**Introduction**

Resolution is an organisation of 6,500 family solicitors, barristers and other family justice professionals in England and Wales, who believe in a constructive, non-confrontational approach to family law matters. Resolution also campaigns for better laws and better support for families and children undergoing family change. Our members, and the couples and families they work with, are regular users of the family courts.

This submission largely focuses on the effect of the HMCTS reform programme on access to justice in relation to family justice and shares results from a recent survey of our members. Examples of comments submitted to the survey are annexed at the end of this submission. We can share the full survey results with the Justice Committee if that would be helpful.

**Main points**

- Resolution supports the Government’s stated overarching aim to increase access to justice while making the system more efficient overall.

- The reform programme is of course ongoing, but we don’t consider that there is currently clear evidence this aim is being met for those involved in family proceedings and their children. The programme is not yet translating to practitioners seeing improved access to justice, a more accessible service, quicker availability of hearings or efficiencies on the ground. We hope our survey results will help to provide a baseline against which to measure the impact of the reforms going forward.

- Delays, and potentially longer periods of uncertainty for clients and their children, remain the top issue consistently reported by our members.

- We would be extremely concerned to see further family court closures. Online and virtual processes are not sufficiently established to provide access to family justice or access to court services without the need for physical attendance at court on a widespread basis. We believe they have an important role to play but a one-size-fits-all approach would clearly not be right; and we question the general practicability and desirability of remote services across the board in family and children proceedings.

- HMCTS’s level of engagement with Resolution on their reform programme has increased since we submitted evidence to the Public Accounts Committee last summer, but the vast majority of our individual members report that they have not been given the opportunity by HMCTS to be regularly engaged in relation to their

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1 The survey was carried out online and ran from 18 February to 6 March 2019. 276 Resolution members completed the survey. The survey asked for information on experiences of the family courts and reforms since June 2018 and our previous court survey as shared with the Public Accounts Committee.

2 Evidence submitted by Resolution to Public Accounts Committee Transforming Courts and Tribunals inquiry; Oral evidence of Jo Edwards, Chair, Family Law Reform Group, Resolution to Public Accounts Committee Transforming Courts and Tribunals inquiry; Supplementary evidence submitted by Resolution to Public Accounts Committee Transforming Courts and Tribunals inquiry;
reforms at grass roots level. This has not changed since our last member survey undertaken almost a year ago.

What will be the likely effects of the reforms on access to justice in relation to family justice?

1. Aside from court closures, the main reform project to progress in family justice is the Apply for a Divorce service for those without legal representation. The functionality for completing petitions appears to have worked well and reduced errors. We look forward to learning more later in the year about how this is operating as an end to end divorce process.

2. But we are not clear how litigants in person themselves find using the service and how they will get information on and deal with next steps beyond issuing their petition e.g. applying for deemed service. Comments submitted in response to our survey indicate that our members are being increasingly consulted by clients who have used the online service, for example, because they are confused and cannot find help. At the HMCTS Family Law Reform event for legal professionals in October, legal practitioners suggested that HMCTS should think about greater liaison with them about what signposting may be useful for users within the online tools.

3. We hope that a digital divorce process for those with legal representation will reduce delays and some of the consequential difficulties in future. At present their paper divorces, or certainly stages of the process, are likely to be taking far longer to process than for litigants in person, penalising those with legal representation. If anything, the delays are getting worse in some areas.

4. At present our members are not reporting that the reforms are having a positive impact on access to justice. In response to the recent Resolution member survey, of those who responded about their experience since June 2018 of the court in which they most frequently issue:

   - Over 90% said that delays in the processing of non-urgent applications is a regular issue, with 55% reporting delays in the processing and hearing of urgent applications.
   - Only 4% said that the processing time of divorce petitions in this period has got better; 64% said that this has got worse or much worse.
   - 67% said that processing time from petition to decree nisi has got worse or much worse.
   - 72% said that the processing time for finance consent order applications has got worse or much worse.
   - 75% said that the ability easily to access the right information in a reasonable timeframe from the court by email or telephone has got worse or much worse.

5. We also asked our members to what extent they agree or disagree that the HMCTS reform programme is delivering access to justice or efficiencies:
• 87% disagree or strongly disagree that a more accessible service is being delivered; 3% agree.

• 94% disagree or strongly disagree that faster processing times are being delivered; 3% agree.

• 91% disagree or strongly disagree that there is quicker availability of hearings; 2% agree.

• 94% disagree or strongly disagree that significant time savings for them and/or their client are being delivered; 2% agree.

• 84% disagree or strongly disagree that decreased waiting time at court is being delivered; 3% agree.

• 82% disagree or strongly disagree that improved facilities are being delivered at court; 3% agree.

6. We are not in a position to survey litigants in person but if this is the experience of professionals whose job it is to use the family courts where necessary, we query what the experience of litigants in person in family cases must be.

What are the effects on access to family justice of court closures?

7. Closures, combined with legal aid reforms, must limit the accessibility of the family justice system at a time when the family justice system is already struggling to cope.

8. 49% of those members who responded to our recent survey said that courts they have historically used have been closed. Many said that their clients’ travel time to court has increased by 30 minutes to 2 hours each way.

9. Over 200 members who responded to our survey have provided examples of their clients suffering financially or emotionally as the result of a court closure or a failure in court administration.

How far can online processes and video hearings be a sufficient substitute for access to court buildings?

10. Whilst we agree that some court buildings may not be completely fit for purpose and physical attendance at court hearings could be reduced in some areas of work, the necessary technology and digital case management systems are simply not in place, certainly across the court estate currently used by the family jurisdiction.

11. Being in a court building can in itself facilitate negotiation and the making of agreements; move cases along more quickly, especially in cases involving one or more litigants in person; and bring both security for witnesses and compulsion to tell the truth.
In the family jurisdiction in particular, much is about conciliation and the parties being given a steer. So most family hearings, save the early directions hearing in a financial application, really don’t lend themselves to an online hearing.

12. Those involved in family cases are also likely to have particular preferences and needs, including emergency protective needs.

13. It must be noted that an online divorce process is effectively a discrete administrative process where it is extremely unlikely that the matter will be defended or that the parties will need to attend court. We anticipate that other areas will be more complex to digitise and there is a vastly significant difference in the nature of the applications, how they are settled and in terms of the need for face to face hearings or the prospect of such.

14. We believe that the online finance consent order process is likely to have a positive impact, but again parties rarely, if ever, need to attend the court building about such consent orders and the nature of the process is consensual.

15. The online pilots involving legal professionals testing digital platforms for solicitor use are not as progressed as the public online divorce service. We understand that only a relatively small number of firms are currently involved in pilots, as reflected by our member survey, which does not allow us to draw any real conclusions at this stage.

16. We have not seen the full written evaluation methodologies or reports to date for the family projects.

Consultation and communication

17. We note that the HMCTS external stakeholder approach document published in November 2018 acknowledged that there is more to do.

18. HMCTS has reached out to us at national level and we are a member of the HMCTS Family Court User Association. This helps us to discuss issues and disseminate more information to our members.

19. However, 83% of those who responded to our member survey said that they do not feel that HMCTS has given them the opportunity to be regularly engaged in relation to their reform programme. Local court user groups are patchy and as far as we are aware, there are no real forums at local level for HMCTS, court staff, the judiciary, legal profession and others to discuss the reforms and what is and isn’t working. Whilst there has been a family justice online event (another had to be rescheduled), these cannot always be a substitute for face to face engagement around the country. HMCTS will be joining our national conference next month and we hope to arrange future regional events for our members with HMCTS.

March 2019
Annex - Examples of comments from our members

a) Some clients travel over 60 miles to access the nearest court. In rural Northumberland some bus services run only every 2 hours. Lots of delays with divorce cases can lead to delays in financial settlements, transfer of property and payment of lump sum. Delays with children cases mean contact is not taking place or breaches of orders are not dealt with for months.

b) The South West Regional Divorce Unit is regularly six weeks behind with correspondence. Listing a hearing is now incredibly delayed at local level, and we are often forced to travel to Plymouth when hearings have to be listed there - a 70 mile round trip - with the consequent additional expense in time and cost.

c) When you ring the centre there are often up to 100 people ahead of you in the queue and the support staff, whilst not unhelpful, only have very limited information and it is very difficult to progress your matter.

d) The fact that individuals now have to book an appointment before being able to attend at the court counter creates another barrier to getting stuff done, both for professionals and for members of the public.

e) The divorce unit is extremely slow. Whereas throughout my 30 year career we have always advised clients that an undefended divorce generally takes 4-6 months, we have had to change this to up to 12 months as the West Midlands Divorce Unit is so exceptionally slow. Further consent orders sent in for approval are taking several months to be considered and there is then a delay in notifying us of the date that the order was made which usually results in the deadlines referred to in the order having already expired.

f) Two consent orders were "lost" by the court. As is the procedure in Bradford we lodge the consent application which we did on 2 separate cases in the spring of last year. In June they were approved by the judge and we were asked to email the electronic versions in for printing and sealing. We did. We heard nothing. We chased by email and letter and we phoned and eventually in November we were told that the files had been closed without anyone realising that the orders had not been sent out.

g) I still have hope that the digitalisation of the court process will improve processing and reduce delay however this is yet to be seen.

h) Better access to WiFi at court is great, but that is the only positive change I have seen. Processing times are significantly worse and causing real distress for clients who cannot move on as fast as they had expected and hoped.

i) I am waiting for a sealed consent order on a file in which a lump sum will be payable when we receive the Order. The couple have a child and the fact the wife is having to
wait for her lump sum is causing tension between them where they were previously working together constructively. I have been told by the Court that it was sent by the Judge to the administrative team on 31 January. I telephoned two weeks ago and I was told that they were working on applications from 21 January. I then telephoned yesterday and I was told they have only moved on to 24 January. I feel this encapsulates the slow pace of the Court system and the problems it causes for clients.

j) Pronouncement of Decree Absolute a matter of days following Decree Nisi without even an application by either party. Instructed to rectify but client suffers financially as a result of significant increased cost.

k) Hearing listed on wrong date by court when no DJ available. Only came to light with court when bundle submitted. Client then unable to change travel arrangements from abroad to attend re-listed hearing.

l) Private children hearing had been listed for a finding of fact hearing 2 months previous. Court contacted less than 2 weeks before to say no Judge was available leading to a delay of a number of weeks. A number of cases have been cancelled on the morning of the hearing to say the matter adjourned due to non-availability of Judge.

m) Private Children Act trial at Reading only listed as directions and not trial - second fee for counsel to attend on relisted trial, costs wasted in the interim, extra day of work for client on a low income. Lead to greater delays in client and child having reasonable child arrangements.

n) One client in particular had a final hearing in Maidstone (private children), the court order said final hearing, counsel was briefed to attend, mother travelled over 50 miles to get to the court. Upon arriving it transpired that the court had listed the case as a Dispute Resolution Appointment in error. The parties then had to wait several months for a new date, plus I had to come off the record as acting as client ran out of funds. He represented himself at the final hearing.

o) Several times we have been given the wrong hearing dates and one party has turned up but we haven't and vice versa. Court papers have not been processed on time - respondent applied for an adjournment of the final hearing but the Court had not processed the application or notified anyone so the final hearing went ahead in his absence and a final order made - respondent complained and the final hearing order was set aside and the whole process had to start again at considerable cost to the client.

p) Final 3 day hearing adjourned due to lack of judicial availability in March 2018 with only 1 working days’ notice. Client has significant needs and there has been cost for her in us now having to seek an interim release of funds. Hearing finally re-listed this year.
q) Cases are fully prepared and then pulled the day before and Counsel have had their brief. They are then relisted months later. In the meantime all the clients financial documents go out of date and so the clients are upset especially if of limited means when they get charged for the same work twice or are suffering financial hardship and desperate for resolution.

**Online divorce service**

r) Initially fast issuing of petition then long delays thereafter.

s) Growing numbers of "it’s all gone wrong and I don't know what to do" with Online divorce. Most problems around applying for decree nisi and client's being unable to understand what the Court wants.

t) They don't read the guidance notes and don't understand what boxes they should or shouldn't be ticking. The ones who successfully go through the process don't recognise or understand the need for a financial order.

u) Those who have been respondents have not had sufficient information from the court/information is set out in a completely different way to the paper issued letters and seems to be more pressuring re deadlines etc.