Written submission from The Association of Her Majesty’s District Judges

Executive Summary

- District Judges have the best understanding of the practical implications of Reform and court closures and fully support modernisation that will improve efficiency and access to justice.

- The original concept of an “online court” has rightly been revised to a “court with online facilities”

- We provide examples of the practical impact of court closures on courts of different sizes throughout the country. It is clear to us that these practical implications were not properly thought through or given proper weight before courts were closed.

- We highlight the difficulties that have arisen in Manchester, now the biggest court centre outside London and why the model of closing satellite courts around a big city hearing centre should not be repeated without an independent and rigorous evaluation.

- We would call for a pause in the Court closure programme until a proper stock take of the present position has been carried out and all assumptions underlying the policies in relation to court utilisation have been scrutinised. In particular fully functioning IT systems must be demonstrated to be up and running successfully.

- There is a need to retain experienced court staff if numbers are to be drastically reduced. The Divorce Centre project has demonstrated the pitfalls of centralisation if inadequately resourced. Those mistakes must not be repeated for service centres.

- Improved online issue process in small civil money claims and for divorce petitions have proved successful but this facility needs to be extended to the remainder of the court process to maintain and improve access to justice while catering for the digitally excluded. IT has to be robust and fully functional as soon as possible. Paperless systems are not an end in themselves but require ease of navigation and use which does not exist at present.

- Video hearings are going to be far less likely than first envisaged by HMCTS. Ad hoc arrangements have demonstrated the problematic issues that are now to be addressed in formal pilots in Birmingham and Manchester. Used correctly, they could provide a useful additional resource but not a full substitute for hearings in person.

- The ADJ will remain vigilant of practical issues arising and work with the senior judiciary, HMCTS and the MOJ at national and hopefully local levels to try and produce a modernised system that not only works but is a significant improvement.
- Reform is a golden opportunity that requires focussed projects and spending on correctly identified priorities. With over 50% of the budget already spent for limited visible benefits we are concerned that the money will run out before completion. Unnecessary projects such as a specialist Housing Court should be avoided.

- There is a need for continuous independent and robust evaluation particularly concerning access to justice at key stages. This could perhaps be best conducted through academic studies. Until now, assessments have almost exclusively concentrated on financial savings to be made which although important, should not outweigh access to justice in a civilized society.

**Introduction**

1. The ADJ represents 420 Civil and Family District Judges. We are the branch of the judiciary most affected directly by the Reform Programme and proposals for new judicial ways of working.

2. We deal with by far the highest number of cases in the civil and family jurisdictions and have the greatest experience of dealing with litigants in person including vulnerable parties. The range of work is greater than any other branch of the judiciary. In civil work this ranges from dealing with small claims to case management of multi-million-pound cases, virtually all housing possession and disrepair cases and the majority of insolvency work. In the family jurisdiction we deal with most of the Financial Remedy applications on divorce and a significant proportion of private and public law cases concerning children. Away from the criminal jurisdiction, the judge members of the public are most likely to encounter is a DJ.

3. We welcome the opportunity to contribute evidence to this Inquiry concerning the long overdue modernisation of the civil and family courts bringing our first-hand experience of what works and does not work and from our unrivalled understanding of the practical implications, what proposed changes from HMCTS should be accepted, modified or rejected.

4. We are keen to scotch once and for all any notion that the judiciary are in some way obstructive of reform. The ADJ could not be more supportive of modernisation. It is
not obstruction to point out obvious pitfalls that were not realised at the outset of the Reform Programme due to a failure to properly engage with the bench who were best placed to understand the practical implications of proposed changes – the very judges who do the work – the District Bench. This led to some justifiable frustration from our members but the ADJ as the representative body have always stressed our willingness to work with the senior judiciary, HMCTS and MoJ directly to ensure what is produced is a system that works. If that offer was ignored at a national level in the early days of planning it is by and large being embraced now to the benefit of all. Some local difficulties remain however.

5. This change of approach at the higher levels is evidenced by the extensive Judicial Ways of Working survey conducted by the senior judiciary in 2018. Clearly, given the length of time between the completion of the survey and the published responses by the four Heads of Jurisdiction, much thought has gone into analysis with HMCTS and summarising the results. Those have provided an overview which, as they are now in the public domain, we do not intend to repeat, rather we hope to provide further detail to illustrate those results.

6. The eminent legal commentator, Joshua Rozenburg, in his recent Gresham Lecture, correctly reflected this when he concluded that the original concept of an “Online Court” has now been revised to become “a Court with online facilities”.

7. We are pleased to note that the Inquiry places access to justice at its heart. Our submissions are limited to the civil and family jurisdictions only as we do not deal with criminal cases. We have also attempted to confine this submission to answer the four principal questions posed.

The likely effects of the Reforms

8. In their 2018 report *Transforming Courts and Tribunals* the Public Accounts Committee criticised HMCTS for failing to articulate clearly what the transformed justice system would look like, limiting stakeholders’ ability to plan for and influence change. Consequently, it is very difficult to comment with absolute confidence what the likely effect of Reform will be in the future. We can certainly provide evidence by
examples of how the work of the District Bench has been affected by changes implemented in the transitionary period since 2016. We will also do our best to forecast potential pitfalls for the future in the hope that some of the mistakes of the past are not repeated.

9. The likely effects of the reforms on access to justice will be significant and far reaching, as they envisage a completely new way of dealing with cases with greater use of technology and a reduced court estate. Improved access to justice is a stated central aim of reform. Our experience to date is that as things stand during this period of transition the improvements to access to justice have been minimal and overstated in public pronouncements by HMCTS. These improvements have been outweighed by increased obstacles to access to justice through court closures, staff losses and delay in providing fully functional and properly supported IT which could provide a potentially adequate replacement.

10. Reform has been predicated on advanced IT that works efficiently and is accessible to all. When first announced with a proposed budget of £1bn to update the Court service it was welcomed with high levels of optimism albeit with a degree of caution. Judges were encouraged by the Senior Judiciary, who had been involved in early discussions, to take as a given that the revolutionary IT would be delivered and would work well. Regrettably the visible objective evidence points to the contrary. In March 2018 the much vaunted first virtual hearing in the Tax Tribunal had limited success due to excessive buffering and crashing. Despite this and the very small number of cases involved, this is still held out by HMCTS in public communications as one of the achievements of reform to date. A more objective assessment was carried out by the LSE. We hope that the video hearings pilots about to start in Manchester and Birmingham in limited categories of civil and family applications prove to be more successful.

11. Birmingham Civil and Family Justice Centre is held out as a flagship of the Court of the Future project with expenditure of £8.1m. Despite this vast expense the majority of hearing rooms in the building including courtrooms still record proceedings on primitive cassette machines with only a minority having digital recording equipment.
12. The Briggs report recommended an expansion of access to justice by the increased use of state of the art technology. It did not recommend a presumption in favour of the replacement of all physical hearings in person by an Online Court. The OC was to supplement existing provisions and probably deal with most interim hearings in a different way in lower value cases. It was still envisaged that a significant number of final hearings would be before a judge in person.

13. One objective of Reform is to reduce and where possible, eradicate the use of paper files. However that cannot be an end in itself if it leads to inefficiencies and inadvertently obstructs or denies access to justice.

14. Various pilots in Family for paperless working have commenced but are in their early stages. Most presently rely on paper bundles for hearings to be produced by the parties despite the documents being filed and stored electronically. No pilot has yet been able to produce an e-bundle and the equivalent software used in crime has not been extended to civil or family generally. Swansea has been chosen as a pilot area for private and public law children applications as they have had a local tri borough portal system funded by the local authorities for some time. Our members report this to be an excellent idea in theory but causes havoc when the system is down (which is frequently the case). It also lacks sophistication. It is excellent to find a document that isn’t in the paper bundle. However, it is not easy to navigate around and does not allow a user to flick from page to page yet alone document to document. Neither can you bookmark or make notes on it. Its use therefore cannot be contemplated for trial purposes without having a paper bundle. Whereas represented parties can produce paper bundles LIPs will find this more difficult and the burden will fall upon court staff to carry out this time-consuming task.

15. Members report similar experiences in Birmingham for the specialist Financial Remedy Court pilot where the Casefinder software tool in use is not fit for the purpose. It is really only an electronic storage system at present. We are very far from a true ebundle. Neither the public nor professions have direct access to the Casefinder system so this does not provide any aid to access to justice. It may have been of
benefit as a cost and space saving exercise to HMCTS but it has not speeded up process nor hearings and cannot be the final solution.

The current position

16. HMCTS published a paper dated December 2018 entitled “Common digital capabilities and components in Civil Family and Tribunals”. This was intended as an update on development and delivery of the principal digital processes. This paper set out a series of intentions for Internal user interfaces, document generation, scanning for those who continue to use paper, continuous online resolution and professional user interface all of which are laudable and are consistent with what the judiciary have asked for in the JWOW survey.

17. Each section also has a heading of progress to date which revealed very little in operation in the civil and family jurisdictions which is disappointing 3 years into the programme. Each section concluded with next steps all of which were very limited and did not extend beyond the middle of 2019. The document generation section acknowledges the need for more work on understanding user needs for collaborative working. This is described as “highly desirable” but we consider it essential if the aim is to try and do as much as possible online. Disappointingly, the paper says this is not seen as a priority so will take longer to deliver. This perhaps exposes the limitations of where we are and will get to in the immediate future.

Our concerns for the future

18. More than half of the budget of £1.1bn has already been spent for limited tangible benefit. Court closures and huge reductions in staff numbers with more to come have led to a stark deterioration in the service with no immediate sign of the promised technology being delivered. We have serious concerns shared by the National Audit Office that the money will run out before the programme can be completed. This is compounded by the extension of the programme from 4 years to now 7 years with no extra funding.

19. If the service centres cannot cope and the back room staff at the courts are pared back to the bare minimum then chaos and complete inefficiency will ensue, with the effect of reduced access to efficient and timely justice – on the ground it is completely
apparent that the best staff have left / are looking to leave because they feel the picture is bleak and all that experience is lost, with a wing and a prayer that the “new” or less capable staff (Service centre or Court based) will be able to work at a high level of competence and efficiency

20. If the IT does not work or suffers from outages of the type recently encountered, the same will apply. There is no immediately available alternative.

21. If the digital-based system of record is compromised, the result would be catastrophic, with no paper-based backup or similar contingency in place leading to adjournments until records can be retrieved from a central back-up facility.

22. If the judges are not properly and comprehensively trained on a programmed mandatory and regular basis, as opposed to the somewhat ad hoc and optional training currently provided, the same will apply. Likewise, proper support must be in place within the Courts at which judges sit so that issues that arise can be quickly resolved.

23. HMCTS appointed Digital Support Officers (DSO’s) at every Court are not IT experts, but HMCTS staff who have undergone minimal training to be available 25% of their working day. They are often unable to resolve issues and have to telephone external help (or ask the Judge to do so). This leads to time consuming circular references to different providers. Meanwhile equipment cannot be used and work including hearings are disrupted. The use of DSOs is perceived as trying to provide a solution “on the cheap”, a false economy when the intended role of IT is so crucial.

24. If proposed new arrangements for listing and scheduling are not properly managed centrally to cope with local requirements, again chaos and prejudice to timely and efficient access to justice ensues.

25. HMCTS acknowledge over 15 million people in the UK will require assistance to use a digitalised system. We have yet to see any persuasive evidence of how support to this section of society is to be provided. Little detail has emerged as to how proposed call centres would work in practice. There is an ongoing pilot involving the Good
Things Foundation but we have received no information as to how effective this has been. Citizens Advice Bureaux may not be the answer to urgent help. The current waiting time for a CAB appointment in Romford is 12 weeks. We worry that the “charity” based approach is cosmetic and a poor substitute for Court-based staff with local as well as expert and focussed knowledge based upon experience and training in the systems.

26. Our experience is that large numbers of the public attend at Courts and far prefer to be able to see someone in person, as opposed to speaking to someone over the telephone. Many of these persons are vulnerable parties and benefit greatly from face to face support. The majority cannot afford to instruct solicitors or barristers to represent them, and therefore being able to access effective support is crucial if they are to be able to access justice and present their case before the Court.

The effects on access to justice of court closures, reductions in HMCTS staff and the extent to which online process and video hearings can be a substitute for access to court buildings

Court closures

27. It is important to appreciate that different courts in different areas of the country are, in practice, affected in different ways.

28. Pre-2011 Dudley County Court had staff, District Judges and a Circuit Judge all under one roof. After the court relocated to share the magistrates building, court staff were in one location (the contemporaneously closed Stourbridge County Court), a DJ in the same building as magistrates (5 miles away) and the CJ in Wolverhampton (10 miles away). To issue an emergency application to suspend a warrant for possession a litigant in person living in Dudley would have to travel to the office at Stourbridge, 5 miles back to Dudley for a hearing before the DJ, if the application was dismissed back to Stourbridge to issue an appellant’s notice then travel to Wolverhampton for the appeal to be heard by CJ (10 miles away). The cumulative time and cost of using public transport would be potentially prohibitive to a party on benefits where money was already tight as evidenced by his struggling to pay the rent. The position improved marginally in 2018 as the court staff are now accommodated in Dudley.
therefore there is no longer a need to travel to Stourbridge. Otherwise the position is
the same. Although this relocation of the Court was not strictly speaking part of the
Reform Programme as it predates the 2016 launch, it is indicative of the sorts of
issues that can arise under the current programme.

29. Similar problems were experienced in more rural areas such as Durham when Bishop
Auckland closed. Litigants had to travel far greater distances using restricted but
expensive public transport.

30. In Weymouth which has a largely rural catchment area, consideration of closure was
averted when it was realised that a litigant travelling by public transport from the
town of Bridport could not get to the reassigned court Bournemouth without setting
off the day before.

31. When Rotherham closed, work was transferred to Sheffield. Housing Possession cases
are heard for Sheffield in the morning and Rotherham in the afternoon. A DJ noticed
that fewer Rotherham defendants were attending court than before. At his request
local staff have analysed the attendance figures. These show that 41.3% of Sheffield
tenants turned up compared to 30.3% of Rotherham tenants. Sheffield and Rotherham
are only 7 miles apart and train journeys take less than 15 minutes. What might be
viewed by some as a minor inconvenience of extra travel appears to have a
disproportionate effect on court attendance. We would urge detailed academic studies
be undertaken to evaluate this with samples from across the country.

32. In Greater Manchester the courts at Oldham, Tameside, Altrincham, Bolton and Bury
have been closed. Manchester CJFC now caters for all cases within a 30-mile radius.
The geographical area now covered is huge, extending south to North Derbyshire and
east to the border with Yorkshire. A defendant tenant unable to keep up with rental
payments is hardly likely to be able to meet the cost of travel from areas such as
Glossop, Rochdale or Bolton.

33. Structural adaptations were undertaken to increase the number of courtrooms for the
DJs. This has resulted in 22 courtrooms for 27 DJs. HMCTS sought to implement a
new listing system, the effect of which would be to break the current link between each DJ and a particular courtroom. Opposition to the proposal was interpreted by HMCTS (and senior judiciary, who were largely unaffected by the proposal) as “territorialism” and an unwillingness to adapt. In reality, opposition was based primarily on a reasoned argument against the constant relocation of DJs (sometimes more than once in the course of a day) in a building in which courts are spread over 7 floors (3 of which are currently dedicated DJ floors) served by two lifts which are prone to regular breakdowns and even when working are unacceptably slow – serving as they do a 13 floor building.

34. A compromise was reached but while HMCTS remain committed to introduction of a more flexible listing system this will not hold. As well as being an inefficient way of working this also risks further damage to judicial morale including increased absences through stress. The importance of tackling these risks to judicial health and morale have been recognised as a priority by the senior judiciary with the Lord Chief Justice and President of the Family Division both making public statements on this. There is already a chronic shortage of DJs and Deputies nationwide without exacerbating the position through risks to health or fed up office holders electing to retire early.

35. There is a clear perception among the DJs at Manchester that waiting times for listing hearings has increased. Regrettably, no reliable data is available to support this.

36. The problems at Manchester have exposed the flaws in the original HMCTS vision to close “satellite” courts in favour of a large regional hearing centre. The full impact needs to be the subject of independent and rigorous evaluation before there is any further attempt to apply this model elsewhere.

**Reductions in HMCTS staff**

37. The loss of HMCTS experienced staff is of considerable concern to us, as the Courts are increasingly reliant on agency staff who have little knowledge of how the Court system works. An added difficulty is that as Court staff are paid less than almost every other government department, they (and agency staff), often leave after a short period of time to take up appointment with another government department at a higher salary (often for undertaking an easier and less challenging job) All of this
contributes to delays and mistakes being made by inexperienced court staff which inevitably does impact upon access to justice.

38. As a precursor to concentrating staff in a limited number of locations, divorce centres were set up around the country. The divorce centre at Bury St Edmunds designed to serve the south-east of England has been unable to cope with the quantity of work and that has been repeated to varying degrees across the country. The latest figures available show that from the time of petition issue to a decree nisi is on average 31 weeks and 56 weeks to decree absolute. The delay to decree can be important as a final order in divorce money claims cannot be made until a decree has been obtained. Waiting times were significantly less when the work was spread across the whole of the courts with a family jurisdiction. This is a vivid example of centralisation making matters worse. Although it is hoped that new service centres will be a marked improvement, these require the development of suitable and robust IT systems not yet in use, and the necessity to develop efficient and appropriate channels of communication between them and local courts.

39. Delays in housing possession cases have led some landlord organisations to call for a specialist Housing Court to speed up the process. In our view this is misconceived. Delays in obtaining possession have two principal causes, firstly a failure by Landlords to complete paperwork correctly or comply with legislation and secondly a chronic shortage of court bailiffs to enforce warrants. Improved online procedures for issue would address the former as it has in the issue of divorce petitions, and proper investment in bailiff provision the other. The Housing Court idea is a prime example of an unnecessary diversion of scarce resources that could be better invested elsewhere.

**Online and video as a substitute for access to court buildings**

40. Articulate, IT literate, well organised users would probably say that such would be sufficient if not preferable. However, even in these circumstances, the IT would need to work perfectly end to end. As Catrina Denvir of UCL remarked in the Civil Justice Council 2018 report on Assisted Digital “that users undertake a range of activities online is not to say that they have the capability to undertake legal processes online.” For vulnerable, chaotic and disadvantaged users, without a highly resourced widely
available supported digital access system, they cannot be any sort of a substitute and above all not when a human face to face in the same room assessment is ultimately required. The “saving of money” impetus suggests that sufficient resources are unlikely to be provided. The very people who really need a local Court for urgent issues are likely to be those without digital skills or access to digital platforms or the money or organisational skills to get themselves to a faraway Court or a video link. There is no substitute in real human situations to being able to see a vulnerable or apparently vulnerable person in the flesh and make an assessment. We don’t believe that could be re-created with anything like the same effect by video.

41. Returning to the Dudley example, the development of IT to enable an application and appellants notice to be issued online would potentially improve access to justice as trips to the court office to do so can be avoided. Attendances at two different courts for hearings would still be required.

42. Likewise, in urgent family applications, if these could be issued online and then referred to a gatekeeping judge promptly, an applicant could then be contacted to attend at court to enable the hearing of the application. That would be more efficient thereby aiding access to justice. However, this is also dependant on there still being a local court for them to attend,

43. In family cases in Grimsby where separated parents are often hundreds of miles apart, when possible, arrangements have been made for the distant party to attend shorter hearings by video link from their local county court. At present, available and reliable video link facilities are rare due to a lack of supporting staff, training and compatible systems. The detailed response to the judicial ways of working survey by the President of the Family Division explains how, upon reflection, the suitability of video hearings in family cases is likely to be very limited.

44. When Scunthorpe County Court closed, work was transferred to Grimsby 27 miles away. Local judiciary appreciated that this would cause significant access to justice problems for Scunthorpe residents and working with local agencies including North Lincolnshire Council attempted to set up provision for a video link to the court in
Grimsby. In possession cases the landlord would be represented in person in Grimsby but a tenant who could not easily get to court would appear by video link from NLC’s offices in Scunthorpe. This facility was offered with the goodwill of the local authority who are not social landlords. In practice it has not been a success. The video link has regularly failed and tenants, many of whom would be regarded as vulnerable witnesses, have been at a significant disadvantage in not having access to advice and assistance from a court duty adviser to meet with them before the case is called. Duty advisers distil relevant information and ensure lists run smoothly and to time. Where absent, hearings invariably take longer. They also provide legal advice and negotiate with landlords on behalf of the tenants, which enables many cases to reach agreement.

45. Although well intentioned, this experiment has highlighted many of the problematic issues recognised by the Video Hearings Group and the Judicial Engagement Groups (JEG) in the Reform Programme. The experience at Scunthorpe also proved that the impact of the closure of Scunthorpe County Court had not been adequately assessed.

46. The use of video link for hearings poses difficulties that threaten access to justice. If using their own equipment there is a risk of the hearings being recorded by litigants in person and then uploaded onto You Tube or some other website or other persons being present at the hearing that the Judge is unaware of. Open justice requires that justice is seen to be done and is not happening behind closed doors. The majority of cases before the Courts are held in public. The main exception being children cases which are held in private, and where the concern is to protect the identity of the child. To preserve open justice, Judges continue to sit in open court even when dealing with video hearings (where members of the public can sit in Court and observe the proceedings)

47. When Halifax CC closed HMCTS made a promise to the LA and to Holly Lynch MP that a means of remote attendance at court for vulnerable residents of Calderdale would be implemented. The jurisdiction of Halifax CC was then split between Bradford and Huddersfield. Nothing has been done in relation to Huddersfield but discussions have taken place regarding Bradford CC. Currently, a proposed video link between the offices of Calderdale LA and Bradford CC are being considered. The IT
plan provided that HMCTS have agreed to fund a full JVS suite to be installed in Court 12 at Bradford. This is a full suite which will be capable of linking with any other JVS suite (ie prisons, other courts etc) and via a bridge to external sites. This part of the scheme appears uncontroversial and funding has been agreed. The other end of the system (ie the Calderdale end) was initially supposed to be based on the Scunthorpe to Grimsby video link. Unlike that system which operated via a WebX system Bradford HMCTS have proposed that a HMCTS laptop and webcam be placed in the LA offices to link to the JVS suite via Skype for Business. This was initially approved by the MoJ and by the LA but has now run into difficulties.

48. HMCTS will no longer agree to their equipment being in the hands of a third party. They are looking at the LA providing a laptop and webcam with connection through Skype for Business. However, it is understood that the Senior Presiding Judge has concerns over Skype for Business meetings and their safety and security. It therefore appears the senior judiciary have not signed off this scheme.

49. The Calderdale link is due to be to the road map for links with three other courts in the NE (Berwick and Northallerton).

50. The LA are keen to work with the judiciary to make any system work. Even if the software system can be approved there will still be others matters to resolve. The LA will ensure that the laptop will not allow hearings to be recorded on it, that parties will only be able to use the laptop for the hearing, that only parties will be in the room for hearings, that the room will be secure and hopefully sound-proofed that any CCTV in the room will not record the screen and hence the Judge's face and that to ensure hearings are not recorded parties will be asked to leave their mobile phones outside the room. These simple practical considerations did not appear to have been considered in advance by HMCTS. It is only as a result of the involvement of an ADJ committee member that they have been.

51. This proposal has been referred to the Video Hearings Group for consideration. An Officer of the ADJ is on that Working Group. HMCTS have acknowledged that every
time the video link is proposed for a hearing the final decision as to whether it is used is a listing decision for the Judge.

52. The Reform programme commenced in 2016 intending to be concluded by 2020. Any objective observer would have expected the program to be far more developed than it is by now. The Public Accounts Committee and National Audit Office agree. Whilst some good results have been obtained which are an improvement, these only represent a tiny proportion of the work done in the civil and family courts. Successes include being able to issue civil money claims up to a value of £10,000 and to issue a divorce petition online. The OCMC does not extend beyond admission of the debt or judgment in default. Once a defence is filed the old system is still relied upon. The improved accuracy of divorce petitions issued online has been a major breakthrough with the rejection of defective petitions reduced to statistically insignificant levels. Again, the process does not extend any further than issue before the old system still applies.

53. Given that it has recently been announced that the Reform programme completion date has been extended again by a further year to 2023 it is clear and imperative that properly tested and robust systems are available before any further court closures can be contemplated.

**MOJ/HMCTS consultation with judicial office holders.**

54. We question whether there has been meaningful (as opposed to token) consultation with all levels of the Judiciary. There is a feeling that whilst MOJ/HMCTS consult, they do not listen but proceed simply to implement the decisions taken by them before any consultation took place. Such an approach makes consultation meaningless.

55. In the ADJ response to the MOJ consultation *Fit For The Future: transforming the Court and Tribunal estate* (FFTF) we observed that it was unusual for such an important consultation to be launched without an impact assessment. That one could not be done, demonstrated that the finer points and practicalities had not been thought through properly or at all. We warned that there was a risk that commitment might be
given to an overall plan prematurely if those matters were not properly considered. The consultation document itself made frequent references to “value for money for the taxpayer”, far more often than to “access to justice”. This leads to suspicion that the government’s priority in the Reform programme is cutting expenditure without proper consideration of the impact on access to justice. It is very disappointing that the MOJ has yet to publish a formal response to the consultation which closed on 29 March 2018. This underlines again the criticism made by the Public Accounts Committee in June 2018 concerning a failure to set out a clear vision of what the transformed justice system would look like.

56. Simultaneously with the FFTF consultation, MOJ ran one for the proposed closure of 8 courts. Respondents made powerful submissions against closure which were ignored. The only court to survive was Cambridge but that appears to have been due to HMCTS being unable to extricate themselves from the financial obligations of the remaining term of the lease.

57. Very limited formal video hearing pilots have recently been launched in the civil and family jurisdictions. Consistent with the agile approach to development of individual projects in Reform these are confined to applications to set aside judgment in civil and first direction appointments in divorce money cases. The pilots are taking place in Manchester and Birmingham only. Through the appointment of an outstanding service manager for the video hearings project we are comfortable that representatives of the district bench are being fully and properly consulted during these pilots. No hearings have yet taken place. It has been difficult to identify individual cases which are suitable for the testing.

58. What is clear already (and has been underlined in the responses of the senior judiciary to the JWOW surveys) is that video hearings will not be anything like as commonplace as HMCTS first assumed. There will certainly be no presumption in favour of hearings by video with a default position of the hearing in person. Rather the presumption will be the other way around with hearings in person unless they can be heard satisfactorily by telephone or by video link.
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?

59. So far as Court closures are concerned, Manchester provides the best first-hand experience as all the other courts in the 30-mile radius from the city centre have closed. The only ‘impact assessment’ of which we are aware is the recently commenced local “post-implementation review”. Two District Judges are on the review panel. The review is in its early stages having held two meetings. No information or data of any impact assessments undertaken locally or nationally has been provided nor has their existence been confirmed. The impression created as the objective of this review has been summarised by a participant judge as

‘What further changes might we make and how should they be implemented to achieve greater efficiencies from the diminishing staff and judiciary without spending any money?’ The scope of the Manchester review is not to assess the impact of court reform closures on stakeholders or users. The mood music seems to be: it’s over what can we do next?’

One family specialist DJs summarises the position as follows:

“There was a miscalculation as to the true volume of work coming into Manchester and no contingencies for the real volume of work coming in- exacerbated by the unprecedented increase of family law work coming into Manchester year on year so that we now do not have enough courts available to undertake the work”.

Another DJ offered the following assessment:

“I am not aware of any steps taken to evaluate the effect of the court closures. As far as I know, no court user (litigant, lawyer, housing officer), no member of the PSU, no
Judge, no usher, no member of the court/security staff, no bailiff…, has been asked to complete any questionnaire or survey or give any feedback on the effects upon them of the closures of the Greater Manchester courts. If I am right, there has been no assessment of the effects upon court staff and users of the closures, no testing of the assumptions underlying them and no attempt to learn lessons from those closures.”

60. An independent evaluation of the Tax Tribunal Virtual Hearing Pilot was undertaken by an LSE academic. Likewise, academics have been instructed to carry out an evaluation of the video hearing pilots in Birmingham and Manchester.

61. The Nottingham extended operating hours pilot was considered to be a failure by the judges, legal professionals and members of the public who took part. There was no real appetite for extended hours. Cases were adjourned when parties failed to attend. Very few were truly effective. HMCTS proclaimed the pilot a success but provided no reliable data to support this pronouncement. These pilots are being repeated in Manchester and Brentford. The ADJ will ensure that reliable feedback is available.

62. Similarly, formal Video hearing pilots in Birmingham and Manchester are about to commence. We are more confident that these will be properly evaluated but we are concerned about less monitored local initiatives like the Calderdale one referred to earlier.

63. District Judges are regarded by the senior judiciary as their “eyes and ears on the ground” through our involvement in the many working groups including those mentioned in the JWOW responses. The ADJ will ensure that accurate and detailed feedback is available to the Judicial Executive Board and the other Boards that report to them for informed engagement with HMCTS.

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