About HLPA

1. The Housing Law Practitioners Association (HLPA) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics, and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. It has members throughout England and Wales.

2. HLPA has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves.

3. HLPA is regularly consulted on proposed changes in housing law or on legal changes which may impact on housing law (whether by primary or subordinate legislation or statutory guidance). HLPA’s responses are available at www.hlpa.org.uk.

4. Membership of HLPA is on the basis of a commitment to HLPA’s objectives. These objectives are:
   - To promote, foster and develop equal access to the legal system.
   - To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
   - To foster the role of the legal process in the protection of tenants and other residential occupiers.
   - To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
   - To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.
Introduction

1. HLPA welcomes this inquiry into the impacts on access to justice of recent and proposed reforms to courts and tribunals.

2. HLPA is deeply concerned about the consequences for access to justice arising from court closures, increased use of online processes, and swingeing cuts to HMCTS’s budget. HLPA has voiced these concerns on several occasions in response to previous consultations.

3. As a body representing specialist housing practitioners, HLPA’s response is limited to areas concerning housing law.

Responses to questions

1. What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to:
   a. civil justice?
   b. family justice?
   c. criminal justice?
   d. administrative justice, particularly as delivered by the tribunals system?
   e. those who are digitally excluded or require support to use digital services?

and

2. What are the effects on access to justice of court and tribunal centre closures, including the likely impact of closures that have not yet been implemented, and of reductions in HMCTS staffing under the reform programme? For users, how far can online process and video hearings be a sufficient substitute for access to court and tribunal buildings?

4. As mentioned above, given HLPA’s area of expertise this response focuses on the effect of the reforms on civil justice, administrative justice, and those who are digitally excluded or who require support to use digital services.
5. HLPA considers that the likely effects of the reforms, both implemented and proposed, on access to justice will be deleterious.

6. The damaging effect of court closures is already evident and, if the further proposed court closures are implemented, will become even worse. Parties are having to travel significantly longer distances to get to their “local” court. This is putting some of the most vulnerable members of our society at a disadvantage:
   a. HLPA represents many social housing tenants, homeless persons, and tenants facing eviction for rent arrears. Their income is extremely limited. They are frequently reliant on benefits or even food banks and cannot afford to meet their most basic needs. They simply cannot afford long journeys (on public transport, as few can afford to own a car) to get to court.
   b. Similarly, many of HLPA members’ clients have mental and/or physical disabilities. For them, a long journey to an unfamiliar area – again, usually undertaken on public transport - is extremely difficult.
   c. Other clients have commitments such as caring responsibilities which make the journey challenging for them.

7. In addition to this, the experience of HLPA members is that the closure of some court centres has led to other courts being overwhelmed as the business of the now-closed courts is transferred there. This has had a variety of unfortunate consequences on the administration of justice. For example, in many courts there is now a wait of many months for even a simple matter such as a directions hearing to be listed. There are long delays in getting applications issued or consent orders approved. It can be extremely difficult to communicate with court centres: it is well-known amongst practitioners that getting a response out of some courts is virtually impossible. This can lead to the court’s own time and resources being wasted if, for example, matters which have settled are not vacated because the consent order has not been looked at. Moreover, some courts have adopted inefficient practices such as floating lists, which lead to many cases being adjourned on the day of trial due to a lack of court capacity.

8. The court closures have also given rise to confusion, both potential and actual. Cases are frequently shifted between two or more different buildings over the course of the litigation. By way of example, a possession case which would previously have been dealt
with at the County Court at Bow may now have its first hearing at the Stratford Housing Centre, sitting at Stratford Magistrates’ Court. If it is likely to progress to a trial it will then be transferred to the County Court at Clerkenwell and Shoreditch. If the trial is likely to last two days or more it will then be transferred again to the County Court at Central London. The tenant facing eviction will have to find their way to three separate courts, none of which may be familiar to them. Similarly, HLPA members have come across housing cases in the Woolwich area – which would previously have been dealt with at the County Court at Woolwich – being heard in the County Court at Bromley, Bromley Magistrates’ Court, and Woolwich Crown Court.

9. HLPA is not persuaded that the court estate was in fact underused, or underused to the extent claimed by HMCTS. The view of HLPA members is that if courtrooms were empty it was because judges were not being paid to sit in them, not because there were insufficient cases to occupy their time.

10. The reductions in HMCTS staffing are only exacerbating these issues. As referred to above, in HLPA members’ experience many courts are simply overburdened. Paperwork is not dealt with expeditiously. Telephones are not answered. Files are lost and documents do not make their way to the judge in time for the hearing. These issues have obvious implications for access to justice. Hearings are not effective, or not as effective as they might be. There is a long delay in claims or applications being issued.

11. HLPA’s view is that online processes and video hearings are not an effective substitute for access to court and tribunal buildings. In the Civil Courts Structure Review: Final Report by Briggs LJ, it was accepted (at paragraph 6.95) that possession claims were unsuitable for the proposed Online Court:

> There has been virtually unanimous support for the wholesale exclusion of claims for the possession of homes, and even those few which (in IR6.43(a)) I originally thought might perhaps be safely included. I have been easily persuaded by a paper from the Housing Law Practitioners Association (“HLPA”) that they are no more suitable for the Online Court than other possession claims, and no-one has suggested otherwise. I need therefore say no more about them.

12. Briggs LJ also agreed that there should not be compulsory inclusion of disrepair claims (at paragraphs 6.101-6.102).
13. It is therefore well-established that housing cases are generally unsuitable for online dispute resolution. This remains the case, for several reasons:

a. Frequently, the individuals who appear before the courts in housing matters are vulnerable. They may be a homeless person appealing a decision of the council that there is no duty to accommodate them under the Housing Act 1996; or a social housing tenant who is struggling to pay their rent and has fallen into arrears; or a tenant in the private rented sector who faces eviction with nowhere to go. They frequently have mental and/or physical disabilities. Often, they have extremely limited means. Their ability to access and navigate the internet is often limited.

b. Housing cases are complex. They involve the application of legal principles from several different fields, ranging from human rights and equality legislation to contract and equity. Even cases which are supposedly straightforward – such as obtaining possession pursuant to a notice under section 21 of the Housing Act 1988 – can be very complicated, given the myriad new regulations which must now be complied with to render such a notice valid.

c. Defences are often only raised at the first hearing. This is frequently because this is the first time a tenant has had the benefit of legal advice. Even if a tenant is unrepresented, it may be that the judge hearing the tenant’s side of events discerns a legal defence from their account.

d. The Housing Possession Court Duty Scheme is an invaluable source of assistance for defendants and indeed the court. The presence of a duty solicitor enables tenants and other occupiers of housing to obtain advice and representation at the first hearing. These are very successful in obtaining adjournments, where a defence is identified, or in having unmeritorious claims dismissed. HLPA members participate in several duty schemes and can frequently deal with upwards of ten cases in a day. Such schemes could not realistically function in an online forum. Duty schemes are particularly important given the lack of legal aid for welfare benefits: this means that issues with benefits, which could previously have been identified earlier, are often now addressed only when the matter comes to court.

e. Housing matters often turn on disputed evidence which ultimately require a judge to hear live oral evidence.
f. Court hearings often provide the impetus for housing matters to be settled, for example by way of the landlord and tenant agreeing a payment plan outside court.

3. Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication with:
   a. Judicial office holders at all levels of seniority?
   b. The legal professions and the advice sector?
   c. Other relevant stakeholders?

and

4. Have the Ministry of Justice and HMCTS taken sufficient steps to evaluate the impact of reforms implemented so far, including those introduced as pilots; and have they made sufficient commitment to evaluation in future?

14. HLPA is deeply concerned at the speed with which these reforms are being pushed through. HLPA’s view is that the haste with which the reforms are being implemented does not allow for proper consideration of their likely consequences (prior to implementation) or actual consequences (post-implementation).

15. HLPA also shares the concerns referenced in the report on Transforming courts and tribunals (published by the Committee of Public Accounts in July 2018) as to the lack of effective consultation. HLPA agrees with the description of much consultation being “lip-service”. HLPA considers many of the consultation attempts to have been exercises in ticking boxes rather than genuine engagement.