Written evidence from the Legal Committee of HM Council of District Judges
(Magistrates’ Courts) (CTS0032)

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

   a. civil justice?

   1 We answer this question primarily from the perspective of access to justice in the Magistrates Courts’ (where District Judges (Magistrates’ Court) (DJMC’s) spend most of their working time) and therefore feel unable to comment on this aspect.

   b. family justice?

   2 The reform programme joint statement ‘Transforming Our Justice System’ 2016 (‘TJS 2016’) states ‘it is important to offer separating parents the opportunity to resolve issues equably between them, avoiding the stress, expense and aggravation of legal proceedings. We are considering how we can best help separating couples to do this, and a major part of this will be digitising and simplifying our processes and providing more information to enable people to make the right arrangements themselves’.

   3 There is evidence in some areas of private law applications being made electronically, but this at present can only be done by litigants in person, not solicitors and therefore the majority of applications are still made in paper form at present. Since the reduction in legal aid for private family law cases, the number of litigants in person has increased significantly. A number of those do not have access to the internet or computers. We have seen no evidence of consideration to those numerous litigants in person who do not have access to digital services.

   4 In respect of public law cases, TJS 2016 also set out ‘work is being undertaken to understand better what works, and to test and promote innovative problem solving approaches: eg the Family Drug and Alcohol Courts (FDACs)’. FDAC’s were rolled out in many areas, which were resulting in considerable positive outcomes for families involved in care proceedings. Unfortunately, the funding for FDAC’s has now been withdrawn in many areas and these courts are no longer in place, diminishing the positive effect they were having on access to justice for many families.

   c. criminal justice?

   5 TJS 2016 set out its vision to ‘modernise and upgrade our justice system so that it works even better for everyone… no one should be left behind. For many, improving our technology and putting services online will make Justice more accessible and simpler’. We have seen no evidence that the reforms have resulted in or will result in this vision being realised in the criminal justice system.
6 In pursuance of the reform programme, the Magistrates’ Court is now intended to be working digitally and in a ‘paperless’ way.

All defendants should be provided with their papers electronically in advance. A secure ‘CJSM’ email address is required for this. Many defendants are unrepresented (please refer to the comments at ‘e’ below in relation to them). For those defendants that are represented, the defence representative will request the online documents to be emailed to them. Many defence solicitors (or the duty solicitor) are often not instructed until the morning of the hearing. This is because many defendants in the Criminal Justice System lead chaotic lifestyles, many have drug addictions and mental health issues. TJS 2016 states ‘we recognise that this will present a challenge for some’, but there is no evidence to suggest that the reforms have in anyway taken into account the specific issues and requirements of these court users.

7 There is no evidence in the Magistrates’ Court that the vision of Justice becoming more accessible and simpler is being realised. On a daily basis, many cases are called into court and solicitors representing have not been provided with digital papers, despite requesting them earlier in the morning or previously. This results in the case then being put back to later in the day to try and resolve the issue – causing considerable delay. On some occasions, the court ends up printing out the papers for the defence as it is often the only way to make progress on the day – entirely defeating the object digitalisation.

8 This lack of papers is usually because the CPS have either not sent the papers or that the wi-fi at court is not working properly. The wi-fi in many court buildings is wholly inadequate. It is very slow and often does not work at all. This prevents papers being sent/received, often the CPS will have to stop in the middle of a case because they can no longer access their files due to ‘system difficulties’ and District Judges often cannot access their papers in court as the wi-fi has stopped working or is exceptionally slow. There is no evidence that HMCTS is addressing this issue.

9 The entire IT system was not working properly nationally in the Magistrates’ Court for an entire week at the end of January 2019. There was no back up system in place. This caused chaos in the Criminal Justice System.

10 If the vision of digitalisation is to succeed, and access to justice available to all, it is essential for these issues to be addressed and we see no evidence that this is being done by HMCTS.’

11 We are not in a position to give a detailed answer to this question. We note that as a result of the current reforms that a number of court centres now have tribunals as well as courts in the same building.

e. those who are digitally excluded or require support to use digital services?

12 Noting the aspirational and optimistic approach adopted in TJS 2016, and comparing it to the reality as of January 2019, we share the concerns expressed by the Public Accounts Committee in its July 2018 Report (HC 976), in particular those at Conclusion 4, specifically:
“Moving services online without assessing the impact could have serious implications for users of the justice system.”

There seems to be a complete lack of understanding by HMCTS of those who are effectively “digitally excluded”. It seems only to have identified that group referenced in TJS 2016:

“...in Great Britain, 86 per cent of homes had internet access in 2015, only 49 per cent of households with one adult aged 65 or over had internet access. One in ten adults, including a quarter of disabled adults, have never used the internet. Research shows that there is a small core of non-internet users who do not intend to get connected.”

We suspect that HMCTS regards this small number as both the only and a diminishing problem. The fact that this identified group does not have access to any form of online justice is addressed by the fall back position of paper correspondence and physical attendance at one of the remaining court houses.

At the point of attendance at the court house, this group will join with the far larger group of often tech-savvy but nonetheless digitally excluded people – self-represented defendants. The cuts in access to legal aid has seen an increase in the number of such defendants in the criminal (and in fact every) court.

At present, and we cannot see that there is any evidence in the Crime Service Model that this issue is recognised let alone to be addressed, such defendants do not have access to the digital file, which is held behind a secure wall. Only those with a CJSM secure email account can access the digital file. No self-representing defendant has such an account. Nor is such an account a matter of moments to set up. Nor is it practicable to expect a self-representing defendant, even if able to access a digital file, to read that file on the only digital device they are likely to have at court – a mobile phone. There is not currently, nor do we see any plans to provide, any digital access points (ie a computer terminal) available to a self-represented defendant in any magistrates court in England & Wales.

Again turning to TJS 2016:

“But there is still too much evidence being carted around the country on CDs and CCTV tapes, and too many ‘digital’ ways of working rely on people scanning in pieces of paper. That will change. All participants in a case, from the judge to the jurors, the Crown Prosecution Service and the defence, legal advisers and court staff, will soon become ‘digital by default’”

We see no evidence that HMCTS has considered how the unrepresented defendant (and we note the defendant is not listed as a party to the criminal process in the above paragraph) will be engaged digitally at all – let alone by default.

It appears to us that the assumption is that unrepresented defendants, or those unable to access an online process (which it is to be hoped will be reserved for the most minor of matters) will attend at court and have access to a duty solicitor. The numbers of duty solicitors is limited. Already, we see delays in the court session as defendants’
queue to access the duty solicitor – who in turn has to go through a laborious process of securely accessing a digital file. If a part of the evidence is CCTV, as discussed above, the current Wi-Fi provision is insufficient to allow that digital file to be accessed. This results in delay as the advocates huddle around the prosecutors’ laptop – and forces the court to come to a standstill for that to be done. We cannot see any scope for an unrepresented defendant to access digital media at all.

So, the likely effects of the ongoing digital reforms appear to be more of the same – inefficiency and significant inhibitions on access to the vision of digitally driven justice to those we identify as digitally excluded.

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?

Impact of Court Closures

The effects on access to justice of court centre closures are significant, particularly in rural areas. Many defendants who appear in the criminal courts have very limited income or are on benefits. They cannot afford their own vehicles or taxis and public transport in many rural areas is limited and expensive for them. To travel for example, 20 to 30 miles to their nearest court is often impossible. Witnesses too face similar difficulties. Whilst their expenses in attending court will be paid (which is not the case for defendants’) there is still the issue of limited public transport in rural areas for them to get to court.

The aim of the vision in TJS 2016 is to ensure that justice is delivered in a just, proportionate and accessible way. It refers to an increase in witnesses giving evidence from other locations and of video link hearings for both witnesses and defendants.

To suggest the use of video link hearings will address the issue of court closures is somewhat naïve. Witnesses and defendants who appear via video link have to be at a centre which has secure and private video link facilities – for example either a court or prison. Planning and investment needs to be put into place to consider creating other locations where, particularly witnesses, can give secure and private evidence via video link. There is no evidence that this is being planned at present. Until this happens, we will be left in a situation where witnesses will still need to travel to their nearest court to give evidence via video link which, with court closures, could be a significant distance.

The impact of these closures is that some witnesses and defendants end up not coming to court due to the difficulties they face in getting there. The impact of this is significant. The prosecution may end up offering no evidence, ending in a charge being dismissed, in a trial where a witness has failed to attend court.

A defendant failing to attend court often results in a warrant being issued for their arrest, with the additional resources and costs that can incur when they have to be later arrested, held in custody and produced to the court (either by video or in person).
Reduction of staffing under the Reform Programme

There has been a significant reduction in staff, particularly administration staff in both the Criminal and Family Courts since the implementation of the reform programme, in one rural court area for example an administration support team has been reduced from 8.5 staff to 2.5.

Some specific examples of the impact of this are:

In one Magistrates’ Court area, administration staff often had over 500 emails at any one time in the general administration ‘inbox’ where the two administration staff in that department found it impossible to look at or answer the majority of them. This resulted in important emails about court cases not being answered or passed onto the relevant court.

Many court centres do not have the resources to answer the telephones, resulting in people not being able to get through and giving up. Many defence and prosecution solicitors accept that they are not able to get through to court houses by telephone and often do not get a response to emails sent.

Where consent orders have been sent into the Family court for approval and processing by parties, there is often a significant delay, on occasions of one to two months before the court processes the order, with parties not knowing whether their order has been agreed or not by the Judge.

TJS 2016 has introduced online pleas for some matters under the Single Justice Procedure. Defendants in some Road Traffic Act cases can send in a plea form online. There have been many occasions where, although the defendant has sent the form into court in time for the hearing, it has not been passed onto the court dealing with the case in time due to lack of administrative staff. Those cases are then often proved and the defendant is fined in absence which can result in a higher fine as the court has not been provided with the defendant’s financial details, even though they were sent into the court. The result of this is that the case then has to be put back into court at a later date and re-opened, using additional administration and court resources unnecessarily.

A further aim of the reform programme has been to deal with all cases electronically. In the Magistrates’ Court, District Judges should be able to access their papers via the ‘Judges Hearing List’ for court from the day before on ‘Court Store’. All documents in the case should appear. Due to the lack of administration staff, often the case has not been uploaded onto ‘Court Store’, meaning the Judge is unable to prepare an often very busy court in advance. If documents have been uploaded, they are simply put on the system without indication of what many of them are. This then involves the Judge having to trail through, often irrelevant documentation, before getting to the actual relevant papers they require. The lack of administrative staff does not allow for documents to be uploaded efficiently on to a central case management system and wastes much of the Judges time having to either chase them up get the documents uploaded in the first place, or trawling through irrelevant documents before getting to the relevant ones.
For users, how far can online processes and video hearings be a sufficient substitute for access to court and tribunal buildings?

27 In the Magistrates’ Court, video hearings work very well in many respects. Defendants in custody are dealt with via video link for all hearings other than trials, which generally works well. Many witnesses now give their evidence via video link from other locations, for example, if they are based in a different area to where the case is being heard. If a witness or defendant is to appear from elsewhere via video link, it must be via a secure link and from a private location. As discussed above, witnesses who now give evidence via video link from another location, do so from another court house in their region, which then links directly to the court hearing the trial. If those court houses are being closed, the question must be asked where they are going to attend to give their evidence via a secure video link within a reasonable distance. We have seen no evidence of plans or consideration of addressing this issue by HMCTS.

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?

28 The MOJ and HMCTS have provided opportunities and presentations around the country for JOH’s to listen to and comment upon the reform programme. In addition, there has been provided material on-line in connection with the reform process.

b. The legal professions and the advice sector?

29 We are not able to comment upon this. There have been no consultations where Judicial Office Holders and the legal professions and the advice sector have been present together.

c. Other relevant stakeholders?

30 We are not able to comment. We note that there have been no joint consultations with other relevant stakeholders.

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?”

31 We see no evidence that HMCTS has undertaken sufficient evaluations of the impacts of reforms to date. We do not know what its intentions are to undertake evaluations. Given its inadequate focus on the realities of access to the digital process we have identified above, we have no confidence that HMCTS will have identified the need to evaluate those matters of concern to us.