suggest a toolkit approach so that "A 'court in a box' could feature key elements which could be readily transported and assembled on site. Inspiration for this is drawn from the BBC's travelling Question Time set, though the court 'set' would be less elaborate."

However, we also note that this is not a new idea – mobile and pop-up courts utilising market halls, civic buildings and other non-traditional venues have been discussed within the Ministry of Justice for nearly two decades. One discussion paper entitled "Judge in Van", for example, was considered in 2005.<sup>15</sup>

<sup>12</sup> Defra and Rural England 2016 <https://ruralengland.org/wp-content/uploads/2016/09/Local-Buses-and-Community-Transport.pdf>

<sup>13</sup> Adisa, O. and Hallsworth, S. (2017). Access to Justice: Assessing the Impact of the Magistrates' Court Closures in Suffolk. Ipswich: University of Suffolk.

<sup>14</sup> JUSTICE <https://justice.org.uk/what-is-a-court/>

<sup>15</sup> Policy paper prepared internally in 2005 for Dept of. Constitutional Affairs Consumer Board

There are also significant precedents from the era before the Courts Act 1971 when there were a variety of periodic local sitting courts operating. It was the conclusion of the Royal Commission which ran from 1966-69 that locally run periodic courts were inefficient for the criminal justice system, leading to the establishment of the Crown Court jurisdiction with continuously sitting terms in permanent buildings. In recent years though there has been a revival of interest in local alternatives for dealing with low level criminal matters; for example in 2010 the Chief Constable of Greater Manchester proposed that “shoplifters should be dealt with on the spot by a special court set up in the Arndale Centre,” an idea which received the backing of the Magistrates Association at the time.<sup>16</sup> There have also been quiet innovations taking place such as Neighbourhood Justice Panels which have recently become a “restorative justice” feature of our system through the work of some local authorities.

What is disappointing however is that where practical models have been piloted or developed for operating courts in less foreboding community settings and venues, they have not had sufficient Government support to sustain them, or local authorities have been expected but unable to shoulder the cost in a constrained funding environment. For example “community justice courts” first mooted in 2003 were piloted with one properly funded professional court based in a school in a deprived part of north Liverpool supported by a District Judge, and co-located with a range of criminal justice agencies as a one-stop-shop for tackling offending in the local area. This model was considered too costly and was closed in 2012. Instead, Government have promoted local panels as their preferred model for community justice, but as the MoJ’s own evaluation of these initiatives found: “Strategic and operational support and engagement, funding to employ a dedicated NJP coordinator... were identified by participants as areas underpinning effective delivery.”<sup>17</sup>

It is important for the delivery of “supplemental provision” that there is a clear programme at MoJ level that is appropriately resourced, and with workable links and clear protocols with local Government, in order to make any alternative model work. The strategy consultation is only able to point to a handful of venues where the model is either currently active or under development -- in Tunbridge Wells, Kendal, Knighton Powys; in most of these cases the non HMCTS venues were already being used for Tribunal work. It seems to us that taking this model forwards is a bigger project than an estates management exercise and will have longer term implications for the structure and delivery of the justice system.

### ***Digital and remote accessibility***

The more important and immediate strand of “supplementary provision” is the extensive programme of modernisation and HMCTS’ digital strategy that aims to enable remote and online interaction with the courts, and move away from reliance on physical hearings, with greater use of Skype, video conferencing and virtual hearings. Whilst this is exactly the right vision and direction of travel, the implementation challenge is with resources. Two years ago Lord Justice Munby highlighted that “The video links in too many family courts are a disgrace – prone to the link failing and with desperately poor sound and picture quality.... The problem, of course, is one of resources, and responsibility lies, as I have said, with HMCTS and, ultimately with ministers.”<sup>18</sup>

All of the LIPSS strategy partners are strongly supportive of developing digital resources and channels which can be utilised to help litigants in person, to improve their understanding (“legal capability”) of the process and their journey through it, whether virtually or physically. Our charities have all been exploring different approaches for using technology to advance access to justice. For example

- Law for Life’s **AdviceNow** website hosts the Going to Court Platform linking multimedia information and education that explains how to self-help in the context of legal situations in a straight-forward way;

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<sup>16</sup> <http://www.dailymail.co.uk/news/article-1244209/Police-chief-calls-shoplifters-punished-shopping-centre-courts.html>

<sup>17</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/294247/neighbourhood-justice-panels.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294247/neighbourhood-justice-panels.pdf)

<sup>18</sup> Speech by Sir James Munby, President of the Family Division, at Middle Temple Hall, 26 February 2016 to the Family Law Bar Association

- RCJ Advice's **CourtNav** is an online tool developed by RCJ Advice in partnership with Freshfields Bruckhaus Deringer LLP, designed to help litigants in person complete petitions online and upload documents.

As key stakeholders working with court users we stand ready to assist and work with both the MoJ and HMCTS with their work on the digital and modernisation programmes. There is a risk, though, that in the absence of enabling legislation, some the modernising momentum that started with the Briggs and Levenson reports - and which has significant buy in from stakeholders and the judiciary - may stall.

Despite numerous Ministerial announcements, there is as yet no published plan for the digital court reform programme and no specific costings. Many back-room court processes need still digitising so that case files can be stored and moved digitally, though we are more interested in the 'front of house' services that interact with the public - from accessible online court forms to inquiry points and reception desks. There are a number a different IT projects running – the online court and money claims project, the Common Platform Programme, the Divorce e-forms project, the online plea service, the online tribunal service, the eJudiciary and eLIS project, the video links and ClickShare dongle, and the assisted digital project; these need to be brought together in a clear framework linking up with customer facing services and public information as appropriate. As Professor Genn has said in her recent Birkenhead lecture: "There is clearly a great deal of activity but it is not easy to say on any one day exactly what is happening and how far any particular part of the programme has progressed. The only regular public source of updates is the "Inside HMCTS Blog". The lack of a clear flow of communication has been a cause of some complaint among the profession, the judiciary and academics." <sup>19</sup>

We cannot overstate the importance of HMCTS delivering on "assisted digital" support and we are pleased to see that the strategy highlights this, and that both the Good Things Foundation and Revolving Doors Agency have been involved with this work.<sup>20</sup> Others like Law for Life should also be invited to assist. We would suggest that it is important for the success of both the assisted digital project and the wider transformation programme that LIPSS strategy partners, like PSU who work on a daily basis with court users, should be closely involved.

Last year the government's response to the *Transforming our Justice system* consultation promised support for excluded people with using technology, saying "we will ensure that our assisted digital support takes into account the needs of those who are elderly or have disabilities, those with poor literacy or English skills, and those who lack access to technology because of cost or geography."<sup>21</sup> Assisted digital should be one key strand of an enhanced "front end" support for court users at all points of contact – online, telephone, court reception desks, case management etc. We recognise that this is not easy to deliver, but key elements of the strategy for assisted digital support could be:

1. Better use of, and support for, the capabilities of the advice and legal support sectors including Citizens Advice, PSU, the Money Advice Service, and other advice charities and pro bono initiatives – the role of court desks is especially vital, and it is important that duty schemes funded through legal aid contracts are well integrated into wider support provision;
2. Partnerships with local libraries and using libraries as information hubs;
3. Using the estates strategy as a basis for shared facilities with other agencies and programmes, CAFcass, 'troubled families' workers, working with Police and Crime Commissioners (PCCs) and with mental health (NHS) agencies.

<sup>19</sup> Professor Hazel Genn Birkenhead lecture 2017

[https://www.ucl.ac.uk/laws/sites/laws/files/birkenhead\\_lecture\\_2017\\_professor\\_dame\\_hazel\\_genn\\_final\\_version.pdf](https://www.ucl.ac.uk/laws/sites/laws/files/birkenhead_lecture_2017_professor_dame_hazel_genn_final_version.pdf)

<sup>20</sup> <https://insidehmcts.blog.gov.uk/2017/10/12/helping-people-access-our-services-online/>

<sup>21</sup> *Transforming our Justice system*, MOJ 2017 <https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/results/transforming-our-justice-system-government-response.pdf>

We will return to these important issues of legal support and customer service in our response to question 6 on 'people and systems'.

### ***Remote versus face to face hearings***

Whilst remote hearings will certainly improve access for some, they may not work for all groups. There are good reasons, for example, to believe that most appellants in social security cases will likely be best served by a hearing involving face-to-face contact with the tribunal. We acknowledge that in some cases, interaction by internet or telephone may be helpful and necessary. However, provision for remote hearing should be exceptions rather than the default position - access to oral, face-to-face hearings should remain an option for appellants, even where alternative forms of contact, including online resolution, are used as an initial stage.

### ***Understanding the user experience***

More important than gathering our views on what "supplementary provision" will work best, HMCTS need to be developing a better understanding of and engagement with the needs and barriers of vulnerable users to ensure services are appropriate for, and accessible, to them. We suggest that there are three stages to this process which need to be incorporated into the overall strategy.

- Reviewing existing research around needs and barriers;
- Engaging with others, collecting data and looking at how HMCTS might incorporate the needs they have identified into the strategy;
- Arranging focus groups and user panels to test new ideas and systems.

### **Q.3. What are your views regarding our analysis of the travel time impacts of our proposals? Are there any alternative methods we should consider?**

We would refer to our answer to question 1.

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

As per our earlier comments, we question how 'capacity' is defined in this context. The title of the consultation "Fit for the future: transforming the Court and Tribunal Estate" implies it is just about court buildings, but it is not. All of the proposals in this consultation about the organisation of the courts estate and its resources have profound implications for effective participation, for access to justice and for the legal profession, and 'capacity' is the key underpinning issue.

Capacity should not simply be equated with throughput and maximum utilisation rates of court rooms. It is vital that there is the right capacity within the court estate to achieve full and fair justice for all and, as the JUSTICE Report makes clear, the key to successful courts estate reform is about being flexible rather than rigid in how the estate and court venues are used. Whilst the Optimising Hearing Capacity (OHC) project is important to the reform programme, it should not be driving it. If the OHC project bears too heavily on policy and strategy, there is a risk that false assumptions about what can be achieved will creep in. There appears to be an assumption that spare slots in hearing rooms are predictable in advance; this is often not the case, as trials can be adjourned or vacated on the day, or may unexpectedly run shorter or longer than anticipated. Whilst Banbury and other courts faced with closure are technically under capacity, this is within the context of court cases taking a long time and the use of court space being constrained by a lack of sufficient judges and court staff

A further criterion should be that capacity is sufficient to ensure that the quality of service provided does not suffer and that there is efficient administration of justice. HMCTS needs to take a wider view of



capacity', including legal support services, with an emphasis on information, digital channels, reception and court desk services, and other advice services or statutory services like CAFCASS that can provide support in the courts environment. HMCTS' staff, whilst not giving advice themselves, play an essential role in navigation and signposting for court users, and staff shortages can have a real impact. In Lincolnshire County Court for example now dealing with two areas (Grimsby and Scunthorpe) court support services not managing well; the lack of help court staff can negatively impact on peoples' lives as the following case study shared by an agency in Lincolnshire demonstrates.

- The client, a father was sent by the police and child social services for help to the court to protect his daughter. The client was on a low income and eligible for remission for fees, but was dyslexic with poor literacy. The court admin office directed him to a child arrangement pack when he telephoned. He needed to keep his new address a secret due to threats but they were unable to give him a C8 form to protect this as they were short staffed and behind with paperwork, or provide information about forms C100 and C1A, the non-molestation application and fee remission form all of which needed to be presented together. The case was deemed an emergency by both Police and Social Services but he was unable to understand or complete the process himself. He was helped by the advice agency and gained a court order from the District Judge within hours. He was very relieved and reduced to tears, but unhelpfulness at the front end of the court system almost prevented him from accessing this protection.

In any assessment of whether courts should close on capacity grounds, care must be taken to ensure that the remaining courts can provide an efficient and well run service to meet the needs of all of their users. Where Courts are closing there need to be adequate resources in the remaining courts to deal with the increased workloads that are expected, including sufficient staffing levels required to deal with the influx of new cases. A further criterion should be that the capacity is sufficient to ensure that the quality of service provided does not suffer and that there is efficient administration of justice. There must also be consideration of what transitional provisions need to be in place to ensure that there is as little disruption to ongoing cases as possible. If courts close before the scheduled date of a hearing or inquest, the parties stand to lose their date and venue and will be pushed to the back of the queue at the new venue.

**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?**

Whilst technical aspects of court design are beyond our expertise, we consider that there is scope in the consultation for greater recognition of the relationship between court design/architecture and the justice system itself.<sup>22</sup> We refer to the JUSTICE report which suggests an approach based on a typology of a simple, standard or formal justice space and also highlights the importance of furniture. A key issue is how welcoming or foreboding the environment may feel for court users, and there are some good models to draw on. For example, RCJ Advice has revised its reception area at the Royal Courts of Justice to include a self-help area where litigants in person can view web resources and be assisted in completing online forms.

Where attendance at venues is necessary, it must be taken into account that both physical disability and tiredness are likely to be factors affecting many claimants (eg, personal injury claimants), and that some litigants may be struggling with severe anxiety and/or mental health issues - so building design and use of the public space should also bear mental wellbeing in mind. Court buildings must be able to accommodate litigants in terms of access to the venue but also in terms of having suitable facilities for breaks and adjournments. Although there has already been recognition of, for example, the need for child care and creches, far more needs to be done in providing facilities to accommodate carers and

<sup>22</sup> Mulcahy, Linda (2013) *Back to the future?: the challenge of the past for courthouses of tomorrow*. In: Simon, Jonathan and Temple, Nicholas and Tobe, Renee, (eds.) *Architecture and Justice: Judicial Meanings in the Public Realm*.

children. Understanding of, and provision for, the access requirements of different groups to be “designed in” to court and tribunal buildings should be re-enforced by duties under the Equality Act 2010. We would like to see HMCTS engage with the Equalities and Human Rights Commission about meeting the appropriate standards.

**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?**

We have partly covered this in our answer to the two previous questions, but again we urge that HMCTS adopt a “systems thinking” approach to ensure that court users are able to address problems as early as possible, and be diverted away from court and lengthy proceedings where appropriate. All too often, clients present at court with problems that could have been solved at an earlier date. This is amply evidenced in the MoJ *Varying Paths to Justice Survey*, for example in relation to debt “(survey) participants facing debt problems were unable to accept that they faced a justice problem until an external party intervened.” We believe that there should be a specific objective within the HMCTS approach to the delivery of front office and customer facing services to ensure that at a minimum:

1. Information, plus signposting to advice and other agencies that can help address problems, is available at all initial points of customer contact, from phonelines to the court desk;
2. Locally appropriate protocols are developed between HMCTS offices and local advice and legal aid providers, including operating frameworks for local court desks and duty schemes (for example Housing Possession Court Duty Schemes);
3. That there is appropriate free online and telephone access to HMCTS services within all court reception areas.

Sir Brian Leveson’s keynote lecture on “Modernising Justice through Technology” called for HMCTS to have “an excellent front of house service” making use of third sector capabilities.<sup>23</sup> However, instead we fear that we are seeing an increasing reliance on call centre models for the delivery of HMCTS customer and public facing services. Our local partners tell us that Salford and Northampton helplines for example cannot deal with the magnitude of calls and the public cannot get through on the lines; when they do staff are said to often be unhelpful. The number of full time staff employed by HMCTS has fallen from 20,392 in 2010/11, to 14,269 in 2016/17.<sup>24</sup> Given the feedback we have received from frontline partner agencies, there are widely shared concerns as to whether the critical issues about the public being able to access HMCTS forms and systems are being addressed.

However, we do not wish our assessment to be read negatively. There are also excellent examples in HMCTS of innovative services, such as the Family Solutions Court in the Royal Courts of Justice Central Family Court, where processes are well joined up, from inquiry points through to listings and scheduling, and the delivery of holistic solutions with effective inter-agency working.

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

We would again stress the importance of working with user groups and understanding their issues, engaging the Litigant in Person Engagement Group (LIPEG) and the Civil Justice Council Working group at an early stage of developing proposals would be a good starting point.

<sup>23</sup> Leveson *Modernising Justice through Technology* <https://www.judiciary.gov.uk/wp-content/uploads/2015/06/pgbd-technology-keynote-240615.pdf>

<sup>24</sup> <https://www.theyworkforyou.com/wrans/?id=2018C01C30.125748.h&s=speaker%3A25391#g125748.q0>

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

Whilst we welcome that this strategy is proposing “a rolling programme of consultations” it is also important that the MoJ undertake more comprehensive public consultation on their key digital court reform proposals, linking to HMCTS work on restructuring its resources and public facing services.

**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?**

We are concerned that no Equality Impact Assessment has been prepared with this particular strategy consultation, although there are impact assessments with the individual court closure consultation. It appears from these latter assessments that there is little by way of comprehensive information held on the protected characteristics of HMCTS service users, which is a matter of concern. Rather, the assessments assume that all court users are representative of the general population so the equalities data is extrapolated from the 2011 Census.

It is important that HMCTS tackles this data gap. The Lammy review has put the spotlight on ethnicity as an issue for the justice system, and recommended improvements in the capture and publication of data.<sup>25</sup> However, the impact assessment documents have no information on ethnicity or any other aspect of equality. It suggests “at this stage the proposed strategy outlined in this document will have no direct impact on service delivery and as such we are unable to carry out a detailed equalities analysis”.

We believe that it is essential that HMCTS should be able to model the impact of changes on different groups. There are indications from research, for example, that video links can disadvantage those with mental health problems, learning difficulties and with English as a second language (among others).<sup>26</sup>

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

We have a few comments in relation to the individual court closures. In relation to the County Court at Wandsworth there are two suggestions for the reallocation of the Court’s work: either the entirety of the workload may be absorbed by the County Court at Kingston upon Thames or the majority of matters could be directed to the County Court at Clerkenwell & Shoreditch, with housing possession matters listed between the County Court at Kingston upon Thames and Wimbledon Magistrates’ Court.

Whilst we fully acknowledge that there are issues as to whether Wandsworth County Court is fit for purpose, we do have some concerns about the proposals to transfer the workload to either Kingston or Clerkenwell and Shoreditch. The travel times set out in the consultation document are unrealistic, and the difficulties of travelling through London should not be under-estimated. Travelling further and making more complex journeys is always likely to be more problematic for vulnerable users (eg personal injury claimants and victims of violence), not just bearing in mind physical injuries but also mental health problems such as anxiety and depression.

There are also concerns that those courts that are proposed to take on the workload from Wandsworth do not have the capacity to do so. The closure of Bow County Court has led to many cases being diverted to Clerkenwell and Shoreditch – there are concerns that the court will not have the time to

<sup>25</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/643001/lammy-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf)

<sup>26</sup> <http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf>

take cases from Wandsworth as well. Of the options suggested we would favour re-allocation of the majority of work from Wandsworth to Kingston County Court. Finally, the needs of Hammersmith and west London residents whose cases have already been shifted to Wandsworth following the closure of Hammersmith Magistrates' Court and Youth Court and West London County Court also need to be considered.

We have some similar concerns in relation to civil and magistrate hearings currently heard in Banbury, reallocating to the Court at Oxford, and likewise some concerns raised about moving cases from the purpose built Magistrates Court in Cambridge to Huntingdon. There is concern locally that increasing the pressure on Oxford Magistrates' Court will incur further costs and delays. As regards the needs of Cambridge the local justice community point to the growing population of the City and its periphery which itself makes a strong case for retaining Cambridge as a strategic location.

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