At Shelter we understand that helping people with their immediate problems is not a long-term solution to the housing crisis. That’s why we campaign to tackle the root causes, so that one day, no one will have to turn to us for help.

We’re here so no one has to fight bad housing or homelessness on their own.

Executive Summary

What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to civil justice?

The withdrawal of resources from county courts over the past few years has created a crisis in the civil justice system. We are witnessing the ruin of what used to be a fine public service. Through lack of resources and staffing, the service in many courts has declined to the point where the impression is one of chaotic administration which is barely coping with the demands upon it. The Government’s rhetoric about improving access to justice is belied by the facts and by users’ experience of the court system. In fact, the changes have had, and will continue to have, a calamitous effect on access to justice.

Our legal services encounter a lack of court infrastructure that leads to delays and inefficiency in the county courts, to the detriment of claimants, defendants, lawyers, judges and public funds. This has the effect of seriously damaging court users’ faith and confidence in using the courts.

As one of our solicitors states, in relation to her day-to-day experience of dealing with the courts, “I cannot stress enough how random and chaotic the whole thing is.” If we, as housing professionals, find it so difficult to communicate with the courts, we can only speculate what it is like for tenants, borrowers and other litigants in person.

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

In our experience, the effects on access to justice of county court closures has been almost universally deleterious. For very many people, the concept of a local court has ceased to exist.

Court closures mean that people have to travel significantly further to get to court, often at a greater cost. It has made it more difficult for people to attend hearings in person, affecting their ability to both bring a claim and defend a claim brought against them. People who are at risk of eviction due
to rent arrears, and generally in situations of severe financial hardship, are often unable to afford the travel costs to attend court.

In Shelter’s view, online processes and video hearings cannot be a sufficient substitute for access to court and tribunal buildings. They could be used to enhance access, especially for legal representatives, but they can never be a replacement. Most of our vulnerable clients would find it difficult or impossible to access digital resources.

**Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication, with the legal professions and the advice sector?**

We are not aware of any consultation, other than the palpably flawed consultation on the court closures. Despite widespread opposition, the Ministry implemented the closure programme anyway. This simply confirmed the belief that it is futile to respond to MoJ consultations, because what is being proposed will go ahead whatever the responses. As virtually all respondents warned, the effects on access to justice have been grievous. There has been no other communication, other than that of the decisions to close courts.

**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?**

If the Ministry had taken any such steps and carried out a genuine evaluation, then they would have identified the issues highlighted in this Response. In view of what has taken place to date, there can be no confidence in any commitment by MoJ or HMCTS to evaluation.

**Consultation response**

**Introduction**

Shelter welcomes the opportunity to contribute to this Inquiry into the effects and potential effects of the HMCTS reform programme on access to justice. We are very grateful that the Justice Committee has identified the need to examine the huge damage that has been perpetrated on the court system in the guise of modernisation. The only possible reason for the measures that have been taken is cost-cutting produced by austerity policies.

Nearly four million people a year come to us for advice and support via our website, webchat, helpline and network of face-to-face services. As part of this, we have extensive experience of interaction with the courts system, and last year saw 6,395 households under legal aid contracts.

Our legal services team operate from 16 offices around England and Scotland and take action to:

- defend possession proceedings, brought by both social and private landlords
- request reviews of and appeal against adverse homelessness decisions under sections 202 and 204 Housing Act 1996
- apply for judicial review of local authorities’ refusal to provide temporary accommodation to homeless families
- apply for judicial review of social services’ refusal to assist families under the Children Act 1989
- assist young persons and care leavers who are homeless or threatened with homelessness
- provide advice to tenants coping with disrepair which poses a serious risk of harm to their health or safety
- defend applications for anti-social behaviour injunctions and committals
- seek reinstatement and/or damages for those who have been unlawfully evicted.

Response

We respond to the Inquiry questions as follows. Where appropriate, we have included verbatim contributions from a survey of Shelter solicitors throughout the country.

Q.1 What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to:
   a. civil justice?
   b. family justice?
   c. criminal justice?
   d. administrative justice, particularly as delivered by the tribunals system?
   e. those who are digitally excluded or require support to use digital services?

1. We will deal first with the effects of the withdrawal of resources from county courts over the past few years. We will not refer to what has happened by the term “reforms”, as that implies an improvement on what went before, when it is perfectly clear that the reverse is the case. It is no exaggeration to say that we are talking about the ruin of what used to be a fine public service.

2. It is not so long ago that when a person walked into a county court, he or she would find an array of counters, each staffed by a court officer. The customer – whether legal representative or litigant in person – could issue a claim over the counter, file documents, check the date of a hearing and receive basic procedural advice about how to present or defend a claim. The court staff would check that the forms had been correctly completed, and would reject them if there were errors or if they were not accompanied by the correct
documents. The court office had a number of telephone lines which were usually answered promptly. Orders were issued efficiently.

3. Now, the same person walks into a county court and is greeted by security and by a row of closed counters. No help is available from anyone. If the individual wishes to issue proceedings or file documents, he or she has to place the papers in a drop box. If there are mistakes in a claim form which would have been easily discoverable on a simple check, the proceedings are issued and the claim is likely to be struck out, for the loss of the court fee (which in the case of a possession claim is £355) and other costs, and the claimant will have to start again.

4. The arrangements for contacting the court by telephone are so poor that there is virtually no telephone contact with some courts. Certain courts are evidently served by a call centre which has no information on specific cases. Even if there is a local number, a person who wishes to contact the court by telephone will now count themselves lucky if their call is answered within a reasonable time or at all. It is a common experience to hang on the telephone for an interminable period and then find the call cut off. Tenants and borrowers who need to make an emergency application, such as to suspend a warrant for possession, must use a separate telephone number to obtain an appointment with a court officer, who will issue the application and give a date of hearing.

“When you try and ask [the call centre] what is happening on a specific case, or ask them to do anything, they say that they are not the court and do not have any information on individual cases. They will send the court a message and ask them to contact you, which they may or may not do… A message may or may not get through and may or may not be answered at some unspecified time in the future.”

(Sherelter lawyer, London)

“When applications are regarded as urgent enough to justify an appointment is very unclear… You can, of course, get an appointment if it’s to suspend a warrant (but at …. Court they would only give you an appointment three days before the eviction and the actual hearing takes place on the day before, even if you asked for it a month in advance of the eviction. They seem to think that it’s sensible to give you a last minute hearing (increasing the stress for everyone and making it difficult to appeal, if necessary).”
5. Our legal services encounter a lack of court infrastructure that leads to delays and inefficiency in the county courts, to the detriment of claimants, defendants, lawyers, judges and the Legal Aid Agency. This also has the effect of seriously damaging court users’ faith and confidence in using the courts. One Shelter solicitor in London summed up their day-to-day experience of the courts as “delayed hearings and chaotic court administration”.

6. The range of problems Shelter’s lawyers experience with court administration includes documents being lost, possession orders being sent out after the possession date and incorrect email addresses being advertised. The shortage of court staff means it is difficult to get updates about a case, putting people at risk of missing crucial deadlines and potentially losing their home.

“Getting through on the phone is a nightmare. Email addresses for filing documents frequently change… letters get lost. It often feels very chaotic” (Shelter lawyer, London)

“Orders are late or inaccurate, listing errors are made and it is very difficult trying to resolve the matters sensibly without creating additional work. It can be difficult to contact the court by telephone.” (Shelter lawyer, North West)

“Major frustration these days is the lack of court staff and how they can deal with urgent applications to suspend warrants. In most courts you need an appointment to make the application. Tenants do not realise this and leave it too late and then travel to court, costing time and money to find it cannot be dealt with. Seems to be little flexibility from Court staff who are obviously under heavy workloads.” (Shelter lawyer, North West)

“It took me three months to issue a standard disrepair claim for damages and works because the court kept sending it to the Salford Money Claims Centre, which can only deal with money only claims. I sent numerous letters and emails explaining that the claim could not be issued in Salford for this reason and they were all ignored. I spoke to one person at length on the telephone about it and she seemed to understand what I was saying, only for all the paperwork to be sent to Salford again.” (Shelter lawyer, London)

“[Another problem is] the length of time that can be taken [for administration]. For example, an order can be made under the accelerated procedure giving possession in 14 days, but by the time the court office have typed it up and posted it out the 14 days have already passed… it’s all just a mess” (Shelter lawyer, East)

“Our local court has such a massive backlog that the chances of a defence reaching the court file in advance of a hearing are virtually zero. The back office team are woefully under-resourced. I have now had two applications listed for hearings where I was not informed of the hearing, despite having made the application and
served a notice of acting. We also regularly receive orders that are incorrect and require correcting under the slip rule. This is far more of an issue where the order states that possession has been granted on mandatory grounds where it is abundantly clear and was agreed in court that the landlord has used discretionary grounds only.” *(Shelter lawyer, North East)*

“I cannot express quite how bad it is. You cannot get an application issued within any reasonable timescale, so are effectively prevented from running the case properly. On a recent case of mine, real injustice could have been caused by the court’s failure to issue our application to amend the defence before the hearing at which the opponent was asking for a possession order. Equally, consent orders submitted days before hearings usually do not reach court files. Lawyers from both sides sometimes have to attend hearings where a consent order has been agreed, wasting hundreds of pounds in each case.” *(Shelter lawyer, London)*

7. As well as causing frustration, upset and the risk of a bad outcome, poor administration can lead to protracted delays:

“For example, in a case… I took on [in August], the client is profoundly deaf. At least three weeks prior to the hearing, the claimant had written to the court asking it to provide a British Sign Language interpreter. It failed to do so [and the hearing was adjourned as a result]. And in two subsequent hearings (which have also been adjourned) there has been no interpreter present despite the court ordering there to be one available.” *(Shelter lawyer, London, writing in the following January)*

8. There are no sources of court-based advice. In the housing field, this affects both landlords and tenants. One Shelter lawyer summed up the outcome:

“Landlords don’t understand the Deregulation Act. They look at you with derision when telling them that it [the section 21 notice] has to be on Form 6A, and a How to Rent leaflet needed to be served. Then during the hearing it’s amazement. After the hearing it’s despair.” *(Shelter lawyer, East)*

9. Email communications should be vital to the good administration of the courts. Yet in our experience, there is no uniformity in how the courts deal with emails, and no minimum standards. Some have separate inboxes for applications or general correspondence, some do not. Some have automatic responses to confirm the email has been received, some do not. Some courts give conflicting information on what they will accept by email.
Court fees

10. The level of court fees is an affront to justice. Despite the possibility of fee remission for those on the lowest incomes, court fees represent what can be an insurmountable barrier to accessing justice for many people. It costs £355 to start a possession claim and an additional £545 for a fast track hearing. A simple notice of application, eg to amend a document, which can often be dealt with without a hearing, costs an extortionate £255.

Q2 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 users, how far can online processes and video hearings be a sufficient substitute for access to court and tribunal buildings?

11. Since 2011, the Ministry of Justice (MoJ) has embarked on a significant programme of court closures, in an effort to save the department money. As a result, the number of courts across England and Wales has been significantly reduced. More than 200 courts and tribunals have closed since 2011. A further eight court closures are planned for 2019.

12. In our experience, the effects on access to justice of county court closures has been almost universally deleterious. For very many people, the idea of a local court has ceased to exist. Court closures mean that people have to travel significantly further to get to court, often at a greater cost. It has also made it more difficult for people to attend hearings in person, affecting their ability to both bring a claim and defend a claim brought against them.

“[People have] to travel for miles to get to their ‘local’ county court. It leads to people not showing up for their hearings.” (Shelter lawyer, London)

“Courts aren’t geographically accessible. There are two in the county and public transport is dire.” (Shelter lawyer, South West)

“We have already seen the negative impact of the court closures at the County Court at Bury, Bolton, Oldham and Altrincham on clients who are having to spend a significant amount of their limited income on traveling into Manchester from those locations. This is of course the clients we know about and I really do worry about the number of clients who simply don’t attend the hearing because of travel costs or difficulty travelling in. I know for example of one client who had mobility issues who lived in Oldham and who had a possession order made against him in Manchester as he had no income, so he literally had no way of getting to the court.” (Shelter lawyer, North West)
“With the loss of rural public transport routes as well, it is becoming increasingly hard for clients in deprived rural areas to get to the larger towns and cities where the courts sit… There needs to be the ability to phone up and explain when [transport] is running late.” (Shelter lawyer, East)

“The reforms implemented so far have had a negative impact on access to justice. The court closure process has left a huge, rural area – Northumberland (which stretches from the Scottish border in the north to the Cumbrian border in the west) – with one court at the north of the region (Berwick on the Scottish Border) and all other work going to Newcastle. In real terms this means that, whilst on paper, most people are within an hour’s travel of a court, the very high cost of public transport (minimum £7 for a single bus ticket) can mean that clients cannot get to court. The roll out of Universal Credit in this region is expected to have a significant knock on effect, with those waiting for this benefit being simply unable to afford to travel to the Court to defend themselves in housing possession cases, which may well have arisen from rent arrears caused by Universal Credit in the first place. This will also be replicated in rural areas in the rest of the North East such as County Durham. I think that, unless you are familiar with these areas, it is incredibly difficult to imagine what it is like if you live in a small rural pit village with an intermittent (or non existent) bus service and you are asked to attend a court which could be 20 - 30 miles away.” (Shelter lawyer, North East)

14. Our legal services across the country have noted the marked reduction in the number of people attending hearings and those who struggle to attend court, owing to the distance they need to travel to court. People who are at risk of eviction due to rent arrears, and generally in situations of severe financial hardship, are often unable to afford the increased travel costs to attend court. This is in addition to the cost and strain of taking time off work and arranging childcare. We are concerned that this disproportionately affects more vulnerable groups, including people with disabilities and low-income families. The barriers faced by those with disabilities making a longer journey to an unfamiliar area on public transport may be unsurmountable. Combined with the decline in legal aid availability, court closures are creating further inequalities between those who can and cannot afford to go to court.

15. There is a general sense that the courts are overstretched and try to deal with too much business in the time available, leading to long waits for matters to be heard, insufficient time to properly consider matters and adjournments.

“The length of time people have to wait at court in bulk possession list... often leads to landlords and tenants sitting around for long periods at court” (Shelter lawyer, North West)
“Only 5/10 mins are available for case in bulk possession list, meaning that if any defence is raised, it cannot ordinarily be determined at the initial possession hearing and has to be adjourned” (Shelter lawyer, North West)

“The most common issue is that the judges want to deal with the matters far too quickly because of the amount of matters in the list… Often the list is divided into time slots but there may be 10-20 listed in an hour which means the judges have to work quickly… Judges are far too quick to want to stamp suspended possession order for almost every case without considering whether it is reasonable… Some judges don’t explain anything to the tenants and talk so fast that the tenants have no idea what the decision was in court.” (Shelter lawyer, North West)

“[My local court] rely on deputy district judges for their possession list but often can’t get one, so they have to adjourn lists. This annoys landlords and causes uncertainty for tenants.” (Shelter lawyer, South West)

16. On the other hand, the experience of our Lancashire office shows that beacons of good practice do still exist, at least in facilitating the operation of court duty schemes:

“We cover weekly court duty sessions in Burnley, Preston and Blackpool. Preston and Blackpool we cover on a rota with North Lancashire CAB. These courts are covering a wide geographical area particularly since the closure of quite a number of smaller local courts. We have spent time building good relationships with our local courts and generally we find that the possession days run smoothly and there is good communication. We also have a Shelter direct line court phone in our Burnley court for court/ court office attendees to use. This is supported by the court. The only issue we have really is that sometimes we have busy lists in a court with 3 different judges, not without its challenges, but it is manageable and the Judges are understanding of our position.” (Shelter lawyer, Blackburn)

17. As well as clearly reducing access to justice, increasing hardship and leading to worse outcomes for tenants, the consequence of the withdrawal of court resources is to shift costs on to other public services. A tenant’s inability to attend a court in person is likely to lead to them becoming homeless, with implications for the local housing authority, social services, education authorities and the DWP, not to mention the hardship and human misery caused to families uprooted from home and schools.

Online processes
18. In Shelter’s view, online processes and video hearings cannot be a sufficient substitute for access to court and tribunal buildings. They could be used to enhance access, especially for legal representatives, but they can never be a substitute.

19. Others will no doubt comment from greater experience on the recent serious issues with court IT. There is a need for HMCTS to show that the IT they already have is functioning effectively before any new projects are rolled out.

20. It is not clear whether it is proposed to hold possession hearings by video. Lord Briggs’ report envisaged that this would not be the case. It must be obvious that online processes and video hearings will never be appropriate for the majority of defendants in the possession lists.

“You lose the personal interaction that can often lead to a case being settled – it is harder to have any sort of rapport with your opponent over Skype and it is often that personal approach that can lead to a settlement. Internet connections are not reliable enough for online services to be a substitute. Many areas still don’t have broadband access at all, and even more areas have limited or unreliable services, especially to download video.” (Shelter lawyer, North East)

21. Many of our vulnerable clients struggle to access digital resources. We often find that clients have had their Universal Credit sanctioned as a result of not knowing how to log on to their journal to find out they have an appointment to attend. We often have to sit with clients to show them how to access their journal online. Many clients are unable to do so without access to the internet at home which comes at a cost which many vulnerable clients are unable to afford. If someone has stopped paying their rent, it is also likely that they have been unable to afford a broadband bill.

22. It is possible for some clients to access digital resources at libraries, but more and more libraries are closing. One client whom we assisted recently who was disabled had no money, and he was having to walk several miles to his nearest library to log on as he had no access to funds to pay for the bus.
23. One essential element of ensuring fairness in possession hearings is access to a duty solicitor/advisor at court. If the hearings are by video, it is unclear how this could be made available.

“I can see some benefit for people to opt in to video hearings, but it should have to be an option to take up. If not I think a lot of time will be wasted and hearings abandoned as people can’t get online, don’t get online, there are connection problems etc.” (Shelter lawyer, South)

An even greater concern is that in cases where the tenant cannot get online, the hearing may go ahead and an order may be made in the tenant’s absence.

“Although I think the government would have the public believe that everyone has a smart phone, this is not my experience. Even when people do have access to technology, in rural areas this can be constrained by broadband availability and speed and, of course, whether people have the money available to put minutes/texts/data on their mobile phones.” (Shelter lawyer, North East)

Q.3 Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication, with:
   a. Judicial office holders at all levels of seniority?
   b. The legal professions and the advice sector?
   c. Other relevant stakeholders?

24. We are not aware of any consultation, other than the palpably flawed and spurious consultation on the court closures. Despite widespread opposition, the Ministry implemented the closure programme anyway. This simply served to confirm the belief that it is futile to respond to MoJ consultations, because what is being proposed will go ahead irrespective of the responses. As virtually all respondents warned, the effects on access to justice have been calamitous. There has been no other communication, other than that of the decisions to close courts.

Q.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?

25. If the Ministry had taken any such steps and carried out a genuine evaluation, then they would have identified the issues above. In view of what has taken place to date, there can be no confidence in any commitment by MoJ or HMCTS to evaluation.

March 2019