Access to Justice: Impacts of Court and Tribunal Reforms

The Yorkshire Union of Law Societies (“the YU”) was founded over one hundred years ago and is the umbrella organisation for all the local law societies in Yorkshire. Those local law societies represent in aggregate in excess of eight thousand solicitors. The YU is pleased to have the opportunity to submit evidence to the Justice Select Committee’s Inquiry into the access to justice implications of the reforms to Her Majesty’s Courts and Tribunal Service (“HMTCS”). This response is based on comments made by members of those local law societies both in meetings discussing the Court and Tribunal reforms relating to both the increased use of digital and video technology and the closures of courts and tribunal hearing centres and in subsequent correspondence. This response does not necessarily represent the views of all the local law societies in Yorkshire or the members of all those local law societies but where there are significant differences of opinion those differences have been highlighted.

1. WHAT WILL BE THE LIKELY EFFECTS OF THE REFORMS ON ACCESS TO JUSTICE?

The YU fully understands the need to use technology to reduce the pressure on courts and tribunals and its members want to engage in the reform programme of court modernisation to ensure that the reforms deliver a system that is not only more efficient but crucially maintains full access to justice. To achieve access to justice it is of paramount importance that new systems must be accessible to all users and that there is no diminution in the ability of users to fully engage with the courts.

The following specific concerns were expressed:-

1.1 Family law practitioners have not seen much digitalisation of processes and though some judges are willing to use a digital platform there is seemingly no widespread adoption of digital platforms. There are concerns over how the digitally excluded will cope with the adoption of digital platforms.

1.2 The Drug and Alcohol Court in Leeds is an important resource and takes cases from a wide geographical area but has very limited resources which is constraining the effectiveness of the facility.

1.3 Bradford Family Court (North East Regional Divorce Unit) is now the only court that can issue divorce proceedings in the North East of England. This has led to processing delays which cause distress to petitioners at an already stressful time. In January 2019 the automatic response to emails sent to Bradford Family Court listed the delays in processing matters. For example, it was taking four weeks to process petitions, seven weeks to process consent orders and seven weeks to process correspondence.

1.4 Family law practitioners do not object in principle to the centralisation of processing divorce cases provided that the centralisation results in an overall decrease in the time taken to process divorce cases rather than causes the delays cited in 1.3.

1.5 Family law practitioners are concerned that the centralisation of divorce cases and resultant online systems appear to have been designed to remove practitioners from the online systems and to prevent practitioners from accessing the online systems. It is fundamental that full recognition must be given to the need for legal advice and
representation. Without full provision for access to legal advice and representation access to justice will be severely compromised.

1.6 Family law practitioners are concerned that cuts in legal aid funding have led to a huge increase in the number of litigants in person (“LIP’s”). This has put significant pressure on the court system. Much time is taken up in hearings by judges having to explain processes to LIP’s and satisfying themselves that LIP’s understand the processes. Without adequate funding the justice system will not function properly either because there is a lack of support for those who represent themselves or because those who work within the system do not have adequate facilities to fully engage with a digital platform.

1.7 In contrast to family law practitioners, criminal law practitioners have seen widespread digitalisation of processes which was deemed a positive improvement. There was however concern that digitalisation of processes could cause problems for LIP’s who may not have the same access to digitalised processes. Examples were given of problems arising from the lack of hard copies of documents and the lack of facilities to print off hard copies of documents in court buildings. There was also concern that the digitalisation of processes failed to recognise that there will be instances when a physical hearing will be required to deliver justice and that legal advice or representation must be available for those appearing at physical hearings.

1.8 The principle concern of criminal law practitioners was the knock-on effect of the cuts in police budgets and the reduction in the number of police officers. This has resulting in a drop in the number of charges being made and the resultant drop in the number of cases proceeding through the courts notwithstanding that the level of recorded crime is increasing not decreasing. Many of those arrested are accepting cautions in lieu of being charged and not only was there concern that those accepting cautions are not being advised of the implications of accepting a caution but also that there will be a proportion of those accepting cautions who if their cases had proceeded through the courts and advice had been given would have been found not guilty. Further examples were cited of arrests being made for serious charges but with those arrested being released “under investigation” and ultimately not being pursued due to a lack of police time and funding to fully investigate and prepare cases for prosecution. Though closures of courts can be superficially justified by the reduction in the number of court cases the bigger question is whether the cuts in police budgets and the reduction in the number of police officers are having the unintended consequence of justice system failing to operate effectively. There was a widespread view that the criminal justice system was broken. The cuts in legal aid budgets and the reductions in remuneration for criminal legal aid work means that there are areas in the country where it is difficult for those charged with criminal offences to find representation. The Law Society has produced data which shows a looming crisis in the number of criminal duty solicitors. This could leave individuals in many parts of the country unable to access their right to a solicitor and free legal advice.

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?

2.1 Family law and civil law practitioners in Leeds had observed extensive cuts in the number of court staff. When staff have left they were rarely replaced which increases the pressure on remaining staff. If agency staff are used the impression given is that they are not familiar with the processes. This results in delays in processes and communication. For example, delays in the time for processing orders can mean that deadlines for payment are passed before sealed orders are received. Further it has become increasingly difficult to contact court staff by telephone.

2.2 It was noted during the recent consultation on the listing arrangements in magistrates’ courts in Humber and South Yorkshire that there was a severe shortage of Court Clerks which meant that several court sittings each week had to be abandoned. Additional resources had been requested and a business case put forward for additional staff but the request had been refused.

2.3 Some practitioners were most concerned that court closures were impacting on listing times in those courts that remained open and causing problems for practitioners and their clients who were having to spend more time travelling to courts for hearings. It is not uncommon for practitioners and their clients to have to “follow the judge” from one court to another. It was noted that HMCTS research into travel time was based on the time taken to travel by private car not public transport. Further there was concern that courts were being closed before the digitalised systems which are intended to reduce the need for physical hearings have been robustly tested and shown to work.

2.4 Most practitioners accepted that the majority of judges work hard to process matters despite the failings in the justice system but it is evident that judges are dealing with ever increasing workloads and inevitably extra time is required to deal with LIP’s.

2.5 Criminal law practitioners were concerned that though the time and expense of transporting prisoners can be reduced by the routine use of video links the infrastructure requires substantial improvement. Too often insufficient time is allowed for criminal law practitioners to speak to prisoners by video link due to pressure on the use of video links and this inevitable impacts on the level of access to justice for those prisoners. Further the use of video links inevitably reduces the degree of engagement between clients and practitioners and that in turn threatens access to justice.

2.6 Concern was expressed that though technology can save time and expense great care needs to be taken to ensure that the introduction of technology does not erode access to justice. Maintaining access to justice must be the fundamental principle that underpins all reforms. For justice to be seen to be done it is crucial that there should be no diminution in the facilities for evidence to be formally tested.
2.7 Concern was also expressed that the adversarial approach which is central to civil disputes and criminal proceedings is under pressure. An adversarial system is predicated on representation for the parties to those disputes and proceedings but the high cost of representation coupled with the drastic reduction in legal aid threatens the viability of the adversarial model. Judges of necessity must intervene to ensure that LIP’s are not disadvantaged by the lack or representation and there is pressure to use alternative methods to resolve disputes which do not require a duty to disclose. Do the proposed reforms unwittingly create a move from an adversarial system to an inquisitorial system?

3 HAVE THE MINISTRY OF JUSTICE AND HMCTS CONSULTED EFFECTIVELY ON THE REFORMS.

3.1 The consensus was that to date there had been insufficient communication from the MOJ and the HMCTS given that far-reaching impact of the reforms.

3.2 The consensus was that the overarching driver for the reforms was the need to reduce costs and that reforms had been forced through without full consideration of the implications of those reforms particularly the impact of those reforms on maintaining access to justice. The impression given is that only now after many reforms have been implemented are serious steps being taken to consider the impact of the reforms.

3.3 The consensus was that an inadequate pot of money had been allocated for the digitalisation of systems with the intention of reducing cost but no proper consideration had been given how the digitalisation of systems would integrate with other aspects of the justice system which badly require urgent investment and modernisation. The recent IT breakdown suffered by the MOJ and the HMCTS and the lack of contingency plans demonstrated that the systems introduced are not sufficiently robust.

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?

4.1 The consensus was that the MOJ and the HMCTS have not taken sufficient steps to evaluate the deliverability of the reforms and the impact of the reforms implemented and that the overriding aim is to reduce costs was being pursued with little understanding of the needs of key stakeholders and the need to preserve access to justice.