



Justice Committee – “Inquiry on the Access to Justice Impacts of Court and Tribunal Reforms”

A Response by

The Chartered Institute of Legal Executives (CILEX)

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Contents	Page
1. Summary of Recommendations	3
2. Introduction	4
3. Court Closures and Courts Staff	5
3. Practitioner Engagement	6
4. Impact of Digitisation	7
5. Parallel Proposals	7
6. Funding	8

1. Summary of Recommendations

- 1.1. CILEx believes the HMCTS Reform Programme is a once in a generation opportunity to modernise our court system. (Para 3.1)
- 1.2. But technology is not a panacea to the deficiencies caused by persistent underfunding of our justice system, and a blanket adoption of tech-based solutions will not be appropriate for all those who rely on it. (Para 5.1 – 5.3)
- 1.3. The reform programme got off to a bad start, with insufficient engagement with the professionals who keep the system running. More recently CILEx has seen better engagement with HMCTS at a strategic level, but this has not been replicated within the individual projects of reform where engagement with practitioners is most critical for testing and continuous improvement. (Para 4.1 – 4.2)
- 1.4. We are concerned by how statistics around the utilisation rates of court rooms have been mis-used to justify court closures, and that changing the estate before implementing reform measures have put the cart before the horse. (Para 3.2)
- 1.5. Our court service is nothing without the hardworking staff who keep it going. The reform programme should be attempting to alleviate the pressures they are under, and not be used to justify further staff cuts as has been reported. (Para 3.3)
- 1.6. The reform programme should be dovetailed with parallel proposals for court reform underway in other areas to avoid a 'patchwork' approach. (Para 6.1 – 6.2)
- 1.7. There is a need for greater transparency around funding, particularly on the reinvestment of proceeds for sale following court closures. (Para 7.1)
- 1.8. Long-term funding is still an uncertainty which risks the long-term feasibility of court reforms. (Para 7.2)
- 1.9. CILEx hopes that having extended the deadline for reforms, HMCTS shall utilise this additional time to embed meaningful engagement with practitioners throughout the lifetime of the reforms. (Para 4.3)

2. Introduction

- 2.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
- 2.2. CILEx continually engages in the process of policy and law reform. At the heart of this engagement is public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to contribute to policy and law reform.
- 2.3. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.

3. Court Closures and Courts Staff

- 3.1. The HMCTS Reform Programme is a once in a generation opportunity for modernising our court system. CILEx is pleased to see a substantial investment intended to improve the administration of justice at a time when the justice system as a whole is still in an age of austerity. We hope that this investment can be put to good use in having a positive enabling effect, to improve not hinder the administration of justice, and maintain high quality justice outcomes.
- 3.2. However, the roll out of reforms to date has put the cart before the horse, with irreversible court closures and reported plans for job cuts before the impact of the reforms can be accurately predicted.
- 3.3. We are still yet to see evidence that digitisation efforts will result in reduced demand on physical space, and it is disconcerting to have court closures justified on low utilisation rates when the definition of 'use' has been viewed through the narrow lens of court room hearings alone.¹
 - 3.3.1. In practice the court estate has varied uses, and in effect act as justice hubs in our local communities. Our court buildings are the setting where out of court settlements are agreed, pre- and post-hearing meetings with clients take place, and people receive information and access to wider community services. Impending reforms must make careful assessment of these impacts on our wider justice system and communities before tearing down, or selling on, valuable court infrastructure.
 - 3.3.2. Where existing infrastructure and services have ceased, it is additionally essential that replacements are implemented ahead of time to mitigate any access to justice impacts. CILEx is not convinced that this has always been the case and is concerned by the knock-on impacts that this could have on the efficiency of our court system.²
- 3.4. Our concerns about the public's ability to access justice concern both premature court closures, and staff shortages. CILEx members have brought to our attention the impact that these shortages can have in increasing reliance on warned and reserved lists and generally contributing to delays, hindering the ability to promptly obtain expert judgments, and creating barriers for litigants when attempting to secure enforcement of justice outcomes.³ HMCTS's Reform Programme should be attempting to alleviate not exacerbate these staffing issues, and CILEx was concerned to see reports last year suggesting that reforms could see job cuts of up to 40% of courts staff.⁴ These staff are not only critical to efficient case management and

¹ HM Courts and Tribunals Service and Ministry of Justice, Proposal on the Provision of Court and Tribunal Estate in England and Wales, (2015) p.6: court closures have been justified on the basis that "HM Courts & Tribunals Service calculates utilisation by assessing the workload (in hours) as a proportion of the maximum capacity of the estate."

² Ministry of Justice, *Evaluating our Reforms: Response to PAC Recommendation 4*, (January 2019), Conclusion: CILEx is mindful that whilst HMCTS acknowledge that they "are still at an early stage in developing our plans for the overarching evaluation..." of reforms and their impacts, court closures have been allowed to push ahead notwithstanding their wider impact on access to justice.

³ Amongst others, one member commented: "The lack of staff at Courts which are open impacts on their efficiency - it is often difficult to get through by phone. Orders are often being received with directions, after the directions should have been complied with. Recently I had a claim for possession submitted to court for issue returned as it had been sent to the incorrect Court. The home Court had recently closed (Eastbourne) and HMCTS Court Finder stated that a possession claim for the particular area should be sent to Brighton. I sent it to Brighton but it was returned (a week later) with a note stating it should have been sent to Hastings. It would have saved time for Brighton to send it to Hastings. Court closures have also affected assistance which Court officers previously provided as Courts are so under-staffed so the Court Officers do not have the time to assist."

⁴ <https://www.legalfutures.co.uk/latest-news/court-modernisation-project-aims-to-cut-annual-spending-by-250m-and-staff-by-40>

listing but will be imperative in managing any new and automated processes that the reforms give rise to. Updates on how court staff are to be affected, and what measures are in place to safeguard against resource shortages would be welcome within this review.

- 3.4.1. It may also be worth considering how staff shortages could have influenced the 'low utilisation' test adopted by HMCTS to justify the closure of 250 hearing centres since 2010.⁵

4. Practitioner Engagement

- 4.1. CILEx recognises that overhaul of a system so large and pivotal is bound to unearth some challenges, but the current framework in approaching reforms from the starting point of a minimum viable product, raises unique challenges which must be addressed promptly. The solution, as endorsed by HMCTS,⁶ lies in stakeholder engagement so that feedback is obtained for the future and continuous development of individual pilot projects.
- 4.2. CILEx has seen increased engagement with HMCTS on the progress of reforms more recently, however this has been limited to a higher level and largely focused around strategic and communications elements. In contrast we have seen no change within the individual projects launched by HMCTS.⁷ Arguably these are the areas which would benefit most from practitioner input.
 - 4.2.1. A case in point was the eventual inclusion of our members within the Professional Entry Scheme Pilot which was largely realised through CILEx's own efforts.
 - 4.2.2. Meanwhile, we have noted that poor management and delays in communication by HMCTS, has undermined effective stakeholder engagement in the past. It has often been the case that our practitioners are informed about consultative events with only a few days' notice, making it harder for specialist practitioners to reorganise their workloads and busy schedules in order to take part.⁸
 - 4.2.3. CILEx lawyers can provide a wealth of experience as regular court users and specialist lawyers. Their ability to contribute at the earliest stages of individual projects can help to create systems which are fit for purpose and in line with court user needs.
- 4.3. CILEx is concerned that the speed at which court reforms have been implemented is arbitrary, and has placed an added strain on things like effective engagement with those people that keep the system working. With the deadline for reforms having recently been extended to 2023⁹, we would like to see HMCTS make use of this

⁵ <<<https://www.theguardian.com/law/2019/jan/27/half-of-magistrates-courts-in-england-and-wales-closed-since-tories-elected>>>

⁶ Ministry of Justice, *Evaluating our Reforms: Response to PAC Recommendation 4*, (January 2019): "HMCTS use phased implementation of changes so that re-designed services can be tested in practice and any emerging issues rapidly addressed. HMCTS regularly monitor reformed services and use this feedback to make continuous improvements to the services."

⁷ CILEx Submission, *Fit for the Future: Transforming the Court and Tribunal Estate*, (March 2018), p.17, Annex A: Many CILEx members surveyed from our Court Users Specialist Reference Group previously indicated to us that they were unaware of majority of projects being undertaken last year.

<<https://www.cilex.org.uk/~media/pdf_documents/main_cilex/policy_and_governance/consultation_responses/cilex_submission_fit_for_the_future_final.pdf?la=en>>

⁸ These concerns have been shared amongst wider stakeholders, including other professional membership bodies in the sector. House of Commons Committee of Public Accounts, *Transforming Courts and Tribunals*, Fifty-Sixth Report of Session 2017-2019, (July 2018) para.11.

<<<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/976/976.pdf>>>

⁹ <https://www.gov.uk/government/news/additional-year-to-deliver-ambitious-court-reforms>

additional time to engage more meaningfully with the sector and ensure that a holistic approach is taken so that all aspects of the profession are included.

5. Impact of Digitisation

- 5.1. CILEx recognises the benefits that digitisation can bring when used as a tool to supplement existing processes and improve efficiency. However, it is not a panacea to the deficiencies caused by persistent underfunding of our justice system, such as growing advice deserts, cuts to legal aid and the Crown Prosecution Service, the rise in unrepresented parties, prohibitively high court fees, etc.
- 5.2. CILEx is mindful that over-reliance on digitisation and blanket adoption of tech-based solutions would not be appropriate in all cases. Although digital reforms and wider modernisation efforts may have a positive impact on access to justice, this will largely be context-specific, and a one size fits all solution is unlikely to work.
 - 5.2.1. Published research already demonstrates that whilst modernisation efforts can facilitate access to justice in some capacities, such as enabling a hearing to take place where it would have been unable to do so, there are times when this shall come at the expense of high-quality justice outcomes¹⁰ or compromise on integral legal principles such as open justice.¹¹
- 5.3. CILEx welcomes the individual workstreams and projects launched by HMCTS to evaluate the context-specific impacts of modernisation. However, the outcomes of these projects should not be treated as mandatory as they may not be suitable in all circumstances, including within sensitive cases involving vulnerable persons. It is not always a matter of implementing Assisted Digital Services or creating two tiered online and offline systems, but of carefully evaluating the areas and processes where fully-fledged tech-based systems would be inappropriate or unhelpful. Digitisation cannot provide a one stop shop for our justice system, and as technology is still a work in progress, appropriate safeguards (including offline resources) may be necessary to avoid disruption and provide safeguards in future.

6. Parallel Proposals

- 6.1. CILEx is conscious about the extent to which work undertaken within the HMCTS reform programme has been dovetailed with parallel proposals for court reform. This includes projects such as the Law Commission's work on employment law hearing restructures¹² and the Ministry of Housing, Communities and Local Government's proposals for a new housing court.¹³
- 6.2. Ongoing and concurrent court reforms need to be capable of facilitating one another so that we do not risk a 'patchwork' approach, as this may replicate the current state of affairs of "*an estate which was not in the main assembled as part of a planned*

¹⁰ Transform Justice, *Defendants on Video – Conveyor Belt Justice or a Revolution in Access?*, (October 2017) <<https://www.barrowcadbury.org.uk/wp-content/uploads/2017/10/TJ_Disconnected.pdf>>

¹¹ Ministry of Justice, *Implementing Video Hearings (Party-to-State): A Process Evaluation*, (2018) <<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740275/Implementing_Video_Hearings_web.pdf>>

¹² Law Commission, *Employment Law Hearing Structures: Consultation Paper*, (September 2018) <<<https://www.lawcom.gov.uk/project/employment-law-hearing-structures/>>>

¹³ Ministry of Housing Communities and Local Government, *Considering the case for a Housing Court: Call for Evidence*, (November 2018) <<<https://www.gov.uk/government/consultations/considering-the-case-for-a-housing-court-call-for-evidence>>>

*process but instead inherited from earlier organisations with different standards and priorities.*¹⁴

7. Funding

- 7.1. As previously articulated, CILEx is pleased to see such a large investment dedicated towards modernising our courts system. Greater transparency around funding within this investment would nonetheless be welcome, coupled with information about the sale of court estate buildings to date and how the proceeds raised have been reinvested.
- 7.1.1. It is currently unclear the extent to which court closures have been cost effective and/or capable of raising finances for reinvestment as proposed,¹⁵ nor on the role that they have played within the £1 billion budget.
- 7.1.2. CILEx hopes HMCTS pays due regard to the recommendations put forth by the Public Accounts Committee, particularly with regards to engagement with HM Treasury so that the financial implications of reforms on the wider justice system may be quantified in a more transparent manner.¹⁶
- 7.2. Concerns have been raised around the scale of the HMCTS Reform Programme and financial feasibility.¹⁷ CILEx is mindful that even where modernisation takes place within the proposed budget, a court estate which is fit for the future shall require ongoing investment. As the IT failures experienced within our courts this year have demonstrated,¹⁸ technology is notorious for its ability to fall quickly out of date and ongoing investment shall be pivotal in future-proofing reforms so that they do not fall into the same trap as our current legacy systems. The Justice Committee may wish to seek assurances from Government that this investment will be properly resourced for the long-term viability of these reforms.

For further details

Should you require any further information, please contact;

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¹⁴ HM Courts & Tribunals Service and Ministry of Justice Consultation Paper, *Fit for the Future: Transforming the Court and Tribunal Estate*, (January 2018) Para 2.1. <<https://consult.justice.gov.uk/digital-communications/transforming-court-tribunal-estate/supporting_documents/hmctsstrategyapproachconsultation.pdf>>

¹⁵ See footnote 9, para 4.20.

¹⁶ See footnote 7.

¹⁷ See footnote 7.

¹⁸ <https://www.telegraph.co.uk/news/2019/01/21/computers-fail-courts-across-england-judges-cps-struggle-access/> and <https://www.bbc.co.uk/news/technology-47482143>