

'Fit for the future: transforming the Tribunal and Court estate'

Response by the Public Law Project

About PLP

The Public Law Project ('PLP') is an independent, national legal charity which aims to improve access to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers.

Within this broad remit PLP has adopted three strategic priorities in our strategic plan for 2017-2022:

- Promoting and safeguarding the Rule of Law during a period of significant constitutional change.
- Working to ensure fair and proper systems for the exercise of public powers and duties, whether by state or private actors.
- Improving practical access to public law remedies.

PLP undertakes research, policy initiatives, casework and training across a range of public law remedies.

Interest in the consultation

PLP has a national reputation for its work in public law and access to justice, and is a regular user of the court system itself. PLP has focused its answers to the issues of highest immediate concern.

Summary of views

PLP will support policy which increases the accountability of public decision-makers, enhances the quality of public decision-making, and improves access to justice. PLP believes that the introduction of online procedures may meet these aims if implemented well but, crucially, the impact of any reforms need to be fully understood before changes are made. In specific relation to the present consultation, PLP is of the view that the impact on access to justice needs to be fully understood before the implementation of any decision to close or move any court or tribunal buildings. We do not think that, at present, the impacts have been fully comprehended.

There remains a significant amount of research to be done on the feasibility of using digital technology to replace physical courts and tribunals. In the context of this consultation, there is a clear need for further empirical evidence on the extent to which online processes and hearings can mitigate the impact of closed venues, as well as the impact of the reforms on access to justice and public confidence in the Rule of Law.



PLP is concerned that the pace of the closure of courts and tribunals is currently far greater than the pace of court modernisation and preparedness for greater use of digital technology. It is PLP's understanding that the Government's position is that anticipated savings from the closure of court buildings will be used to fund the modernisation programme.<sup>1</sup> However, without more meaningful research and specific plans for what this modernisation entails being made publicly available, proceeding in this way creates a serious risk of negative impacts on access to justice. PLP is also concerned about recent reports showing that the Government appears to have significantly overestimated how much money can actually be saved from closing court buildings.<sup>2</sup>

PLP echoes the concerns raised in Bob Neill MP's open letter to Lucy Frazer QC MP on 27<sup>th</sup> February 2018 regarding travel times, assumptions about capacity of other court buildings which might be receiving cases from closed buildings, and assumptions about the suitability of other buildings to function as court venues.<sup>3</sup>

### Responses to questionnaire

#### **Q1: What is your view of our proposed benchmark that nearly all users should be able to attend a hearing on time and return within a day, by public transport if necessary?**

PLP recognises that in rural areas where a mismatch between the number of court venues and work generated may be more likely, as well as comparatively fewer court users and fewer transport connections, problems with access to a court when necessary already exist.

However, the benchmark proposed is too vague and does not appear to take into account the length of some hearings and the sparsity and quality of public transport in some parts of the country. Nor does it appear to take full account of the possibility of delays or adjournments that may require further travel and disruption to court users, as well as to judges, staff, and lawyers.

It is not clear what is meant by 'nearly all users' and whether this refers to a particular number or proportion of anticipated court users, or to particular categories or groups of court users (e.g. all users, except for disabled court users). It is also not clear if a day is to mean 24 hours, 12 hours, or an 8-hour 'working day'. Any of those three definitions would potentially involve significant travel time which is likely to be disproportionate to the length of most hearings. PLP considers a target of an hour's travel by public transport to be a more appropriate benchmark and does not agree with the position, set out at para. 4.18, that using any specific target travel time would be arbitrary – and certainly no more arbitrary than the proposed benchmark of 'within a day'.

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<sup>1</sup> This was PLP's understanding after attending the conference organised by JUSTICE on 3<sup>rd</sup> February 2018, in particular from remarks by Sir Robin Knowles during the opening address.

<sup>2</sup> 'Court closures: sale of 126 premises raised just £34m, figures show', [The Guardian](#), 8<sup>th</sup> March 2018

<sup>3</sup> [Letter](#) from Bob Neill MP to Lucy Frazer QC MP, 27<sup>th</sup> February 2018.



It is not clear from the consultation document if more support and funding will be provided to help court users with travel fares and other associated expenses of having to take the time to get to court (such as childcare costs). Generally, the costs impact of the proposed court closures on court users has not been sufficiently stated and particularised throughout the consultation document.

It is not clear whether the term 'on time' means arriving at the scheduled time for the beginning of the hearing, or in enough time to meet with legal representatives first.

It is not clear if the statistics cited at para. 4.14 of the consultation document take into account factors such as disability and other protected characteristics (the Impact Assessment published in February 2016 does provide more of a breakdown but it is not clear if the same data was collected for the proposed closures in the present consultation).

**Q2: What is your view of the delivery of court or tribunal services away from traditional court and tribunal buildings? Do you have a view on the methods we are intending to adopt and are there other steps we could take to improve the accessibility of our services?**

PLP recognises the work of the Optimising Hearing Capacity (OHC) project, set out at para 4.31, in respect of freeing up capacity and gaining extra 'sitting days'.

If alternative venues to traditional court and tribunal buildings are to be used more often then there needs to be a clear recognition that some types of hearing require particular facilities. For example, in order to ensure that they are secure enough for all court users and members of the public.

PLP remains unconvinced, in the absence of further research conducted by HMCTS or independent bodies, of the extent to which virtual hearings will mitigate the loss of court buildings. PLP is also unconvinced at this stage that it can be assumed that virtual hearings will free up capacity in the current court system. PLP is further concerned that the extent of digital exclusion has not been given sufficient weight in the government's thinking with regards to the progress of the modernisation programme.

**Q3: What are your views regarding our analysis of the travel time impacts of our proposals? Are there any alternative methods we should consider?**

The consultation document states that 90% of court and tribunal buildings are within 15 miles of another HMCTS location – but this does not necessarily mean within 15 miles of another suitable court or tribunal venue for a particular case. Irrespective of how this statement is read, the assessment does not factor in the increased demand on nearby courts that closure of other venues will cause.

Looking at travel time only as an impact is not sufficient for this exercise. Thorough research needs to be done on issues such as the impact of increased travel times on the inclination of court users, including claimants, defendants and witnesses, to

actually attend. If having fewer available and accessible court buildings leads to, for instance, an increase in hearings collapsing due to absent witnesses, then this needs to be thoroughly explored and considered.

Other issues such as costs also need to be closely examined. There is a lack of reference to costs to court users throughout the consultation document. This is a cause for concern. Doubling the length of a journey time or distance can result in significant expense due to the high cost of rail travel in the UK. Court users are not always given a great deal of notice before their hearing date, and dates can be subject to change, which can make it difficult to purchase cheaper travel tickets in advance. One of the courts that is proposed for closure is Wandsworth County Court, where a large number of housing possession cases are heard. These types of cases often concern individuals of limited financial means.

PLP notes, for example, that in a 'Life Opportunities' survey conducted in 2011 by the Office for Disability Issues, 29% of adults with impairments stated that difficulty with transport was a barrier to employment, and that barriers with using buses and trains included costs, availability of local services, and difficulties with getting to stations or stops.<sup>4</sup>

Further research is needed on the impact in terms of the outcome of court hearings when a witness or defendant is giving evidence by live link or in person.<sup>5</sup>

#### **Q4: Do you agree that these are right criteria against which to assess capacity? Are there any others we should consider?**

PLP would add to the capacity analysis factors such as known or anticipated reforms in areas of law that either currently generate a lot of court and tribunal work, or could reasonably be expected to in the future.<sup>6</sup> For example, the continued roll-out of Universal Credit and the replacement of 'legacy benefits' is likely to have an effect on demand on the Social Entitlement Chamber of the First-Tier Tribunal in a way which is currently difficult to predict. Some areas of the country also experience higher levels of homelessness, and as the Homelessness Reduction Act 2017 comes into force this may generate an increase in cases that come before the courts (e.g. reviews in the County Court under s.204 Housing Act 1996, or as judicial reviews). The impact of Brexit may also increase demand on courts and tribunals in a wide range of areas of law, immigration and public law being two obvious examples.

Notwithstanding the above remarks about trends, anticipating the workload of a court or of a particular jurisdiction is extremely difficult to do with any confidence or accuracy. PLP's view would be that the modernisation programme needs to be given more time to bed in and take effect, and that the effect of the programme on the

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<sup>4</sup> Office for Disability Issues, [Life Opportunities Survey: wave 1 results](#), 8<sup>th</sup> December 2011, pages 10 and 11.

<sup>5</sup> See, e.g., 'Remand by skype – the dystopian future for an already broken system', [Transform Justice](#) blog, 19<sup>th</sup> March 2018.

<sup>6</sup> This may have been what the consultation document was referring to by 'forecast changes in receipt levels by jurisdiction' at 4.24, page 25.



demands of courts would be best assessed at a later stage rather than closing courts prematurely. The consultation document does not make clear if courts, once closed, can be re-opened or bought back.

**Q5: What is your views on the proposed principles and approach to improving the design of our court and tribunal buildings? Do you have any further suggestions for improvements?**

The design principles are welcome. However, PLP is aware that the amount of funding available can provide the conditions in which such principles—though reasonable and unobjectionable in the abstract—are given practical operation. PLP is hopeful that the political appetite for funding the modernisation programme will also be seen in improving the design of court and tribunal buildings.

**Q6: What are your views on our approach to people and systems? How do we best engage with the widest possible range of users as we develop scheduling and listing systems? What factors should we take into account as we develop our plans?**

PLP is concerned about the risk that a centralised listing system is likely to be less flexible and slower to react to short-notice changes and the demands of local areas.

It is very unclear what the precise role of ‘digital assistants’ or ‘assisted digital support’ would be, and whether, for example, they would be expected to provide legal advice to court users.

**Q7: Do you have views on our approach to evaluating proposals for estates changes or any suggestions for ways in which this could be improved?**

There needs to be independent, expert review of the reform package, conducted at regular stages of the programme.

**Q8: What is your view on our proposed approach to future estates consultations?**

Future consultations need to be much clearer about which court and tribunal venues are to remain open and where the workload of courts proposed for closure will be re-allocated to. They also need to be clearer as to the research (and its methodology) and modelling supporting the plans. This will make it far easier for members of the public to assess the impact of a closure on their ability to access a court when they need to.



**Q9: What is your view on how these proposals are likely to impact on groups of court and tribunal users with particular protected characteristics as defined in the Equality Act 2010? Are there any sources of further research that you think we should consider?**

As set out above, PLP is of the view that much more thought needs to be given to the impact of the proposals on court users with protected characteristics. For example, disabled people are more likely to have a low income and/or to be claiming means-tested benefits,<sup>7</sup> are less likely to be able to pay for travel costs outside of their budget at short notice, and are more likely to be digitally excluded.<sup>8</sup> It is essential that primary research on the effects of the reforms for court users with protected characteristics is undertaken by the government prior to the implementation of the scheme.

**Q10: Do you have any other comments on our future estates strategy?**

In addition to the introductory summary paragraph above, PLP is particularly concerned about the timing of the proposed court closures. The court modernisation programme may be well-intentioned but there is an absence of particulars and clear, thorough research, as well as a lack of evidence that the modernisation programme will lessen demand on physical court buildings.

PLP is concerned that by pressing ahead with court closures before allowing enough time for the modernisation programme to bed in and for evidence to be gathered and research conducted, the quality of access to justice will decrease. The effect on the appearance of justice being done also needs to be thoroughly considered and researched in respect of both court closures and the modernisation programme. The modernisation programme will be of little real benefit if public confidence in the justice system is diminished further.

**Public Law Project**

**27<sup>th</sup> March 2018**

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<sup>7</sup> See, e.g., [Disability Facts and Figures 2016](#), published by the Papworth Trust: 40% of disabled children in the UK live in poverty (at page 7).

<sup>8</sup> Office for National Statistics, [Statistical Bulletin 19<sup>th</sup> May 2017](#): 22% of disabled adults had never used the internet in 2017.