The Law Society of England and Wales ("the Society") is the independent professional body that works globally to support and represent 180,000 solicitors, promoting the highest professional standards and the rule of law.

The Society welcomes the opportunity to submit evidence to the Justice Select Committee’s inquiry into the access to justice implications of the programme of reforms underway in Her Majesty’s Courts and Tribunals Service (HMCTS). These reforms include the increasing use of digital and video technology and the closures of courts and tribunal hearing centres. To address the terms of reference contained therein we have sought views from the Society’s members.

**Executive summary**

**Impact on the justice system**

1. The Society is broadly supportive of the court modernisation programme and understands the need to manage the pressures on courts and tribunals by taking advantage of the opportunities that technology can provide to delivering a just, proportionate, and accessible system that provides value for money.

2. However, the proposed reforms will have an impact on access to justice across the justice system and particularly on the digitally excluded. The Society believes that some of the reforms will have a positive impact on access to justice where digitalisation will make processes simpler and faster. There will be times when only a face to-face physical hearing will deliver justice, and this option needs to be realistically available and accessible when required. The Society continues to have concerns that some projects within the reform programme give insufficient weight and prominence to the need for legal advice or representation which will impact on the rule of law as a key principle that everyone should be treated equally and fairly.

3. Without proper funding, the justice system will continue to experience negative impacts on access to justice whether this is because there is a lack of support for those who represent themselves in legal issues or those who work within the system not having adequate facilities to cope with working within a digitised system. The lack of contingency plans highlighted in the recent IT breakdown experienced by the Ministry of Justice and HMCTS, demonstrates the power of technology failures and their impact.

**Court closures**

4. The Society does not believe it is an acceptable position to close courts before the technology that is intended to replace the need for physical hearings has been tested, evaluated and proven to work.

5. Focusing primarily on travel times conflates travel distance with access to justice. HMCTS have failed to consider the following factors which are fundamental to any decision to streamline the court estate whilst ensuring access to justice is not compromised:

   - Risk of re-allocating work outside the local area where the offence took place;
   - The benefits of local administration of justice;
   - Longer travel journeys increases the potential for travel difficulties;
• Court closures will threaten access to justice in that people who qualify for legal aid may be unable to access legal advice in some areas.

Video hearings

6. The Society believes that video hearings have a place and can be helpful in some tribunals such as the tax appeal tribunal. The Society is however concerned that video hearings in other parts of the justice system, particularly in criminal courts, could risk damaging the quality of justice as they could threaten defendants’ rights. ¹

7. The Society is also concerned that as video options and better technology are not yet available in all the courts in England and Wales, their lack of availability does not appear to be informing decisions on closing courts.

8. In the case of children and young people accused of offences, the Society believes that video hearings are not appropriate.

Consultation on the reforms

9. The Society supports HMCTS’ design principles for the reform programme. Having a user centric design should help instil trust in the justice system and in those who work in the system. However, for this design to be truly user centric, HMCTS needs to ensure it has engaged with all stakeholders so that they will be sufficiently informed on users’ needs.

10. The Society has seen some improvement in communications from HMCTS, however there is room for improvement. For example, the Society found out through a Law Society Gazette article that a video hearing pilot was being launched in the county courts which we were not aware of.² A further example is in relation to the release of HMCTS’ response to the Public Accounts Committee hearing report. HMCTS hosted a Strategic Professional Engagement Group meeting two days before the release of their response and did not advise us or the other legal professional bodies at this meeting about it. We only learned of through a routine update e-newsletter from HMCTS.

11. The summary of HMCTS’ consultations in their recently released stakeholder engagement plan,³ highlighted to the Society how few times HMCTS have actually consulted formally with their stakeholders, particularly given the scale of the project and the magnitude of the changes envisaged.

Evaluation of the impact of the reforms

12. The Society agrees that there should be robust evaluation of the impact of the reforms to best shape policy for the programme. We are pleased that Dr Natalie Byrom has been seconded to HMCTS to help advise on open data and academic engagement within the context of court reform.

13. The report on evaluation in response to the Public Accounts Committee report is also a positive step, however the report did not capture a proper evaluation framework as HMCTS stated that they ‘are still at an early stage in developing our plans for the overarching evaluation.’⁴

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775588/Publ...
QUESTION 1

Civil justice, family justice and tribunals

14. Generally, the Society agrees that making various aspects of the civil, family and tribunal justice system digitalised will make some processes simpler and more accessible for court users. Examples of projects where we feel this would occur include the Civil Money Claims online (for the value of up to £10,000), online divorce and the track your appeal service launched for people who want to appeal their personal independence payments.

15. The above examples are successful as the main change implemented has been paper forms to online applications. Other reform proposals and developments are more complex and will be predicated on the notion that all court users will be digitally knowledgeable and know when and where to get legal advice should they need it. Some of the projects, such as the Money Claims Online, are being designed so that users may wrongly feel they do not need legal assistance.

16. Many litigants in persons do not understand the legalities of their case and this may result in misguided claims being pursued without understanding the risks. This will be particularly risky for claimants as the value of the Civil Money Claims increases, as claimants will then be potentially liable for adverse costs if they lose or drop the claim.

17. The Society has raised numerous concerns on the need for early intervention and practical advice to prevent problems from reaching the courts. We have also been advised of a lack of funding available in the entire justice system including the state of technology currently available in courts, such as the lack of phones suitable for teleconferences in tribunal centres and limited or no video conference facilities and recording equipment. Many areas also have poor mobile phone reception, inadequate Wi-Fi and far less consistent broadband.

Criminal justice

18. The scale of the reforms proposed for the criminal justice system is highly ambitious and dependent on a level of technological sophistication and reliability of IT that we are not confident can be assured. The Ministry of Justice’s recent IT breakdown that occurred in January 2019, raises serious concerns surrounding full reliance on technology with no contingency plan in place should a failure occur. In addition, many courts do not have the required infrastructure to deal with modern technology. For example, the Society has been advised that the Number 1 Court in Taunton Magistrates Court, only has one plug socket on the lawyer’s bench. This makes it impossible for all lawyers present to charge their laptops. While there are other plug sockets throughout the building itself, this is no answer to the need to keep equipment plugged in during hearings.

19. The Society agrees that automatic online convictions may have some advantages in summary cases with no mitigating circumstances, such as train fare or TV license evasion. We have strong concerns that the online conviction process will not ensure that defendants are aware of the possible consequences of a guilty plea. A law firm has highlighted a case recently where a client had been advised by two different court staff that a fare evasion conviction would not come to light on the disclosure and barring service when in fact it would. This conviction could potentially harm this client’s future employment opportunities.⁵

⁵ https://www.lawgazette.co.uk/law/courts-fare-evasion-advice-fuels-online-justice-fears/5069381.article
20. Our members have advised that many defendants do not always fully understand the seriousness of their charges or that there may be the possibility of offering to plead guilty to a lesser charge. Research conducted by Transform Justice found that in the case of unrepresented defendants, most did not understand the difference between defence and mitigation. An example of this is a businessman who pled guilty to a bus fare evasion charge even though he had an answer to the charge. He pled guilty online as it was the easiest thing to do.

Digitally excluded

21. Being digitally excluded does not just include those who have never used the internet but also those who need help navigating the online processes. HMCTS uses the term ‘assisted digital’ to refer to the support arrangements they will put in place to help these people who have difficulty using technology or who cannot access the technology. The Society endorses this strand of the reform project as it is essential for access to justice for users to have multiple forms of support including web-chat, telephone and face to face support. This would also help those users who have difficulty reading and writing. The Society continues to be concerned about the lack of information and/or signposting on the HMCTS website to external online advice or specialist services such as the Advicenow guides which could provide valuable public legal education support for those who are navigating these systems by themselves.

22. The Society also recently learned that at an HMCTS Reform event for tribunals held in Exeter on 26 February 2019, HMCTS staff confirmed the online forms for the immigration and asylum tribunal will only be available in English and Welsh. This would have a serious impact on those users who may have online access but will not able to read them.

QUESTION 2

Court closures

23. The Society believes that HMCTS’ court closure programme has severely impacted on all court users and thus negatively impacting on access to justice. Accessing justice is not just about the distance a court user must travel to attend. There must be extra consideration about the additional cost, vulnerable user groups and the risks associated with relocating work.

24. There are two crucial factors that HMCTS has not factored into their assessment for closing courts:

a) Loss of access to justice

- It is unclear whether HMCTS has investigated in detail all the relevant public transportation to ensure that court users who must attend court will not be impacted by limited journey timetables.

- The length of journeys is a concern for individuals living in rural areas, those who do not have access to a car, people on low incomes, and those who have to travel with children or who have mobility issues.

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• The costs of travel are another concern for court users. Witnesses, victims and defendants in criminal matters tend to be from lower income households and are more likely to rely on public transport.

• Having such lengthy and costly journeys to court will also impact whether defendants in criminal cases are able to attend court. Our members have indicated that in many areas, defendants are not remanded into custody. It is likely that many defendants will fail to attend and will be arrested and taken to court by police on a subsequent occasion.

• The Society is concerned court closures will threaten access to justice in that people who qualify for legal aid may be unable to access legal advice in some areas. The economic viability of legally aided services will be impacted by imposing on them substantial additional costs in attending distant courts.

• Buses travelling long distances tend to have hourly services leaving the possibility for witnesses, victims and defendants to all travel on the same bus to court. The potential for intimidation for victims or witnesses who are on the same bus as defendants has not been explored.

b) Costs to society that have not been sufficiently evaluated:

• The impact on police resources and other organisations who use the courts has not been researched.

• When considering the time involved with travelling by car, it is difficult to make an accurate assessment of the reality of travel by car.

• The Society is also not aware of any impact assessments conducted by HMCTS that focus on cases being ineffective as a result of travel disruption.

Video hearings

25. Despite HMCTS being half way through this ambitious programme; video options and improved technology is not yet available for all court users. Many streams are still in a pilot phase and have not been tested with the public.

26. A recent fully video hearing pilot took place in the first-tier tax tribunal. This small-scale pilot found that technological issues were commonplace, ‘with the majority of hearings suffering problems such as visibility of parties on screen or access to documents. In many cases, the hearing had to be paused and restarted, and in one case the hearing had to be abandoned.’

27. HMCTS has admitted that the research base for video is limited. There is no evidence that video hearings will ensure justice outcomes are fairer, and there are concerns over reliability of the technology and the efficiency of the administrative processes that will have to be built around it.

28. It is unclear how a video hearing will impact on defendants particularly as there is no evidence on the effect of giving evidence over a video link versus giving evidence in person.

QUESTION 3

8 [https://www.lawgazette.co.uk/news/users-back-video-hearings-but-technology-failings-persist/5067536.article](https://www.lawgazette.co.uk/news/users-back-video-hearings-but-technology-failings-persist/5067536.article)
29. The Society believes that the Ministry of Justice and HMCTS have conducted insufficient consultation with legal professionals, both in respect of individual strands of the project and on the overall aims and objectives, and the intended end state.

30. Published in November 2018, HMCTS’ stakeholder engagement plan did not suggest how HMCTS would ensure that engagement with stakeholders would improve. Instead, HMCTS focused on what it has done even though many of the things listed in the document were part of the history that led to concerns being raised about the degree of stakeholder engagement. HMCTS also included examples of engagement that have not gone as smoothly as suggested. Many of the projects or pilots were announced publicly with no prior notice to HMCTS’ stakeholders. The plan also contains a lot about process as to how HMCTS would develop communication plans whereas the Society expected to see more detail of what HMCTS actually intended to do to improve communications, along with timeframes.

31. The Society has seen some improvement since the Public Accounts Committee report particularly with respect to engagement events. The Society was pleased that HMCTS implemented a number of online reform events focused on particular aspects of the reform programme and provided participants an opportunity to ask questions. Four of these online events were scheduled, however two of those events, one on civil reform in October 2018 and one on family reform in February 2019 were not able to proceed due to technical difficulties.

32. The Society regularly consults with its members and various committees regarding the HMCTS court reform programme. The consistent feedback from members is their frustration about the lack of engagement or consultation that they have had with the programme whether it is through roadshows, online updates, research requests or consultations.

QUESTION 4

34. The Society believes that the Ministry of Justice and HMCTS have not always taken sufficient steps to evaluate the impact of the reforms but does acknowledge two important areas where HMCTS has done some work on evaluation; video hearings and flexible courts.

35. The independent evaluation by the London School of Economics in the first fully video hearings pilot, was only a small-scale pilot as it only evaluated eight video hearings and did not measure any outcomes. While HMCTS announced the pilot was a ‘success’,9 of the 8 cases that were involved in the pilot, seven experienced technology difficulties.10

36. In 2013, HMCTS conducted an evaluation on flexible courts11 and consulted us in 2017 regarding the FOH pilot. Our concerns in relation to the FOH pilots taking place in criminal courts was taken onboard and taken out of the scope of the pilot. We have been assured that an evaluation will take place after the flexible operating hours pilot due to take place in Spring 2019.

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37. With respect to the court closure programme, every public consultation did not go far enough in its assessment in the identification of equality impacts. The assessment focused on the direct impact of closures on disabled people and pregnant women. However, court closures will have far reaching negative implications on other groups which are not mentioned in any of the assessments contained in any court closure consultation.

38. Other aspects of the reform have not had any or very little consultation with us and our members. We are particularly concerned that we have not been shown any evidence of baseline data against which to measure the impact of the changes. In addition to measuring the impact on process and efficiency, there is a need to measure the justice impact of changes.

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