



Transforming Our Justice System Consultation

**A response by
The Chartered Institute of Legal Executives**

November 2016



1. Introduction

- 1.1. 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. This includes 4883 Conveyancers registered on our database.
- 1.2. 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 inform policy and law reform.
- 1.3. 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.

ASSISTED DIGITAL

2. Question 1: Do you agree that the channels outlined (telephone, webchat, face-to-face and paper) are the right ones to enable people to interact with HMCTS in a meaningful and effective manner? Please state your reasons.

- 2.1. There is no doubt that technology has the capacity to assist with access to the courts and that taking advantage of what is available and moving towards digital, for example in the context of the civil justice system, is necessary and an obvious development that should be supported. CILEx recognises that technology in the Courts radically needs to be overhauled. However, this should be done in ways that mitigate the risk that those who do not have access to technology, or who require support to use it, are not excluded from taking court action.
- 2.2. As a minimum, the default option of paper channels remaining available to those that need it should be retained. It is the experience of some CILEx members that many older clients are simply not “technology friendly” and do not email or even have a computer or smart phone. At the moment, many court forms are online and the counter services in courts are closing or only open by appointment thereby precluding certain people from accessing the right information. The proposed changes may therefore only be successful if the Courts are resourced with people able to help those that do not have access to the internet or technology so that they are not precluded in any way. This could be done by having a section of each county court set up and staffed for proper opening hours each week to allow people to go and seek assistance that do not have access to the internet. This would mitigate the experience of, for example, the Administrative court, where there is not enough time to assist Claimant’s when they are litigants in person because they are short staffed.
- 2.3. It is the experience of some CILEx members that the current telephone support available can be very frustrating with erratic responses to urgent calls and telephone systems that can cut off before making a connection. It will therefore be important that court staff engage in telephone support and face

to face assistance will firstly have to be at staffing levels that make it viable and secondly if staff are properly trained in customer service and the rules of the court. There is a perception that there remains a high turnover in court staff and this too will have to be managed in this context.

- 2.4. In relation to webchat, it will also have to be borne in mind that there are still large parts of the country and certainly Cornwall which do not have a good enough broadband connection.

3. Question 2: Do you believe that any channels are particularly well suited to certain types of HMCTS service? Please state your reasons.

- 3.1. Yes, divorce petitions and probate documents can be lengthy and time consuming to complete. The ability to save documents online will be necessary. However, our general views on these proposals is that any such system should be fully trialled and the results thoroughly assessed before application.

ONLINE CONVICTIONSS AND STATUTORY FIXED FINES

4. Question 3: Do you agree with the principle of a statutory fixed fine process for those who enter an online guilty plea and are content to proceed with the process? Please state your reasons.

- 4.1. CILEx has reservations about this proposal. Firstly, there is not a great deal of detail offered in relation to the process. For example, the paper talks about resolving entire cases online in future in appropriate cases, but there is no indication how and on what basis such appropriate cases are identified.
- 4.2. Also, although the paper refers to building in 'safeguards' to ensure the process is only used in appropriate cases, there is no reference to the need to mitigate any risks that may arise as a consequence of switching to greater use of technology. For example, in relation to confirming the identity of the respondent, is there any recognition of and mitigation for the risk of identity theft? This is increasingly prevalent in digital environments and should be carefully considered to avoid convictions being recorded against people who are entirely unaware of them. It could be very difficult for an individual to prove that he had not consented to the process and that he had not entered the plea. Recording convictions against unwitting parties would have considerable implications for the justice system and could potentially increase the burden of the Courts (and costs) if decisions are challenged in lengthy hearings in a higher court. Proper technical safeguards to capture data securely must therefore also be in place, and be seen to be, if the process is to be successful.
- 4.3. Any safeguards would, of course, also have to cover the process itself, and defendants' interaction with it, as well as the technical platform supporting it. As proposed, there is, for example, no independent oversight of the process, judicial or otherwise, to ensure that it is transparent and fair and that defendants understand the implications of what is being put to them. It is not inconceivable that without that, and without any access to any legal advice, defendants will not understand the process, nor be able to challenge any

aspect of it (such as the evidence or the sentence) or feel obliged to simply accept both.

5. Question 4: Do you think that there any additional considerations which we should factor into this model? Please list additional considerations.

- 5.1. The Courts Service will have to properly plan to manage any increased burden on the courts should the new arrangements result in appeals against pleas made incorrectly, for example due to incapacity.
- 5.2. It may be appropriate to consider complementing the new process with access points at Court for the online process to be undertaken in-situ; particularly for those more likely to comply with the process by the formality leant by the environment than they might not do at home. Such access points could be utilised by professionals and individuals supporting litigants as well.

6. Question 5: Do you think that the proposed safeguards are adequate (paragraphs i-x above)? Please state your reasons.

- 6.1. No; as stated above (Q3), CILEx believes that it should be made clear that the system has been fully tested to ensure it meets all primary and secondary requirements, and is stress-tested for peak times. Practitioners will require additional access to any online support system in the event of technical difficulties.

7. Question 6: Do you agree that the offences listed above are appropriate for this procedure and do you agree with our proposal to extend to further offences in the future, including driving offences? Please state your reasons.

- 7.1. As stated above (Q2&3), it is difficult to assess 'appropriateness' of the procedure because of the lack of detail of how the assessment was made in the first place. It is therefore difficult to comment on appropriateness of its applicability to other offences. Whilst we do agree to the principle that the concept should only be available for specified offences where there is not an identifiable victim, it may be difficult for some victims to comprehend a system of punishment where an offender does not have to address a judge or jury.
- 7.2. However, if there was greater clarity about how the suitability of cases for this procedure was assessed, combined with assurances that any technical risks have been identified and mitigated, then there is no doubt that dealing with relatively minor matters that would free up court time for other more significant crimes.

IMPACTS AND EQUALITIES IMPACTS ASSESSMENTS

8. Question 9: Do you agree that we have correctly identified the range of impacts, as set out in the accompanying Impact Assessments, resulting from these proposals? Please state your reasons.

Assisted Digital

- 8.1. The emphasis of Assisted Digital Impact Assessment is to highlight the benefits there are to be had from the introduction of assisted digital services. There is no doubt that there could be real benefits and the Assisted Digital Impact Assessment refers to the learning experience derived from *'a number of recent initiatives across Government'*; there is however little specific detail of that learning experience and its relevance to this proposal.
- 8.2. As stated above (Q2), proper and thorough trialling and testing of the new systems will be crucial. In that regard, it is reassuring that the Assisted Digital Impact Assessment recognises both that *'there is no such thing as an average user of the justice system'* but the same could be said of technology, that there is no average user. Whilst the approach cited in the Assisted Digital Impact Assessment as being 'iterative' must be right, sufficient weight must be given to the impact of an increase in online demand for the court service. Mitigation measures should be available if the 'assistance' to be introduced proves insufficient, and plans made should the iterative introduction find a lack of or non-engagement with the system due to lack of technical knowledge. CILEx would be interested to better understand how service users' experience of the new system will be gained.
- 8.3. The reference to *'3rd party assisted digital providers'* is not clear and therefore their potential involvement in the provision of assisted digital services may similarly be unclear for clients. The Impact Assessment seems to contemplate that such third parties may also provide other services such as legal advice to court users. There may be significant risk both for the service provider in resource demands (as identified in the Impact Assessment) but also for court users (not referred to) in terms of clarity and status of the services they are receiving. More detail or consideration of this point is required.

Online Conviction and Statutory Fixed Fine

- 8.4. As stated above (Q3), the risks and associated safeguards referred to in the Online Conviction and Statutory Fixed Fine Impact Assessment predominantly focus on the incremental roll-out of its application and making court processes aware of the need to be flexible enough to take remedial action where a defendant did not understand the consequences of what he/she entered online. There is however virtually no reference to technical risks and what safeguards are specifically in place to mitigate the threat of them in the Online Conviction and Statutory Fixed Fine Impact Assessment. It may be that this will be managed within the contractual arrangements the HMCTS has with the 3rd Party Providers commissioned to provide the online services but this should be specified if there is to be full confidence that such a digitised process will work, even if it is to only be applicable to the limited number and type of case (which we agree with) in the first instance.

9. Question 10: What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please state your reasons.

- 9.1. The impact will be subtle but potentially significant in relation to individuals with protected characteristics. Most of this category of user will remain inclined to seek support and advice from their communities and trusted legal advisors. This is particularly the case, as stated above, in relation to individuals with poor technological literacy or who live in an area of the country where the broadband is insufficient to maintain the connection needed to make webchat and other online access effective. In relation to the former, this is particularly a generational gap to which lack of access could reinforce. The Impact Assessments do acknowledge that 645 of adults over 65 had ever used a computer and less than half use one ever day compared to 99% and 82% of the 16 – 24 years age bracket and say the design of services will take this into account. But again, there is no detail as to how this significant demographic factor will be mitigated.
- 9.2. Professor Gus John's 2014 report on the challenges faced by BAME lawyers and sole practitioners highlighted the fact that many BAME law firms are situated in areas where a high percentage of individuals with protected characteristics reside. If the impact and cost implications of changes to online applications increases the margins of already stretched BAME firms, clients might be more likely to seek pro bono support which would not necessarily mean they guarantee access justice on each occasion they need it.

10. Question 11: Do you agree that we have correctly identified the range of equalities impacts, as set out in the accompanying Equalities Impact Assessments, resulting from these proposals? Please state your reasons.

Assisted Digital

- 10.1. The Assisted Digital Impact Assessment rightly highlights the range of protected characteristics that could be impacted but does not go into great depth about mitigation for adverse impact. For example, it is insufficient to simply say that '*assisted digital support is a reasonable adjustment in itself*'. Whilst to an extent it could be, the picture is far more complex than suggested. For example, there is no specific detail about how the visually impaired will be assisted to use the new process. Whilst the Assisted Digital Impact Assessment says that '*design of the...services will have a particular focus on how to address their specific needs*', the lack of detail is concerning.

Statutory Fixed Fine

- 10.2. Our response to the above Assisted Digital Impact Assessment also applies to the Statutory Fixed Fine Impact Assessment: the potential characteristics affected have been identified but little real detail is included on actual potential

impact and how any impact that is adverse will be mitigated, other than the line '*Safeguards will be in place...where appropriate*'. There is no detail as to what reasonable adjustments are being made (beyond the fact that they are) nor what '*alternative methods of engagement*', except assisted digital, will be made available.

CILEx welcomes the opportunity to contribute to this consultation and would be happy to work with the Ministry of Justice on future consultations or the incremental development of these proposed services which envisages gaining extensive feedback from court users.

Please contact the writer below for further contributions that may be required from the answers provided.

For further details

Should you require any further information, please contact;

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