Key points

- Maintaining or improving access to justice seems to be only a secondary aim of the HMCTS reform programme, that is primarily driven by efficiency savings. The intent to make it ‘proportionate’ is meaningless without setting minimal standards of service.

- The reform programme misses an opportunity to address problems created by earlier cuts, such as the great increase in Litigants in Person. It was, however, expected to enable further potential cuts for the Ministry of Justice (MoJ) in legal aid.

- The lag between the closure of over 200 courts and the delayed delivery of digital services meant to maintain justice accessibility is already damaging access to justice, affecting not just at courts and other public services but voluntary support services.

- In our experience, much of the programme’s stakeholder engagement has taken place once its course had been set, and has focused on communicating changes rather than consulting about how best to attain them and actively getting stakeholders onside.

- Evaluation remains a concern in two key ways: assessing discrete ‘products’ apart from the cumulative context in which users would encounter them; and monitoring justice outcomes during and after the programme to maintain access to justice.

- Overall, for the reform programme to succeed it needs to proceed at a measured pace which would allow identified problems to be resolved before pressing ahead.

About us

1. The Law Centres Network (LCN) is the national membership body for Law Centres, each of which is an independent law practice operating on a not-for-profit basis. Law Centres employ solicitors and specialist caseworkers and specialise in social welfare law. They target their services at the most disadvantaged people in their communities, many of them vulnerable. The first Law Centres in the UK were established in 1970 and despite an adverse funding and policy environment, there are Law Centres in 40 locations nationwide. Nearly all Law Centres hold legal aid contracts and most of them are involved in their County Court duty solicitor scheme. As Law Centres’ national policy voice, LCN represents them at various forums, including with HMCTS and MoJ.

Likely effects of reforms on access to justice

2. We have grave concerns about the effects of the reform programme on access to justice, chiefly because maintaining or improving access to justice has not been its key aim, and because several access to justice recommendations made in the Briggs report that informed it were not implemented (more below). Evidencing this is the Boston Consulting Group report commissioned by Justice Secretary Michael Gove, which reported to him in February 2016. The consultants observe that “Given that driving efficiency gains was the focal point for the programme design, there is some risk that the plans may look different if improvement to justice outcomes were the overriding design objective”. This approach had been shaped in the 2015 Spending
Review, where the Ministry of Justice set its eyes on “better managing demand”, an aim it has since found challenging, probably because the ambitions of this major programme had been “unmatched anywhere else”. In delivering on this aim, MoJ’s overarching focus has been on proportionality to guide the reform programme’s efficiency gains. This it takes to mean that “the cost, speed and complexity should be proportionate to the scale and substance of the case”. Further clarification as to how this was to work in practice was not given, nor were any access to justice indicators for it – an absence that we find telling.

3. The courts and tribunals reform programme was preceded by a comprehensive change to the English and Welsh legal aid system, introduced through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). As has been widely acknowledged, LASPO created a massive increase in Litigants in Person (LiPs), who were trying to use the courts and tribunals on their own, without having had advice or representation. To a justice system designed by lawyers for lawyers this posed a massive challenge, yet the courts and tribunals reform programme does not appear to take account of the LiPs problem and seems not to have made explicit attempts to address it. Its focus on accessibility confined itself to intelligibility of procedures and remedies, reasonable adjustments for disabled people and use of digital platforms (‘Assisted Digital Services’). Yet what LiPs lack is more fundamental: the legal capability to assess their options and prospects and competently to conduct themselves against a legal adversary who is likely to be represented. As legal researchers have pointed out, Assisted Digital is only specified to address digital exclusion and there are doubts about the way it is assessed by Government Digital Service (GDS). Put simply, help to fill an online form does not extend to explaining to the user what the questions probe for and how to truthfully answer them to best effect. The current Assisted Digital service provider is explicit about answering no questions about forms’ content, providing no advice and not referring people to agencies where they may obtain advice.


5 Transforming Our Justice System, p. 5.

6 Dr Catrina Denvir gives the examples of applying for Lasting Power of Attorney or lodging an Employment Tribunal claim, both of which were rated 8 for specialist knowledge required, whereas 9 required ‘expertise’ and would have required more support. None of the 23 exemplar services evaluated were rated 9 by GDS. Catrina Denvir, “Online Courts and Access to Justice: Providing Support for the Digitally Defaulted”, unpublished paper delivered at UCL Access to Justice and Legal Services Conference, London, 12 June 2018.
4. The courts and tribunals reform programme was also intended to affect access to justice through other public provisions, specifically legal aid. In March 2017, then-Lord Chancellor Elizabeth Truss told the House of Lords Constitution Committee that “We are designing a new system and want to look at a new legal support mechanism around that system.” With specific reference to legal aid, she said that “more things will be done online; there will be a more streamlined process. We will need fewer lawyers to help people navigate through the system.” These comments, made nearly a year before the LASPO post-implementation review began, also foreshadowed the review’s focus on ‘legal support’ and associated terms. They suggest that, even if cementing legal aid cuts was not integral to the courts reform programme from the outset, then by the programme’s second year MoJ recognised it as useful for “better managing demand”. Confluence between the two, therefore, was intentional rather than coincidental.

Effects of court closures on access to justice

5. Along with other funding cuts in the MoJ domain, since 2010 HMCTS has closed over 200 courts across the country, consolidating services into remaining sites that for many mean a longer, costlier journey simply to have their day in court. About two thirds of these closures (asset disposal aside) have taken place by the end of financial year 2014-15, before the HMCTS reform programme was announced. As the rolling closure programme wore on, it has also become apparent that earlier undertakings to observe maximal travel durations of up to an hour to court have been relaxed or abandoned, leading to yet more onerous journeys of parties or witnesses to court. Some closures were downright confusing, such as that of Lambeth County Court, where even a Law Centre operating the duty solicitor desk was left in doubt about the actual date of its closure and which facilities proceedings would move to. Our concern remains that vulnerable and impecunious people in fateful situations such as the brink of home loss would be discouraged from pursuing justice, because they would feel that accessing it in their already precarious circumstances would overwhelm them.

6. A key vulnerability of the reform programme from an access to justice perspective is that court closures go on while the vaunted technology that is meant to replace them in ensuring access to the courts is far from ready to take their place. In effect, since 2016 and until the recently-delayed projected conclusion of the reform programme in 2023, HMCTS is not delivering ‘business as usual’ while also introducing change. Instead, it has already reduced standing court and tribunal services while key new systems are yet to be introduced – meaning that in the interim access to justice is

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8 Indeed, several officials were involved in both the HMCTS reform programme and the LASPO review, not least the review’s team leader, Fiona Rutherford, who had been HMCTS deputy director of business strategy.

9 Figures aggregated from justice minister Lucy Frazer QC MP’s recent answers to Parliamentary Questions, HC Deb 11-13 March 2019, cW.

10 Some parties even received letters redirecting them to one court but quoting another court’s address: https://www.lawgazette.co.uk/law/court-confusion-adds-to-homelessness-risk-for-vulnerable-clients/5063075.article.
already adversely affected, in ways that are barely accounted for. This is not limited to local court facilities, either: local wrap-around support services for vulnerable people are also affected. Some of these are publicly provided, such as the Housing Possession Court Duty Scheme (HPCDS), which is part of civil legal aid. In affecting the availability of possession proceedings and duty solicitor services, court closures also put pressure on not-for-profit legal advice providers, such as Law Centres, that provide many of these duty schemes. Law Centres also provide other legal services, no longer covered by legal aid, that are nonetheless vital for resolving the same defendants’ legal problems in full, not only delaying eviction but resolving underlying benefits and debt problems and preventing relapse. Therefore, it is not just access to formal justice and remedy that is affected by court closures, but the wider justice outcomes for disadvantaged populations, in ways that MoJ has not accounted for.

Consultation and communication about the reforms

7. The Judiciary’s part of the reform programme in civil courts was based on a review commissioned from Lord Briggs in July 2015, reported in interim form in January 2016 and finally in July 2016. Briggs reached out to practitioners and we were among numerous organisations engaged with this unstructured consultation. He acknowledged that his recommendations could then be subsumed into a wider reform programme, as was the case. However, in this process, some of the Briggs proposals have yet to be implemented, such as a new Online Procedure Rules Committee shared by civil, crime and tribunal jurisdictions. Other significant recommendations in the Briggs report concerning access to justice, such as providing some advice alongside digital assistance, were also not implemented. There were also parts of the reform programme, such as tribunal reforms, that cannot be said to have benefited from Briggs’ consultative approach.

8. Once the reform programme got underway, LCN has also sought to join its stakeholder engagement groups, and in early 2017 our head of policy joined the Tribunal Reform Engagement Group. The engagement group meetings were regular and had broad scope. Led by an HMCTS deputy director, they were also fairly responsive to stakeholder questions and requests for clarification. However, in two respects they were unsatisfactory: firstly, requests for user research participants that informed the initial ‘discovery’ stage of product design always came at very short notice of several days, despite requiring fee-earners’ time. Secondly, Engagement Group discussions could get rather detailed, covering elements from court interior design, through balancing open justice with privacy, to preserving as much of the essence of in-person hearings in designing virtual hearings. This level of detail could be illuminating if the process were continuous rather than episodic. Yet when the National Audit Office (NAO) published its report about the reform programme it turned out that salient changes included in it, such as downgrading of outputs, overspending and delivery delays, had not been reported to the Engagement Group at all. By that time, HMCTS had unilaterally restructured its stakeholder engagement, shaped by court closures. See Mrs Justice Andrews DBE’s judgment in [2018] EWHC 1588 (Admin).

discontinuing talks with most representative groups except for the two largest professional bodies, the Law Society and the Bar Council.

9. This abrupt end to the Engagement Groups coincided with a decisive shift by HMCTS into media management mode, as the NAO report findings prompted greater public scrutiny and criticism. Even before this, some elements of the HMCTS engagement programme were curious if not questionable. The two overarching stakeholder engagement events held at MoJ with ministers presiding were structured like speed-dating events, compressing the panoply of changes into a series of short presentations on rotation, leaving limited time for questions and discussion. Last May, two law journalists – just the people to help reforms reach wider audiences – had their tickets to a stakeholder engagement event in London cancelled, even though there were enough empty seats. Shortly afterwards, the reform programme engagement roadshow timetable was revised. Later still, several online events were suspended, apparently due to technical difficulties, raising questions about the programme’s own digital capability. The revised engagement plan clearly aims to cover regions and areas of justice but this meant that, for instance, the one event dedicated to tribunal reforms was held in Exeter, somewhat out of the way for most of the legal professions.

10. Some of the above suggests that HMCTS was, at least in part, going through the motions of engaging legal practitioners, even though it needed to get them onside for the reform programme to truly succeed. The importance of meaningful engagement was raised by the BCG consultants in February 2016, yet by the time that NAO published its report in May 2018 this was still lacking and therefore a risk factor for the programme. LCN continues to take part in HMCTS stakeholder events at senior levels and to engage with key functionaries involved. However, HMCTS’ main preoccupation seems to be with delivering digital, so when we raise access to justice concerns about particular elements of the programme, time and again no HMCTS official seems to have the authority to address them and they are referred back to one part or another of MoJ.

Evaluation of the impact of reforms so far

11. The evaluation of the HMCTS reform programme was always going to be challenging because of the fast and comprehensive change it sought to introduce and because of the scale of its ambitions, which was unmatched anywhere else. Early on, leaders such as the Senior President of Tribunals have assured stakeholders that no changes would be implemented across the piece that have not been satisfactorily piloted first. However, having 16 development teams working in parallel over the programme’s peak years seems particularly taxing. Some of the products being developed are discrete (e.g. online civil money claims) and other are cross-cutting (e.g. fully video hearings). This means that the only opportunity fully to assess how products would work together, and how the programme would work as a whole from a user’s perspective, is when all products are ready, toward the end of the programme. By then, one wonders what room for change and testing-based improvement would realistically remain, with the programme already overspent and behind schedule.


12. A second concern about evaluating the programme regards its contingency arrangements as an ambitious programme highly reliant on IT performance and digital services. In the two months preceding this submission, two IT service outages have crippled courts across the estate and lessons from this, if they were learned, have yet to be reported. Such disruptions have a detrimental impact on people’s experience of the courts system and their trust in it. If not addressed promptly, they could affect people’s justice outcomes and disproportionately those of disadvantaged or vulnerable people, who have higher support needs in accessing the courts. We would like to see robust, tested and well-communicated contingency plans for the reform programme to protect users.

13. Another ongoing concern is about the reform programme’s evaluation framework. The functional integrity of the reformed system (as above) is important, but the programme is also in great need of a binding framework for appraising its effect on access to justice – not just when it has concluded but on a current basis throughout the life of the programme. At the very least, we would like to see the framework recently suggested by Dr Natalie Byrom and the Legal Education Foundation adopted as binding, and for data collection to proceed right away in order to enable evaluation according to it. There is also a case for distinct monitoring of access to justice in tribunals, given that they reflect more directly the relationship between the state and the citizen. Greater monitoring and transparency would be key to building public confidence in our justice system as it undergoes a fundamental transformation.

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