Written evidence from Public and Commercial Services Union (CTS0010)

Justice Select Committee inquiry into Court and Tribunal Reforms

1. The Public and Commercial Services union (PCS) is the largest trade union in the civil service, representing over 180,000 members. We represent workers throughout the civil service and government agencies. These include staff that work in Her Majesty’s Courts and Tribunals Service (HMCTS) and the Crown Prosecution Service (CPS). They undertake all the key duties in the full range of posts necessary for the courts and tribunals to operate. They provide services for all courts and tribunals from Magistrates’ Courts to the Appeal courts and the Probate Service.

2. We welcome the committee’s timely inquiry and would welcome the opportunity to back this written submission up with oral evidence.

3. By March 2023, HMCTS expects to employ 6,500 fewer full-time equivalent staff, reduce the number of cases held in physical courtrooms by 2.4 million per year and reduce annual spending by £265 million.

4. There is a massive shift of justice delivery to a centralised administrative service based in an as yet unknown but small number of Court and Tribunal Service Centres (CTSCs) in England and Wales. We are concerned at the distinct lack of consideration for the impact on staff that these reforms will undoubtedly have.

5. PCS believes that the changes are primarily driven by the 40% Ministry of Justice budget reduction rather than any genuine desire to improve access to justice or the service provided. This accounts for why there has no effective consultation or evaluation of changes made.

6. Of the £1 billion that has been earmarked for reform at least £30 million has been spent on management consultants and £38 million on IT contracts. With over two-thirds of the money spent, PCS maintains that very little in tangible benefits has been delivered. Many products are not fit for purpose.

7. HMCTS has announced that the finish date to their programme will be extended by a year to 2023 to allow more time to develop some of the shared systems that sit behind their next set of online services. In the announcement HMCTS claims that existing services have already provided quicker and easier access to justice for many. However, as we have set out below the new technology already in place such as online divorce and probate services, has not improved services, and has in fact caused more delays.

8. Since 2010 over 250 courts have closed and the Public Accounts Committee2 rightly criticised HMCTS for its lack of effort to review the impact of these closures. We are concerned the reform programme is being justified on principles associated with civil dispute resolution in the commercial world and those people who are able to easily engage online.

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1 HMCTS press release: Additional year to deliver ambitious court reforms – 5 March 2019
2 Public Accounts Committee: Transforming Courts and Tribunal inquiry report 20 July 2018
9. There is no evidence to support HMCTS’s contention that their reforms are providing a more open and accessible justice system. In the Civil Service People Survey 2018 only 21% of respondents agreed that where changes are made in HMCTS they are usually made for the better and only 33% agreed that the reform programme will mean that the people who use our services will receive a better service than they do today.

10. Our members’ experience of new digital technology introduced into Magistrates’ Courts court rooms is that it causes delay and difficulties for the staff using it and is threatening the quality of justice delivered. According to HMCTS’s own staff survey 85% of respondents confirmed it is having a negative impact on timeliness and 81% indicate it is interfering with their ability to give legal advice and ensure all who attend have a fair hearing. It causes delay, slows the courts down, and distracts legal advisers from concentrating on proceedings leading to legal advice not being given and outcomes being missed.

11. Despite what HMCTS claims, the introduction of divorce online has not improved service. Delays at the largest regional Divorce Centre in Bury St Edmunds reached unprecedented levels last year. Freedom of Information figures show on average it took 373 days from the issue of petition to decree absolute in 2018, a 9% increase from 2017. The eight day wait for issuing the petition has more than doubled in a year while the average time from the issue of petition to decree nisi has increased by 17% to an average of 195 days.4

12. The introduction of probate online has also increased the time it takes for probate to be granted with the number of stops on digital applications at levels never seen with the paper process. Members report up to 74%, but HMCTS refuses to recognise the figure. It speaks volumes that no one who works in the probate service has applied to work in a CTSC. Thousands of years of experience is being lost and we are concerned that the current model of probate is having to change to fit HMCTS’s proposals for a paperless system; a system that they have not consulted upon, our members maintain is not fit for purpose and threatens the integrity of the grant.

The likely effects of the reform both implemented and proposed, on access to justice

13. Reform both implemented and proposed is having a negative on impact on access to justice in all jurisdictions. It will not improve or even maintain access to justice but will continue a worrying trend over the last six years that has resulted in a two tier justice system; one for the rich and one for the poor. When HMCTS considers access to justice, it’s only the very narrow sense of an individual’s formal right to defend themselves or to commence proceedings, rather than the fundamental equality of opportunity and outcome.

14. A combination of court closures, centralisation of work, the removal of eligibility of legal aid for certain civil areas of law, the increase in civil fees together with the changes to the rules regarding the legal costs a client can recover have removed

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3 Ministry of Justice: Civil Service people survey results 2018
4 The Law Society Gazette: Country’s biggest regional divorce centre hit by record delays – 18 February 2019
access to justice and fairness for huge swathes of the population.

15. If HMCTS is committed to ensuring access to justice and to a system that is just proportionate and accessible, a commitment to removing these detriments would be made and the ability to access justice online would be one of many ways to engage being developed. HMCTS would also recognise that some aspects of the justice system simply do not lend themselves to a digital service.

16. Whilst having the choice to access justice from a computer may substantially benefit international and commercial litigators and some other users, we do not accept that a default position of accessing justice digitally or virtually increases access. Deciding cases exclusively online will makes justice more remote and inaccessible. Starting all cases on line and the completion of some cases entirely online is not as HMCTS contends much more convenient for everyone involved as the substantial increase in probate stops demonstrates.

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?

17. Since 2010, 162 of 323 Magistrates’ Courts in England and Wales have shut – a loss of 50.2% of the estate.5 HMCTS has stated it has been able to accommodate the work of closing courts and tribunals within existing capacity. However, it has undertaken no analysis of the impact of the time it has taken for hearings to be listed, it has not examined whether there has been an increase in the number of cases that are proceeding in absence or the number of non-attendances at court.

18. A study by the University of Suffolk shows that Magistrates’ Courts closures in Suffolk led to an increase in costs for those travelling to court and an increase in the number failing to attend; also more warrants are being issued for the arrest of defendants in locations where Magistrates’ Courts used to exist or no longer list certain types of work. We maintain the position is mirrored across England and Wales. The government should commit to fully evaluate the impact of these closures before continuing to remove access to local justice.

19. Alternative provision put in place to facilitate court closures has not preserved equality of arms between prosecution and defence witnesses.

20. In 2010 the MoJ suggested all courts should be within a one hour public transport journey for all users. In their most recent consultation “Fit for the Future” the goalposts changed with HMCTS suggesting users should be able to get to and from court within a day. A comparison is made with travelling to and from school (where DFE guidance is that children should not spend more than two and a half hours each day). However, while a minority of children may choose to attend a school far from their home, most court users do not choose to attend court.

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5 House of Commons Library: Constituency date: Magistrates’ Court closures – 7 January 2019
21. HMCTS also sought to justify its proposals by referencing that those in rural areas have lengthier journey times to access critical health care. Since 2010, over 60 towns and cities across England and Wales have had vital hospital services either closed or downgraded with a substantial rise in emergency patient deaths attributed to the closures.

22. HMCTS concedes that 7% of Crown Courts users and 5% of Magistrates’ Court users will be more than two hours by public transport from their nearest court. HMCTS have however consistently underestimated the time it takes for citizens in rural communities to get to court and never considers the increased transport time for the elderly or disabled.

23. The judiciary in criminal and family proceedings have powers to dramatically change people’s lives. Those with mental health illness, addiction issues and very limited financial means are disproportionately represented in criminal and family courts. Citizens, who if they have a home, are unlikely to have affordable internet or economical telephone access.

24. Current journeys and proposed journeys to court may take a significant proportion of a person’s income leaving them unable to meet essential living expenses. If they fail to attend a criminal court they will be arrested and then released miles from home. They are likely to be charged with a bail act offence, face an additional penalty and should they be arrested for an offence in future, are more likely to be refused bail on the basis they are considered a flight risk. Many decisions will have been made without them. If they fail to attend a family court all the decisions will be made without them. It is unfair to make it such a challenge to attend court.

25. Problems in reaching courts are exacerbated by the reduction of public bus routes. BBC analysis recently revealed that 134 million miles of bus network coverage has been lost in the past decade alone.

26. While allowances and travel expenses for prosecution witnesses are paid for by the Crown Prosecution Service, the majority of those attending court are not eligible for support with travel costs. Staff who move their work location have assistance with excess fares limited to three years. Due to the reduction in the value of civil service pay, MoJ staff (who are amongst the worst paid in the civil service) suffer financial detriment year after year.

27. Virtual rather than physical court hearings risk furthering inequality in the justice process. No independent research has been carried out by the MoJ as to the impact of its digital proposals on access to justice or quality of justice delivered.

28. The last evaluation of virtual hearings the MoJ undertook was in relation to its pilot programme introduced in Magistrates’ Courts in Kent and London in 2010. That
concluded that virtual hearings were expensive to set up and run, less efficient than the traditional court process, defendants were less engaged in the process, more defendants were unrepresented in proceedings, that where they were represented communication between lawyer and client was impeded and the rate of guilty pleas and custodial sentences was higher. Economic modelling suggested that a roll-out of Virtual Courts across London based on the structure and performance of the pilot would cost more than it would save over a ten-year period. This demonstrates that further evaluation is needed before any decision is made towards more routine use of these types of hearing and courts are closed predicated upon that decision.

29. If HMCTS could demonstrate that its virtual courts proposals would not in any way compromise access to justice and its delivery, we believe it would set those out.

30. Virtual justice can only be delivered if equipment is reliable. Current equipment including relatively newly installed equipment into court rooms is not reliable. In our members’ experience there are too many current costly and time consuming workarounds that have to be turned to when digital technology does not work. IT initiatives such as the use of video-links, virtual courts and digital court files have all increased the time it takes to deal with cases. Sometimes equipment failure means an adjournment is required, increasing delay.

31. All technology needs to be robustly tested and objectively evaluated in terms not only of its reliability, but the impact it has on the quality of evidence that is given and how that evidence is perceived before decisions are made to close any court.

32. Quality of evidence should be a paramount consideration. It is important that as many different ways of ensuring witnesses can give the best evidence they can. Police officers attending court to give identification evidence have realised on seeing the defendant up close outside of the courtroom that the individual is not the person they say committed the offence enabling the case to be promptly dismissed. Video links do not facilitate this. Worryingly officers have attended court when the court had directed a video link because of a breakdown in communication as opposed to the courts realising from information provided from unrepresented defendants that identification was a live issue.

33. The move to virtual justice threatens to significantly increase the number of litigants in person, further discriminate against vulnerable defendants and make justice less open.

34. Vulnerable people, those with learning difficulties, mental health conditions, addictions, disabilities and English as a second language are disproportionately represented amongst defendants. It is harder to assess and support those who are vulnerable when they are remote from the court room.

35. Many find that appearing over a video link creates a barrier to effective communication. Unreliable technical equipment compounds difficulties and reduces
rather than increases access to justice.

36. Whilst video links may ensure that a defendant in custody does not have a long and uncomfortable journey to court or risk being sent to a prison afterwards that is less local, such hearings create barriers to effective participation. The solution is not more video links but to address prison overcrowding issues and to ensure that journeys are made in a more humane manner.

37. Any system using video link needs to ensure participants are in an appropriate private room where they cannot be overheard and can access, with literacy or language help as required, any papers being referred to. This is not the case in many circumstances currently.

38. HMCTS have stated that they will not mandate these type of hearings, what can be done virtually will be a matter for judicial discretion. It is already the case that courts list hearings only to find later that a witness is a wheelchair user or that a defendant required an interpreter in a police interview. If such basic information is not being shared how will less obvious matters be picked up and identified?

39. Information concerning an individual’s vulnerability or protected characteristics is often unavailable to a court when decisions are made regarding the appropriateness of a video hearing or is deemed irrelevant. Behaviour that may be associated with learning difficulties or mental health issues may be interpreted as aggressive or uncooperative behaviour that warrants using a video link rather than be explored and considered as a good reason to hold a hearing in person. Cost appears to be the overriding principle.

40. Working digitally may assist international and commercial litigators but this is not the core work of our criminal, civil and family courts or tribunals.

41. No information is provided as to how online justice will increase access to justice, particularly in relation to those who are currently priced out of it. The political choice of austerity has left many families in poverty and unable to get help to pursue valid claims or defend themselves from unjust claims. A starting point that a claim must be issued online will act as a deterrent to many vulnerable individuals. This risks entrenching a two-tier justice system, providing a different type of justice to claimants and defendants, depending upon the size of the money claims in dispute.

42. Citizens using the proposed, largely "lawyerless", online court process could easily find themselves in litigation with big organisations which can afford to hire their own legal teams and have access to reliable IT. These reforms risk treating court users as consumers.

43. No public consultation has ever taken place around online pleas and no evaluation has taken place regarding its impact. Both should, before any decisions are made to continue or extend online plea. An ability for some to enter their plea more easily and
where legal advice may be unavailable may increase the number of guilty pleas entered online. It is not uncommon to find when defendants who have pleaded guilty online, attend court for the consideration of disqualification from driving that their plea is equivocal and they have an arguable defence.

44. The developing of a single online system for starting and managing cases across the jurisdictions will exclude those who do not have access to IT. One in four adults, around 12 million people in the UK, do not have basic online skills. A report by OFGEM in 2017 estimated that 18% of 55-64 year olds, 35% of 65-74 year olds and 56% of 75+ year olds are non-users of the internet. There should be alternatives to engaging digitally and these should be developed at the same time as digital options. The introduction of online application without real supported alternatives for those without access to or familiarity with the internet will be discriminatory. The closure of over 450 libraries across England and Wales in the last seven years has removed access to the internet for many of the above.

45. Closing courts and moving justice out of courtrooms results in a loss of transparency. Back offices and hearing rooms to which the public have no access such as those being used for the Single Justice Procedure are not open. Accessing online hearings by listening to a five-way conversation or seeing some participants on a video screen (often too small to work out what is going on) and hearing some on the telephone will make proceedings even more confusing. Justice will stop being seen to be done and public respect for and confidence in the criminal justice system could dissipate.

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?

46. The MoJ and HMCTS have not consulted effectively on the reforms. The overwhelming majority of the reforms including the model of virtual and online justice over traditional court room based models has not been consulted upon.

47. HMCTS has consistently ignored the overwhelming and reasoned opposition to its proposals when it has consulted on court closures. In one recent consultation on court closures, staff were merely referred to as “other impacted groups”, the impact on whom was not considered.

48. PCS is concerned at the way in which the very senior judiciary are becoming increasingly identified with the reform programme. The issuing of a joint statement by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals on their shared vision for the future of HMCTS in September 2016 was an unprecedented step and one which we maintain undermines the fundamental constitutional principle of the separation of the powers. We believe that the line between the executive and the judiciary is becoming blurred with the potential for what should be the fearless independence of the judiciary to be compromised. PCS maintain that HMCTS is using the support of the senior judiciary not only to justify
their plans but to not consulting with PCS regarding the impact of their proposals on our members.

49. Consultation with trade unions on behalf of staff as a key stakeholder is virtually non-existent.

50. HMCTS does not understand that consultation should be a timely, meaningful process conducted with a view to reaching agreement and that staff through their recognised unions should be able to influence that process at the planning, development and implementation stages of organisational change.

51. PCS recently went into dispute over the employer’s failure to consult with staff about the introduction and movement of work into the first two CTSCs in Birmingham and Stoke-on-Trent. This has seen Civil Money Claims, Social Security and Child Support, Divorce and Probate Work undertaken currently throughout England and Wales centralised. Our concerns included HMCTS management advertising for roles without the necessary redundancy avoidance measures having first been agreed and existing staff being required to make a decision on their future before they were clear on all the options available to them.

52. HMCTS advised PCS in July 2018 of its proposal to use bulk scanning and printing services within the probate service. A contract had already been signed with a supplier. The proposal would mean that documents such as wills would be sent to an outsourced body to scan onto a case management system. The supplier would check the will/codicil to establish its authenticity. Any concerns identified would be notified.

53. PCS indicated its opposition to the proposals and our wish to consult with members and propose an alternative. A cost benefit analysis and information as to the impact in terms of staffing on our members was requested to inform this. Nothing further was heard until December 2019 when we were advised a pilot which would become “business as usual” was due to commence.

54. The process of determining the validity of a will is a fundamental part of the process which culminates in the issue of the Grant of Probate. The checking process is a detailed and forensic one currently carried out and overseen by civil servants with extensive years of experience. Without any consultation HMCTS is transferring this process to a private firm. They will be informing the decision-making process as to the basis on which a Grant of Probate is issued. This is a judicial process and our members, the legal profession and the public should have been consulted.

55. PCS has consistently raised concerns about the impact court closures and the centralising of administrative work into a small number of contact centres will have on women employed by HMCTS who have caring responsibilities and on disabled staff.

56. Workplace closures have already made the continued employment of some staff untenable because of extra journey time and lack of flexibility. HMCTS has failed in its duty to its women and disabled workers when considering the way it delivers justice in the future.
57. The Courts and Tribunals Service is creaking under unrelenting pressure caused by years of chronic underfunding and is largely held together by the goodwill of our members. The morale of an already dejected workforce, who have suffered under years of pay restraint, privatisation, court closures and who are now having to contend with the imposition of IT that is not fit for purpose will be damaged further by reform.

58. These reforms mean a day to day working life of crisis management, stress management, fire-fighting and workarounds. During the recent IT crash staff were taking photos of bail notices and sending them to the police as a means of notifying bail conditions.

59. The staff are key stakeholders; they understand the legal system and deal with the most vulnerable of users. Failing to consult them or give any weight to their response gives HMCTS reform limited credibility. Loss of expertise is a valuable resource and is not easily replaced. PCS is concerned not only for staff welfare but for the impact of loss of expertise on quality of justice and on communities as jobs are lost following centralisation.

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?

60. We have been calling for HMCTS to commission independent research into the impact of video hearings. What has been done so far is not nearly enough considering the scale of the changes. We have already set out our concerns about video hearings in the criminal jurisdiction.

61. Fully-video hearings were tested for the first time between March and July 2018 in the First-Tier Tribunal (Tax Chamber). A review of the small-scale pilot of fully-video hearings was undertaken by the London School of Economics. The study showed that far more needs to be done before any further roll-out is made of video hearings. The current state of the technology is poor and that those hearings which did proceed were only able to do so due to significant technological support. Our members dealing with poor HMCTS technology day in day out who must adopt workarounds to get many video hearings to work do not have such support available to them.

62. Of the 11 very carefully selected hearings chosen for the pilots, only eight video hearings were completed. Three experienced technology fails on the day; two of which had to be conducted as a telephone hearing and one which was rescheduled as a physical hearing. Despite considerable technical support from HMCTS, seven of the eight completed hearings experienced difficulties which included issues around wi-fi, audibility, visibility of parties on the screen or access to documents. The large number of support people involved meant that most technology difficulties were dealt with quickly and the evaluation identified issues around how HMCTS will be able to

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maintain such support.

63. The researchers also warned of the possibility of ‘self-selection bias’ as they were not involved in the selection of cases. All users had previous experience with video-communication technology at work or at home, with half of them reporting being ‘frequent’ or ‘very frequent’ users of this technology. It was acknowledged that the report cannot comment on the video hearing experience for people with vulnerabilities and that further research would be required.

64. Considering the self-selection bias and the problems encountered during the hearings, we were concerned that HMCTS released the research results under the headline “Court users taking part in the first fully-video hearings found them convenient and easy to understand, an independent report published today reveals.” This brings into question how open HMCTS is to criticism levelled at their digitalisation programme and whether they will only highlight the most positive outcomes.

65. This is the only independent evaluation of any reform introduced. In house evaluations such as those of the digital tool imposed in magistrates’ courts for noting the outcome of proceedings have ignored or glossed over the negatives.

66. The approach that the government proffered for the resolving of private law disputes in family proceedings outside of courtrooms is already failing and has not been evaluated. The majority of cases that can be mediated or agreed amicably are not and never have been reaching court. An increase in litigants in person has meant that the proportion of applications that are being contested have increased and proceedings take longer. Litigants in person are less child focussed in their approach. A party who is the subject of abuse control without access to money or technology may feel the digitised system just continues the abuse.