

Proposal on the provision of court and tribunal estate in England and Wales

A response by
The Chartered Institute of Legal Executives

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For further details

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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. We represent around 20,000 members, including approximately 7,500 qualified Chartered Legal Executive lawyers.
2. We respond to Government consultations to represent both our members' views and the wider public interest. This response follows engagement with our members, seeking views on the proposed court closures. Some observations are in relation to specific geographical regions. Other comments apply nationally and to the majority of courts marked for closure.
3. We accept that Her Majesty's Court and Tribunal Services (HMCTS) in its current state is not sustainable for effective delivery of justice. It is important that HMCTS offers services as efficiently as possible, with the use of new, accessible and affordable technology. The technology, envisaged as long ago as the Lord Woolf reforms needs to be introduced. We recognise the significance of the five year modernisation programme currently underway.
4. England and Wales are currently undergoing a significant and fundamental time of transformation in both the civil and criminal justice system. The combined impact of reforms and legal aid changes, recent and upcoming court fee increases is substantial. Following the 2010 Court estate reform programme, which proposed the closure of 103 magistrates' and 54 county courts and the consequential closures, we are concerned the Government is acting in haste and without sufficient investigation into or consideration of the potential consequences.
5. This is of particular concern where courts previously identified as alternatives to those closed under the 2010 reform programme are now being earmarked for closure. For example, Carmarthen Civil, Family, Tribunal and Probate Hearing Centre is recommended for closure. Courts in Llandovery and Ammanford were closed previously (the latter shortly after a circa £60,000 refurbishment) on the basis that work could be transferred to the Carmarthen Courts.

6. We acknowledge the set of principles against which the current proposals have been developed and consider them below having regard to feedback from our members.

Ensuring access to justice

7. The consultation paper recognises the need to ensure access to justice for court users is not eroded when assessing the impact of the proposed closures, taking into account particularly victims, witnesses and vulnerable court users. Access to justice is of utmost importance.
8. Throughout the consultation and impact assessment, reference is made to travel times. The consultation suggests that if proposed closures go ahead, 95% of citizens will be able to reach their required court within an hour by car. The evidence base for this is flawed. Even if it were true it would not be an acceptable compromise. Not every household has a car.
9. An assumption has been made that those attending court will arrive for 10am. There will be times when earlier arrival will be needed. Even 10am starts could be problematic. One of our members gives an example of a court user living in Macclesfield. If the proposed closure of Macclesfield county court goes ahead, the nearest available court would be in Manchester. Our member told us *“If they needed to be at court 30 minutes early for a 10.00am hearing they would have to leave their homes at 6.45am to get two buses into Manchester for this time. Unfortunately the first bus is at 7am...”*.
10. Train travel is not necessarily a viable alternative. A court user could go from Macclesfield station to one of a range of Manchester stations each requiring varying distances of onwards travel to the court. A peak time return ticket costs between £14.50 and £14.90.¹

¹ Macclesfield to Salford Central, 2 changes, £14.90 peak return, Macclesfield to Deansgate, 1 change £14.50 peak return, Macclesfield to Manchester Oxford Road, 1 change, £14.50 peak return, Macclesfield to Manchester Picadilly, direct, £14.50 peak return. Northern Rail.

11. More thorough consideration needs to be given to available public transport routes, costs and affordability, particularly in areas of high deprivation. Closures may disproportionately affect those with any disabilities, or who are otherwise unable to travel easily on public transport.
12. The impact assessment assumes there *'is no change in court volumes, no change in court fees, and no change in waiting times at court'*. This is a weak assumption. The Government is increasing court fees. Fee increases will put court services out of reach for some. Employment tribunal claims fell by 67% following an increase in fees.
13. We are concerned that proposals to close courts have been made on an inadequate assumption there will be alternative and better ways to access court services. In his appearance before the House of Commons Justice Select Committee on 15 July 2015, the Lord Chancellor mentioned proposals to use town halls, other public buildings, and potentially hotels, as alternatives.
14. It would have been helpful for proposals for alternative sites with facilities for hearings, conferences, waiting facilities for parties and witnesses etc. to have formed part of this consultation.
15. That said it would not necessarily be any more efficient to have a multiplicity of venues replace a court. This has the potential for confusion and additional cost of travel for HMCTS staff.
16. The proposals assume flexible court listing will be encouraged. The experience of our members tends to show this may not work in practice. Members have experienced difficulties in amending hearing times, without attendance at court to request adjournments. If this were to continue following closures it could cause further delays, increase the expenditure of court users, and potentially legal costs unnecessarily.
17. We recognise that HMCTS staff already work at full capacity. Delays are common, for example, to final orders being drafted. To increase the workload of courts, and

significantly so in some cases, has potential to generate backlogs, which can increase waiting times and delays. This will impact the savings anticipated.

18. We are not convinced the proposed closures support the requirements of agencies such as social services, the Crown Prosecution Services and police. Those attending courts or tribunals from these or other agencies will still need to travel to the remaining courts. Whilst it is envisaged as part of the five year modernisation plan to significantly improve the IT infrastructure in the courts (and potentially other buildings), there is potential for a significant transitional period with requirements for additional travel time and expenses.
19. The need to attend court is outside the control of most court users. 'Strategic planning' for better use of courts by victims, witnesses, agencies or legal professionals is simply not a reality. Emergency attendance is a regular feature, for example by local authorities and other agencies in child care cases.
20. The impact assessment recognises that businesses and local economies surrounding courts marked for closure are likely to suffer. Businesses near the remaining courts gaining an advantage will not help the small businesses which suffer due to closures. The impact has not been considered area by area and in particular in relation to areas of high deprivation. Some law firms may need to relocate leading to advice deserts.
21. We question whether all courts and tribunals marked for closure are genuinely underused. In some instances cases have been moved to alternative courts in advance of the current consultation, for example Bedford Magistrates' court. Despite opposition and the disruption caused, criminal hearings which had been held at Bedford Magistrates' court were from June 2014 transferred to Luton.
22. Following the changes in the listing, the Chair of the Judicial Business Group sought the views of court users on the impact of the listings arrangements. Concerns were noted from the Criminal Justice Board that witnesses experienced an *'increase in inconvenience, stress and anxiety levels'*. The Police Federation recorded concern about additional travel time for officers. Central Beds Council recognised that whilst the facilities at Luton were better, it had experienced

difficulties in getting hearings, resulting in delays in prosecuting cases. The Council also registered concerns over travel time for staff.

23. The current under-utilisation of some courts appears due to administration being transferred to an alternative court, leaving it open for hearings only. Our members report difficulties in being able to contact court staff to resolve issues. For example a member based in Grantham currently attends the county court and Magistrates' court there. However, applications are not sent to either court, as no staff can deal with them. Papers are processed by Boston or Lincoln county court, or by Lincoln Magistrates' court. Difficulties arise if there is a need to speak with a member of staff on the day of a hearing as no staff are available at the hearing centre.
24. The utilisation figures produced in the consultation are from the last financial year, so do not reflect the full picture.
25. We are concerned at the lack of consideration given under the proposed court closures to the provision of Welsh language services. The proposals leave a significant area in West and Mid Wales with inadequate provision.

Delivering value for money

26. It is clear from the consultation and written Ministerial statement by the Courts Minister Shailesh Vara² that the main aim of the current reform programme is to save money. The Government currently proposes to implement all closures by April 2017, and for capital receipts to be realised by April 2018. We do not believe this is achievable.
27. Following the written statement by Lord Faulks on 16 July 2015, confirming details of this consultation, Lord Falconer of Thoroton asked a written question³, seeking details of the number of courts closed since the 2010 reform programme which have not yet been sold off. Details of the monthly costs of these courts were also sought.

² 16 July 2015

³ HL Deb, 14 September 2014 cW, HL1700

28. In his written response, Lord Faulks accepted that as at 4 September 2015, 13 courts buildings which were closed in May 2010 had not currently been sold. These continue to cost around £40k per month. Lord Faulks wrote *“The disposal of surplus property assets is dependent on a number of factors, such as the market, potential future use, location and the fact that some are occupied in part by the police and local authorities which also make disposal difficult.”*
29. Lord Faulks recognised the inevitable costs in ensuring buildings are ready to reach the market, which include decommissioning, security costs and expenses due to property rates etc.
30. Whilst mothballing costs less than the running an open court, the fact remains the Government has recognised there can be significant obstacles to the disposal of property. The Government’s expectation that it will realise the capital receipts for the current court buildings within one year of closure is not realistic. Disposal of court buildings will inevitably take longer, and additional expenditure will be incurred in keeping empty buildings secure and fit for sale when the market allows.

Enabling efficiency in the longer term

31. We do not believe the proposed savings will be produced. Whilst court buildings should have good facilities, and enable more efficient and flexible listing or court and tribunals business, this will not automatically be achieved through closures. Better facilities do not automatically mean the system will work without delays or difficulties.
32. Increased travel times will impact upon non-attendance, thereby increasing waiting times, adjournments, or decisions being taken with only one party to the proceedings present. This will impact on quality of decisions, and likelihood of further appeals, leading to increased hearing numbers and costs.

33. If parties to any proceedings, or potential proceedings, will now have to take into account additional travel expenses when deciding whether to make a claim, legitimate claimants may take the view that it is not proportionate to start a claim. This will ultimately restrict access to justice, tarnishing public view perception of the fairness of and access to the judicial system.
34. We recognise the importance of long overdue modernisation of IT practices throughout the courts and tribunals service. However, Wi-Fi in court and tribunal buildings is not a panacea. Court users experience difficulties with video links. Whilst Wi-Fi is already in more than 40 court buildings, there is no evidence that the system has been robustly tested. Ultimately, if it is the Government's intention that court papers can be received whilst court is in progress, and considered at the time, the length of hearings is bound to increase. This is not effective use of time.
35. The current proposals deal with the issue of IT the wrong way around. The courts and tribunals estate should be modernised with new technology, so that all court users can access these facilities. Once the systems are in place, the Government can then legitimately evaluate the efficiencies, thereafter considering any alternative savings which can be made.