Written evidence from Young Legal Aid Lawyers (CTS0069)

1. Young Legal Aid Lawyers is an association representing over 3000 junior and aspiring lawyers working in areas traditionally funded by legal aid. As all our members are less than 10 years post qualification, we are heavily on the front line of county court, criminal court and tribunal advice and representation. To compile this response we have asked members and others in our network to share their views (including via a small survey) and have reviewed some of what has already been published about the reforms (in particular, MoJ documents, the Public Accounts Committee report and articles in the news media).

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

(a) civil justice?

2. In all areas of justice, court wifi has improved efficiency for practitioners which in turn we believe will result in better user experience for lay clients. It should also assist in reducing data breaches, which typically occur when paper briefs are lost. We also believe increased email access to judges has been highly beneficial in terms of sharing important court documents and finalising orders efficiently.

3. In housing law, Possession Claims Online is helpful for representatives, especially on a busy duty rota dealing with clients for whom the difficulties leading to their possession proceedings often also mean they do not provide comprehensive paperwork, to be able to find previous orders and keep up to date with hearings and applications. Orders are uploaded much faster to this system than they used to be sent out in the post.

(b) family justice?

4. Both family practitioners and judiciary have spoken out about the unsustainable workload in the family courts which are delaying divorces and child care proceedings. This has been linked to both court closures and more people acting without lawyers. The family courts are one of the most obvious examples of our justice system effectively shifting to an inquisitorial system. However, judges do not have the resources, training or powers to act accordingly and the procedures and constitutional principles underpinning the legal system are incompatible with such an approach without major legislative and constitutional reform at a system and nationwide level.

5. The one court where radical new procedures had been introduced to try to support families in a more holistic manner, the Family Drug and Alcohol Court (FDAC) now faces a loss of funding. This seriously undermines YLAL’s faith that the MoJ and HMCTS genuinely wish to transform justice and support innovation, even in the face of research that showed that, of 90 families who went through the process, 40 per cent of mothers and 25 per cent of fathers stopped substance misuse, compared with 25 per cent of mothers and 5 per cent of fathers who went through ordinary care proceedings.
(c) criminal justice?

6. Our understanding is that the digital case system and now well-established practices such as digital service of Initial Details of Prosecution Case is seen as a positive development allowing for easy exchange of skeleton arguments and essential trial documents (i.e. in particular for court advocacy). However, there have already been two major system crashes in 2019 which had an immediate effect on access to justice in the criminal justice system because they resulted in numerous adjournments and trial delays, with an obvious negative impact on victims, witnesses, defendants and their families. YLAL members are concerned that as these systems rollout we could see similar unreliability and lack of technical support issues as in other areas of digitisation, notably CCMS.

7. Also, the system is still dependant for its effectiveness on being used efficiently. One of our survey respondents pointed out that the digital case system does not have areas for attendance notes and unused material, meaning it is impossible for subsequent advocates to know if they have the full set of papers. Another respondent, a London-based criminal defence solicitor with 2 years PQE, said the CPS serving CCTV and other evidence by online transfer website although very useful is often late. In one instance, CCTV which the court had directed to be served 6 weeks before trial was only sent 24 hours in advance. Inadequate preparation times undermine access to justice for both sides. The criminal defence team having to chase the CPS wastes scarce resources. The CPS itself is notoriously under-resourced and we believe this is an example of reforms being undermined by broader weaknesses in the system. It is simply not possible for the CPS and criminal defence representatives to use a digital case system in a way that supports access to justice if they do not have the time and personnel even to upload documents on time.

8. This is not assisted by courts reportedly putting pressure on parties to exchange documents late in the evening or early in the morning. The flexibility and speed of electronic systems should not lead to the unreasonable working practices, not least because last minute exchanges of documents undermine the ability of both sides to prepare adequately and resolve issues before trial.

9. We also believe that improving the existing systems should be prioritised over developing entirely online systems for some offences. This means that when the latter are developed, they can take on board all of that learning.

10. We have not been able to identify any assessment of the proposed new online procedure called ‘Automatic online convictions and standard statutory penalty’ that examines whether defendants using the procedure, even if they agree to do so, will have taken appropriate legal advice. This is necessary to prevent defendants using the procedure and even pleading guilty in error which could lead to an increase in miscarriages of justice and appeals against conviction and/or sentence, implying greater costs for the system in the long run. Any pilot should incorporate this concern.
(d) administrative justice, particularly as delivered by the tribunals system?

11. Online case management in the IAC could potentially have a major positive impact on the efficiency of hearings where, due to the nature of the cases (vulnerable clients, difficulties obtaining evidence from abroad), there are frequently many additional bundles, often served close or at the hearing. Increased use of email, particularly between appellant’s representatives and the Presenting Officers Unit, has already resulted in better case management prior to hearings, albeit normally only the day before.

12. However, it is highly unlikely that wider reform will be effective when both the judiciary and the Home Office representatives have, we understand, unreliable wifi and such poor hardware that they are regularly unable to use basic functions during hearings, sometimes creating delays. There are also many basic email systems not at all in place in the IAC: the UT is virtually uncontactable by email (especially outside London), and the First-tier Tribunal still uses a ‘goldfax’ system which converts email attachments into .jpg files for each page which are then individually printed out.

13. In addition, the removal of legal aid for refugee family reunion and other human rights appeals means that potentially extremely vulnerable court users who cannot speak English and do not have any funds to access the internet will effectively be excluded from using the system.

14. As in other areas, the Transforming Justice initiative in the tribunal system focuses on radical measures which are primarily cost-saving rather than designed to improve the user experience. Meanwhile, in both the Manchester and Bradford IAC hearing centres this winter, climate control was so inadequate that court users frequently had to wear coats and use space heaters to be able to sit through hearings. Vulnerable appellants often giving evidence of previous torture and their fear of being killed if returned home should not have to appear in such conditions, nor should the representatives and judges responsible for the demanding task of ensuring they receive a fair hearing.

(e) those who are digitally excluded or require support to use digital services?

15. YLAL is concerned that online systems in the arena of social welfare and social security are inherently problematic due to vulnerabilities of much of this user group and the lack of legal representation due to the abolition of legal aid for any benefits work below Upper Tribunal level. Online systems used for universal credit – the ‘journals’ have proved difficult to use by claimants who by definition have a low or no income and for whom internet access and smart phones are unaffordable. Those whose claim is rejected have their journal closed, even though this is the only place where the decision they would need to appeal is provided. Relying on internet services at job centres and libraries creates further barriers for claimants who cannot afford transport or who suffer from mental health problems or learning difficulties which make it challenging to use services, or even to leave the house. One YLAL member, a Liverpool-based trainee solicitor, had to assist a client pro bono because, English not being her first language, she repeatedly failed even
to submit her claim, let alone provide all the necessary information, leaving her at risk of losing her home and unable adequately to feed her children.

16. Rolling out such systems for personal independent payments (PIP), where an even larger proportion of the client group has health-related vulnerabilities that make it difficult to use online services, is likely to be a waste of resources given the small percentage who could actually use it effectively.

17. We are also concerned that a push to decide social security tribunal appeals using an online system where further evidence is requested and then a judge decides the case without a hearing could inhibit access to justice. Oral hearings of social security appeals where the appellant is supported by free services provided by law centres and clinics have an extraordinarily high success rate indicating these make a substantial difference to the outcome. We fear that individual appellants will nevertheless opt for consideration without a hearing because wait times (about a year) are too long when they have no income and/or they simply do not have the advice or information to know that an oral hearing could improve their prospects of succeeding.

18. Our view is that spending money on online systems for this area of law is a waste of public resources and could undermine access to justice for some of the most vulnerable in society. It is disturbing to see the lack of learning from the experience of the telephone gateway which, as predicted by many prior to the passage of LASPO 2011, was used for entirely inappropriate client groups and has now been scrapped for those areas. We believe that tribunal waiting times could be reduced by an investment into early (face-to-face) advice for benefits applications and problems which would reduce the amount of claims that ever need to go before a judge. The experience of our members working in law centres is that vulnerable clients often turn to them for face-to-face advice after experiencing difficulties accessing the telephone and online services the CAB is able to provide.

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?

19. One of our survey respondents, a London-based criminal defence solicitor with 2 years PQE, described the introduction of video link from police station to magistrates’ courts as a ‘complete and utter failure.’ It has proved to be less efficient than bringing clients to court because either there is one link being used for both the hearing and client conferences or there are insufficient video consultation rooms (often one per police station), resulting in long delays while representatives wait to be able to speak to their clients. This will have a knock-on effect on an already strained courts budget.

20. Most concerningly, legal representatives are finding it very difficult to obtain the physical signature of homeless defendants (of which there are an increasing number) who are
pleading not guilty after the video conference has concluded. This means that legal aid applications cannot be processed and the client will then find themselves unrepresented at trial or have to request an adjournment to find a representative, resulting in the trial ‘cracking.’ This has serious implications for access to justice and for the efficient use of very scarce resources, which in turn further undermines access to justice. It could potentially be resolved by the installation of signature capture technology at police stations.

21. We are dubious of the reliability and fairness of video link hearings for full trial and appeal hearings. We are also unsure how much research and analysis has been done on the effect remote hearings will have on the outside court negotiation common in many areas of law, for example housing, which can be extremely effective at resolving cases. Also, again, surrounding practical arrangements need to be considered: if representatives are appearing by video link, do they have access to internet/email if information needs to be exchanged during a hearing? Will technical support be available if the link fails? Failing to put these arrangements in place risks hearings, and therefore the administration of justice, being adjourned and litigants may personally incur high costs if they have to pay for expert witnesses or advocates to attend court on another day.

22. We also question the focus on video (or even telephone) hearings as a solution to preliminary or case management hearings. A great deal of the information exchanged for such hearings could be done by email. Another option is online ‘chat’ functions or systems used for online lectures where the lecturer appears by video and those attending can communicate via a chat function. This would reduce the need for two-way video facilities while enabling all parties to see the judge.

23. A survey by The Times of 1,500 barristers also highlighted widespread concerns that video links do not afford the same access to justice and prevent proper participation by the defendant. The charity Transform Justice has questioned more broadly how online court processes will be compatible with the principle of open justice and the ability of the public to observe the most basic function of the state after national security.

24. Overall, we are of the view that properly supported online case management systems and email protocols would be better prioritised as already showing positive reports and more technically achievable than video hearings.

25. In terms of staffing cuts, one of the respondents to our survey, a solicitor based in London with 2 years PQE said that in certain courts and tribunals it is now ‘almost impossible’ speak to a member of staff or case manager. This has serious implications for fair and efficient case handling. However, the solution does not necessarily have to be reinstatement of past staffing patterns. Given the culture of digitisation, MoJ and HMCTS should consider online ‘chat’ functions that can be operated remotely and which could include facilities to share helpful links and documents.
26. To the extent it is relevant to the scope of this inquiry, the Transforming Justice proposal to use tribunal judges across various chambers is of concern given the complex and specialist nature of certain areas of law.

**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?

27. In terms of the junior end of the profession, we do not feel there has been much attempt by MoJ or HMCTS to seek our views. One respondent, counsel of 5 years call practising on the Western Circuit, said ‘But, being a junior criminal barrister, that’s not unusual.’ We do not think it should be unusual though, because as stated above we are at least, if not more likely to see the impact of these reforms on the ground and we also have a lot of potential to provide user feedback and innovative ideas. Another respondent, a criminal defence solicitor with 1.5 years PQE said that CPS defence engagement sessions has provided a useful platform to exchange views about the way in which either side works and how to improve trial preparation. This kind of engagement would be helpful from other government departments working in tribunals (e.g. DWP, Home Office) and local authorities (family, housing) and should be systemised nationally to maximise the potential learning opportunities.

28. We also believe that it is important to consult the ‘frontline’ of the judiciary at district and First-tier Tribunal judge level because again those judges are seeing the impact on individuals every day.

**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?**

29. In preparing this response we were unable to find clear summary information on the various pilots proposed and their status. We would expect a link to this should be on the front page of the MoJ and HMCTS websites given the enormous amount of public money being spent and the radical and wide-ranging nature of the reforms. The absence of such easy-to-find information makes us concerned that there is no holistic, integrated, ongoing evaluation or oversight of the various pilots, how they fit together, and how they fit with the Transforming Justice project and its overarching aims as a whole.

30. We also note that the most recent evaluative work published by the MoJ/HMCTS in relation to Transforming Justice is in response to the Public Accounts Committee report. We would not expect it to be necessary for a select committee to have to intervene in order for the MoJ/HMCTS to produce such evaluations.

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