Written evidence from South London Law Society, by Professor Sara Chandler QC (Hon) and approved by the President Robert Hush, and the Committee of the Society (CTS0030)

1. 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?

Answer:

1a. Civil justice: Our experience is that clients are encouraged to make their claims on-line, fees are cheaper, and they are led to believe the process will be quicker. However, this is difficult for litigants in person (LIPs) if they are not familiar with the court system. The Court staff still send documents out in paper, so clients or lawyers are not getting the benefit of time saving. There are delays in the court service administration, as there are fewer staff than there used to be.

One solicitor gave the example of a claim worth £40,000. The solicitor made an application to strike out the claim in December 2018 on-line. The on-line service sent the application and the file to another court, but it was the wrong court. Now in March the solicitor is still waiting for the application for strike out to be decided. The administration team for each court send the papers to the Judge, who then directs it for the next step. Then the papers could be sent on to another court to be received in that court by another team, and then to the judge. If it arrives in the wrong court the process is prolonged way beyond the days before court closures and on-line claims.

1b. Family justice: The use of video links/Skype etc are problematical. There are positive aspects in terms of people who cannot reach the court. However, there are also negative aspects. The person communicating with the court might not be able to make an independent call with the court. It is not possible to check whether there is another person in the room out of sight. The hidden watcher could be putting the person under duress. One solicitor reported surprising withdrawals of applications for non-molestation orders.

The improvements to the on-line applications for divorce have been received positively. Whereas there had been a problem with capability for applicants to save their in-put on to the on-line form. They were not able to save and return later to complete the form. There were concerns about confidentiality on-line. Both of these concerns have been resolved with reprogramming. One solicitor commented that the improvements had been made fairly quickly after the complaints had been put through to the Court service.

1c. Criminal justice: Several solicitors had had disappointing experience with the video links. They were inefficient, frustrating, with technical difficulties, such as the sound and/or picture not operating properly. It is important that the judge and magistrates can see the defendant so that they can evaluate the person’s facial response and hope for sight of their
eyes. Without sound it is useless. The hearings have to be quick because the cases are given short time slots. But if the cameras go off, the time is prolonged and then the next slot is late.

There are problems when the defendant is not produced on time for whatever reason and misses the slot. There are queues for the video conferencing room at the Magistrates’ Court and if a slot is prolonged or missed this gives rise to frustration. Each prison has a time slot for all their prisoners who will be interviewed that day. This can lead to problems if one is not produced on time for whatever reason.

Solicitors from South London Law Society commented on South Western Magistrates Court, Camberwell Magistrates Court and Wimbledon Magistrates Court.

1d. Administrative justice, particularly the tribunals system:

No answer here.

1e. those who are digitally excluded or require support to use digital services: Solicitors expressed grave concern at this gap in access. People get directed to a library if they can use a computer but do not own one or have access to one. The problem with using a computer in a library is that it is not private, and people need privacy for their legal work. In some areas, particularly some rural areas, there is still no access to broadband.

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?

Answer:

- The first impact on members of the public and the legal community has been the closure of the Court offices. This means that people have to access the court service by telephone or on-line.
- So members of the public who come to Court with papers to lodge or enquiries about what they have to do with papers are not able to speak to anyone face-face.
- A post box at Court is the only means available of lodging documents, and people do not get an acknowledgement or receipt for their documents immediately. If documents get lost in the court system, then people are left unaware that their case is not proceeding or their documents have not been received in time. When no acknowledgment is received people try to access information about their documents by telephone or on-line, and are not always successful. Members of the public feel angry, distressed, confused and generally let down by the justice system.
- Because of this withdrawal of the court office, London South Bank University (LSBU) established a Help Desk at Lambeth County Court in 2013, which ran until 2017 when the Court was closed to the public.
- The closure of Lambeth County Court in itself was an enormous loss to South London residents.
- LSBU now runs a Help Desk at Shoreditch & Clerkenwell County Court, as there are many people who come to Court without representation. They have no one from the Court staff to assist them with their enquiries, apart from the telephone Helpline.
• Solicitors who use Wandsworth County Court were dismayed to hear that it was on the list to be closed. After a strong campaign, the Court has been reprieved, though no one can say for how long. The solicitors reported that there is no Court Office for the public and lawyers, there is a helpline number advertised for people to ring. There is also a post box for people to leave their papers.

• Members of the public can only see a member of the court staff by appointment and the reasons for appointments are strictly limited to matters such as applications for emergency hearings.

• One solicitor reported that a client had been told by HMCTS on the telephone to issue an application in family proceedings in a court in the area to which she had moved. All previous proceedings had been in West London County Court. So she issued in the Croydon County Court. But then she was told it was the wrong court. So she ended up entering her postcode on-line, and was told her local County Court would be Columbus Circus in Docklands, not at all near where she lived. Her experience of the on-line enquiry was negative.

Case Study:

In late 2015, the Ministry of Justice (MoJ) and HM Courts & Tribunals Service (HMCTS) announced that Lambeth County Court was one of many courts that it proposed to close. Lambeth County Court was a busy court, with hearings for housing possession cases five days a week at one time. Rent arrears was by far the most common reason for landlords to seek possession. Many of those landlords were social landlords, such as Councils or Housing Associations. So the tenants whose cases commonly came to Lambeth County Court were those who had problems with the rent, often because they had not claimed help with the rent through housing benefit.

Following a ‘consultation’ – in which the MoJ based its travel time estimates on people driving their own cars, an unlikely activity for tenants who cannot pay the rent, the closure was confirmed on 11 February 2016. The court closed in late July 2017.

The Court service had 15 months to plan and organise the transfer of LCC work. Solicitors were concerned at the lack of communication and needed to know what was going to happen to the court’s possession cases and, in particular, the possession lists for hearings.

The first proposal was that everything would go to Wandsworth County Court – an epic trip by public transport. Then it turned out it would be too expensive to get Wandsworth in a state to cope with the load. Both Lambeth and Southwark councils and MPs made strong representations about the distance involved for both claimant and defendant. So the plan to transfer to Wandsworth County Court was shelved, and later on it was proposed that Wandsworth County Court should be closed. The next proposal was to transfer the possession cases to Camberwell Green Magistrates Court. But MoJ/HMCTS then decided to close that court too.

There was such uncertainty as to where cases would be transferred, that Lambeth County Court had an extension for an extra month, about which the staff were not informed until the last month. When the month was up, there was another extension, and the Court finally closed at the end of September 2017.
A letter went out to (some) court-users at the very end of September saying that possession lists would still be heard at Lambeth County Court, because there was one Judge still in the building, but that there would not be any staff and it would not be open otherwise.

Solicitors were recommended to deal with Stratford Housing Centre at a Magistrates Court in East London, or if urgent, to try Clerkenwell & Shoreditch County Court in Clerkenwell, the other side of the river.

This was very difficult for tenants who were defending possession proceedings, and likely to lose their homes if they did not attend Court. People were already getting documents with various different hearing venues.

Solicitors were then told that the possession lists would be heard at Inner London Crown Court (ILCC), though HMCTS was not sure when cases would start there, though some cases were already listed as being heard there. Solicitors were also told that Lambeth County Court would stay open until 24 November 2017. After that, all rent arrears possession cases would be heard at Inner London County Court. Then solicitors were told that new cases were to be issued at Stratford Housing Centre, and heard at Lambeth, Inner London or Clerkenwell & Shoreditch County Courts. This was confusing for the lawyers, and unfathomable for members of the public.

If a tenant fails to attend Court, then they are at risk of losing their home. The confusion over which Court would hear the case was not only inefficient, but denied people access to justice. Defendants miss hearings and get possession orders which could have been avoided or suspended. Housing cases are now heard at Clerkenwell & Shoreditch County Court. HMCTS justified the transfer to Clerkenwell & Shoreditch County Court on the basis that the tube from Kennington to Barbican took 20 minutes, but did not mention the 20 minute walk from Barbican to the Court, clutching the A-Z or a map. It is a long way from South London.

3. 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?

Answer:

3a. Not known by members of the South London Law Society.

3b. Members of the South London Law Society Committee did not know anyone who had been consulted.

3c. Other relevant stakeholders:

Court users and members of the public should all contribute their views. However, solicitors had no knowledge of how or whether this had been done.
This could be done through public meeting, front line services, and community organisations, faith organisations, youth organisations, organisation such as the Women’s Institute etc. MPs could help to facilitate consultations in their constituencies.

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?**

**Answer:**

Our direct knowledge of a pilot is at Lambeth County Court. The closure of the Court Office was a pilot which the local legal community and Court users opposed. Unfortunately, the pilot ended and the Court Office never re-opened.

The South London Law Society opposed the closure of Lambeth County Court, which was on a long lease with a peppercorn rent to pay. There was a small staff team, and as already mentioned the closure of the Court Office to members of the public and the legal community was opposed. The total closure of the court would not have saved much money. But it removed access to justice for many residents of south London, particularly in the London Boroughs of Lambeth, Southwark and Lewisham. These are boroughs where a local court is needed. Members of the public now have to travel much further to attend court. In particular, housing possession cases are particularly affected where tenants fail to attend court and a possession order is made. This has dire consequences on the tenants and their families.

We do not know of any other pilots, and suspect that if they were undertaken then the legal profession was not consulted on the pilot, at least in the courts.