Ministry of Justice consultation: Fit for the future – transforming the court and tribunal estate

Thank you for your letter of 17 January 2018 drawing our attention to your Department’s public consultations on the proposed future strategy for the court and tribunal estate, and on proposals to close eight courts in England. Although we do not intend to submit a formal response to the consultations, we would nonetheless wish to draw your attention to some of the issues that they raise. These issues are underpinned by our overarching concern that the impact of any decisions on access to justice be fully understood before implementation, and that measures be proportionate to the policy objectives in question.

Court closures
We welcome the Ministry of Justice’s (MoJ’s) decision to establish clear principles to inform the estates reform programme: ensuring access to justice; delivering value for money; and enabling longer term efficiency. In particular, we endorse the move towards a new design guide, to ensure buildings are appropriate, flexible, effective and sustainable, and the renewed commitment to tackling the estate’s maintenance backlog.

However, it seems to us that several proposals in the consultation are worthy of further careful attention:

1. Travel time to court:
The current consultation is seeking views on a modified approach to the travel standard used to determine decisions on court and tribunal locations: that nearly all users should be able to attend a hearing on time and return within a day. Our predecessor Committee recommended maintaining the standard that at least
90% of users can reach the nearest magistrates' court venue by public transport within one hour (The role of the magistracy, Sixth Report of Session 2016–17. October 2016). No convincing policy justification has been offered for the current proposal, which appears to favour the principle of value for money over the principle of access to justice. We dispute the assertion that any particular time standard would be “arbitrary”, and we question the assumption that virtual hearings will, and should, increasingly take the place of physical access to hearing rooms – a topic to which we return below.

The proposal for closure of Northallerton Magistrates’ Court provides a worrying illustration of the travel times that may be involved; according to the consultation document, this closure would mean a user from Richmond in Yorkshire attending one of four alternative courts, with public transport travel times – one way – ranging from 2 hours 22 minutes (Teeside) to 3 hours 22 minutes (Harrogate). We would like to know to what extent these travel times are based on assumptions that users have easy access to a bus stop – given that, in a rural area, this is often not the case. The equality analysis that accompanies this consultation paper – in common with the other equality statements in this package of consultations – makes no mention of the indirectly discriminatory impact of a six-hour (plus) round trip on elderly people or on women, who are more likely to be caring for pre-school and/or school-aged children; nor does it suggest what reasonable adjustments would be made for people with a mobility impairment, in particular wheelchair users – other than a reference to adjustments in court buildings themselves.

2. **Assumptions about the capacity of receiving courts**

We question whether, in all cases, the court buildings expected to receive the business of the courts identified for closure would in fact have the capacity to deal with the additional work, notwithstanding the endeavours of the MoJ/HMCTS Optimised Hearing Capacity project. There appears to be an assumption that spare slots in hearing rooms would be predictable in advance; this is often not the case, as trials may be adjourned or vacated on the day, or may unexpectedly run shorter or longer than anticipated. There also seems to be an expectation that brief gaps in the occupation of hearing rooms, which we assume to have been factored into the MoJ/HMCTS “available hours” calculations, are in practice long enough to be usable for court business. In relation to the proposed closure of Banbury Magistrates’ and County Court, which sat for a total of 2,211 hours in 2016/17, we observe that the spare capacity of Oxford Magistrates’ Court (one of the two receiving courts) is less than 1,200 hours.
3. **Use of alternative court venues**
   We accept that services do not have to be delivered from traditional court buildings and we welcome the steps that MoJ/HMCTS have taken to identify and test a range of buildings such as civic centres and community buildings that have been adapted to provide hearing facilities. However, we note that so far the use of many alternative venues is restricted to “suitable” cases – implying that not all cases are suited to such venues. In its report on the role of the magistracy, our predecessor Committee concluded that it was “regrettable” that inadequate forethought had been given to the security implications of holding magistrates court sessions in buildings that are not equipped with a secure dock. If the MoJ/HMCTS has concluded that secure docks cannot be provided in alternative venues, we consider that this should have been stated in the consultation paper and an explanation offered as to how cases demanding this facility will be dealt with once proposed court closures are implemented.

4. **Increasing reliance on virtual and online justice**
   The estate reform programme is predicated on an assumption that increasing use will be made of modern technology in the administration and delivery of justice, leading to a reduced need for physical buildings; the main consultation paper (paragraph 1.15) states that the starting point for the MoJ/HMCTS approach is that “only what has to be done at a physical venue – most trials and sentencing – will be done there”; however, the consultation does not seek views on this aspect of the reform strategy. We do not doubt that further modernization is needed, and we welcome proposals such as the centralization of HMCTS administrative functions. However, we are concerned about the MoJ/HMCTS’s evident preference for virtual and online justice over traditional, court-based models in the absence of recent research, or evaluation of pilot projects.

   We accept that video hearings may suit some court users – including people with mobility impairments who may find it difficult to travel to court. However, we consider it likely that virtual courts will disadvantage some individuals. Focus group and survey evidence from the national charity, Transform Justice (reported in October 2017: *Defendants on video*) suggests that unrepresented defendants, defendants who do not speak English well, and older and younger court users are likely to be particularly disadvantaged by video hearings; there was also evidence of video equipment failures, poor sound quality and mismatches of sound and image. The MoJ appears to have undertaken no evaluation of virtual hearings since its pilot programme in Kent and London, which was evaluated in a report published in 2010. This found that virtual courts were expensive to set up and to run, that defendants appeared less engaged in the process and that the rate of guilty pleas and custodial sentences was higher than in traditional courts for
reasons that were unclear. This discrepancy indicates that further evaluation is needed before moving towards routine use of virtual hearings.

We accept that some types of case lend themselves to online processes and we do not doubt the success of certain initiatives such as the online service for straightforward divorce, or the Common Platform programme that supports case management in the Crown Court. However, were digital justice to become the norm, we believe that substantial barriers would be faced by non-users of the internet, estimated as 18% of 55-64 year olds, 35% of 65-74 year olds and 56% of 75+ year olds. In relation to socio-economic groups, 16% of C2s and 27% of DEs are non-users of the internet (Ofgem, Adults’ media use and attitudes report 2017). We do not consider that the MoJ/HMCTS proposals for providing face to face assisted digital support have been adequately developed, evaluated or costed. If digital justice is implemented more widely without adequate mitigation for those without access to, or familiarity with, the internet, then this would raise a serious issue of discrimination and fairness – particularly for those in older age groups and those who are less well off. The adverse impact may be greater because of the widespread cuts to local libraries which have previously facilitated internet access for these groups.

In relation to criminal cases, we are not aware of any consultation or piloting of the proposals to introduce online pleas, or the proposals designed to allow defendants charged with certain minor offences to plead guilty using an entirely automated system that would issue an online conviction and penalty; in response to the latter, our predecessor Committee observed (in the magistracy report) that excluding judicial office holders from involvement in disposing of certain criminal case at first sight “does appear to raise some issues of concern”. We believe there are particular fears about the implications of departing from the long-established principle of open justice – a principle accepted by the Senior Presiding Judge in oral evidence to the magistracy inquiry. In addition, there may be concerns about the fairness of defendants making decisions about plea without the benefit of legal advice.

I look forward to receiving your thoughts on these points.

Bob Neill MP
Chairman
Justice Committee