



Submission to the Justice Select Committee Inquiry on Courts and Tribunal Reform

Introduction

This is a joint response from LawWorks and the Litigant in Person Support (LIPS) Strategy partners, representing a key cross-section of stakeholders in the court and tribunal reform process, and the civil justice sphere.

We welcome the Committee's inquiry into the access to justice impacts of court and tribunal (HMCTS) reforms, including the increasing use of digital and video technology and the closures of courts and tribunal hearing centres. With the recent legal aid (LASPO) review now complete, this inquiry is timely as both issues - the HMCTS reforms and legal support for the justice system's users - relate to whether the justice system is fit for purpose with the resources, capabilities and equality of arms to deliver fair outcomes. The configuration of how courts and tribunals work not only impacts on access to justice, but also expresses the rule of law in its most tangible form. As the Lord Chancellor says in the foreword to the Government's recently published 'Legal support action plan', "The ability of individuals to resolve their legal problems is vital to a just society and is a fundamental principle underpinning the rule of law."ⁱ

In this context, the inquiry's terms of reference (TOR) are well framed. However, the issue of court fees does not appear specifically in the TOR – this is an important access to justice issue which has been integral to policy-making in the courts and tribunals system. It is also unclear whether the new civil claims portal reforms for personal injury and whiplash cases are in the inquiry's remit. We assume, for purposes of this response, it is possible to comment on these broader access to justice issues, given their connection to the court and tribunal reforms. Likewise, issues raised by the LASPO review are relevant, for example the 'action plan' suggests that there should be "enhanced support from HMCTS for litigants in person" but acknowledged the concerns of stakeholders that, whilst efforts to simplify and streamline court processes have been "commendable", the system "is not yet sufficiently capable of catering for those without legal representation"ⁱⁱⁱ

About LawWorks and the LIPS strategy

LawWorks (the Solicitors Pro Bono Group) promotes, supports and facilitates pro bono legal services that extend access to the law for individuals and communities in need and the organisations that support them. We champion pro bono because of the positive contribution and difference it makes for individuals, communities and society. We work (in England and Wales) with the solicitors' profession and our members, the Law Society, law schools and law students, law centres, advice agencies and others to develop and support pro bono legal services, and to promote access to justice for all.

The Litigants in Person Support (LIPS) Strategy is a national partnership to improve the experience of people facing the legal process alone. The partner organisations are the Personal Support Unit (PSU), RCJ Advice, Law for Life (incorporating Advicenow), Advocate, LawWorks and the Access to Justice Foundation. Working in partnership with the Ministry of Justice these organisations come together to deliver on the following aims:

- Litigants in person know what support is available to them;
- Litigants in person access appropriate practical and emotional support;
- Litigants in person have routes to free or affordable legal advice;
- The legal system is more responsive to the needs of litigants in person.



General comments

The LIPS Strategy partners are broadly supportive of the objectives of the Ministry of Justice's Courts and Tribunal reform programme, as summarised in *'Transforming our Justice System'*, (a joint statement from the Government and Judiciary) - a system that is "just", "proportionate", and "accessible to all".ⁱⁱⁱ This package includes the ambitious £1.2 billion plan to modernise the system through IT, and Lord Justice Briggs' proposals to deliver an online court for low value civil claims. The joint statement sets the right vision and direction, but to genuinely enhance access to justice it needs practical resources, careful management and regular engagement with stakeholders, including third sector organisations working with court users.

The Briggs review of civil courts highlighted the importance of Public Legal Education (PLE) to delivering a system in which processes are understood, expectations managed, with outcomes perceived as fair.^{iv} As the Solicitor-General's recent 'vision statement' on PLE (supported by a range of stakeholders) implies, this should be higher on HMCTS' agenda.^v

On the issue of resourcing the reforms, whilst the £1.2 billion additional investment dedicated to the reform programme is very welcome, this has been predicated on divesting assets (i.e., court closures and property sales) with lesser than expected returns, and some negative implications for the physical infrastructure and local presence of the system. Also, the funding should be viewed within the wider context of dwindling resources for the justice system over the past decade. The recent Bar Council report by Professor Martin Chalkley *'Funding for Justice 2008 to 2018: Justice in the age of austerity'* lays out the stark extent of the reduction. The Ministry of Justice, its related agencies' frontline service provision and access to justice support have all seen massive real term reductions in funding. In the context of an economy that has grown 13 per cent in real terms 2008, public funding for justice has declined overall by 27 per cent. This includes:

- The Crown Prosecution Service seeing a 34 per cent reduction in real terms;
- A reduction in legal aid spending of 32 per cent, including a 70 per cent cut in social welfare law legal help;
- A 17 per cent reduction in funding for the the provision of court services and staff.

According to Professor Chalkley's report, accompanying these reductions in public funding, the justice system has placed increasing reliance on user-charges and other sources of income that now constitute 20 per cent of total spending. As he concludes: "There has been little, if any, articulation or discussion of these important headline facts and figures. The fundamental question is whether it is desirable to so reduce the public funding support for the justice system and access. If it is not, then there must be acknowledgement of the fact that the cuts to justice are savage and need to be addressed."^{vi}

There are, however, positive opportunities arising from the reform programme including user-friendly forms, online tracking of cases, more efficient case management, and assisted digital support. As key stakeholders working with court users we are ready to assist both the MoJ and HMCTS with the digital and modernisation process. However, there is concern that the early promise of the programme is failing to meet expectations, and it has been announced that the programme will be extended by a year. The enabling legislation has been less comprehensive than anticipated (after the withdrawal of the Prisons and Courts Bill in 2017), and some of the momentum that started with the Briggs and Levenson reports, with significant buy-in from stakeholders and the judiciary, appears to have stalled.

A challenge for stakeholders has been the information flow about the different strands and the portfolio of overlapping change programmes. As Professor Genn said in her Birkenhead lecture: "There is clearly a great deal of activity, but it is not easy to say on any one day exactly what is happening and how far any particular part of the programme has progressed. The only regular public source of updates is the "Inside HMCTS Blog". The lack of a clear flow

of communication has been a cause of some complaint among the profession, the judiciary and academics."^{vii}

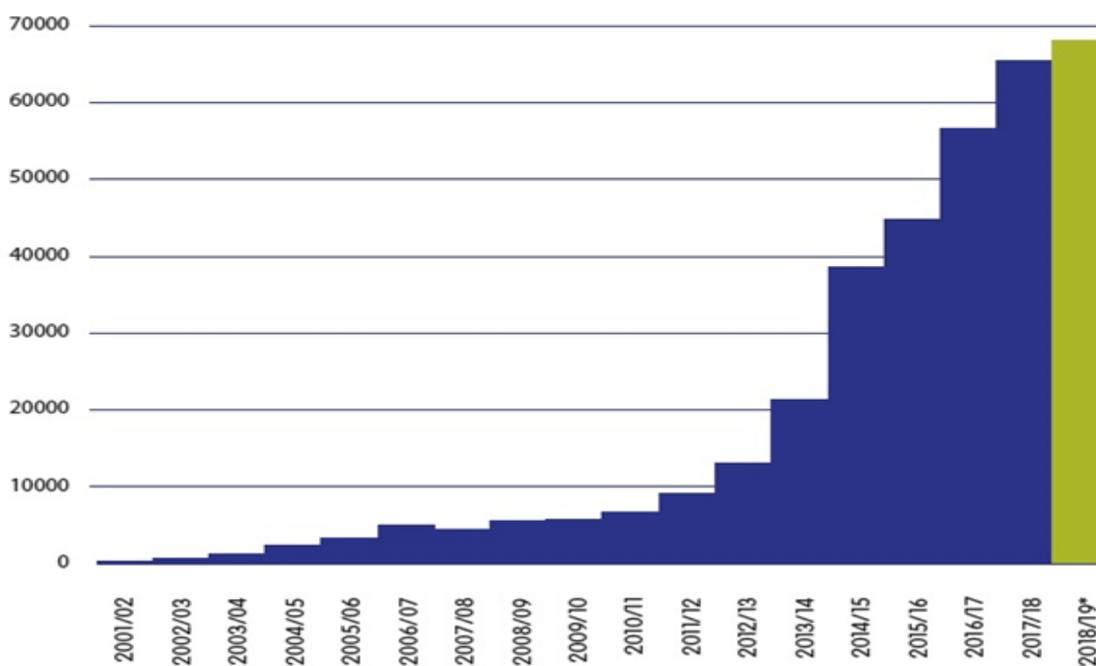
Last year, the Public Accounts Committee (PAC) questioned the ability of HMCTS to manage its court reform programme, noting that the pressure to deliver quickly risked driving changes before fully understanding the impact on users and the wider justice system.^{viii} The clearest assessment of the challenges to date has come from the National Audit Office's (NAO) report on 'Early progress in transforming courts and tribunals'. This found that not only is the programme running behind on time and scope, but that most crucially "expected costs have increased and planned benefits have decreased."^{ix} The NAO report also found that the programme had not sufficiently addressed the interdependencies with other (non-HMCTS) agencies, and that HMCTS needed a better understanding of the system-wide consequences. The MOJ's independently commissioned report, from the Boston Consulting Group, warned back in 2016 that the time-table was over-optimistic and highlighted that both data-gaps and operational silos could become insurmountable obstacles.^x

Civil justice and family justice

Some good progress has been made including online divorce applications, the 'Online court Money claims' and other online claims portals that can be used by claimant and defendant solicitors. However, these facilities work best for straightforward cases, and the system as a whole needs to adapt better to the growth in the number of litigants in person with more complex issues.

Whilst we acknowledge that litigants in person have always been a feature of the civil and family courts system, the rising numbers seen over the past few years have been partly attributable to the significant restrictions in the scope of legal aid for family and civil law issues. This has created additional demand for other forms of court-based support for litigants including, for example, the fact that the Personal Support Unit (PSU) has been dealing with a rising number of inquiries every year, increasing from around 5,000 in 2010 to nearly 70,000 in 2018.

Total number of times PSU have helped people per year



* Predicted figure based on steady growth across all PSUs

The largest area of work for the PSU is family law where the number of people helped has nearly trebled since before LASPO; followed by money claims, and housing. Most PSU centres report that the majority of their clients are digitally excluded.

Vulnerability

A key concern about the civil and family justice modernisation programmes has been the absence of a cross-cutting vulnerability strategy, recognising just how intimidating vulnerable litigants in person find the legal process to be. Whilst vulnerability is highly contextual, consideration of vulnerability should be embedded across all pathways in civil and family justice, with early alerts for judiciary and court staff. The following-case study summaries from the PSU are illustrative:

Kathryn came into the PSU's offices as she needed help filling out an application for emergency child arrangements for her nine-year-old daughter. Both Kathryn and her daughter were struggling with severe mental health difficulties including depression and anxiety, which were worse when her daughter was attending a weekly contact session with her father. The PSU helped Kathryn to complete the correct forms, and volunteer then went with her to the emergency hearing in court. During the hearing Kathryn was extremely distressed. The judge granted an interim order for Kathryn's daughter to stay with her whilst they looked for counselling to help with their mental health issues.

Michaela came to the PSU in a very distressed state, having never been in court before. She was seeking a non-molestation order against her ex-husband who had been sending her abusive messages, showing up at her house and threatening her. Her mental health had deteriorated significantly; she was very nervous in the court building and worried about having to come face to face with her ex-husband. The PSU's intervention led to the judge deciding to call Michaela and her ex-husband into court at separate times.

Staffing

By March 2023, HMCTS expects to employ 5,000 fewer full-time equivalent staff compared to 2016 levels. We have significant concerns about the impact of far fewer front-counter staff. For example, Wandsworth County Court initially reduced public counter opening hours and then closed them for all but restricted functions. The PSU report that the G4S security team at the court have to deal with many more confused court users; and send clients with a straightforward query, such as the location of a particular courtroom, to the PSU. At the County Court of Central London (CCCL), shared counter provision involving HMCTS, CAB, and PSU was initially set up when the CCCL moved into the Thomas More building. However, as counter provision has reduced, court users have difficulty finding their way around the building despite wall signage, leaving many frustrated and anxious. Faced with stressful situations people do not function as effectively as they do in routine interactions, and for many litigants in person being in court is a crisis situation. If there is no friendly face to talk to – even if only for reassurance that they are in the right place – the stress of the court experience can be compounded. This point is stressed in JUSTICE's '*Understanding Courts*' report.^{xi}

Special Measures:

'Special measures' are supposed to be available on request for clients in family courts, who need separate waiting areas and screens etc., to avoid direct contact with an opposing party – especially if domestic abuse is involved. However, there have been reported examples that it can be difficult for litigants in person to arrange for special measures. Whilst this may sometimes be due to short notice having been given, it can also be because courts are not easily able to make such provision.

Civil Liability Act reforms

Fixed-fee compensation and a change in the small claims threshold are due to be introduced within 12 months, following the Civil Liability Act. As a result, there may be fewer lawyers

available to handle whiplash (personal injury) claims under the new terms, and more people having to represent themselves in such cases. Access is planned through an online portal, but with no non-digital alternative (although a possible telephone access point is being looked into). There is a risk that, without access to legal advice or representation, litigants in person will be unable to factor-in the long-term consequences of their injuries, nor have a full understanding of the damages they can claim (such as loss of earnings, costs of a hire car, and other associated costs). Insurance companies may offer settlements and litigants in person will have little recourse to expert opinion on whether such offers are appropriate. The imbalance of power/resources of less informed individuals standing against commercial companies, without the support of personal injury lawyers, should therefore be considered. Claims Management Companies of variable integrity may step into the gap. Where inadequate settlements and rehabilitation packages are accepted, there may also be potential longer-term impacts for health services and welfare benefits provision as the consequences of injuries develop over time.

Criminal Justice

The LIPS Strategy partners work primarily in the civil, family and administrative justice spheres. However, some issues are related to criminal justice, many court centres deal with both civil and criminal matters, and research has identified connections between unresolved civil justice problems and criminal re-offending.^{xii} The work of *Transform Justice* will be valuable for the Committee's inquiry^{xiii} including the issues they raise about the growing number of unrepresented defendants in magistrates courts, and how video hearings have impacted negatively on outcomes in the system. The experience of video hearings is a siren warning for introducing remote hearings as normative practice in the civil justice and tribunal system.

Administrative justice and tribunals

Online processes are being rolled-out across tribunals. This is delivering some useful improvements, but also raising risks of digital exclusion. So, for example, with social security appeals, the 'track your appeal' online facilities are useful whether claimants are acting for themselves, or with the support of an advice agency or social welfare lawyer. However, this is now moving towards a process whereby individuals may only be able to bring appeals to the first-tier tribunal online. This could seriously disadvantage some claimants given the high proportion with digital and/or literacy issues or having no access to the internet. Many claimants (e.g., those appealing Employment and Support Allowance or Personal Independent Payment decisions) have physical or mental health problems which can impair their ability to use an online process effectively. Some speak English as a second language, and some may not have an email address (see comments on digital exclusion below). The Ministry of Justice have also been clear that this is just the first stage of moving away from a face-to-face hearing before a tribunal, something which we consider essential to securing justice.

Digital Exclusion

Given the levels of digital exclusion amongst users, it is vitally important for HMCTS to deliver or enable "assisted digital" support for the online process. The problem of digital exclusion is very real and can be an aspect of vulnerability. Almost five million people in the UK have never used the internet and over 11 million adults lack basic digital skills, such as being able to complete online forms or locate relevant websites.^{xiv} Last year HMCTS spoke of delivering a "network of support centres across the country" for face to face help,^{xv} but there is still little information on these, beyond what can be found on the online centres network website run by the Good Things Foundation's website;^{xvi} some anecdotal evidence suggests that so far the offer from online support centres is negligible. The importance of those who are digitally excluded being able to access meaningful face-to-face support cannot be overstated, as the following case study illustrates:

Thomas, an elderly man who is not computer literate, received court papers alleging he owed his property management company in excess of £8000. He did not understand how to respond to the court papers and wrote to the court enclosing his bank statements to show he was up to date with payments. To his surprise judgement in default was entered against him in the sum of £8116.43. Worried that a bailiff may try and enforce the judgement, Thomas was able to obtain help from RCJ Advice, who successfully applied to set aside the judgement.

JUSTICE's recent report on '*Preventing digital exclusion from online justice*' further explores a range of issues for assisted digital support, with useful recommendations.^{xvii}

Effects of court and tribunal centre closures

Some court closures preceded the current reform programme and have been ongoing since court services were first centralised in 2005. However, they have accelerated such that there are now 250 fewer courts in England and Wales than 15 years ago. Whilst some redeployment in the HMCTS estate has been backed by a business case to deliver better combined courts and civil justice centres, rural areas and populations have been adversely affected by closures, almost becoming 'justice deserts' (e.g., East Anglia and Lincolnshire, North Wales and Cumbria), with court users having to travel long distances and roundtrips that cannot be completed in a day by public transport. Our response to the HMCTS Estates Strategy consultation is included as an **Appendix** to this response.

Engagement, consultation and evaluation

To date engagement has been variable or piecemeal. There have been serious efforts and various different HMCTS fora for engaging stakeholders, including the Litigant-in-Person Engagement Group (LIPeG) and with the Civil Justice Council. However, with 50 distinct HMCTS projects (some service-specific and some cross-cutting) and regular reorganisation of its engagement channels, stakeholders have not always been coherently or consistently engaged.

As regards evaluation, it is important that meaningful measures of access to justice are used to benchmark progress and success. We would direct the Committee to the excellent Legal Education Foundation Report '*Developing the Detail – Evaluating the Impact of Court Reform in England and Wales on Access to Justice*'.^{xviii}

March 2019

ⁱ *Legal Support: The Way Ahead An action plan to deliver better support to people experiencing legal problems* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777036/legal-support-the-way-ahead.pdf

ⁱⁱ *Paras 23 & 29 Post-Implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777038/post-implementation-review-of-part-1-of-laspo.pdf

ⁱⁱⁱ *Transforming our Justice System* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf

^{iv} *Briggs Review of Civil Court Structures* <https://www.judiciary.gov.uk/civil-courts-structure-review/civil-courts-structure-review-ccsr-final-report-published/>

^v <https://www.lawworks.org.uk/about-us/news/public-legal-education-new-vision-statement>

^{vi} https://www.barcouncil.org.uk/media/688940/funding_for_justice_the_last_10_years_version_-_professor_martin_chalkley.pdf

^{vii} Birkenhead lecture 2017

https://www.ucl.ac.uk/laws/sites/laws/files/birkenhead_lecture_2017_professor_dame_hazel_genn_final_version.pdf

^{viii} <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/976/976.pdf>

^{ix} *Early progress in transforming courts and tribunals*

<https://www.nao.org.uk/wp-content/uploads/2018/05/Early-progess-in-transforming-courts-and-tribunals.pdf>

^x <http://www.transformjustice.org.uk/wp-content/uploads/2018/10/BCG-Report-for-Release-1.pdf>

^{xi} <https://justice.org.uk/our-work/areas-of-work/what-is-a-trial/>

^{xii} *Criminal Re-offending, Social and Financial Exclusion, and Civil Legal Aid.*

https://webarchive.nationalarchives.gov.uk/20091016082202/http://www.lsrc.org.uk/publications/FactSheetCriminalOffend_July2009.pdf

^{xiii} <http://www.transformjustice.org.uk/>

^{xiv} *Statistics from Office of National Statistics (“ONS”), Internet users in the UK: 2017* (19 May 2017), at

<https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/> .

^{xv} <https://insidehmcts.blog.gov.uk/2018/06/28/helping-people-to-use-online-services/>

^{xvi} <https://www.onlinecentresnetwork.org/projects/hmcts-face-face-assisted-digital-support>

^{xvii} <https://justice.org.uk/new-justice-report-on-preventing-digital-exclusion/>

^{xviii} <https://research.thelegaleducationfoundation.org/wp-content/uploads/2019/02/Developing-the-Detail-Evaluating-the-Impact-of-Court-Reform-in-England-and-Wales-on-Access-to-Justice-FINAL.pdf>