1. The Association of Consumer Support Organisations (ACSO) welcomes the opportunity to submit evidence to the House of Commons Justice Select Committee (JSC) in its inquiry into the government’s ongoing court and tribunal reforms.

2. As the Public Accounts Committee (PAC) states in its July 2018 report ‘Transforming courts and tribunals,’ “No other country has attempted to change its whole [courts] system at this scale or pace.” It is therefore right that the opportunity be taken to consider carefully both the progress of HM Courts & Tribunals Service’s (HMCTS) £1.2bn modernisation programme, its impact on access to justice in England and Wales and how this fits within the wider context of other recent reforms.

3. ACSO was established in January 2019 to represent the interests of consumers in the civil justice system and the reputable, diverse range of organisations who are united in providing the highest standards of service in support of those consumers. Its role is to engage with policymakers, regulators, industry and the media to ensure there is a properly functioning, competitive and sustainable justice system for honest consumers.

4. As such, ACSO will restrict the scope of its submission to civil justice matters regarding the consumer as a claimant, i.e. 1(a) of the committee’s terms of reference, but will also address 1(e) which concerns the impact that reforms will have on the digitally excluded or others who require support.

5. It should be stressed that the government's stated aim "to increase access to justice while making the system more efficient overall" is one ACSO supports. However, there must be robust safeguards built into the reform agenda which put the consumer first and which ensure a balanced approach is taken between the needs of the taxpayer as a funder of our justice system, those making legitimate claims and those acting on behalf of those defending claims.

6. As the PAC has stated, the savings anticipated from the overall court reforms “are expected to contribute around half of the total savings the Ministry of Justice committed to in the 2015 Spending Review.” Analysis from the Resolution Foundation suggests that, depending on further spending reductions for unprotected departments in the 2019 Spending Review, by 2023/24 the Ministry of Justice (MoJ) could have a budget 48 per cent lower in real terms than that which it had in 2010. This puts into context the scale of the challenges the department faces in its day-to-day operations and the extent to which other policy imperatives such as access to justice risk being a lower priority.

7. Moreover, the HMCTS reform programme must also be seen in the context of the many recent reforms which have been, or which are being, implemented within the civil justice system in England and Wales. These have changed fundamentally the rights and expectations which consumers have and their impact remains in many areas poorly analysed.
8. Part of the justification for more recent and ongoing reforms was the increasing number of civil claims, particularly for personal injury (PI), which was felt to be unwelcome. However, the number of PI claims has fallen sharply in recent times. In the last full year for which the Department for Work and Pension’s Compensation Recovery Unit (CRU) data are available, 2017/18, PI claims fell by 13% to 853,615. The largest single sources of cases, motor claims, fell year-on-year by 17% to around 650,000 while clinical negligence cases dropped 3% to 17,400. Quarterly updates from the CRU since show this is an accelerating trend.

9. These trends are expected to accelerate as a result of the government’s whiplash reform programme, as legislated for in the 2018 Civil Liability Act and the accompanying statutory instruments (SIs) expected to be published in draft in October 2019. These measures will diminish further the ability for consumers who have been injured through the negligence of another party to seek professional advice in the pursuit of any legitimate claim. The JSC has separately raised a number of concerns about these reforms in its May 2018 report following its inquiry into the small claims limit for PI. The challenges on access to justice must therefore be seen in the light of the HMCTS, whiplash and other reforms taken together and not just in isolation.

10. Time should be taken to ensure both the implementation of any reforms and their impact is fully understood. It was therefore welcome that the government recently announced a further delay to the full implementation of its HMCTS modernisation programme. While the financial backdrop is understood, avoidance of an unnecessary erosion in access to justice should rightly be prioritised. Drawing on the views of a wide range of opinion is vital. As the PAC has said in its report of 16 July 2018, "The pressure to deliver quickly and make savings is limiting Her Majesty's Courts and Tribunal Service's ability to consult meaningfully with stakeholders and risks it driving forward changes before it fully understands the impact on users and the justice system more widely."

11. The drive to modernise the justice system and digitise services is, as stated, welcomed by ACSO but only when it supports access to justice and helps create a civil justice system which has consumers at its heart. In other sectors of the economy, digital products and services have often worked best when they are introduced as well as existing systems rather than instead of. This is especially the case initially while the public adjusts to the changes, consumer preferences can become properly understood and any limitations of new approaches are addressed, not least for vulnerable users with complex needs.

12. As part of its small claims reforms, the government and motor insurers are creating a new online portal for minor road traffic accident (RTA) claims. While details on the design, operation and oversight of this new portal are very limited at this stage, some overriding priorities should be made which are intended to protect consumer rights and access to justice.

13. First, the portal and any supporting telephony should be fully tested and in a way which is transparent. This should have an overriding consumer focus, with direct input from litigants in person and research into user preferences and experiences. There have been concerning recent reports of a 'minimum viable product' or MVP being relied upon and clearly that would be a regrettable outcome of a set of public
policies many years in their gestation. Even if such an MVP were to be temporary while enhancements and improvements are made, in the interim there could be a considerable detriment for many thousands of consumers which would benefit neither claimants nor defendant insurers.

14. The government’s self-imposed deadline of April 2020 to introduce these reforms may make it impossible for comprehensive, consumer-focussed testing to take place. There may need to be rapid adjustments should the new system struggle to cope with the number and complexity of cases. Under the existing regime, consumer law firms and claims management companies (CMCs) filter out a high proportion of unmeritorious, exaggerated or potentially fraudulent claims. Under the new system it is likely to prove uneconomic for many such organisations to undertake this filtering process, potentially adding to the scale of the challenge faced by the new portal and undermining the financial and other benefits it is hoped it will deliver.

15. Second, the new system should not only work for consumers as litigants in person. It should also allow support organisations and those interacting directly with the consumer to be able to help them through the process. Technology is vital to achieving positive outcomes, one example being application to application (A2A) software which helps automate administration and document production. This already exists and should be available from the outset of the new regime. This would be to the benefit of the consumer, those who support the consumer as claimants in the civil justice system and those organisations defending the claims.

16. Third, while there needs to be ongoing review of the efficacy of this new portal from its launch, there is also an opportunity to undertake a thorough post-implementation impact assessment of the new regime before any non-RTA reforms commence. We have seen in recent years additional civil justice reforms being aggressively pursued before previous changes to the system have had the opportunity to be fully understood, as was the case with the reforms introduced under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

17. Fourth, concerns have rightly been raised that online systems, albeit with some very limited telephony support, are likely to prove inadequate in the event of both more complex cases and/or cases involving vulnerable consumers. Such people might include the very young, the elderly, those with cognitive and physical disabilities and the many millions of people who face literacy, numeracy and IT literacy challenges. Clear safeguards must be in place to ensure that these consumers do not face additional barriers to access to justice. Research from Minster Law and Consumer Intelligence, for example, shows that while those aged 35-54 are the happiest to make claims online, older consumers are likelier to want more human interaction via telephone support.

18. The ‘digital divide’ can be seen most conspicuously amongst those in lower-income groups who are also the most dependent on independent, expert advice. In addition to this divide there may also be information asymmetry, with consumers used to being given professional advice now in danger of being overwhelmed by the demands put on them as claimants or exploited by companies seeking to profit from the impact of the reforms on the market for legal and insurance services.
19. Further, there is a clear potential conflict of interest between the funding of any new portal and the quality of service and therefore access to justice it delivers. As the portal will be funded by defendant insurers (and, in turn, all of their customers, and not just the small minority who claim against their policies), there is a vested interest in attempting to ensure that many claims are not made at all. There would be an egregious consumer detriment if a system were allowed to exist which is so limited or difficult to use that genuine claimants are discouraged from using it rather than making legitimate claims for compensation under the law. The JSC might in future like to consider how the new system is operating and whether it could be further enhanced both in the consumer interest and to ensure greater access to justice, not least amongst the most vulnerable.

20. The government believes before-the-event legal expenses insurance (BTE LEI) will have increasing importance to help consumers receive support in the event that they make a civil claim. However, ACSO has yet to see any substance around the government’s stated aim of encouraging awareness of BTE LEI as a product, and as the JSC has itself said, “We conclude that the Government has under-estimated both the role of BTE insurance in securing legal representation for PI claimants, and the impact of raising the small claims limit on BTE providers’ current business model, with potentially adverse consequences for access to justice.”

21. When creating online digital services it is likely that many consumers and smaller businesses will want and could greatly benefit from BTE LEI support. The government should therefore consider what can be done to promote awareness of BTE LEI. This should be done alongside (and not after) the court digitisation programme and the Civil Liability Act reforms, partly to encourage take-up but also to promote awareness that people should check whether they already have such a product before trying to use the online civil justice system themselves. The government assumes around 50% of motorists have a BTE product.¹ In Q3 2018 there were 39.55m licensed vehicles in the UK, including 32.58m cars.² Consumers may also own non-motor legal expenses cover, for example through their household insurance. Taken together, the total number of legal expenses policies may be as high as 25m.

22. Many of ACSO’s members have considerable expertise in meeting complex consumer and small and medium-sized business (SME) needs, ensuring equality of arms under the law and providing the reassurance, guidance and expertise which legitimate claimants want. It would be regrettable if this expertise was not brought to bear in helping create efficient, modern systems that work in the wider consumer interest rather than just pursuing narrower, cost-saving interests which may prove to have damaging unintended consequences. As the PAC observes, “interested parties feel that changes are being imposed rather than co-created.” This will make the government's aim "to increase access to justice while making the system more efficient overall" far more difficult to meet.

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23. ACSO would therefore be delighted to provide any further evidence required by the JSC during the course of its inquiry, including any additional recommendations that will help protect access to justice and ensure there is a fair and efficient civil justice system which operate effectively in the interests of all consumers.

24. In conclusion, ACSO wishes to stress that the overall stated policy aims of HMCTS’s modernisation programme are to be welcomed. However, any new systems introduced across the civil justice system as a whole need to be fully fit for purpose, including by ensuring the technology used can provide support both to claimants and to those who support them. There is considerable threat to access to justice through the imposition of any changes which are rushed through without adequate, transparent and consumer-focussed testing and which do not put the needs of the most vulnerable in our society first.

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