Introduction

This response is submitted on behalf of the Civil Litigation Committee of Manchester Law Society. The Committee is made up of, mostly, senior civil litigators from a broad range of legal firms (from international firms to high street practices), barristers' chambers and legal educational institutions in the Greater Manchester Area. The comments below relate purely to civil justice: separate responses will be submitted by Manchester Law Society in respect of family and criminal law.

1 What will be the likely effect of the reforms, both implemented and proposed, on access to justice in relation to civil justice.

Court Opening between 5.00pm and 7.00pm

1.1 We are concerned that later Court opening hours may be problematic for solicitors with childcare or other commitments which prevent them from attending hearings after 5pm. Even if the listing of hearings after 5pm is voluntary, there may be pressure on legal staff to agree to a hearing after 5pm if the client wishes for an application to be heard sooner than would otherwise be the case.

1.2 Whilst it may be argued that alternative staff members could attend at a hearing in place of those with caring duties, the reality in many smaller practices is that the firm may not be able to offer a suitable stand-in or, if a replacement lawyer is provided, the change in personnel may compromise the provision of service to the client.

1.3 We observe that it will become necessary/an expectation that a firm's office would remain open until after 7pm to properly support those members of staff attending a hearing. This may be particularly difficult for legal aid high street practices which traditionally close shortly after 5pm. There will be extra costs involved in keeping offices open until after 7pm, including extending hours of existing staff (or finding alternative staff prepared to work after 5pm) and additional overheads (heating/ lighting etc.). Such additional costs may impact on costs charged to clients, or affect the viability of firms which have no option other than to absorb the additional cost.

1.4 We have real concerns about clients travelling home to outlying districts in the winter months when it is dark after 5pm. Further, there are genuine difficulties returning to, say, Oldham, Bury or Bolton from Manchester after 7.00pm due to the poor state of public transport. The same issue will apply for legal staff.

1.5 It is common for advocates to use a conference room at court to explain to their clients what has just happened in a hearing. This process may well go beyond 5pm, particularly where more time is required to explain the outcome to vulnerable clients. This often leads to pressure from court security for the
advocate and their client to leave the building, notwithstanding that the meeting is still in progress. This pressure will be even greater at 7pm in the evening. The result may well be that clients will leave the building confused about what has just happened – which will be an even greater issue for those who need that explanation most.

1.6 There may be issues where a case running from 5-7pm has to come back the next day. The late hour will exacerbate the difficulties of informing clients that an alternative advocate will be dealing with their case the next day. Indeed, offices will probably have to stay open far later than 7pm, extending working hours for office staff, so as to cope with the fallout from such matters and to ensure that the next day’s diary is reconciled.

1.7 It is common for advocates to provide their instructing solicitor with a note of the day’s events the same day as the events occurred so that the advocate can then commence preparation on the next day’s cases. Where a case runs until 7pm and there are transport issues this will make it more difficult to achieve this. This work can only then be picked up in an evening, putting an unfair responsibility on those with caring duties, beyond just having cover while they are at court. This makes the profession even less attractive to those with young children/ caring duties.

1.8 As regards preparing a case for the next day, this work will be pushed back to later in the evening, making it difficult for advocates to properly prepare for their hearing the following day. As court listing determines the start time of a hearing, if the advocate has no ability to flex the start time back to, say, 11am, to recognise a late finish the previous evening, then this will be damaging to those practitioners.

1.9 These issues have been exacerbated by the closure of local courts, meaning greater distances to travel and therefore bigger issues with returning home on public transport.

1.10 If courts sit later will it only be for cases specifically listed for a 5pm start with a less than 2 hour time estimate? Or will the norm become that all cases will just run on until 7pm? If it is the former, then there is a risk that cases will be rushed or will not finish in the 2 hour slot. If it is the later then this will be damaging for the concentration of those involved and may affect the quality of representation. Staying on top of a brief for a 9 hour day is challenging, particularly if the case lasts several days.

### Online court

1.11 For lower value claims there is an attraction to disputes being dealt with, and potentially settled, online, as long as the parties are:

1.11.1 able to ask for an oral hearing and/or the judge is able to determine that an oral hearing is appropriate; or

1.11.2 able to opt-out of the process and use a more traditional method of dealing with their case.

### Availability of an Oral Hearing
1.12 If there is no oral hearing, this may be prejudicial to a lay person. An unrepresented litigant would not have the assistance of the Judge to help them articulate their case and help them focus on the key issues in the case, as would occur if there was an oral hearing. This will be a more difficult exercise for a Judge to undertake if a case is purely dealt with on paper, as many unrepresented litigants may find it difficult to properly articulate their arguments in writing.

1.13 Consideration needs to be given to the type of cases which are suitable for online disposal. If witnesses provide statements which are diametrically opposed – it may be virtually impossible to decide the case on paper. An oral hearing should be required.

1.14 There is a cathartic element to parties having their day in court. Will they find it unsatisfactory that they do not have that day?

1.15 There is a value in witnesses understanding that not only will they have to provide a statement, they will also be cross examined on the content of the statement at trial. The threat of having to stand up in court and give evidence on oath is a powerful deterrent to those who might otherwise be tempted to give untruthful evidence in a written statement.

Availability of an opt-out

1.16 Older claimants in particular may be put off by a system which requires the use of technology to access justice. We are concerned that at present there is insufficient education for older putative litigants in terms of how to access relevant sites, filling in electronic forms and use of online systems? The same concern would apply to those with disabilities which may hinder the use of technology. Further, we query whether all putative litigants have access to robust, secure and effective IT equipment to use such systems. We query whether those having trouble accessing justice also have trouble accessing the digital world?

1.17 In the light of the above, we firmly believe that it is important that there is an opt out from using the online court and access to an acceptable alternative system for progressing low value claims.

Robust Technology

1.18 Turning to the system itself, it is important that the IT used by the court is extremely robust if it is to be used and accepted by litigants. It has to be accessible and useable on a variety of hardware such as tablets and, increasingly, by phones. The court needs to be leading the way in technology to make this work and be attractive to litigants, but our experience is that, at the moment, the court service appears to be lagging behind in this area. We are concerned that this will be a difficult project to deliver in a timely, cost effective way.

1.19 Finally, we observe that historically such online processes, which are supposed to be easy to access and simple to use for litigants, have been hijacked by claims management companies and end up costing more for those using the service and delivering less by way of damages to the claimant.
Online Virtual Hearings

1.20 It is important that this approach is not foisted on parties to proceedings. Not everyone will have access to reliable IT equipment. For the system to work properly and be an attractive proposition to those who cannot easily access the central courts (which is especially important, in light of local court closures), HMCTS should put in place technology "hubs" where parties can access robust and reliable video conferencing facilities which have been specifically designed for the use of the court service.

1.21 However, we are concerned about the provision of a robust infrastructure. Again the government/HMCTS does not have a good track record of delivering reliable IT. Whilst the aim may be to reduce costs, for the system to be attractive and effective, significant up-front investment will be required to make video hearings accessible to those who have been deprived of access to local justice. Further, such systems do not look after themselves and will require continuous maintenance, upkeep and be subject to an ongoing process of renewal to keep track with technical advances.

1.22 At the early stages of proceedings there ought to be a discussion about the use of virtual hearings and only if the parties agree to its use should it be deemed appropriate.

1.23 If the system is supposed to work using the parties' own technology systems/hardware, it needs to be tested on all types of devices and will require constant updating to cater for the very rapid development in consumer technology. In any event, we fear that hearings will be extremely difficult to manage within a defined time slot due to delays in parties being linked up, loss of signal etc. Even with professionally maintained and managed video online communication systems, significant time is lost at the start or during calls due to issues with technology or simply human error in how the system is used. The regular use of virtual hearings using the parties' own hardware has the potential for farce.

2 What are the effects on access to justice at 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 tribunals' buildings?

2.1 No response: our members practise in Manchester so we are not in a position to comment from our own experience.

3 Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication with the legal profession and the advice sector.

3.1 There have been consultations and visits to Manchester by various members of the judiciary and it is true to say that we have been given the chance to respond to consultations and provide feedback to the judges. When given the chance to express a view, we have done so. However, our experience is that responses have largely been ignored in favour of what the MOJ advocated from the start.
3.2 Consultations have not been particularly open as there is frequently insufficient information provided in terms of, for example, the likely or hoped for cost savings in the various routes which have been suggested. It is therefore difficult to weigh up properly what has been proposed.

3.3 There has also been information provided in support of particular proposals which has not been entirely accurate. For example, in relation to court closures, the journey times from the court to be closed to the alternative court were measured in terms of how the crow flies: it might be stated that the court is only 10 miles away from Manchester Civil Justice Centre, however, in reality, that may take over 1½ hours to travel in during certain times of day. Further, it may the case that it is not possible to reach a court centre at 9 o'clock using public transport from certain parts of the surrounding area.

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?

4.1 It is not apparent that there have been any significant steps taken to evaluate the impact of reforms. If there has been, it is not visible or evident to us. Our impression is that pilots are run and then adopted without any significant change, irrespective of how the profession believes the pilot operated. There is usually a short message issued stating how successful the pilot has been and that it will be adopted in the near future.

4.2 Further, it is not clear what the actual evaluation criteria against which success is being judged. We have seen no evaluation criteria, meaning we are not able to collect impact data because we do not know what we are collecting it in relation to.