Written evidence from Criminal Justice Alliance (CTS0050)

The Criminal Justice Alliance (CJA) is a coalition of over 150 organisations – including charities, voluntary sector service providers, research institutions and staff associations – working across the criminal justice pathway. The Alliance works to achieve a fairer and more effective criminal justice system. We welcome the opportunity to respond to this inquiry. Our response focusses on the reform programme’s implications for criminal justice.

The court reform programme was borne out of a need to make the justice system more cost-effective and efficient by closing physical courts and moving more processes online. While the CJA remains broadly supportive of this initiative, there are serious concerns that the changes being implemented are so broad in their scope that the court system as a whole is struggling to adapt at the pace required and that implications for access to justice are not being sufficiently recognised or addressed. The National Audit Office’s 2018 review of the reform programme highlighted serious concerns about HMCTS’s capacity to secure the expected changes and savings within the current timeframe, which has now been extended to 2023 despite an initial completion date of 2020.

We are also concerned that the programme has suffered from a lack of transparency and consultation from HMCTS on several key areas. Despite efforts to increase transparency through a blog and a newsletter, there is still very little information about the programme’s long-term vision for the courts. We are also concerned by the lack of clear information about the programme’s financial costs and how it expects to make the court system more cost-effective in the future without shifting greater financial burdens onto other parts of the criminal justice system or wider public services. This is particularly pressing because of the programme’s stated aim to improve efficiency.

If HMCTS does not take steps to clarify its vision for the courts and evidence the reasons for the wide-ranging changes being implemented, these reforms run the risk of seriously undermining the fairness, accessibility and transparency of the criminal justice system, which could undermine outcomes for some of the most vulnerable people in society and damage public confidence.

1. What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to:
   - Criminal justice
   - Those who are digitally excluded or require support

A significant proportion of the population, around 70 per cent, are ‘digitally excluded’ or need assistance in accessing digital services, highlighting the extent to which digitisation may, without careful planning, undermine the rule of law.¹

¹ Preventing Digital Exclusion from Online Justice, Online www.barristermagazine.com/preventing-digital-exclusion-from-online-justice/
The Law Society and Transform Justice have raised concerns about allowing people to make pleas online, particularly, the ability of people to make an informed choice without access to legal advice and understanding the implications of pleading guilty. The Law Society asserted that while people could make a claim online, it was still crucial that they received legal advice on whether they had a valid case, what evidence they needed to produce, whether a defence was reasonable, and at what level they should settle a claim.2

A Ministry of Justice 2010 evaluation found guilty pleas in virtual court cases were 3 per cent higher than in traditional courts and guilty pleas were also slightly higher where defendants were unrepresented. The proportion of defendants receiving representation in virtual courts was 5 per cent, compared to 72 per cent in traditional courts.3 There are also concerns about the potential for virtual hearings affecting both how engaged defendants are and consequently how they are perceived by juries and sentencers.

The implications of a guilty plea – such as the impact of a criminal record on future employment – may not be fully explained online or understood by an individual. Their difficulty in understanding such information might also not be picked up over a computer, whereas such a vulnerability could more easily be identified in person and reasonable adjustments made.

Research from CJA member Transform Justice also suggests that use of video hearings might further increase a defendants’ feelings of isolation, stress and exclusion from the criminal justice system. This research also noted that video hearings can have a particularly negative impact on defendants who do not speak English well, those who are unrepresented and both younger and older people.

A survey by Transform Justice of 180 professionals working in the courts found over half thought that video links had a particularly negative effect on young adults.4 The Justice Committee has previously recognised that young adults aged 18-25 must be treated as a distinct group with the criminal justice system – we encourage the Committee to reconsider this topic against the court reforms to test whether the programme has properly taken into account this cohort’s distinct needs.

Similar concerns about vulnerable defendants apply to the use of video hearings. For example, many ‘hidden’ vulnerabilities, such as mental health problems, learning disabilities and autism are more difficult to pick up over video than in person. It is now 10 years since the launch of the Bradley Report, which highlighted the distinct needs of people with learning

[Accessed 20/02/2019]

2 Transforming Courts and Tribunals, Online https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/976/97602.htm [Accessed 19/02/2019]
disabilities or mental health problems in the criminal justice system. HMCTS must ensure that its reforms neither exacerbate or create new problems for this cohort.

We share concerns that use of video might jeopardise the relationship between defendant and legal representative. While there are some benefits to video links – for example, reducing travel time for legal representatives – these are counterbalanced by concerns over possible difficulties in developing a relationship and issues around confidentiality.

For detained populations, security concerns have historically limited access to technology within the prison estate. Detainees have limited access at the same time that digitisation of criminal justice processes advance rapidly. HMCTS could consider a particularised approach to detained populations, one that balances security and safety needs on the one hand against the importance of allowing detained populations to properly engage with their criminal or immigration case as more of it goes online.

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 user, how far can online processes and video hearings be a sufficient for access to court and tribunal buildings?

There is little information on the possible effects on access to justice by closing courts, despite the fact that HMCTS have closed over 250 courts between 2010 and 2018. As the Public Accounts Committee recently highlighted, this raises the concern that HMCTS has not adequately considered the possible effects of its reforms, particularly for court users who travel by public transport or have caring responsibilities.

According to a recent study court closures have had significant travel cost impacts on defendants and their defence advocates. It found that the generalised time costs of a defendant coming from rural and rural remote locations daily has doubled in almost all cases. The study highlighted testimonies that if someone chose to stay in a hotel overnight, accessibility costs would be higher; and that when the trial date at the magistrates’ courts is over two days, the costs are likely to double. In Chichester, some cases are being sent to courts over 80 miles away which can mean some people are unable to attend their appointments, particularly those with childcare or caring responsibilities. Furthermore, 88 per cent of those who had seen their local court close reported increased travel times and costs.

Significant unintended consequences to court closures is that access issues can quickly lead to disengagement of vulnerable people from the criminal justice system. Crown Court trials/hearings can take five days while in the magistrates’ courts it is likely to be a maximum

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6 Transforming Courts and Tribunals, Online https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/976/97602.htm [Accessed 19/02/2019]
of two days. A disabled person on benefits, travelling for a week would mean that one would have to spend their entire Disability Living Allowance on travel.

“I have had clients who have told me that they cannot afford to travel from the west of the county to Ipswich and would wait to be arrested on a warrant. This is the reality of centralising courts and the demise of local justice.” – Defence Advocate

Court closures may also affect victims if they result in lengthier processes. Currently, at Ipswich Magistrates’ Court, the average number of days from charge to first listing pre-closures was 34 days (October 2015 – March 2016), and 42 days post-closures (October 2016 – March 2017).

3. Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication, with:
   - Stakeholders?

There has been very little public consultation on the court reform programme and we are anxious that, aside from the recent introduction of a blog and newsletter, the programme’s progress has lacked transparency. We are aware that HMCTS has informally consulted with stakeholder groups but this process has also lacked transparency and accountability and, in our view, highlights HMCTS’s lack of engagement with a wider range of stakeholders, including members of the public.

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?

We are also concerned about the lack of research and evaluation of the impact of the courts reform programme, particularly with regard to the use of virtual hearings, since the initial review conducted by Sir Brian Leveson in 2015. The recent evaluation of the pilot of virtual hearings in the tax tribunals observed just eight video hearings and only interviewed two appellants after their hearings.

HMCTS has only recently begun to answer some of the difficult questions posed by the Public Accounts Committee in its 2018 inquiry around evaluating the impact of the reforms, admitting that the ‘overarching evaluation’ of the programme is still at scoping stage. According to its latest response to the PAC, HMCTS aims to have an advisory panel in place by Spring 2019 and will commission any necessary research or calls for evidence in Summer 2019. HMCTS aims to produce an interim report by 2021, which will be five full years since the programme began.

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8 Ibid