Written evidence from Mrs Melanie Benn (CTS0043)

I can only speak about the criminal justice system and anecdotally

Earlier this year the opening of two centralised court “support” centres was announced in an effort to “take the burden away from under-staffed regional courts”. Whilst any move to assist with answering phones and processing administrative tasks is welcome many criminal practitioners see this as the first step towards the regional super courts that the MOJ want to work towards, shifting justice from local to central control.

The Court Service is just not working. And this is a product of issues within HMCTS as well as other agencies and the chronic underfunding of all aspects of the CJS. But whilst this state of affairs exists then the courts will not get any better.

The workload in courts has been decimated by the drops in charging and processing crimes due to a combination of the police and CPS not having the staff to properly investigate and review cases. This is not a reflection of the amount of crime being committed just a failure to get people into court. As a result it appears that HMCTS are using this, unsurprisingly, as a pre-text to close courts (centralisation is good as it concentrates resources) and list identifiable offence groups (youths, domestic violence) in one place. The problem with this is it removes justice from local communities and increases the costs pressures on defendants (often of limited means). It is likely to further shrink the supplier base for local defence firms as the static legal aid rates make it increasingly difficult to finance the work particularly where fee earners are spending large amounts of billable hours in travelling to court centres. This has a knock-on effect on police station coverage. If local firms go under who will service local police stations?

Digital working and court reform are meant to make the system work better. That is simply not the case. Firstly there are the continuing problems with wifi, cjsm and the digital case system in the Crown Court. We have to email for our case papers. This is ok if we know prior to the hearing date that a client is in court and the CPS actually receive the papers from the police in time. Often they do not. Often we are told by clients the night before they are in court the next day. Or we attend court and they ask for us there. Or we are duty and do not know who we are representing.

In the past the papers were waiting in court when we arrived. As soon as we got a name or saw a client we could pick the papers up and see the client. Now we have to email and wait. If we have someone on the cells and get another name we have to come out of the cells, get a wifi connection and wait. Often the papers are on the system but not bundled. So we wait for that. Sometimes no papers have been uploaded. Recently I had a case where a client was charged and bailed but no digital case was created. As there are no paper files for CPS nor the court the case did not exist. I was denied legal aid and the case drifted off into the ether as no warrant could be issued for my absent client as the case did not exist: the ultimate ‘computer says no’.

I understand that no one agency’s system ‘talks’ seamlessly to another.
Videolinks are more trouble than they are worth. The system goes down or do not link in the first place. The local prison rarely get anyone to the booth in time and the amount of consultation time with a client can be compromised. There is no facility to talk to the client after the hearing which means that a client who has received a knockback can be left frustrated and angry. If there needs to be negotiation with the CPS it is difficult as there can be no back and forth in such short slots. The danger is then that an email written to the CPS after a hearing is not actioned until shortly before the next hearing which often means no progress is made.

More time is being spent at court doing everyone else’s job: ringing the CPS to try and get things done as the prosecutor does not have the time to do so, ringing courts to try and get stuff brought forward or shifted around.

How does this all impact on the delivery of justice?

Firstly there is a huge effect on defendants and witnesses who are being processed less efficiently and who may have to travel miles to get to court. Cambridge Magistrates’ Court was recently spared from the latest round of cuts but the defence community is under no illusion that this is a temporary stay of execution. The ‘business case’ for closure was not made out. That phrase shows the issue that the MOJ has with the court system. This is not a ‘business’. The administration of justice is about delivering justice and the rule of law. It is not about ‘results’ or ‘margins’. The courts deal with real people. The slower and less hands on the system the more delay and difficulty it causes for those attending court in a ‘lay’ capacity. When we had our local admin in a local office this could be sorted without problems as you just went to speak to the admin staff. The centralised court support centre is unlikely to improve this. Without the experience and contact with day to day running of court work call centre staff are unlikely to know what is being asked. There is a risk of them not signposting where issues can be resolved and that justice will not be served. And if they are helping with ‘administration’ what is the risk of this being expanded to legal decisions?

The amount of money being spent on these centres would be better spent on increasing local court staff numbers.

Centralising courts penalises witnesses and defendants who have to travel to engage in the court process. Videolinks remove the participant from the proceedings. It is harder to read body language. The serious nature of proceedings is undermined. Local knowledge and conditions are lost. It is harder to take instructions. If all hearings go digital there has been no guidance as to how defendants will access legal representation. There is a significant risk of miscarriages of justice. Criminal proceedings have so many variables that there is often no straightforward path to follow. What if a defendant needs to see a probation officer?

The digital systems render the delivery of justice slower not faster.

There is a widespread view in the defence community that HMCTS and the MOJ do not listen to defence practitioners. The privatisation of the probation service demonstrated a stubborn desire to plough on in the face of objections which have now come true. And instead of cancelling the reforms the number of providers will be shrunk. The failure of the change illustrates how a business modal cannot be applied to the CJS but no one is listening.
The rates of pay for criminal defence practitioners needs to be looked at. There are fewer new entrants into the profession, and this is not surprising. The MOJ also appears to treat us with contempt – the attacks on judges, the time it took David Gauke to respond to threats made against Richard Egan, Sajid Javid’s knee-jerk responses to populist shouting about knives and terrorist suspects all point to a failure to uphold the importance of a rule of law. If the administration of justice is taken out of communities and tucked away in videobooths and lawyers’ offices no one will regard it with any respect. Justice not only needs to be done it needs to be seen to be done.

Last year I responded to the Committee’s request for evidence. I was one of a handful. Again I will commend Penelope Gibbs of Transform Justice whose measured, well researched and well argued position is set out again and again in her work. I can only speak anecdotally about my practice. Last year I was despairing about the state of the CJS. I read story after story from my colleagues about the failings of courts and the CPS. I have given up spending energy on trying to sort out problems that are not of my making. I look at the recent adverts for public defenders and the salaries and perks and wonder at the mismatch between what the MOJ thinks a lawyer is worth and what they pay us in private practice. This year I have no more cause for optimism, save that my local court remains open. I remain heartbroken that the justice system is on its knees and no one who has any power to change it cares.