On 25 February 2019, the Leeds Law Society hosted a round table discussion with members of the legal profession (solicitors and barristers) who work in Leeds and the surrounding areas. The group considered (under Chatham House rules), the access to justice implications of the programme of reforms underway in Her Majesty’s Courts and Tribunals Service (HMCTS), including the increasing use of digital and video technology and the closures of courts and tribunal hearing centres.

This response which is a summary of the main points made deals with most of the questions raised by the Justice Committee (as indicated) in the examination of the Court and Tribunal reforms.

1. **WHAT WILL BE THE LIKELY EFFECTS OF THE REFORMS, BOTH IMPLEMENTED AND PROPOSED, ON ACCESS TO JUSTICE IN RELATION TO:**

(a) **Civil justice?**

This was not directly discussed due to time constraints.

(b) **Family justice?**

(i) The family practitioners (who deal with areas of public and private law) said that they had not noticed on a day to day basis the impact of reforms, which may have already been implemented. They commented that there had been no real sign of digitalisation and that although some Judges were ready and willing to use a digital platform for bundles etc.; this was not a uniform approach. The technology was judge-dependent in terms of capability and preference.

(ii) The Drug and Alcohol Court (which was originally launched in London) was implemented in Leeds initially as a pilot that was withdrawn and then reinstated. It is currently in use in Leeds, although the Council must elect particular cases to use this Court and the parties must all agree. The Court is a very important resource and it covers parities from a wide geographical area. However, there are very limited resources available to run it and a small team of staff that keep it going. Those which had experience of this Court commented that the Judges were dedicated to supporting it and that there had been positive results achieved but the lengthy Court sessions and limited resources were restraining its effects.

(iii) The West Yorkshire Problem Solving Court was also referred to. This Court uses a Judge-led negotiation process with parties seeing a Judge on a fortnightly basis. It was recognised that this was a big commitment for resources and the service users. Those who had used this Court commented that they had tried it a few times, but that overall they were not keen on it as a solution.
(iv) There was no objection to the centralisation of processing of the straightforward divorce cases, although it was noted that the online nature of this was designed to "take lawyers out of the system". Practitioners cannot access the systems so are not even able to provide assistance to anyone requesting the same from them. In addition, Bradford Family Court is now the only court that can issue divorce proceedings in the North East of England. This has led to severe delays in processing proceedings which causes further distress to clients at an already stressful time. In January 2019 the automatic reply to emails sent to Bradford Family Court set out the various periods of delay in dealing with matters including for example four week delays in processing petitions, seven week delays in processing consent orders and seven week delays in processing correspondence including emails.

(c) Criminal justice?

(i) Criminal defence work is a difficult area for practitioners for a number of reasons, including low rates of pay. There was a detailed discussion about the current state of the system. There were a number of factors that have affected the amount of work that solicitors and barristers are processing. There is a significant impact from Police budget cuts. It appears that an increased burden on the workloads of the Police is impacting the charges being brought and therefore the number of cases that proceed to the Court System. There are a lot of people accepting cautions instead of charges (often without legal advice and not realising the impact this could have on their future job prospects etc and if the matter had proceeded to Court the person may not have got a conviction); there was evidence from the participants in this area that there are lower charges being brought (e.g. s20 instead of s18 charges) and more people being released "under investigation" as this impacts on the processing and court time required. The level of recorded crime has gone up but the work in the Criminal Courts has reduced. Therefore there were other factors at work which meant that the Courts are not stretched. It was felt that HMCTS were then able to justify Court closures without the impact being as severe (in terms of Court waiting times etc) than they might otherwise have been. A positive from Court closures was suggested in that it makes it easier for practitioners based in Leeds to attend Court (as it reduced the number of Courts that they are required to attend on a daily/weekly basis). However this was not the case for practitioners outside Leeds who now have to travel (as do their clients). Overall it was felt by the practitioners that there had been a significant reduction in access to justice. In addition, cases often sit in the Police’s to-do list for too long and therefore pass limitation, preventing the matter proceeding to Court.
(ii) The amount of detective work in many cases has been reduced. Therefore it was felt that overall the Justice system is broken and there were significant concerns about access to justice for those who were charged. A very difficult picture emerged about this area of law and criminal justice.

(iii) Digitalisation could be said to have had a positive impact on the criminal justice system. The legal representatives of the parties can see documents as soon as they are uploaded to the central system and comments can be added. In addition, you get an email update once a document is shared. However, it was not thought to be working for LIPs as they did not have the same access and there were examples given about the lack of hard copy documents (and there being no facilities to print documents at the Courthouses) causing issues in some cases. However, in theory this should deal with the issues that have arisen recently about the provision of documents to the defence (e.g. phone records etc) and it should help with the increase in documentation from digital sources (subject to there being some checks and balances on the volume of documents being used in a case).

(d) Administrative justice, particularly as delivered by the tribunals system?

This was not discussed due to time restraints.

(e) Those who are digitally excluded or require support to use digital services?

(i) LIPs often struggle with the digitalisation in criminal cases as they do not have access to the systems and there are limited printing facilities at Court (see above).

(ii) In relation to family matters there has been a huge increase in LIPs in cases. This has put significant pressure on the system, particularly in private law cases. At present, a lot of time is taken up at hearings whilst the Judges have to give explanations to LIPs. This is putting a strain on Court time (as the Judges are required to explain issues to the LIPs) and needs to be addressed to keep the cases moving more efficiently.

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 PROCESSES AND VIDEO HEARINGS BE A SUFFICIENT SUBSTITUTE FOR ACCESS TO COURT AND TRIBUNAL BUILDINGS?**

2.1 Overall in relation to public family law the practitioners felt that the system was overwhelmed with cases and the closure of Courts outside Leeds has not helped. In relation to private family law cases the view was more positive and it was felt that the Judges worked hard to keep the system working (although it was noted that the Judges seem to be under more pressure in terms of workloads).
2.2 It was noted by some practitioners that Court closures have impacted on listing times in some cases and sometimes there were issues in family law (and civil cases) where it was necessary to "follow the Judge" to say Bradford or Newcastle. This leads to increased travel time for practitioners (and their clients) and can lead to firms having to stretch resources across different cities for hearings in different cases. In addition, service users are having to travel further for hearings e.g. those based in Halifax are forced to travel to Leeds, which has issues of affordability as well as the length of time the travel can take, particularly using public transport. It was noted that previous HMCTS research about local travel time was often based on the average car journey as opposed to public transport. It was also noted that there are issues about transporting hard-copy bundles to other cities (on the basis that family law Courts are not yet digitalised for hearings).

2.3 It was recognised by family and civil practitioners in particular that there have been huge cuts to the number of staff in the Court Service in Leeds. People have left and not been replaced putting a lot of pressure on remaining staff and the use of agency staff who are not "up to speed" with the processes. This has overall led to delays to communications and processing. The Court Service staff in Leeds are helpful but are overstretched. The main area that this had been noted was the return of sealed orders and dealing with routine correspondence. Delays of over two months were not uncommon. Delays impact on cases detrimentally in terms of moving the case forward and/or may stop settlement discussions. In addition, the time for processing orders can mean that deadlines for payment etc. have passed by the time the sealed order is received. This requires practitioners to be creative in their drafting of orders to accommodate (the now expected) delay. These delays are also causing problems where the opponent is a LIP. There would be reliance on the Court for service of order which is delayed and can hold up the progress of the case as a result.

2.4 In relation to criminal cases video links are routinely used and can be useful for avoiding the need for the transportation of prisoners. However, the infrastructure needs to be greatly improved for this to work in the long term as the time pressures on the currently limited facilities are far too great. There was also concern that the practitioners do not have long enough to speak with their clients (due to the pressure on the video links time for each case - other cases are waiting), so this can impact on access to justice for those clients. However privacy for the conversations with the client was not a concern.

2.5 Technology is not the total solution for access to justice and cannot justify all the budget cuts that have taken place. As is clear from the comments above it is more complex than is being portrayed (more crime – less prosecutions = justification for closing Courts). Reliance on technology also has to be carefully considered as there can be a detrimental impact on justice when the system is unavailable, as happened for a few days in January 2019. There is also a training issue as Judges have to be confident in their use of technology for it to work properly. For example in civil cases we are nowhere near the use of electronic bundles for interlocutaries or trials.

2.6 Irrespective of the changes, for justice to be seen to be done it is crucial in all areas of law that evidence is tested; therefore any changes should not prevent a full hearing of the case. The concern was expressed amongst some of those present that maybe the Courts of England & Wales are moving away from the adversarial system to the inquisitorial system. If that is the case, for such a seismic change MOJ/HMCTS need to be transparent about that and consult with practitioners in all areas.
In criminal cases it was noted that often there are no staff available in the Court to support the Judge and this can cause delays and complications. It is important there are no reductions in the number of Judges in Leeds/North Eastern circuit (and actually more Judges are required in family and civil law at a District Judge level particularly).

Cuts to the Court Service have led to difficulties for practitioners in contacting the Court by telephone.

Many of the practitioners overall considered that access to justice was under pressure and had reduced (e.g. the reduced conviction rates referred to above).

Although as set out above there were some positive opinions about the use of video links for prisoners there were issues such as:

- there was no "day in court" for the claimant or defendant;
- for the purposes of cross examination it is more of a challenge to cross examine someone who is on video link;
- there is less pressure on a defendant when they appear via video link as they are removed from the Courtroom where in some cases the victim and/or their family may be present;
- some defendants may reserve their position and plead not guilty so they can have a full trial and be present in court for the hearing;
- video link could also be easier for the defendant as they don’t have to leave the prison, travel in the van, miss their daily exercise/meals etc;
- if evidence is given by video link it could lead to victims not conveying the emotion of the situation and therefore this reduces their persuasiveness and effectiveness as a witness.

Court users, who have limited resources, might be cash-poor and/or have mental health users. These would be the most vulnerable users in the system and they are likely to be the ones who will struggle most with the changes.

Often resolutions are obtained when there is an opportunity for legal representatives to speak informally/off the record. It was noted that the closures of Court canteens had reduced the opportunities for this and now legal representatives often have to leave the Court building during breaks.

Overall those present (solicitors, barristers and Leeds Law Society board members) considered that there was insufficient communication from MOJ and HMCTS to date. It was also felt that this consultation would not be likely to result in any change of course as decisions had already been made to make the changes.

Those present felt that the proposal for change was about saving money and so the changes were being pushed through without consideration of the implications. Although it appeared that steps were being taken to assess the impact now (after many changes have already been made) it was too late and in the wrong order.
3.3 It appears that a pot of money has been allotted for the digitalisation of the system and this is being spent in any event with no regard for the other elements of the Justice system which require improvement or capital investment.

3.4 No one felt like they truly understand the plans for the Justice system going forward.

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 This seems like an effort to try but only time will tell, if this evidence and that of others is taken on board.