Written evidence from the Institute for Criminal Policy Research, Birkbeck, University of London (CTS0005)

1. The Institute for Criminal Policy Research (ICPR) at Birkbeck, University of London is completing a study, funded by the Nuffield Foundation, on *Achieving Accessible Justice*. The study, led by Professor Penny Cooper and Dr Jessica Jacobson, is addressing two main questions:

   - What factors support, and what factors undermine, participation in courts and tribunals?
   - What policy and practical changes could promote higher levels of participation by lay court and tribunal users?

2. This work builds on a number of prior court-based studies undertaken by ICPR, such as our research on defendants’, witnesses’ and victims’ experiences of the Crown Court (Jacobson, Hunter and Kirby, 2015, *Inside Crown Court*); and on Penny Cooper’s extensive work on vulnerability in the courts, including as co-founder and Chair of The Advocate’s Gateway (www.theadvocatesgateway.org).

3. Our current research entails observation of court and tribunal hearings and interviews with justice practitioners (including members of the judiciary, court staff, lawyers, and providers of support and advice services) in three geographic areas. The primary focus is on the following court and tribunal settings:

   - Crown Court
   - Adult magistrates’ courts
   - Family Court
   - Employment Tribunal
   - Immigration and Asylum Tribunal

4. To date, we have conducted around 130 practitioner interviews and 70 observations across all fieldwork sites and venues. We will complete the fieldwork at the end of March and anticipate publishing the findings in the autumn of 2019. Because the work is ongoing, we are not in a position to provide a detailed submission to the Select Inquiry based on the research. However, we wish to make the following points:

   4.1 It is our contention that effective participation in the judicial process – by witnesses, parties others directly impacted by it – is essential to ensuring that the process operates in a fair manner and produces just outcomes. More broadly, participation can be seen as an essential component of the exercise of the right to a fair trial, access to justice, and the perceived legitimacy of the judicial process. However, it is clear that practitioners’ conceptions of what ‘effective participation’ means and entails differ widely.
4.2 The development of our current research was informed in part by our concern that the HMCTS reform programme does not appear to take sufficient account of the critical importance of participation by lay court users. It seemed to us, in particular, that court closures, the emphasis on ever swifter justice, and growing reliance on video-link technology for court appearances risk exacerbating barriers to participation that court users already encountered.

4.3 Emerging findings from our research suggest that these concerns are shared by many practitioners; while reduced availability of legal aid is the other development that, in the eyes of practitioners, impedes court users’ participation and access to justice. On the other hand, there is also a recognition that aspects of court modernisation not only offer potential cost savings to the justice system but may also improve court user experience by, for example, enabling easier access to information, reducing delay, and reducing unnecessary travel to – and stress associated with – physical attendance in the courtroom.

4.4 From our research to date it is evident that a wide array of factors undermine court user participation; and that while some of these relate to the reform programme, others are rooted in existing court culture and modes of operation. This points to the need for an integrated, principled approach to supporting effective participation across the justice process, which addresses both old and new barriers – relating, for example, to courtroom design, language and ritual, and accessibility of legal representation, advice and information.

4.5 Additionally, we perceive a need for further research on the court reform programme, and believe that the implications of attendance at court by video-link are a vital area of inquiry. Research that assesses whether video-link hearings are associated with differential outcomes would be of particular value. Another key question which merits in-depth research is the difference in the quality of face-to-face versus video-enabled interaction, from both practitioner and lay court user perspectives.

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