Written Evidence from Victim Support (CTS0003)

1. Victim Support is the independent charity of victims and witness of crime in England and Wales. Our purpose is to provide specialist help and services to support people to cope and recover to the point where they feel they are back on track with their lives and to ensure their voices are heard. Last year we supported over 130,000 people, including 58,000 victims of violent crime, 43,000 survivors of domestic abuse and 12,000 victims of burglary. We run a number of specialist services across the country including our national homicide service, which last year supported 2,256 family members bereaved by murder and manslaughter.

2. Victim Support welcomes the opportunity to respond to the Justice Select Committee’s call for evidence on the HMCTS court and tribunal reforms. We have engaged closely with HMCTS during the development of their reform programme and we believe that both the reform programme and the Committee’s timely inquiry into its access to justice implications presents a valuable opportunity to address many of the barriers and problems that victims and witnesses face in criminal courts.

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?

3. Victims of crime face multiple barriers to accessing justice, from the immediate aftermath of the crime through to a criminal trial and beyond. Many victims find attending court to be a stressful and anxious experience, they worry about coming face to face with the defendant and fear possible reprisals for giving evidence.

4. The operation of the criminal justice system (CJS) relies entirely upon the co-operation and confidence of victims; the CJS simply would not work if victims do not report to the police or support the police and CPS in giving evidence. Improving victim experience of the courts is not simply a ‘nice to have’ but is vital to the successful operation of the justice process, and it must be a central aim of the court reforms.

5. We do believe that a number of the reforms will improve access to justice for victims, but in a number of areas we are concerned that they do not go far enough.

6. We warmly welcomed the focus of the 2016 joint vision statement Transforming our Justice System on allowing vulnerable witnesses to pre-record their evidence ahead of the trial taking place. Section 28 of the Youth Justice and Criminal Evidence Act 1999 allows vulnerable and intimidated witnesses to do this, however due to concerns about IT, cost and procedural changes the pilots for Section 28 did not begin until nearly 15 years after the Act passed, in December 2013. As the then provider of the national Witness Service in criminal courts, VS assisted with the pilot. The results of the pilot found that Section 28 delivered clear benefits
not only for victims and witnesses, but for the CJS as a whole. The Ministry of Justice found that Section 28 cross-examinations reduced the level of distress and trauma for witnesses and reduced the time between sent date and cross examination by half.  

7. If implemented, the use of Section 28 will have clear positive consequences as it allows vulnerable witnesses who would otherwise be unable to access justice to do so. The evidence also suggests that its use results in fewer cracked trials and alleviates the long waits that victims face to give evidence, which can cause them to drop out or lose confidence in the process. Put simply, Section 28 helps to increase the engagement of vulnerable and intimidated victims in the criminal justice system.

8. However, we are extremely concerned that despite a commitment to roll pre-recorded cross examination out nationally in 2017, this process is far from being been completed. The roll out has been beset with delays, with only three courts having pre-trial cross-examination available and six further courts starting the process of adopting it to date. We understand from HMCTS that six new courts are expected to be identified for roll out as these six courts finish implementation. With 254 Magistrates and Crown Courts in England and Wales, at a rate of six new courts per year it will take over 40 years for the roll out to be completed. It is unclear when the Government intends for the national roll out to be finished and what plans are in place for this to be achieved in the near future. We know that the use of Section 28 will go a long way to opening up access to justice for vulnerable and intimidated witnesses. Having been on the statute books for two decades, and with six years passing since the pilots began, it is unacceptable that the roll out has still not been completed.

9. The ability to pre-record cross examination is one of a series of practical provisions available to witnesses known as Special Measures. Introduced under the Youth Justice and Criminal Evidence Act 1999, Special Measures are available to witnesses defined as being either ‘vulnerable’ or ‘intimidated’ to help mitigate the stress of giving evidence (at the discretion of the court). Special Measures can include putting a screen around the witness box to stop the defendant seeing the witness, giving pre-recorded evidence, giving evidence by video link (usually from another room within the court building) and having the public gallery emptied. Special measures are vital to increasing access to justice for vulnerable and intimidated victims and witnesses as they can alleviate some of the stress and anxiety of giving evidence, including removing the fear of having to appear in front of the defendant. They can encourage victims to engage with the criminal justice process who otherwise would not have given evidence.

10. Research shows that Special Measures are greatly valued by victims. One victim of non-recent sexual assault supported by VS told us: “I had Special Measures so I didn’t have to look at him [the offender]… and it made giving my evidence a lot easier not having to see him.” A victim of a road rage incident said: “I made a point of saying that I wanted to give my evidence behind screen, I really didn’t want to see this guy again. It took a little while to get that approved, but it was approved.” CPS research has found that the most common Special Measure, the use of a screen (used by 11% of victims who give evidence), was found to be helpful by 85% of victims.

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2 MoJ (Jan 2018) Fit for the future: transforming the Court and Tribunal Estate Consultation. P.12
11. However, the provision of Special Measures is patchy, courts are sometimes not fully equipped to provide them and often a decision to provide them is made at the last minute, resulting in confusion and anxiety for witnesses.\(^4\) One witness in a serious assault case told VS of the problems they faced in accessing Special Measures: “It wasn’t that easy to get [Special Measures]... [I] was really unsure as to whether we’d get it and nobody really told us, definitively, until the actual day that we were in court that we’d be getting them.”

12. In a number of courts special measures screens are not fit for purpose to ensure the privacy and protection of victims and witnesses and in the majority of courtrooms TV screens cannot be moved to ensure the privacy of those giving evidence. Technology delays or failures with video link equipment are also common. We welcome the government’s commitment made in their 2018 Victims Strategy to improve access to Special Measures and record and monitor applications for them.\(^5\) However, it is clear that more needs to be done to ensure that this is the case and HMCTS is responsible for ensuring that any granted Special Measures are in place.\(^6\) Given the vital role that they play in opening up access to justice for vulnerable and intimidated victims and witnesses, updating all criminal courts to ensure that Special Measures are available, fit for purpose and working needs to be central to the ongoing court reforms.

13. The court reforms also need to address the long waiting times for cases to reach trial. Currently, the average time from offence to completion for criminal cases at court is 151 days. This is even longer for complex cases, with sexual offences taking 470 days on average and fraud cases taking 463.\(^7\)

14. Victim Support research in 2017 found that more than half of victims (51.2%) were dissatisfied with the time it took for their case to reach trial, with more than a third (34.1%) being 'very dissatisfied'.\(^8\) Previous VS research found that delays in cases reaching court were “especially difficult for victims of crime” and Lord Justice Leveson said that long waits are “doubtless causing a considerable increase in the stress placed on victims and witnesses”.\(^9\)\(^,\)\(^10\) Long waits for a case to reach trial are not only stressful for the victims and witnesses involved, but also have the potential to undermine the effectiveness of the trial itself. Lord Justice Leveson’s review identifies that where there is a long period between offence and trial “memories will be affected and the direct evidence less persuasive”.

15. Long waits for the case to reach trial may also result in a trial collapsing altogether. Anecdotal evidence from VS caseworkers and victims suggests that there may be a correlation between long waiting times and ineffective trials. VS staff frequently report that many victims and witnesses do not return to court following an adjournment or threaten not to. Continued long waiting times for trial have clear access to justice implications and they must be addressed. We recommend that rather than a vague commitment to increasing efficiency, a central aim of the court reforms should be reducing waiting times.

\(^4\) https://www.victimsupport.org.uk/sites/default/files/Victim%20of%20the%20System%20report.pdf
\(^8\) https://www.victimsupport.org.uk/sites/default/files/Victim%20of%20the%20System%20report.pdf
\(^9\) Victim Support. (2013). Out of the Shadows
16. Finally, we would like to raise the issue of lack of or patchy support at court and after trial. While we are aware that this is not entirely within the remit of HMCTS, we believe that it would be a missed opportunity for the government to embark on a programme of court reform without addressing this issue. The Ministry of Justice funds a Witness Service at all criminal courts in England and Wales, currently provided by Citizens Advice. Research has found that victims and witnesses value the support provided by the Witness Service and that it provides a ‘safe haven’ for them.¹¹

17. However, outside of this service support for victims can be hit and miss and too often at the discretion of court. For many victims, having a professional advocate support worker at court can help to alleviate the stress and fear of giving evidence as well as help them to navigate the complex courts process. Despite this, our Independent Domestic Violence Advocates (IDVA) and Independent Sexual Violence Advocates (ISVAs) tell us that courts do not always permit them to sit with the victim in domestic abuse or sexual violence cases. One Cumbria based VS IDVA makes the point that there are two Crown Courts in her area; in one she is allowed to sit with the survivor in the courtroom but not in the other. Being deprived of much-needed support in court can make it difficult for victims to engage in the criminal justice process, potentially restricting their access to justice. In addition, victims can lack support after trial as they are not routinely referred back in to victims’ services creating a gap in support at a point where re-victimisation is prevalent. Victims who do not feel supported throughout the court process and post-trial may be unlikely to engage with the CJS again, resulting in future access to justice problems.

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 processes and video hearings be a sufficient substitute for access to court and tribunal buildings?

18. Up to date and accessible court buildings are vital to improving access to justice for victims and witnesses. We have concerns that court closures could lead to victims travelling long distances to attend court, and potentially having to share long journeys on public transport with the defendant and their supporters, particularly in rural areas where courts can be a long distance away and public transport infrequent. Longer journey times can lead to other difficulties as well, such as having to take more time of work or extending childcare hours. These issues are exacerbated by hearings being rescheduled on the day.

19. In addition we strongly believe that the programme should have a firm focus on the facilities within court buildings. Given that fear of unwanted contact with the defendant is one of the biggest issues raised by victims at court, it is vital that separate spaces are available for the defendant and victim at all criminal courts. This includes separate entrances, toilets and waiting areas. When choosing which courts to close and which to keep open, HMCTS must take into account the facilities available at court, including separate waiting rooms and the availability of Special Measures.

20. In our experience staffing cuts do present a problem for victims and witnesses. A lack of staff can mean victims and witnesses struggle to find out basic practical information on the day of court, and without adequate levels of staff there is no one to enforce separate spaces for

¹¹ Victim Support. (2013). Out of the Shadows
victims and defendants. In practice we have found that staffing cuts have resulted in the voluntary sector picking up the slack and providing more of the practical assistance that court staff should provide, in particular the Witness Service.

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?

21. We feel confident that HMCTS has consulted comprehensively with victim and witness stakeholders at all stages of the reforms. VS is a member of the HMCTS Victim and Witness Group, alongside other voluntary sector stakeholders, which provides us with a regular opportunity to feed in to the reform process and represent the voice of victims. We have engaged in a number of meetings and discussions with relevant HMCTS and Ministry of Justice staff and have submitted written evidence on the subject of the ongoing court reforms.

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?

22. The reforms aim to improve the efficiency of the criminal justice process and to “deliver better justice for all”. It can only do so by improving the experience of victims within the criminal justice system as the system can only operate with the consent and co-operation of victims. We therefore believe that any evaluation of the reforms must focus on improving outcomes for victims and witnesses. We suggest that specific success measures should include: decreased waiting times, decreased number of cracked and ineffective trials, increased victim satisfaction, increased number of victims accessing Special Measures and a fall in the number of cases which fail because victims do not support action.

March 2019