

# Justice Committee Inquiry: Court and Tribunal Reforms

January – March 2019

---

This response to the Justice Committee's consultation on court and tribunal reforms is submitted on behalf of:

**Dame Vera Baird, QC**  
**Northumbria Police & Crime Commissioner (PCC)**  
**2nd floor, Victory House, Balliol Business Park, Newcastle upon Tyne, NE12**  
**Email: Enquiries@northumbria-pcc.gov.uk**  
**Tel: 0191 221 9800**

---

*'The Justice Committee has decided to hold an inquiry into the HMCTS reform programme to consider the progress made with the reforms so far and the implications of planned changes, particularly in relation to access to justice. The Committee is interested in evidence of the effects and potential effects of the HMCTS reform programme on access to justice, as well as the management of the reform process.'*

---

## **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?**

### A different approach is needed for different areas of law

The bulk of the HMCTS reform plans revolve around the digitisation of hearings, with proposals that some cases will take place entirely online. The 2016 document ('Transforming Our Justice System') setting out the plans for the reforms, highlight several times the contributions to the UK economy by international litigators who choose our law to govern their commercial contracts and disputes. The further benefits that are possible by making this area of law more digitally accessible, are no doubt many.

However, access to justice for a wealthy international business person, looks very different to a vulnerable victim of crime living in England and Wales. Thus, there should be entirely different focuses for distinct areas of law. However, the HMCTS plan appears to aim for the same streamlined, virtual hearings across all areas of law, without much consideration for the real impact this will have on court users. HMCTS 'testing' of online hearings with people is not the same as testing the real impact on those going through our justice systems.

### Accessibility

Accessibility is an issue especially for those members of society who prefer not to, or cannot, use technology – the elderly and the disabled, for example. Though HMCTS set out in their 2016 plans that they will ensure users have support through any technical processes, this does not give much assurance. HMCTS' plans to close more court buildings will further ostracise those who find it difficult to use technology – see below.

### Benefits to some vulnerable victims

Despite the caution outlined above, there are clearly benefits to the proposals to digitise the court system, particularly to vulnerable victims of sexual offences and other similar offences. Victims of sexual violence have previously described their experience at court as akin to 'second rape'. Special measures have been introduced to negate some of the concerns of victims in coming to court – being seen by the accused, harassment from the accused and his family etc. Many victims now do not have to attend court at all, with the introduction of remote evidence suites, which have been successful in giving victims the option of where to give evidence. Further roll out of remote evidence suites and improvements in the IT quality can only benefit those who do not wish to attend court. However, those that do must be given the option to face their perpetrator.

A further advancement is the introduction of pre-recorded cross-examination of complainants, under s28 YJCEA 1998. Following its pilot a few years ago, we look forward to seeing its rollout nationally, which will undoubtedly lead to less anxiety and pressure on complainants, who are expected to give evidence under cross-examination years after the offence, often under hostile treatment by a defence barrister. Ground rules hearings, pre-agreed questions and more contemporaneous cross-examination, which can be shown to the jury on video, can only assist victims' confidence in and experience of the criminal justice system.

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

It appears that HMCTS and the MoJ have two things in mind when speaking of closing courts and tribunal centres: moving services online and utilising non-court buildings for hearings/tribunals. Both of these developments infer that traditional court and tribunal buildings will be closed. First and foremost, we ask that HMCTS/MoJ publish their business case for this 'modernisation' of estates, as their consultation documents to date are very limited.

### Online Services/Virtual Hearings

There are many concerns that come with a suggested digitisation of courts and tribunals:

- Moving to virtual hearings may increase the number of unrepresented defendants, affecting the outcomes of justice.
- The Bar Council is also concerned that virtual hearings diminish the ability of parties to follow proceedings and understand each other.

- Moving to more online services may additionally bring issues of confidentiality. How can one ensure that discussions between lawyers and their clients are confidential over a video link?
- The digital equipment already in use in the estate fails a lot and there are concerns with its effectiveness – poor sound and video equality etc. Extending the use of digital services without solving the existing issues makes little sense.
- There will inevitably be a power imbalance between a client on video link and those at the other end in court/elsewhere.
- Those who do not speak English as their first language will find it more difficult to engage with virtual hearings, particularly if the connection is not clear.

There are undeniably benefits to using digital services within the courts and tribunals estate – the various measures enabling complainants to give their evidence/be cross-examined by video link in the Youth Justice and Criminal Evidence Act 1999 are just one example of how technology can improve court experience for vulnerable victims. Likewise, the digitisation of probate applications and uncontested divorce applications have improved not just the accuracy of applications and rejection rate, but user satisfaction. However, not all services can be moved online.

#### Utilising Alternative Facilities

There are concerns around the suitability of facilities in alternative facilities, such as town halls and voluntary sector buildings. HMCTS state that one of the considerations when selling some of the estate is the maintenance and refurbishment costs of buildings. This issue does not appear to be solved by utilising other buildings, which will surely have to be adapted to an extent to be fit for use as a court. Particularly soundproofing and security.

In addition there are also concerns about transparency. If court/tribunal business is happening in several buildings across a region at one time, how can the public be assured that standards and regulations are being met? Justice must be seen as well as done.

#### Access

Plans are underway to close many court buildings and move services online. Within the consultation document last year HMCTS and the MoJ set out a proposed benchmark that 'nearly all users should be able to attend a hearing on time and return within a day, by public transport if necessary'. Currently the principle is that 'the majority of the population will be able to travel to their nearest court within one hour on public transport' (Court Estate Reform Programme 2010). The new benchmark of there and back in one day is therefore a huge increase in expected/accepted travel time.

The proposed new benchmark would apply to 'nearly all' users and therefore is redundant as a benchmark, which should apply to all users, or at least explain clearly who it will not apply to. Vulnerable victims living in remote/rural places with bad transport links will have to deal with the increased likelihood that they will encounter their perpetrators en route to court, particularly if both utilise public transport. In rural areas buses or trains can run once an hour. This potentially makes an already difficult experience much worse.

This change to acceptable travel times has a negative impact in the delivery of justice and appears to lack any policy foundation, instead favoring value for money over access to justice. Not only will parties to a court case be put off of travelling so far, but some witnesses may also be put off of giving evidence, leading to less prosecutions and justice. Those that do travel long distance to courts have to pay more for travel and possibly overnight travel, particularly where hearings/trials take place over more than one day, as most serious criminal trials do. This is onerous and also increases the cost to justice substantially – barring access for many.

Increased travel times are not just onerous for parties and witnesses, but also for support systems, particularly those for vulnerable victims who need a lot of support at court. Not only close family and friends, but also support services such as IDVAs and ISVAs, police, solicitors, counsel and others. This will have an impact on other budgets and resources. Court staff and volunteer magistrates among others will also be impacted on, having to travel further, or even losing their jobs should their local court close.

Finally, we are concerned that the proposed ‘benchmark’ is based on users being able to travel to courts/tribunals in time for their hearing. This does not take into account users who need to attend court earlier to meet their representatives, consider last minute negotiations, take advice etc. In addition, it is a requirement that in a public law children’s hearing, all parties attend court an hour before the hearing.

**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?**

We are unable to fully comment on this question, without being privy to who has been consulted. However, following the House of Commons Committee of Public Accounts review of HMCTS’ programme, we echo their concerns which were borne out of evidence given to it by various stakeholders:

- “Little confidence that HMCTS can successfully deliver this hugely ambitious programme to bring the court system into the modern age. Despite extending its timetable from four to six years, HMCTS has already fallen behind, delivering only two-thirds of what it expected. The reforms have suffered from poor progress measures and weak governance, which HMCTS has taken steps to improve.
- HMCTS has failed to articulate clearly what the transformed justice system would look like, which limits stakeholders’ ability to plan for, and influence the changes.
- Despite the revised timescale, HMCTS’s imperative to deliver at such a fast pace risks not allowing time for meaningful consultation or evaluation and could lead to unintended consequences. With so much to deliver in the remaining four years of the programme, HMCTS is operating at a rapid pace. This limits the time available to stand back and consider the wider impacts of the changes on the justice system as a whole and on those that use it.

Fundamental changes to how cases are processed could impede access to fair justice and increase costs elsewhere in the system.

- HMCTS has not adequately considered how the reforms will impact access to, and the fairness of, the justice system for the people using it, many of whom are vulnerable.
- One third of the way through the programme, the Ministry of Justice still does not understand the financial implications of its planned changes on the wider justice system.
- We remain concerned that the Ministry of Justice is taking on significant amount of change, without a clear sense of its priorities, at a time when it is facing severe financial and demand pressures.”

We would add to these concerns the observation that Wi-Fi is still being introduced in court buildings at the same time as the whole system is looking to be digitised. The pace of these changes is cause for concern.

Additionally, we do not know that any meaningful engagement has been had with victims, victims’ organisations or other court users who represent the most vulnerable groups. At a time when the government have just publicised its concern at the reductions in volumes of police referrals, charges, prosecutions and convictions for VAWG offences, particularly for rape and serious sexual offences, and its intention to conduct a review of the working of the whole system (HM Government, ‘Ending Violence Against Women and Girls 2016-2020 Strategy Refresh’, 2019), we question whether digitisation and closing court buildings should be a priority in the criminal law system in particular.

**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?**

As above, HMCTS publications and updates thus far have been vague and have failed to set out any meaningful consultation, reflection or evaluation. This is concerning given the scale of the work that is taking place, which will drastically change the justice system.