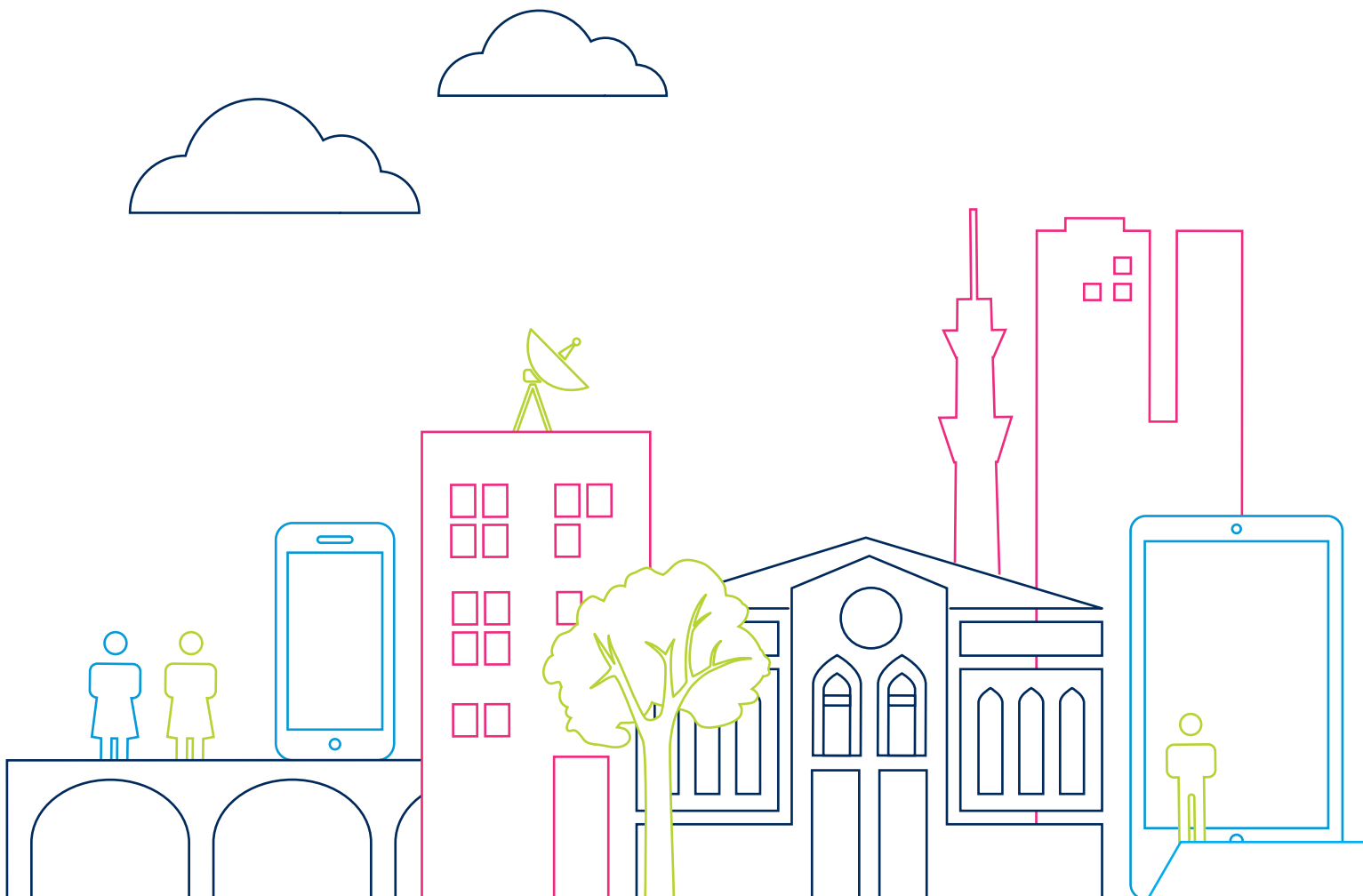




HM Courts &  
Tribunals Service

# Response to **'Fit for the future: transforming the Court and Tribunal Estate'** consultation







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Tribunals Service

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Response to consultation carried out by Her Majesty's Courts & Tribunals Service, part of the Ministry of Justice.

This information is also available at <https://consult.justice.gov.uk/>



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# Introduction and contact details

This document forms the post-consultation response to the consultation paper, 'Fit for the future: transforming the Court and Tribunal Estate'.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting the Estates Consultation Team at the address below:

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This report is also available at <https://consult.justice.gov.uk/>

Alternative format versions of this publication can be requested from **[estatesconsultation@justice.gov.uk](mailto:estatesconsultation@justice.gov.uk)**.

## **Complaints or comments**

If you have any complaints or comments about the consultation process you should contact HM Courts & Tribunals Service at the above address.

# Foreword

**On the 18 January 2018, we announced that HM Courts & Tribunals Service was publishing 'Fit for the future: transforming the court and tribunal estate'; a consultation outlining proposals on our future strategy and approach to reforming the court and tribunal estate.**

The consultation outlined the three core principles behind our approach – ensuring access to justice, providing value for money for the taxpayer, and ensuring efficiency in the long term – and how we should approach these as modernisation takes place. It set out our proposed approach to future consultations on changes to the estate as HMCTS reform initiatives continue to deliver results.

The consultation received 249 responses and it is clear from the range and detail of the responses we received that our courts and tribunals are valued highly by those that use and work in them. I would like to thank all those who took the time to read the consultation and submit a response. To get our estates principles right for the future, we have taken the time since the consultation closed in March to consider very carefully all comments and proposals we received in response to the variety of themes and questions posed.

These proposals, when combined with the wider changes that will come from our modernisation programme, will mean some changes to the way justice is delivered. Our central principles are already set: the system must be just, proportionate and accessible to everyone. However, to make them reflect the realities of the 21st century, we need to look at the technology, working practices and

opportunities offered by the modern world to offer new, enhanced and more convenient routes to justice. The Government and the judiciary have a shared commitment to a £1bn reform programme that will use modern technology and ways of working to transform our justice system, so that it continues to lead and inspire the world. An important part of this transformation is an acknowledgement that our court and tribunal buildings will need to be used differently in the future.

As we pursue and implement more opportunities to settle disputes in a way which progresses cases away from our court estate - be it online or using remote links and technologies – we expect the demand for access to a physical court or tribunal hearing room to decrease. We will always need a court and tribunal infrastructure; and we want to improve and invest in those buildings which are, and will remain, essential to supporting our delivery of justice services. The proposals that form the basis of our new strategy will enable us to think differently about where court or tribunal buildings are needed, and target our investment, making this go further. We anticipate that this will mean having fewer, better buildings that are well-located and well-connected, welcoming, easy to use, and in good condition. We recognise that too many of our current court and tribunal buildings have shortcomings which we need to address.





We recognise the value of a traditional court hearing, and the need for defendants, victims and witnesses to be able to travel to court when they need to. New technology offers opportunities to improve the services the courts and tribunals offer and will enable new and innovative ways to access and deliver justice. Technology will often enhance our services rather than replace them. It will be our servant, not our master, and will allow our courts and tribunals to resolve disputes more quickly and at lower cost.

Informed by responses to the consultation, we have looked carefully at the critical question of access to justice and travel time to and from court. This aspect of the consultation generated the largest response; many of those who responded to the consultation had deep concerns about a benchmark that lacked specificity. We have therefore made a strong commitment within our estates principles that, in considering any future proposals for rationalising the estate, the ability to access justice by means of travelling to a physical court or tribunal building will continue to be expressly taken into account in assessing and making the case for estate change. Importantly, we will consider the different types of users and nature of cases affected by the building in

question; we recognise a one-size-fits-all approach will not work.

We have outlined in the response to the consultation the new principles that will inform our future decision-making. Comments, criticisms and concerns have made us think hard and seriously about our approach and we have listened to what you have had to say. The proposals in this document will ensure that our estates strategy keeps pace with and complements our wider programme of reform and modernisation. These new principles and the strategy we have adopted for our court and tribunal estate will ensure a justice system fit for the 21st century and the resources to make it sustainable.

***The Rt Hon David Gauke MP***

**Lord Chancellor and Secretary of  
State for Justice**

# Executive Summary

## Background

We published the consultation paper 'Fit for the future: transforming the Court and Tribunal Estate' on 18 January 2018. The consultation recognised that there had been significant changes to the court and tribunal estate since 2010. In that period we reduced the footprint of our estate to improve utilisation of our buildings. We were guided in this by an existing set of HMCTS estate principles – maintaining access to justice, delivering value for money, and ensuring operational efficiency.

## Impact of Court Reform

As we look to the future, our reform programme is changing the way court and tribunal services are delivered. We are building a system which uses technology to enable people to access justice in simpler, easier and swifter ways. We recognise that provision for hearings in court rooms will remain essential for the delivery of justice, and that we need an estate of fit-for-purpose courts and tribunals. As we enter the next stage of the reform programme, fewer interactions with the court and tribunals system will happen in a courtroom. Instead, as people use remote access to the courts through digital services, video hearings and online applications, we expect that we will need less physical courtroom space as a result.

As we modernise our processes it is appropriate to think again about the appropriate principles when considering any reduction to the estate. In order to ensure these updated principles best reflect the needs of our users, we have listened to those who use and work in our courts and tribunals before deciding on the way forward.

We need to consider further court closures in the context of our modernisation approach, which will ensure that we provide fair and proportionate access to justice. We expect an increase in the number of people using remote access to the courts which will reduce the use of court and tribunal buildings in the future. We make a commitment that we will not act on that assumption by proposing to close courts unless we have sound evidence that the reforms are actually reducing the use of those buildings.

Naturally, with an estate of this size there may be changes in demand for reasons other than uptake of digital services, and in those circumstances, it may be sensible to close or merge courts. Furthermore, this consultation has no effect on previously announced closures which will go ahead as planned.

We want to enhance justice not reduce it. We have listened carefully to the responses in the consultation. We have outlined here the key messages we heard.

## What we heard in the consultation

In our consultation we heard that respondents were most concerned about how we assess users' journeys to courts and tribunals. We proposed in the consultation that our benchmark should be that people who need to attend a hearing in person should be able to attend and return home on the same day. It was clear from the responses we received that this was not specific enough and many were concerned that this could include some very lengthy or inconvenient journeys.

We have therefore enhanced our principles to make it clear that we expect journeys to court to be reasonable, and set out that for the overwhelming majority of users a reasonable journey would be one that allowed them to leave home no earlier than 7.30am, attend their hearing, and return home by 7.30pm the same day, and by public transport where necessary. We have also set out in much greater detail how we will measure this, what other factors we will consider – for example the circumstances of users including those that are vulnerable, and the mitigations we can apply when users have difficulty attending court.

We also heard that people were broadly positive about our proposals regarding the design of our court and tribunal buildings. There was a clear message that the security of those who use and work in our courts and tribunals needs to be paramount, along with ensuring suitable facilities for vulnerable users. We have made sure that the Court and Tribunal Design Guide (published alongside this document at [www.gov.uk/government/publications/court-and-tribunal-design-guide](http://www.gov.uk/government/publications/court-and-tribunal-design-guide)) provides a flexible room design which includes enhanced security standards and provides for the needs of vulnerable victims and witnesses.

There was widespread support for our work to introduce Digital Support Officers – who will support the introduction and longer-term support for digital services in local courts – as well as support which will assist users who do not wish or are unable to access online services. We have listened to concerns regarding the resourcing of these services, and will ensure that the right number of staff support these activities.

We also had important feedback on the nature of future

consultations: we heard that we need to take great care when considering the timing of future consultations, and to ensure we talk to the right people at the right time as we develop our plans. We agree, and this response outlines who and when we will consult on closures. We expect that increased use of digital services will mean that fewer court and tribunals hearings will be needed in a traditional courtroom setting, and therefore fewer buildings will be needed. However, we are committed to having clear evidence that these reductions are happening before we decide to close any further sites.

### **Our revised estates principles**

As a result of responses to the consultation we have considered and updated our principles. The revised principles are stronger, and provide greater assurance that, when we make changes to our estate, we maintain effective access to justice, provide value for money to the taxpayer and make sure that our courts and tribunals are as efficient as possible.

The changes to the principles seek to ensure the following.

- Everyone who needs to access the court and tribunal estate should be able to do so. Journey times to court should be reasonable and take into account the different needs and circumstances of those using the courts. Mitigations are available for those who experience difficulty attending court.
- We want to make sure that our buildings are in the best condition possible for those that use them and that they can be maintained at a reasonable cost to the taxpayer.
- We will focus on the provision of multijurisdictional centres which are able to provide flexible access for the people who use our courts and tribunals. We will harness the power of technology to offer enhanced access and greater flexibility.

Throughout the document we have detailed where changes have been made to the principles, and the rationale for them. Below we have provided our estates principles - published in 2015 - prior to the changes we have made as a result of this consultation, alongside our new estates principles.

These new estates principles are intended to strengthen and guide our analysis and assessment when we consider future changes to the court and tribunal estate and to align any future changes with our modernising services. They will be applied

by the HMCTS Board and the Lord Chancellor throughout the decision-making process regarding the court and tribunal estate. Decisions regarding our leasehold estate, which is predominantly used by tribunals, will also be guided by the new principles, including when we are considering not extending our occupation of a leasehold site. Throughout the document we have captured new principles that have been added and why we think the change is needed.

The updated principles and approach set out in this document underpinned our thinking and planning in the most recent Reform Programme business case.

New Principles	Former Principles
<b><i>Ensuring access to justice for all</i></b>	
<p>Everyone who needs to access the court and tribunal estate should be able to do so.</p> <p>To ensure continued access to justice, journey times to court should be reasonable and we will consider carefully the likely impact on travel times for any proposal, while recognising that different users have different needs.</p> <ul style="list-style-type: none"> <li>• In determining whether a journey is reasonable we will consider the ability of users to attend a hearing on time and return, by public transport if necessary, to include consideration of the following points: <ul style="list-style-type: none"> <li>- the length of journey both by car and public transport, with the expectation that the overwhelming majority of users would be able to leave home no earlier than 07:30 to attend their local court and return by 19:30 using public transport if necessary;</li> <li>- the difficulty of the journey including frequency of public transport and the number of changes required;</li> <li>- the cost of potential journeys;</li> <li>- the type of cases heard at the court or tribunal;</li> <li>- the opening hours of the court or tribunal;</li> <li>- the needs of vulnerable users; and</li> <li>- whether there are available mitigations to reduce the impact on users with longer journey times, if the numbers of such users are small.</li> </ul> </li> </ul> <p>Where applicable, mitigations may include (although not be restricted to) the following:</p> <ul style="list-style-type: none"> <li>- Varying the start or end times of hearings, subject to judicial approval and where the case type was suitable (which could also include a change of location). This would provide an effective mitigation for those people whose earliest arrival at court was after 10:00, or who had to leave early;</li> <li>- Provision of local video links; and</li> <li>- Consideration of supplementary provision where this is appropriate to the nature of the case type/workload, and in agreement with the judiciary.</li> </ul>	<p>To ensure continued access to justice when assessing the impact of possible closures on both professional and lay court and tribunal users, taking into account journey times for users, the challenges of rural access and any mitigating action, including having facilities at local civic centres and other buildings to ensure local access, modern ICT and more flexible listing, when journeys will be significantly increased.</p> <p>To take into account the needs of users and, victims, witnesses and those who are vulnerable.</p>
<p>To assess the impact of court closures on travel with evidence-based modelling and real-world examples of typical travel times and costs for those courts proposed for closure, drawing on local knowledge.</p>	
<p>To maintain and expand the presence of HMCTS in key strategic locations to meet the needs of a larger proportion of the population, while taking into account the needs of users and in particular, victims, witnesses and those who are vulnerable.</p>	
<p>Where it is used, supplementary provision, which involves the delivery of court and tribunal services outside of the fixed HMCTS estate, must be safe, secure and accessible and also reflect the dignity and authority of the court. In exploring opportunities for using supplementary provision, intended to benefit court and tribunal users by increasing accessibility and flexibility, we will ensure that appropriate case types are heard in such venues.</p>	
<p>To understand and work closely with our stakeholders including other government agencies such as the CPS, social services, police forces, local authorities and Cafcass.</p>	<p>To support the requirements of other agencies such as the CPS, social services, police forces and Cafcass.</p>

New Principles	Former Principles
<b><i>Delivering value for money</i></b>	
Without compromising access to justice for all, to ensure we reduce the current and future cost of running the estate and invest appropriately in other routes to justice; to deliver value for money for the taxpayer and to reduce costs to the taxpayer of running the estate, working collaboratively with key partners across the public sector.	To reduce the current and future cost of running the estate.
To ensure that our buildings are in the best condition possible and can be maintained at an affordable cost.	
To focus our investment into those buildings that will best provide effective access to justice and best meet the needs of users.	
To recognise that under-used buildings represent a poor return on investment and to remove from the estate buildings that are difficult and expensive either to improve or to upgrade.	
To maximise the capital receipts from surplus estate for reinvestment in HMCTS.	To maximise the capital receipts from surplus estate for reinvestment in HMCTS.
<b><i>Enabling efficiency in the longer term</i></b>	
To move towards an estate with buildings which are larger and facilitate the more efficient and flexible listing of court and tribunal business while also giving users more certainty when their cases will be heard.	To move towards an estate with buildings which are larger and facilitate the more efficient and flexible listing of court and tribunal business whilst also giving users more certainty when their cases will be heard.
We will present proposals for changing the court and tribunal estate in the context of the impact of the changes delivered by the reform programme. This will be drawn from our experience as we test prototypes and assess initial roll outs.	
To increase the ability to use the estate flexibly across the criminal jurisdiction and separately across the civil, family and tribunal jurisdictions.	To increase the ability to use the estate flexibly across the criminal jurisdiction and separately across the civil, family and tribunal jurisdictions.
To move towards an estate that provides dedicated hearing centres, seeking opportunities to concentrate back office function where they can be carried out most efficiently.	To move towards an estate that provides dedicated hearing centres, seeking opportunities to concentrate back office function where they can be carried out most efficiently.
To invest in the modernisation of the estate by taking advantage of the latest communication methods (Wi-Fi and video links), greater use of online services and digital systems to support the delivery of justice.	To improve the efficient use of the estate by seeking to improve whole system efficiency, taking advantage of modernised communication methods (Wi-Fi and video links) and adopting business processes to increase efficiency and effectiveness.
To improve the way we deliver day to day maintenance at our buildings through the use of building champions.	To reduce the reliance on buildings with poor facilities and to remove from the estate buildings that are difficult and expensive either to improve or to upgrade.
To ensure that important historic buildings are properly protected and maintained	

New Principles	Former Principles
To ensure that our estate is as effective, efficient and flexible as possible, irrespective of administrative boundaries and to focus on users of our services, including making improvements to support victims and witnesses, because of the critical role they play in the justice system.	To increase the efficient use of the estate wherever possible irrespective of current administrative boundaries.
As changes are made across our estate, to use the new Court and Tribunal Design Guide, to ensure that we maximise our investment across buildings and that our designs take us closer to meeting the requirements of modern court and tribunal buildings.	
To support our courts and tribunal centres by providing dedicated front of house staff who are knowledgeable, trained and skilled to support members of the public and professional users. These staff members will be given continued training and skills in managing new technologies.	

**1. Summary of responses for the 'Fit for the future: transforming the Court and Tribunal Estate' consultation.**

- 1.1. The consultation generated 249 individual responses and HMCTS is very grateful for all contributions and suggestions made in response to the consultation.
- 1.2. By type of respondent the 249 responses break down as follows:
  - 40 responses from members of the judiciary
  - 11 responses from judicial organisations
  - 55 responses from magistrates
  - 53 responses from professional users
  - 59 responses from staff members, trade union bodies and 3rd sector organisations
  - 31 responses from individual members of the public
- 1.3. Given the scale of reform and the decisions needed regarding the future of the court and tribunal estate, we wanted to give respondents the opportunity to respond as fully and openly as possible about the wide range of topics covered in the consultation. The consultation asked open questions intended to generate detailed and constructive responses. As a result, we are not able to provide a statistical analysis of those "in favour" or "opposed" to the proposals, in a binary way, as would be the case in a consultation on the closure of a specific court.

The full list of questions is included at Annex B for reference.

# Responses to specific questions

## 2. Access to justice in a reformed HMCTS

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?

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

### Summary

- 2.1. The first part of the consultation paper proposals focussed on ensuring access to justice to physical court and tribunal buildings. We discussed how location would be considered when developing future proposals about the court and tribunal estate. We have brought together our summaries of responses to Questions 1 and 3 consecutively in this section, given the overlap in reactions to the theme, which was heavily focused on travel.
- 2.2. In the consultation document we had proposed that users should be able to attend court or a tribunal on time and return within a day, by public transport if necessary. Building on this principle, and listening to respondents' challenge to be more specific, we have set out what we think a reasonable journey would be for the overwhelming majority of court and tribunal users – namely, that in considering a future proposal to close a court, we will assess the ability of users to travel to and from court between 7.30am and 7.30pm. It is not expected that most users will start and end their journeys at precisely these times, but that travel to and from court could reasonably be expected to take place within these hours and these parameters will therefore be used in our analysis in future.
- 2.3. Several responses highlighted a range of other important and relevant considerations. We have listened to these views and are committing within our revised principle to factoring into our assessment of the travel impact a range of other factors, namely: the difficulty of the journey, including the frequency of public transport and the number of changes required; the cost of potential journeys; the type of cases heard at the court or tribunal; the opening hours of the court or tribunal and the needs of vulnerable users. We consider that the outer travel time parameters of 7.30am to 7.30pm are necessary but not sufficient for our overall assessment of the impact. Finally, as part of our assessment, we will consider what mitigations are available to reduce the impact of the travel challenge on users facing longer or more difficult journeys, and we have set out what we will take into account when formulating proposals and making decisions.
- 2.4. In introducing question 3 of the consultation, we outlined our intention to improve upon the analytical approach taken in prior proposals for court closures. In the last court closure consultations published in January alongside this consultation, we provided example journey times by both car and public transport from some key towns and locations in the catchment area of the closing court, alongside the 'closing court to receiving court' travel times. We intend to expand this analysis in future, continuing to provide real world examples of typical travel times and costs and sense checking these with the local knowledge of our people.
- 2.5. Based on this consultation, and the additional principle captured in the next chapter, our **new estates principles** which will guide our assessment of the impact of future proposals on access to justice are as follows:
  - Everyone who needs to access the court and tribunal estate should be able to do so.
  - To ensure continued access to justice, journey times to court should be reasonable and we will consider carefully the likely impact on travel times for any proposal, while recognising that different users have different needs.
  - In determining whether a journey is reasonable we will consider the ability of users to attend a hearing on time and return within a day, by public transport if necessary, to include consideration of the following points:
    - o the length of journey both by car and public transport, with the expectation that the overwhelming majority of users would be able to leave home after 07:30 to attend their local court and return by 19:30 using public transport if necessary;
    - o the difficulty of the journey, including frequency of public transport and the number of changes required;
    - o the cost of potential journeys;
    - o the type of cases heard at the court or tribunal;
    - o the opening hours of the court or tribunal;
    - o the needs of vulnerable users; and
    - o whether there are available mitigations to reduce the impact on users with longer journey times, if the numbers of such users are small.

- Where applicable, mitigations may include (although not be restricted to) the following (a full list of mitigations can be found in Section 9):
  - Varying the start or end times of hearings, subject to judicial approval and where the case type was suitable (which could also include a change of location). This would provide an effective mitigation for those people whose earliest arrival at court was after 10:00, or who had to leave early;
  - Provision of local video links; and
  - Consideration of supplementary provision (i.e. non-HMCTS locations such as town halls) where this is appropriate to the nature of the case type/workload, and in agreement with the judiciary.

- To assess the impact of court closures on travel with evidence-based modelling and real-world examples of typical travel times and costs for those courts proposed for closure, drawing on local knowledge.
- To maintain and expand the presence of HMCTS in key strategic locations to meet the needs of a larger proportion of the population, while taking into account the needs of users and in particular, victims, witnesses and those who are vulnerable
- To understand and support our stakeholders including other government agencies such as the CPS, social services, police forces, local authorities and Cafcass.

2.6. A further principle of relevance to access to justice, but captured within the 'delivering value for money' heading is as follows:

- To focus our investment into those buildings that will best provide effective access to justice and best meet the needs of users.

### **Question 1 – Detailed breakdown of responses**

**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?**

2.7. Of the 249 total responses received to the consultation, 231 supplied an answer to this question. Of those, 55 were identified as being in favour of the proposed benchmark, one magistrate considered the proposal "a good and sensible benchmark", while the Association of Personal Injury Lawyers stated that:

...the aim of users being able to attend a hearing on time and return within a day, by public transport if necessary, will allow for greater consideration of the needs of different court users.

Association of Personal Injury Lawyers

2.8. Among those supporting the benchmark there were areas highlighted as requiring further detail, such as clarification of what is meant by 'a day'. For example, the Magistrates' Association, while not supportive of the proposals, commented as follows:

The MA [Magistrates' Association] believes that this benchmark is not helpful as it is not sufficiently specific. For example, it is not clear what number "nearly all" would constitute, and it is equally unclear what "within a day" would mean in this context (i.e. inside daylight hours, within a 24-hour period, within the running time of public transport over a calendar day etc.).

Magistrates' Association

The Police and Crime Commissioner for West Mercia also commented:

The proposed measure for a reasonable time to travel to and from court, as well as participating in the hearing, of a day is an unhelpful benchmark. It is unclear if by day you are proposing, a 24-hour period, a standard working day of 7 hours 30 mins or some other variation.

Police and Crime Commissioner for West Mercia

2.9. Respondents (both positive and negative towards the proposal) generally felt that a benchmark was needed, but some questioned how fair the proposed standard would be for the disabled, elderly, those relying on public transport or living in rural areas.

2.10. It was suggested that particular focus should be given to witnesses and victims. Many respondents commented on how transport infrastructure and public transport accessibility varies widely across the country. Concerns were expressed that this



would have a disproportionate impact on women, those with caring responsibilities and those on low incomes.

- 2.11. There was also concern expressed that the proposal could lead to an increase in failure to attend warrants being issued, thereby wasting court and Police time. The Law Society, for example, pointed out that in some areas defendants are not remanded into custody and that this could mean that “many defendants will fail to attend, and will end up being arrested and taken to court by police on a subsequent occasion”.
- 2.12. There was a recurring argument that the comparison with Scotland and adoption of a similar proposal used by the Scottish Court Service was flawed, as Scotland has a very different geography and democratic makeup to England and Wales. There were numerous responses that discussed the unsuitability of the benchmark for Wales, where it was argued that there had been a decline in the coverage of buses. Similar arguments were made by those with knowledge of other local circumstances.
- 2.13. A point repeated was the concern that if journey times were to increase then those attending court would experience greater stress and anxiety. It was argued that this would be felt acutely by children and young people, who would also not have the means to pay for longer journeys. A Youth Panel member stated that:

...we are expecting minors to spend a day, sometimes without adult supervision, to make their own way to a courthouse which is miles away. Children and young people should and are considered as vulnerable and I do not think this is appropriate or achievable for a large number of young defendants or witnesses.

Magistrate and Northamptonshire County Youth Panel member.

- 2.14. Similarly, it was argued that the proposal would also impact upon judges, who may be required to travel further.
- 2.15. Some respondents argued that the suggested benchmark was arbitrary with others suggesting that 90 minutes would be a more suitable time-frame. In many cases, respondents questioned whether HMCTS had taken into account the practicality of when a hearing would start. Suggestions were made that we consider factors such as cost (very prevalent in responses), the distance to bus stops and train stations, the views of disabled people and the fact that public transport for disabled people is hard to use and unreliable. The following comments from the Buckinghamshire Disability Service highlighted the latter:

Much public transport is inaccessible or impracticable for disabled people. Travel times can be very significantly higher for many disabled people whatever mode of transport is used, due to the need for rest breaks. Disabled people also have lower overall stamina for journeys than non-disabled people.

Buckinghamshire Disability Service (BuDS)

- 2.16. Furthermore, the use of ‘nearly all’ users was considered by some to lack specificity. It was suggested that this should be a commitment for all users, or that there should be a specified proportion of users.
- 2.17. We received responses from some organisations such as the Law Society which argued that a benchmark would represent a fundamental misappraisal of the crucial right of users to appear in court in person. Some respondents asserted that the benchmark would entail a movement away from a key value of local justice, pointing to the beneficial impact of local administration of justice on communities and reoffending and rehabilitation rates.
- 2.18. Finally, there were comments from other respondents that criticised the perceived lack of evidential basis for the view that virtual hearings, online services and greater use of digital technology would decrease the need for users to attend court in person.

### **Question 3 – Detailed breakdown of responses**

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

- 2.19. Of the 249 total responses received to the consultation, 201 supplied an answer to this question. It is not possible to clearly identify positive or negative responses as many used it as an opportunity to reiterate concerns made around travel times. However, many of the responses were positive about the ways in which we would be calculating travel time impacts. It was considered positive that we would consider travel time from the catchment area of a closing site to the proposed receiving site, as opposed to from closure site to receiving site (*This approach has in fact been undertaken in recent consultations, so is not a new initiative. This is potentially a misperception of how travel impacts are calculated*). The Crown Prosecution Service, for example, commented as follows:

The CPS [Crown Prosecution Service] welcomes the change from using straight 'closing court to receiving court' travel times to 'travel to the receiving court for those in the catchment of the closing court' as this better assesses the impact on users.

Crown Prosecution Service

- 2.20. In general, most respondents supported the proposed methodology, but typically the view was expressed that it did not factor in additional important factors, some of which were also referred to in question 1, namely: cost; the practical realities of attending court (such as needing to be in attendance one hour before the start of a hearing); the length of a trial (possible lasting several days); and lack of familiarity with an area being travelled to. One member of the public recounted their own experience of traveling to court:

... it is not only about travel time. I had a number of postponed hearings I had already pre-booked and paid for. I also was unable to meet with [sic] pro bono due to travel costs as I had two court hearings in one week which cost me representation.

Member of the public

- 2.21. The Public Law Project, a national charity, commented as follows:

...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. ...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...

...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.

Public Law Project

- 2.22. Another crucial area for respondents was the need to use local knowledge of travel times and access. One member of the judiciary responded, for example:

"Pleased to hear that you propose to check your model with people who have local knowledge".

Judge

- 2.23. Many respondents were of the view that user groups should be established when court closure proposals are put forward, to discuss access and journey times and find out real-world factors. It was asserted that Google Maps was an unreliable source of information, particularly in rural areas, Wales was cited as an example:

Travel times in Wales are often slower than in other parts of the country because of geography and because, in many areas, public transport is infrequent, making the calculation of travel time difficult to calculate. It is essential to have regard to the practical reality of transport rather than theoretical possibilities.

Association of Judges of Wales

## Question 1 and Question 3 – Our Response

### Travel time benchmark

- 2.24. The points put forward by many respondents about the need for greater clarity in the wording of the benchmark are well made. In considering a measure that would capture the entire population, we have built upon and adapted our original principle of travel to and from court within a day. The principle now acknowledges that journeys to and from court must be reasonable. In determining what is reasonable, we will undertake our analysis with an expectation that an overwhelming majority of users should be able to travel to and from court for a hearing by public transport, setting out no earlier than 7.30am, and returning home no later than 7.30pm. For most users, and for more types of hearing, we would expect start times to be later, and finish times earlier; these parameters are intended to capture a very broad range of types of hearing, and types of user.
- 2.25. We have stopped short of saying that absolutely all users should be able to reach absolutely all hearing types between these start and finish times, because there will be some very specific circumstances in which we know that will not occur – including for some of those attending hearings in specialist jurisdictions which have very few hearing locations nationally; and those who live in more remote locations.
- 2.26. Our measurement of journey times will only relate to travel times to local courts and will not take account of people travelling outside their usual catchment area. For example, this may happen because they have been charged with committing a crime when away from home, have witnessed a crime away from home, or where two parties to a case live so far apart that there is no mutually local court. We will, however, be working to make more use of video link technology to offer additional options in such cases to reduce the need to travel where judges agree that is appropriate.
- 2.27. In response to a suggestion that we set a percentage “acceptable level” for the population who can reach court, we believe any figure selected would be arbitrary and equally would take us away from our principle starting point that, aside from the above exceptions and circumstances, everyone should be able to access a court or tribunal.
- 2.28. It is important to highlight that our court estate remains accessible to the majority of people. The close proximity of HMCTS courts and tribunals – of 332 operational court and tribunal buildings providing face to face services, 245 are within 5 miles, 280 are within 10 miles, and 304 are within 15 miles of another court or tribunal - means that the majority of users will not face onerous journeys. The move to focusing on key strategic locations will mean that more densely populated centres will have improved access to better quality court and tribunal buildings.
- 2.29. Having established a view of reasonable limits for assessing travel time impacts, we have undertaken an assessment of what this means for users of the current court estate. This analysis is based on Google travel time data and middle layer super output area (MSOA) (census-based) population areas, looking at the proportion of people in England and Wales who are able to get to and from their nearest court (post announced closures) by car or by public transport. The table below shows, broken-down by jurisdiction, the proportion of the population who can arrive at court for 9.30am, 10.30am and 11.30am nationally by public transport leaving not before 7.30am. Proportions are also shown for arrival at the home location by 7.30pm when leaving at 3.30pm, 4.30pm and 5.30pm.

Public transport	Mags	County	Crown	Tribunals
9:30am	95%	95%	92%	93%
10:30am	98%	98%	97%	97%
11:30am	98%	98%	98%	98%

Public transport	Mags	County	Crown	Tribunals
3:30pm	98%	98%	98%	98%
4:30pm	98%	98%	97%	97%
5:30pm	95%	96%	93%	93%

- 2.30. These figures show that our expectation of a reasonable journey would currently apply to the overwhelming majority of users. Our new principle recognises, however, that our assessment of the impact of future changes to the court estate on access to justice should not be confined to analysing the length of journeys and their start and finish times but also needs to consider other factors (see below), with the latter affecting what is reasonable.
- 2.31. In response to the suggestion that we set a time-limit for travel, such as 90 minutes, attending a court or tribunal hearing is a typically rare event for most users, with a wide range of jurisdictions and case situations possible; our assessment of what is reasonable in travel impact will be affected by this. It would be disproportionate to assume that in all instances anyone travelling should be able to do so within 90 minutes. Our parameters are intended to set a reasonable outer boundary for considering travel impacts across the range of possible case types.

#### ***Other factors in assessment of impacts on access to justice***

- 2.32. We agree with the arguments made that our principle should take into account a range of other relevant factors. Our new principle recognises that our assessment of the impact of changes to the court estate on access to justice is not confined to analysing the length of journeys and their start and finish times but also the cost and complexity of the journey (for instance, the number of changes involved) and the circumstances of the case types and users concerned (for example, impacts on disabled users). Therefore, we will conduct detailed assessments of proposals on a court by court basis, recognising the different circumstances and requirements of potential users.
- 2.33. We will consider the types of cases heard at the building proposed for closure, which in turn affects the potential for repeated journey for a trial lasting several days (which was raised in some responses), compared to hearing types of shorter duration or completed in one day. The opening hours of the building proposed for closure will also be considered. Our assessment will also take into consideration types of users affected, for example, whether a Youth Court operates at the building or the building houses Social Security and Child Support tribunal hearings. The proximity and the facilities available at buildings which could receive the work of the closing court or tribunal will be considered. Additionally, we will consider whether the hearings in question are to be dealt with by different means in future, not requiring travel at all; this will be based on evidence of change, and not assumed. Vulnerable users' needs will be explicitly considered as part of our assessment and our commitment to this is stated within our new principle, set out above in paragraph 2.5.

#### ***Real-world assessments***

- 2.34. To support our consideration of how a potential court closure will impact travel times, we will be conducting 'real-world' travel time assessments when considering a court closure. These will use software that aggregates real journey times (including average delays, connection times etc.) relevant to the appropriate times of day. In future, these will take into account a wider range of local towns and villages within the catchment of the court proposed for closure (a minimum of 20) and these will be ranked by population size. It will include a consideration of the complexity of public transport journeys (different modes of transport) and their cost. Differences in, for example, bus service availability across the country will be captured in taking this approach. We will undertake an assessment of these journeys to highlight areas of concern and an explanation of potential mitigations that could be applied in these cases. Our assessments will continue to draw on local knowledge, as emphasised by a number of respondents. This approach has been captured within our new estates principle, as follows:

To assess the impact of court closures on travel with evidence-based modelling and real-world examples of typical travel times and costs for those courts proposed for closure, drawing on local knowledge.

- 2.35. Some responses suggested that using travel times from an online source such as Google is not reflective of reality. Our view is that the data used is informed by thousands of real users and represents a reasonable and proportionate estimate of journey times. The Department for Transport closed their travel planning website in 2014 as there were many reliable alternatives (including Google Maps) on the web. The decision to close the site was a result of work by the Government to encourage transport operators to provide their timetable data freely to website developers. We believe that our strengthened court by court analysis of journey impacts will provide a robust assessment.
- 2.36. In those locations where our assessment is that significant numbers of users may have to make journeys longer than the benchmark we have set (or where journeys appear unreasonably complex or costly) were a building to close, we will either not close the building, or will make good quality alternative provision (if other arguments in favour of closure are compelling). In locations where very small numbers of users may have to make longer journeys than the benchmark we have set, but arguments for closure are otherwise strong, we will consider mitigations to reduce the potential impact. For example, where a court user cannot arrive at court until after 10am, a later hearing time could be provided (with judicial agreement).
- 2.37. Many responses to the consultation queried the impact that our principle would have on those who are disabled, or who face

difficulties travelling, for instance those with caring responsibilities and the elderly, and those on low incomes. In addition to considering travelling time with our new parameters of 7.30am and 7.30pm in our assessment, our new principles on access to justice will be taking into account impacts on the cost and complexity of travel (for example number of changes involved). Alongside these factors, we will be looking at what mitigations are available and relevant to users affected by the court closure facing particular challenges. Mitigations, also captured in the equalities statement (Annex D), include:

- providing guidance on location, directions and the facilities and provisions available at the hearing venue. If appropriate facilities are not available, arrangements can be made by contacting the court to determine reasonable adjustments, including, where necessary, use of an alternative venue.
- providing information on how to make a claim, appeal or make a complaint, and information about online services (e.g. Money Claims Online and Possession Claims Online), to support access up to the hearing stage and helping to reduce some travel that may otherwise be needed; and
- undertaking reasonable disability adjustments, with examples including:
  - identification of blue badge parking near the receiving court
  - use of the staff car park where necessary for users with disabilities
  - consideration of an alternative venue where access is problematic
  - later starts times being considered
- Assisted Digital provision to support the digital access needs of individuals currently not able to easily engage with online services. We will make reasonable adjustments for users with disabilities through alternative channels, including face to face services, telephone or other channels (especially for visual, dexterity or hearing impairments).

2.38. In responding to concern over how future proposals will impact upon children and young people, our new principle explicitly commits to considering the impact on vulnerable users, which will include considering children and young people. Our assessment will factor in the types of cases and work heard at a court proposed for closure and the condition of facilities available in the closing court and site(s) proposed to receive the work. We will pay careful attention to alternative locations and travel times where closure proposals mean that a youth court would close and carefully assess the impact on travel. The cost of journeys will also be considered as part of this assessment, as stated in our new principle.

### ***Strategic locations***

2.39. The current location of our courts and tribunals across the country is a patchwork of buildings that has grown and evolved over time. In making an assessment of where the best locations for our sites are in the 21<sup>st</sup> Century, we need to consider our current estate, but also where a rational person would locate courts if they were starting now. Based on such an assessment, our focus is on strategic locations where the largest number of people can have the best access.

2.40. We understand that respondents are concerned about what they perceive to be as a movement away from local justice. The figures provided in paragraph 2.28 above, show that the majority (74%) of our buildings are within five miles of another HMCTS location. We do not consider that 'local justice' should be equated with always retaining a court in a place that has historically had one. However, we agree that justice should continue to be delivered locally, and we believe that our principle setting out travel time parameters for assessing the impact of future proposals will support this.

2.41. Many respondents also felt that victims and witnesses would need to be given special consideration. We have included wording in our principle on strategic locations that entrenches our commitment to consider the needs of victims, witnesses and vulnerable users as follows:

- To maintain and expand the presence of HMCTS in key strategic locations to meet the needs of a larger proportion of the population, while taking into account the needs of users and in particular, victims, witnesses and those who are vulnerable.

2.42. We understand that as we develop proposals for potential court closures, we must consider the implications such closures might have on public sector partners. Specifically, where we develop an individual court closure proposal, we will consider whether a New Burdens Assessment is required to factor in potential implications on the services run by a local authority. We also recognise the importance of our work and partnerships with other agencies delivering services locally to users. We have developed the following principle to demonstrate our commitment to doing this:

- To understand and work closely with our stakeholders including other government agencies such as the CPS, social services, police forces, local authorities and Cafcass.

**Failure to attend**

2.43. As our strategy is seeking to consolidate our estate within strategic centres, it is right to acknowledge questions put forward by some asking whether there is a correlation between court closures and an increase in failure to attend warrants being issued. HMCTS holds data showing failure-to-appear rates of defendants mapped against the number of courts and tribunals that have closed in each year. There was not a significant increase in failure to attend warrants (including breach warrants) being issued as a proportion of hearings following the large closure programme of 2011/12. However, we will continue to monitor this as we develop further proposals for the court estate and are developing our evidence base and will be publishing these figures in our official statistics later this year.

**Magistrates Courts – Failure to Attend Warrants (FTA)<sup>1</sup>**

	2011	2012	2013	2014	2015	2016	2017
<b>National</b>	115,490	109,521	95,234	94,540	92,983	92,862	93,317

**Focusing our investment**

2.44. Our intention is to make sure that our buildings are fit for purpose and enable everyone to access justice services. Our funding for maintenance and improvements to our buildings is limited and we therefore face sometimes difficult choices regarding where we invest. We have therefore added a new principle under the 'delivering value for money' heading, but also of relevance to access to justice, to demonstrate that, where appropriate and in line with other principles, we will typically seek to invest in and modernise those sites that will offer the best access options to meet the needs of all users. The new principle is as follows:

- To focus our investment into those buildings that will best provide effective access to justice and best meet the needs of users.

**Other comments**

2.45. A further point raised by some respondents was around the evidential basis upon which we make the assertion that modernisation will lead to a reduction in the number of physical court and tribunal hearings. When proposing a court for closure where we are anticipating the delivery of reform initiatives (and the associated change in workloads in court or customer behaviour) we will provide details and evidence of this within the consultation proposals. Our approach to consulting is addressed later on in this response, in Section 8.

2.46. We have listened to the concerns raised about travel time and how we should assess its impact in the future. We believe that our new access to justice principles provide for a much tighter and well-defined examination of the impact of travel times as a result of a potential court closure, expressly taking into account a range of factors as a matter of principle and recognising the different experiences and issues faced by our range of users.

2.47. When proposing a court closure, we will undertake equality assessments to determine the impact on the elderly and those with disabilities and the extent to which we can put in place relevant mitigations to support users where necessary, such as later hearing start times. We will use local knowledge of areas affected by a proposed closure, to ensure that we have the most accurate, up to date and relevant information regarding real-life travel experiences. More detail of our work on equalities impacts is provided in Section 9 of this response.

2.48. It is clear from the strength of responses received that our analysis and determination of the impacts on users of changing travel time, resulting from a proposal to close a court, will be remain critical to our assessment of the case for closure. This must not only consider the needs of public and professional users, but also the impacts on local judiciary, magistrates and staff. We believe our new principles for access to justice, combined with those explained in the next chapter of this response, will ensure we continue to undertake a comprehensive, objective and fair assessment of the impact of future proposals on access to justice.

<sup>1</sup> Figures are for warrants issued in Criminal Proceedings for failing to attend Court, as well as those issued for failing to comply with the requirements of a Community Order. Figures are based on cases rather than defendants which means that where a defendant has more than one case for which a warrant is issued, each instance will be counted. Data is based on the most serious offence type on a case when it is registered on the HMCTS Libra Case Management system, and where a warrant is issued at different hearings for the same case, each issuance will be counted

### 3. Other locations and supplementary court and tribunal provision

#### Summary

- 3.1. In the consultation document we explained that, alongside our strategic locations, we need to make provision to support other locations, particularly rural areas which are less populous, to ensure that access to justice is maintained where transport links may be poor. We detailed how this may be accomplished, by retaining some of our more remote existing courts and tribunals, even though they may not be well utilised, or they have a narrower range of facilities compared to our larger courts and tribunals.
- 3.2. We also indicated that we might, as an alternative, consider supplementary court and tribunal provision involving the use of non-HMCTS estate to provide services to meet the needs of users who for reasons of lack of access to transport, lack of mobility or financial hardship may find it particularly difficult to travel to a court or tribunal. Supplementary provision will, in some cases, include the use of a video-link facility, allowing victims and witnesses to appear at a remote location via video and participate in a hearing. These links may on occasion be facilitated in a non-HMCTS venue.
- 3.3. We gave examples of how supplementary provision had been used to date in specific projects and set out the criteria by which we proposed to assess the suitability of a potential site to offer supplementary provision. These criteria include:
  - ensuring the venue is aligned with our Court and Tribunal Design Guide principles; appropriate, effective, flexible, sustainable and accessible for the hearings that will be held there;
  - ensuring the venue meets minimum safety and security standards, providing a safe and secure environment;
  - ensuring the venue is cost effective, and;
  - ensuring the venue has the capability to use the right IT for the type of hearing concerned.
- 3.4. While the listing of cases into any supplementary provision venue will remain subject to judicial direction, we expect that supplementary provision will have a part to play in making sure that our courts and tribunal services are accessible.
- 3.5. The second question in the consultation document therefore asked for views relating to the use of non-traditional court and tribunal buildings, not owned or permanently leased by HMCTS. The analysis of views received, together with our response, is provided in this chapter.
- 3.6. Informed by our analysis of consultation feedback, our new principle on our approach to using supplementary provision, which fall under the Access to Justice heading, is as follows:
  - Where it is used, supplementary provision, which involves the delivery of court and tribunal services outside of the fixed HMCTS court estate, must be safe, secure and accessible and also reflect the dignity and authority of the court. In exploring opportunities for using supplementary provision intended to benefit court and tribunal users by increasing accessibility and flexibility, we will ensure that appropriate case types are heard in such venues.

#### Question 2 – Detailed breakdown of responses

##### **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?**

- 3.7. Of the 249 total responses received to the consultation, 232 provided an answer to this question. While many of the responses considered multiple aspects of the proposal, several others tended to focus on one specific area. For example, a number of responses focused solely or primarily upon technological issues that may be faced, while others did likewise for the in-principle use of non-traditional court and tribunal buildings. The question was seeking to concentrate on the use of supplementary provision, defined as an alternative to, or an additional court and tribunal space in which physical hearings can be held or supported, under current ways of working, and not seeking to cover alternative new methods of accessing services, such as video and audio hearings or online courts. However, a number of responses covered video and audio hearings, and we have provided a response to these points.

- 3.8. Significantly, of those respondents that supported the proposals outlined in the consultation document, some supported offering online services, some supported the use of non-traditional buildings and some supported both. For example, Age UK commented:

Age UK acknowledges the potential savings and benefits to court users of the move towards virtual and online court and tribunal hearings. And taking into account the transport issues referred to above, digital service delivery is likely to be well received by some users who face difficulty getting to a court or tribunal building.

Age UK

- 3.9. While the Police and Crime Commissioner for Northamptonshire responded positively to the proposal to utilise non-traditional court buildings:

I am supportive of seeking to bring justice to a more local level by holding court hearings away from traditional buildings. Community buildings should be utilised to localise justice as far as possible and reduce the impact on vulnerable victims and witnesses of having to travel long distances, and to buildings that can be intimidating for those who have never set foot in them before.

Police and Crime Commissioner for Northamptonshire

- 3.10. The joint response from LawWorks and Litigants in Person Support Strategy Partners, were generally supportive of both a move towards use of non-traditional buildings and greater use of online services:

We support the Strategy's focus on both alternative provision beyond the traditional court building, and improving accessibility of HMCTS services through remote communications and digital channels.

LawWorks and Litigants in Person Support Strategy Partners (joint response)

- 3.11. Some respondents from youth courts suggested that alternative sites could be more effective in youth cases as they are less threatening, such as the following response:

We would support the use of alternative venues for youth cases, particularly where this would obviate the need for longer journeys to courthouses. Suitable rooms in Youth Offending Service (YOS) premises could be one option...It is worth noting that it is preferable for youth hearings to be less formal than those in the adult court, which ought to make it easier to find suitable venues.

West London Bench

- 3.12. Others took the opposite view and felt that appearance at a court is effective in reducing re-offending by young people:

...for youth offences and first time attenders the reaction to standing in front of a bench is extremely effective in reducing reoffending.

Member of the public

- 3.13. The responses to the question on supplementary provision were generally supportive in principle but with some scepticism toward the practical realities of implementation. A small number of respondents were resolutely negative. The most consistent theme amongst all respondents was around the need to ensure that any building used maintains the dignity, importance and grandeur of a court house. The word 'gravitas' was used frequently by respondents, as many felt that the visual spectacle of a court is a vital part in the delivery and effectiveness of the justice system. There was concern that this would be lost if non-traditional buildings are used.

- 3.14. The other most frequently cited areas of concern were around ensuring that any buildings would be safe, secure and accessible for all parties, with appropriate technology and facilities in place. A view widely shared by respondents also remarked that alternative venues would be inappropriate for some types of cases, although opinions differed on the kinds of cases that would be acceptable. There appeared to be consensus that trials should be held only at traditional court buildings. Some respondents felt that criminal cases should not be held at other venues and there was a wider acceptance among respondents that some non-contested family work and tribunals were more suited to the relative informality of a non-traditional building. A comment representative of these views was made by a magistrate based in Liverpool:



I do not think it would be appropriate to deliver criminal cases in such venues for a number of reasons including:

- Security
- Access to custodial facilities/transport
- Maintaining the dignity and gravitas of the court procedure
- Provision of suitable areas to maintain the separation of victims, witnesses, defendants and jurors.

Deputy Bench Chairman, QEII Centre Liverpool

- 3.15. On the topic of access and security there were numerous areas for consideration, such as the need to ensure that any alternative venue had full IT access and video-conferencing, as well as appropriate facilities to ensure that victims, witnesses, appellants and jurors have separate, private rooms, enabling confidential advice to be provided by legal representatives. This would need to include, it was argued, separate entrances and exits for the various parties and a need to ensure any alternative venue was sufficiently staffed. The Citizens Advice Bureau noted that the most common reason their Witness Support Service is contacted is due to parties being nervous about running into those against whom they are appearing. Many pointed out that a lack of secure docks and holding areas would present a fundamental problem for certain cases and it was stated that there would need to be a physical barrier between the judge and litigants. The Law Society noted that document access and storage at more remote sites would be a significant problem.
- 3.16. Other points raised centred on the inflexibility of supplementary provision, that such sites are not suited to catering for an upsurge in work and that notice would be required for the use of secure links. It was asserted that there would be a risk of listing delays for judges deployed to satellite or "pop-up" courts, as well as the potential for inefficiencies caused by moving judges away from the administrative staff who support their work. For example:

...the delivery of tribunal services away from traditional court and tribunal buildings may result in confusion and additional costs for regular tribunal attendees and HMCTS staff, resulting in an increased likelihood of delays and inefficiency.

Chartered Institute of Legal Executives

#### Video links and technology

- 3.17. Regarding IT, video-hearings and technology, concerns were raised over access, and ensuring that the digitally excluded are provided with the support, equipment and skills to engage with the system through the new technology. It was suggested that users should be required to have video hearings at a designated location such as a Police station. While this is routinely undertaken by HMCTS, it was argued by some respondents that the use of video hearings should wait until the requisite infrastructure is in place. All technology projects need to be properly tested and piloted to ensure that they are fit for purpose and that their impact on the conduct and process of proceedings can be assessed. The Prison Reform Trust commented:

We urge the government to conduct a thorough assessment of the impact of digital courts and fully consult with stakeholders, including defendants and prisoners, before it decides whether or not to proceed with these proposals.

Prison Reform Trust

- 3.18. Without providing supporting evidence, some respondents asserted that video hearings would not be widespread or replace physical attendance, given the potential challenges for some users in accessing the internet; even if a system could be devised which enabled a litigant to use this from their home.
- 3.19. Some respondents were concerned about the impact of video hearings on proceedings, Other respondents contended that those in a court would have an advantage over those appearing via video link and that vulnerable users would not be able to represent themselves effectively via video link. Video hearings, some asserted, would be more expensive than traditional courts.

## Question 2 – Our Response

- 3.20. Respondents used a range of terminology when discussing video technology and supplementary provision. We have considered the responses in two distinct areas:
- What we refer to as 'supplementary provision', which we consider to be a service provided from a non-traditional court or tribunal building. This can take the form of a "traditional" physical hearing where parties are present in a room in the building not owned or leased full time by HMCTS, or involving a video link which allows someone to take part in a hearing remotely from the court or tribunal.
  - Video and audio hearings, and 'fully video' hearings, which are currently being tested by HMCTS as part of the wider Reform Programme, and which involve all parties in the case attending by video. While the question posed to respondents in this section was not seeking views on this area, it is clear from the range of responses that video and audio hearings are something that respondents are very keen to understand. We have therefore provided a response to this.

### *Supplementary provision*

- 3.21. In general respondents were in favour of the principle of delivering certain services away from traditional courts and tribunal buildings, where this is appropriate. However, concerns were raised about making sure any sites used have suitable security arrangements, are accessible and that we retain the dignity and authority of the court. We acknowledge these concerns and our policy will be to ensure that the most appropriate facilities are provided for the hearings taking place, and that any venue represents the appropriate dignity of the court.
- 3.22. We consider that some civil, some tribunal and non-contested family hearings will typically be the most appropriate kinds of hearings to consider hearing in non-traditional buildings. This is due to the relative informality of the setting that is required for certain case types; in some cases, informality being an advantage in reducing the stress and anxiety experienced by people attending. Some tribunals have successfully been making use of non-HMCTS estate for a number of years and we want this to continue. We are also open to working closely with partners to identify suitable venues for other case types suitable for supplementary provision.
- 3.23. We agree that custodial hearings are generally not suitable to be heard in non-traditional buildings. While some lower-level criminal cases might be able to be heard through supplementary provision, subject to there being suitable facilities and based on consultation with the judiciary, some of these case types may in future be dealt with online. For example, currently there is an option to enter a plea for some low level criminal offences online, including fare evasion with Transport for London and TV Licence evasion. There is the potential for the scope of this to be extended to other offences subject to enabling legislation being passed. In considering the value of supplementary provision to users, we need to look at what work and case types need to actually be heard.
- 3.24. Supplementary provision can help us to deliver an effective and flexible justice system and has already been successfully implemented in a number of areas. For example, as highlighted in the consultation document, Tunbridge Wells Borough Council Town Hall has been used for civil hearings every Tuesday since December 2016. The Council chamber is being used to hear civil cases such as possession hearings and other cases deemed to be suitable by judiciary to be heard at the venue, including short civil applications. In advance of using this venue, some additional measures were put in place to ensure that the venue met HMCTS safety and security requirements. Over the six months of April to September 2018, an average of 46 cases were initially listed per month with 41 of those scheduled proceeding.
- 3.25. Supplementary provision at Kendal Town Hall was also set up as a part of the Estates Rationalisation Project closures. The venue is available one day per month for civil hearings and one day per month for suitable non-custodial magistrates' court hearings, such as traffic offences and fishing licences. Over the six-month period April to September 2018 criminal cases were only listed on a total of 2 out of the 6 available days, due to insufficient suitable cases being identified to list. Civil cases were listed on 4 out of the 6 available days, but on average hearings did not last the full 5 hours allocated.
- 3.26. Similarly, Scottish Tribunals at Kirkcaldy operate using supplementary provision; HMCTS regularly hires Volunteer House in Kirkcaldy, Fife, a sublet from the voluntary sector. We hire a dedicated room and waiting room for sole use as tribunal hearing facilities. The venue can be used for up to five days a week subject to demand and is not let out to other users at the same time. The venue hears Social Security Appeal cases but it is not used for Child Support Appeals and Medical Appeals. The latter case types are heard in Edinburgh, as a medical assessment room is required for the Medical Appeals and an extra waiting room is required for Child Support cases. The venue has held 161 sessions in the period from 1 April 2017 to 31 August 2017, proving that it is a useful and busy hearing facility.

3.27. In 2016 HMCTS piloted use of a number of supplementary provision venues in order to further test the principles by which we will assess its future use, and any limits or constraints on this. Drawing upon the analysis of responses and the findings from the supplementary provision pilot evaluation process, we see a case for exploring the possible use of supplementary provision for the following types of hearings:

- it can be used for work that is categorised as low-risk, such as some civil, tribunals, non-contested family and magistrates' hearings. It can continue to be used for tribunal cases where it is already in place. It is not considered suitable for custodial cases.

Taking into account the types of hearing for which supplementary provision might be appropriate, our policy would be to consider its use in the following circumstances:

- it can provide support to courts and tribunals experiencing temporary spikes in workload;
- it can be used for business continuity purposes e.g. flooding; and
- it can provide access to justice to communities in areas where access to the nearest court or tribunal is an issue and transport links are poor.

3.28. In assessing whether a potential supplementary provision venue is appropriate to use in any of the sets of circumstances described above, our assessment should draw on evidence which takes into account the following:

- **Appropriateness:** any site used for supplementary provision must be consistent with maintaining the integrity of the administration of justice and appropriate dignity of the court;
- **Security:** any supplementary sites chosen must meet minimum security standards and where supplementary provision is proposed for use, HMCTS should ensure that a governance mechanism is in place to monitor and maintain those standards. We will continue to use HMCTS sites for cases posing the greatest security risks;
- **Site-specific considerations:** experience suggests that, while there are common lessons in setting up provision successfully, there is not one uniform model for supplementary provision that can be deployed across all locations in an identical way. However, it is important that we establish a standard 'best practice' for such services to ensure they are delivering for users. This means that in setting up a provision we identify a potential facility and work with site managers to make it appropriate and safe for court hearings.
- **Cost-effectiveness:** supplementary provision can be a cost-effective way of providing access to justice in a location where we are closing a court or tribunal and where it will be more economical than continuing with running costs associated with keeping open an underutilised court building. It may not, however, be the most efficient use of resources in relation to judicial time, if cases do not go ahead as scheduled. Using supplementary provision in remote communities might not always be cost effective in terms of sitting days, due to lack of demand; this should be considered when comparing options<sup>2</sup>; and
- **Accessibility:** ensuring that we always consider the needs of users with disability very carefully when assessing potential supplementary provision venues.

3.29. Our new principle on supplementary provision, set out at the start of this chapter, captures our intention to consider it as an additional means of supporting users and access to justice. The guidance set out above will further inform how we consider its application in practice, and the constraining factors we have explained.

### **Video and audio hearings**

3.30. Although fully video hearings (previously termed 'virtual' hearings) are beyond the scope of consultation question 2, we want to acknowledge the responses received on this area and range of issues which were raised.

3.31. We are currently in the early stages of developing a video hearings service for the courts and tribunals and, in September 2018, we published an evaluation of a small-scale pilot in the tax tribunal which took place earlier in the year [full details of the findings of the pilot can be found here: <https://www.gov.uk/government/publications/implementing-video-hearings-party-to-state-a-process-evaluation>]. We plan to carry out further pilots to support the development of our thinking.

3.32. Of the cases considered for a video hearing as part of this pilot, eight hearings were held. This was a relatively small pilot in number of hearings, with the testing focussed on people's experience of being part of the hearing. The results of the pilot suggested high levels of overall user satisfaction with video hearings, particularly due to the practical advantage of not having to travel to a physical court. Participants reported that the hearing itself was clear, easy to navigate, user-friendly and

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2 For example, Llangefni Shire Hall was used twice in the period between September and November 2017.

formal enough not to diminish the majesty of the court. While the hearings piloted experienced delays and minor technology failures (such as WIFI dropping out), most problems were resolved quickly and users still indicated that felt they could participate effectively.

- 3.33. Our conclusion from this testing is that, when it works well and is suitable for the hearing type, video hearings have the potential to offer a more convenient option for some people to access their hearing. Our pilots are helping us to develop our understanding of the additional services we need to provide for participants and judges and to better understand infrastructure requirements. Under the piloted process, all participants log into a video call from their own location using a standard web browser. Before the hearing HMCTS conducts test calls with participants to test their internet speeds and ensure there is capacity for the hearing. Immediately prior to the hearing HMCTS performs another internet speed test to ensure the strength is suitable to hold a hearing. As part of our Reform Programme we are upgrading the Wi-Fi in all of our buildings, to ensure that the technology is working as it needs to, supporting users and our delivery of services to them.
- 3.34. We are very clear that video hearings will not be appropriate for every hearing and every participant. We have focused our user research deliberately on those with varying degrees of digital skill and capability, as well as those with different attitudes to digital services. Individuals involved in the case will be asked to provide relevant information to support the judge in deciding on the appropriate mode of hearing. Judicial discretion is at the heart of making fully video hearings work, and it will always be for the judge to decide whether to use the option of a fully video hearing or not, to ensure the interests of justice are served. Video Hearing Administrators will be available to provide on the day first-line support with any technology failures and help enable the hearing to continue.
- 3.35. Existing research into the link between hearing type and outcomes is mixed, and it is also limited, as fully video hearings have not been trialled before. It is crucial that video hearings support a fair judicial decision-making process and have the full confidence of our users. We have therefore commissioned an independent evaluation of our early testing to be carried out by an academic from a London University who specialises in technology in a court environment. This will give us insight into the way people engage with the system, identify what is working well in the adoption of the service, and look at users' experiences.
- 3.36. Current research focuses on video-enabled hearings, i.e. where one participant joins via a video link into a hearing with other participants appearing from traditional court room. In order to understand the limited research to date on fully video hearings we have committed to testing across a wide number of hearings types and jurisdictions and to developing a carefully phased rollout across individual courts and tribunals. This allows those designing the new services to work in partnership with the judiciary to determine the suitability and scale of video hearings relevant to each jurisdiction

## 4. Assessing capacity and use

### Summary

- 4.1. The consultation document included an outline of our proposed future approach to assessing capacity; a key factor in determining how we use our estate more efficiently, while achieving value for money and safeguarding access to justice. We explained how our analysis uses current workload data across jurisdictions, allowing us to model how much capacity is required now, but also to take into account future expected changes in workload, and assess the contingency needed for a sensible range of unexpected changes to workload.
- 4.2. Specific capacity analysis can take into account current workload, forecast changes in workload, modernisation assumptions<sup>3</sup> and the effect of work to improve utilisation. We described in relation to the last factor the work of the Optimising Hearing Capacity (OHC) project. This work conducted in 2017 involved a small team working across 14 sites with regional operational staff to identify and share best practice in maximising utilisation of rooms through the implementation of better listing practices and new ways of working. This has seen positive results and we will continue to evaluate its effect and wider potential to improve the efficiency with which we use our estate.
- 4.3. Our demand forecasts take into account the expected future use of online, video or audio hearings to allow us to plan for what the capacity requirements would be in a reformed system. This modelling allows us to 'future-proof' our plans to ensure that they are aligned with changes underway.
- 4.4. We detailed in the consultation document how we would make an assessment of capacity. We have expanded the second of the four criteria set out in the consultation (new text in italics) to explicitly capture our consideration of quality of service provision, as suggested by some respondents, namely we will:

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3 As our reform programme is modelled, tested and implemented, we have made assumptions about the wider impact on the court and tribunal service as a result of the changes that modernisation will bring. These assumptions will inform our thinking on our future requirements for the court estate. We will, however, use evidence obtained through pilots and testing of reform projects when consulting on court closures.

- apply our learning from the OHC project to ensure we have we have clearly understood hearing room requirements at both importing and exporting locations;
- maintain sufficient capacity to hear the expected workload, *maintain the quality of the service provided to court and tribunal users* and to provide adequate accommodation for staff, judiciary and court and tribunal users;
- align estates changes with reduced capacity requirements which take place as a result of modernisation; and
- ensure that there is sufficient contingency to maintain capacity in the event of workload fluctuations.
- The analysis of views received in response to question 4 is provided in this chapter, together with our response.

#### **Question 4 – Detailed breakdown of responses**

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

- 4.5. Of the responses received to the consultation, 184 provided an answer to this question.
- 4.6. There was a modest level of support for the assessment criteria as published (39 were positive), with respondents noting that they seemed appropriate and, if applied consistently, would generate improved utilisation. Welfare Rights from Redcar and Cleveland Council stated that they “agree with the...considerations with regard to capacity”, similarly, a Deputy Bench Chairman and Magistrate commented that they “...agree with the criteria” and the Magistrates’ Association commented:
- The MA agrees that the criteria outlined are sensible, and has no further suggestions.
- Magistrates’ Association
- 4.7. Many respondents were concerned that our capacity analysis was based on an analysis of available space and did not take into account the impact of increasing workloads in our buildings on the service provided to court or tribunal users. Other responses considered that any calculations derived from our internal management information systems would not accurately reflect the situation ‘on the ground’. The importance of maintaining an effective quality of service was raised by several respondents.
- 4.8. While many respondents saw the potential for the application of these criteria to result in more efficient use of buildings, they were concerned that sufficient judicial and administrative resources needed to be available to hear additional lists or cases. On the matter of judicial resources, Resolution commented:
- In our members’ experience, allocation, listing and availability of hearing dates and judges are more of an issue than courts’ utilisation. More courts would be used nearer capacity if more judges were available and listing arrangements more effective.
- Resolution
- 4.9. There was scepticism that video and audio hearings would significantly reduce the number of cases heard in court. There was also concern that our assessments should include sufficient contingency to cope with the loss of court buildings through some exceptional event such as flooding or fire. The flooding of the Bristol Civil Justice Centre was cited as an example. Finally, the importance of wider contextual assessments was highlighted in some responses, and the need for us to demonstrate our awareness of demographic changes in the area being assessed.

#### Question 4 – Our Response

- 4.10. We acknowledge the concerns raised by respondents and understand that how we use our court and tribunal space, as well as the time we use it for, are fundamental concerns for those working in our courts and tribunals. We are also committed to ensuring that our data used in assessing capacity is robust and effective. This is why we are piloting and testing reform projects, to ensure that we understand how assumptions work in practice, when applied to 'real-world' situations. Similarly, when making decisions on capacity, we will work with the judiciary to ensure that we have sufficient judges or magistrates in place to deliver changes.
- 4.12. We recognise that it is a widespread belief that when we identify that a court is under-used, we do not take account of the cases that could be heard if more judicial capacity were available, or if more 'sitting days' were allocated. Current workload primarily determines 'in year' sitting day allocation levels and judicial deployment decisions, and forecast workload is used to shape judicial recruitment and future resourcing decisions. Although we allocate sitting days to specific regions and then to specific centres, this is done in direct response to local workload demand and backlogs. Where local capacity, whether judicial or hearing room, is insufficient to meet local demand, and cannot be created, then we do move work and the associated sitting day resource elsewhere. This means that on occasion we move work to otherwise underused courts from courts experiencing capacity problems in order maintain performance and meet local workload demands. Furthermore, when considering utilisation levels (in the context of potential closure discussions), we have in the past used local knowledge (particularly about workload origin and judicial capacity problems) to inform our decision making, albeit informally. This consultation has made it clear that we need to make this analysis more structured, consistent and transparent (in future consultation documentation), and we will use the opportunities presented by reformed services and new HMCTS forecasting and analysis capability to do so.
- 4.13. We recognise the wider concerns raised over lack of judicial capacity. Volatility in court and tribunal receipts has been particularly marked in recent years. For example, Crown Court receipts dropped by 25% between 2014 and 2017 and the amount of work in hand in the Crown Court is at its lowest level since 2014. Family public law cases rose by 18% between 2015 and 2016 and family private law children cases dropped by 23% between 2013 and 2014 and have since risen by 20%. Receipts in Employment Tribunals increased by 106% in the 12 months after fees were removed. This volatility creates significant challenges when the recruitment process for Judges takes some time. Working with the Judiciary and the Ministry of Justice, HMCTS has taken urgent action to increase Judicial recruitment. We are, for example, currently recruiting 250 recorders, 303 deputy district judges (civil and family), 250 fee-paid judges of the First-tier Tribunals, 35 s9(1) authorisations to act at High Court judges, 94 circuit judges, 54 salaried Employment judges, 100 salaried judges of the First-tier Tribunals and 110 District Judges (civil and family), in addition to smaller scale recruitments. This will help make sure that, where there are demand increases, there is no restriction on maximising Judicial capacity through lack of funding. HMCTS will continue to work with the Judiciary and the Ministry of Justice on ensuring sufficient Judicial capacity and ensuring that future courtroom requirements meet anticipated demand and allow sufficient flexibility to meet unanticipated changes.
- 4.14. We consider that the proposed criteria provide a fair balance between ensuring efficiency and sufficient capacity to maintain an effective service. The question of contingency is also already addressed in the criteria.
- 4.15. We agree that our ability to provide a high-quality service should be assessed alongside the operational capacity of a building which would receive work from a closing building. To capture and underline this important point, we have expanded the second criterion of the four set out in the consultation, as stated above in para 4.4.
- 5.15. Demographic considerations will, where possible, need to be included in workload analysis, which will then flow into an assessment of capacity against future workloads.

## 5. Court and Tribunal Design Guide (previously Court of the Future Design Guide)

### Summary

- 5.1. In the consultation we outlined our work to adapt and improve facilities within court and tribunal buildings, which is being brought together in a new court and tribunal Design Guide, as a radical update to the current 2010 guide. Future design of courts and tribunals must ensure: that technology is an integral part of design, rather than a later addition; that we have hearing rooms and workspaces that support digital ways of working; and that flexibility within room design is provided where it is needed.
- 5.2. We provided the principles that would underpin the new Design Guide, providing a framework for our design decisions when we change, update or improve our court and tribunal spaces and buildings. Our buildings should be:
- Appropriate: buildings must provide the right setting and service for each user and every hearing, and reflect the dignity and authority of the court and tribunals.
  - Effective: buildings must provide a safe and secure environment for everyone and help each user fulfil their role.

- Accessible: buildings must be easy to use and find the way around.
- Flexible: buildings must be adaptable, both for day-to-day requirements and longer-term change.
- Sustainable: the estate must be affordable to resource and maintain.

5.3. We asked for views on the principles and approach to be taken in the new Court and Tribunal Design Guide. The analysis of those views, together with our response, is provided in this chapter. Our four new estates reform principles developed as a result of this consultation, which sit under the 'enabling efficiency' heading, are as follows:

- To improve the way we deliver day to day maintenance at our buildings through the use of building champions.
- To ensure that important historic buildings are properly protected and maintained.
- To ensure that our estate is as effective, efficient and flexible as possible, irrespective of administrative boundaries and to focus on users of our services, including making improvements to support victims and witnesses, because of the critical role they play in the justice system.
- As changes are made across our estate, to use the new Court and Tribunal Design Guide, to ensure that we maximise our investment across buildings and that our designs take us closer to meeting the requirements of modern court and tribunal buildings.

### Question 5 – Detailed breakdown of responses

#### **What is your view on the proposed principles and approach to improving the design of our court and tribunal buildings? Do you have any further suggestions for improvement?**

5.4. This question was answered in 139 responses to the consultation. A number of respondents were positive towards the principles and proposals that comprise the Court and Tribunal Design Guide. The five principles on which the Design Guide is based were received positively in a number of responses, including the following comments:

We consider that the proposed principles and approach are good. We support them.

The Presiding Judges and Family Division Liaison Judge, Wales

We welcome the proposal to establish a clear set of design principles to ensure court and tribunal buildings are fit-for-purpose.

Equality and Human Rights Commission

5.5. Respondents were, in general, keen to see HMCTS improving provision that meets user and stakeholder needs. The Civil Justice Council was one respondent amongst a number that were supportive of our plans to introduce Building Champions:

The introduction of 320 building champions will provide additional support and is welcomed to provide identification of maintenance and repair issues in the court estate that need to be addressed.

Civil Justice Council

5.6. Respondents felt that designs needed to ensure safe and secure accommodation that would provide appropriate gravitas for hearings, but that this would need to be balanced against hearing rooms not being overwhelming. A member of the public detailed their experience of attending court and describing the site as "a terrifying building" and the experience as "overwhelming", further remarking:

Rooms should be easy to access on the ground floor where there are no empty corridors and lack of people and staff. Better to be closer to home, better still not at court but more comfortable environment for victims such as myself.

Member of the public

5.7. Responses to the consultation indicate that there is a high level of importance placed upon maintaining the authority of the courtroom, as one Deputy District Judge explained:

Careful consideration needs to be given to the interior design of the courts to ensure safety and maintain authority.

Judge

5.8. Appropriate facilities for victims and witnesses are a priority, although some respondents asked that needs for defendants and offenders were also provided for.

5.9. Some argued in favour of proportionate risk management, to avoid designs being focused more on security than user needs. Respondents were also keen to see the Design Guide applied to refurbishment works (i.e. improvements to existing buildings in the estate) as well as entire new buildings (i.e. building from scratch).

5.10. The particular and unique needs of youth courts were highlighted, in particular, as needing separation and provision of appropriate waiting areas:

The youth court has a unique ethos and several distinct features, as outlined in the Judicial College's *Youth Court Bench Book*. Should the proposals in this consultation be realised, the YJB [Youth Justice Board] would expect provision of all youth-specific features to continue, including in mixed-use courts.

Youth Justice Board

5.11. Respondents felt there should be separation requirements for victims and witnesses in the guide, to include separate entrances, waiting areas, waiting rooms and consultation rooms. Some respondents also requested that provision be made for specific judicial retiring rooms and advocates rooms. Respondents highlighted safety and security standards and were keen to see engagement taking place with operational and judicial staff to gain their input. They supported our seeking professional advice from architects. The impact of technology installation is important to respondents, as is the general hearing room layout, with sufficient space for parties and maintaining formality. Two responses asked about provision for



car park facilities. Some underlined the importance of effective heating and cooling of buildings, and improved acoustics in hearing rooms.

- 5.12. Respondents welcomed designs that would provide improved facilities for all users, particularly those with disabilities. They asked that designs: provide suitable waiting and conference facilities, suitably located in buildings; that lifts are provided and facilities are fit for purpose; and that technology is accessible and appropriate for users' needs. Respondents stressed that the Design Guide must comply with the Equality Act 2010, that facilities and furniture provide support and improvements to all users, and that the Design Guide is developed with user input, particularly from those with disabilities. Hearing impairments, users with literacy or numeracy difficulties, and those with physical impairments must be catered for. Signage must cater for all users, and all who use the buildings must be able to participate in the judicial process. These points were encapsulated as part of the response of the Police and Crime Commissioner for South Yorkshire:

Any future specification should ensure every building is accessible and disabled users can participate in hearings in the same way as non-disabled individuals -victims/ witnesses; prisoners; staff across a range of CJS [Criminal Justice Sector] agencies who access the courts; supporters; Press & media; solicitors & judiciary - and the buildings need to be able to respond effectively to a broad range of disabilities.

Such reliance is to be placed on digital technology and video enabled justice - these facilities should not be limited to a few courtrooms - these facilities should be available throughout the specialist court building.

Police and Crime Commissioner for South Yorkshire

- 5.13. Respondents welcomed the approach to increased flexibility in room design which will, in conjunction with other reform projects, help to increase the utilisation of HMCTS buildings. One staff member commented that we are moving in the "right direction". Respondents asked that consideration be given to the needs of all jurisdictions in the hearing room designs.
- 5.14. Flexibility should not compromise safety and security, and furniture in hearing rooms should be robust. Citizens Advice, for example, stated:
- We welcome the work that HMCTS is doing to improve facilities in court buildings. The ability to use rooms flexibly will help to make the most efficient use of space. If it also reduces the need for cases to be adjourned this will improve the court user experience substantially. With rigorous equality impact assessments, improvements in the design of facilities should also lead to more accessible buildings and a more inclusive service.
- Citizens Advice
- 5.15. Respondents were positive about the principle of sustainability but raised concerns about affordability and whether funding would be available for (broad) application to our existing estate.
- 5.16. However, many also asked that money is not spent on buildings likely to close in the future. Where the current estate is fit for purpose respondents argued that we should not undertake unnecessary repairs or improvements. Respondents supported contracts for maintenance being considered and reviewed regularly.
- 5.17. Finally, there was concern amongst some that there should be a commitment to ensuring the proper protection and maintenance of our historic buildings in the new Design Guide.

### Question 5 – Our Response

- 5.18. We welcome the support received towards our developing a new Design Guide and principles by which we should alter buildings in the future, and the constructive suggestions for further improvements to be made.
- 5.19. On safety and security, we are confident that the points raised by the respondents are provided for within our new Design Guide, the first version of which is being published alongside this response. Safety and security is a fundamental requirement of HMCTS estate and the Design Guide is fully compliant with HMCTS enhanced security standards. Similarly, flexibility of room design and separate waiting areas and entrances for vulnerable victims and witnesses are provided for in the Design Guide.
- 5.20. We have identified where our approach can be strengthened or further actions taken in line with responses. For example, the blueprints published in the Design Guide provide for a hearing room to be used for youth courts and facilitate the entry and exit of the building through a separate entrance for youth defendants. They can access a separate hearing room on a floor that has no other hearing rooms and can access separate waiting areas, consultation rooms and WCs. In our next iteration of the guide we will ensure the reasoning behind this design is articulated clearly.
- 5.21. The Design Guide we are publishing sets out principles for hearing centres to ensure that the physical presence and dignity of the court is protected. We recognise the importance placed on this, particularly among members of the judiciary and magistracy.
- 5.22. The Design Guide has also been developed to provide for improved accessibility for all users of court and tribunal buildings. In taking forward engagement activity on the development of the guide, we visited Croydon Magistrates' and Combined Court to meet with representatives from public user groups, including the Equality and Inclusion Engagement Group, to gain feedback and views, particularly on accessibility. The output from this will be considered in developing the next version of the Design Guide, which we plan to release later in 2019. We will also be including design considerations for the perimeters of buildings and addressing feedback received on access to buildings.
- 5.23. We have carefully considered the responses to the consultation. We plan to improve the way we deliver day to day maintenance through use of building champions. We also acknowledge the concerns expressed by some respondents about our historic buildings being adequately protected and feel it important to underline our strong commitment to this by including preservation of historic buildings as an estates principle. Where a historic building is agreed for closure and disposal we will, where appropriate, make potential purchasers aware of the protected status of our buildings and we will ensure that purchasers are reminded of their responsibility to maintain and enhance historic buildings.
- 5.24. We want our estate to be as effective, efficient and flexible as possible, and focus on users, including making improvements to victims and witnesses. It will be important as changes are made to our estate that our new Court and Tribunal Design Guide is used. This approach taken in this guide, the first version of which is being published alongside this response document, will help us to maximise our investment and take us closer to meeting the requirements of modern buildings. This means that, as far as possible, we will use modern methods of construction to ensure any new buildings benefit from the efficiencies these constructions techniques bring.
- 5.25. In listening to feedback, we developed new principles to sit under the 'enabling efficiency in the longer term' theme.

## 6. People and systems

### Summary

- 6.1. In the consultation we acknowledged that improved design and flexibility are important parts of the picture but cannot be the whole story. We provided details about how, as we take forward reform, we are focussing on developing the roles we need in our courts and tribunals.
- 6.2. We committed to ensuring that our teams will be structured to support our courts and tribunal centres. We will be providing dedicated front of house staff who will be knowledgeable, trained and skilled, in order to support members of the public and professional users. As part of this, we stated that we are driving forward plans to train over 350 of our people to act as on-site Digital Support Officers (DSOs) in courts and tribunals. As technology becomes more and more integral to court and tribunal proceedings, DSOs will provide on-site support, maintain local technology and ensure that issues are promptly and correctly diagnosed and resolved, avoiding sole reliance on a remote help desk.
- 6.3. We also provided information regarding assisted digital provision. This is about making sure that everyone can access our services regardless of their digital capability. We will be providing different paths for people to get support in ways that are suitable for them. We know that some people will need more support to use digital services than others and explained that we are designing a range of assisted digital support channels to be available for this purpose. This means that where HMCTS services move online, support will be available for people who have difficulty using technology.
- 6.4. Alongside these improvements we shared how we are investing in digital systems to support the scheduling and listing of cases. Listing is, and will remain, a judicial function but we will support the listing function by providing better digital tools to reduce administration and gather and use data to support well-informed decisions.
- 6.5. The sixth question asked for views on our future approach to people and systems.
- 6.6. Based on feedback from this consultation, our new principle is as follows:
  - To support our courts and tribunal centres by providing dedicated front of house staff who are knowledgeable, trained and skilled to support members of the public and professional users. These staff members will be given continued training and skills in managing new technologies.

### Question 6 – Detailed breakdown of responses

**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?**

- 6.7. This question was answered in 147 responses to the consultation.
- 6.8. There was widespread support for the introduction of Digital Support Officers (DSOs) to support the introduction and longer-term support for digital services. Responses noted that DSOs would require significant training to be effective and would need to form part of a properly resourced system. This point was articulated by the North East Regional Employment Judges:

We strongly support the creation of posts at local level to provide digital and IT support. We will need reassurance, however, as to the level of skills, expertise and training offered by and to these individuals. There are a number of factors which must be taken into account so DSOs are able to provide effective support. At present we are unaware of there being any minimum competency requirements for appointment as a DSO. It is critical that there are minimum competencies for knowledge of hardware and software and individual jurisdictional needs...There should be a member of administration staff on-site with an overview of the day-to-day hearing room utilisation and allocation.

Regional Employment Judges, Employment Tribunals (North East Region)
- 6.9. Many responses focussed on a perceived current lack of staff and resources at courts and tribunal hearing centres. There was concern that without additional resources the roll-out of digital services along with any new scheduling or listing systems would not prove effective, and there was a need for digital support staff to provide technical assistance. As one magistrate commented:

If the face to face aspects of Assisted Digital Provision are to be located in premises other than court buildings, then the sign posting for that needs to be plain and clear, ideally from the very first contact with a court user. I hope that the additional resources (people or equipment) necessary are being funded by HMCTS...

Magistrate

- 6.10. Arrangements for Assisted Digital provision were generally welcomed. There was concern raised that this provision should be appropriately resourced and should be particularly supportive of litigants in person and the disabled.
- 6.11. Improvements to listing and scheduling systems received a cautious welcome from respondents. Some respondents considered that more efficient listing would have the potential to reduce the amount of time wasted by parties and their representatives waiting in court. Concerns were raised about the introduction of scheduling and listing systems being a means of imposing a centrally mandated listing arrangement that would threaten judicial independence. While the consultation acknowledged that listing is a judicial function, many responses from members of the judiciary raised the point that scheduling and listing must remain so.
- 6.12. Respondents were also concerned that any systems that are established would need to be flexible and able to cope with individual circumstances and the complexity of listing in practice:
- 6.13. Some respondents also argued that the new systems and ways of working being introduced needed to be properly assessed before commencing roll-out.

#### **Question 6 – Our Response**

- 6.14. We are taking forward the approach set out in the consultation document to train over 350 of our people to act as on-site Digital Support Officers (DSOs) in courts and tribunals. We will make sure that they are properly trained and resourced to support the introduction of digital services. In recognition of the widespread support that the proposals around DSOs received, we will include a commitment to ensure that we have staff available in our courts and tribunals who are knowledgeable and trained to support users and other staff members. We have therefore added a principle under the 'enabling efficiency in the longer term' theme of our estates principles, which is provided in paragraph 6.6 above.
- 6.15. We are clear that listing will always remain a judicial function and responsibility. We are introducing systems which will improve the way listing is accomplished while maintaining judicial control of the process.
- 6.16. All new scheduling and listing systems will be thoroughly tested before deployment.

## 7. Bringing our analysis together

### Summary

- 7.1. In the consultation document we talked about how the range of factors we identified as necessary for consideration when reaching decisions on estate changes will be brought together for assessment. We described how this would be in the form of evaluation matrices.
- 7.2. These matrices assemble all of the relevant factors (based on the agreed principles) such as information on: workload and accessibility; the condition and capacity of a building; and the operating and maintenance costs, so that we can make an assessment of each site which takes into account all of our principles.

### The future approach to consultation on estates reform

- 7.3. In Part 4 of the consultation we explained our proposed approach to consulting on future changes to the estate. We acknowledged that reform means that we expect to need fewer court and tribunal rooms in the future and that further proposals for closure or rationalisation will therefore be made.
- 7.4. Instead of a single large consultation, we will consult on specific sites or groups of sites individually, as part of a rolling programme. We will explain why the evidence from our wider reform programme supports the proposal(s) and why we believe that a further consolidation of our estate is justified. Naturally, with an estate of this size there may be changes in demand for reasons other than uptake of digital services, and in those circumstances, it may be sensible to close or merge courts.
- 7.5. The rolling programme will mean that we will be publishing consultations when we have evidence supporting a proposed estate rationalisation in a particular locality, rather than waiting until the entire reform programme is delivered before seeking views and progressing proposals which will improve value for money for taxpayers.
- 7.6. The consultation detailed the criteria we intend to apply when assessing sites against our estates principles, in particular, to ensure that we understand:
  - the level of use of the building, and its condition;
  - locations where cases could be listed should the court or tribunal close;
  - the accessibility of the receiving court or tribunal;
  - the level of capacity any receiving court or tribunal has to accommodate additional caseloads;
  - the estimated costs of any enabling works; and
  - the overall costs and benefits of the building closure.
- 7.7. We indicated that we would not make any closure proposal until we have the evidence to support it.
- 7.8. In listening to the feedback received as part of this consultation, we have developed a new principle:
  - We will present proposals for changing the court and tribunal estate in the context of the impact of the changes delivered by the reform programme. This will be drawn from our experience as we test prototypes and assess initial roll outs.
- 7.9. In this chapter we have brought together the summary of responses in questions 7 and 8, given the overlap in themes raised.

### **Question 7 – Detailed breakdown of responses**

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

7.10. This question was answered in 112 responses to the consultation.

7.11. Respondents were encouraged by and welcomed the independent review taking place. Some responses asserted that the judiciary were in the best position to conduct it and questioned who would undertake this work. The Magistrates' Association stated, for example:

The MA welcomes the proposed independent review, but important questions remain as to who will carry out the review and who is being asked to input into the evaluation process.

Magistrates' Association

7.12. Several responses urged HMCTS to suspend any further court closures until either the current pilots have been completed, or the entire reform programme concluded. One member of the public argued that we should "stop and reverse court closures", while a professional user argued that "there should be no more court closures". One magistrate suggested that:

Alternative venues or methods must be put in place before the next stage of court closures take place and then be evaluated.

Magistrate

7.13. There was a perceived lack of transparency regarding the evaluation process. Our proposal to publish evaluation matrices in the consultation process was therefore viewed positively. The Crown Prosecution Service commented:

CPS endorses the consultation proposal to publish the evaluation matrices. The need for transparency will be vital to the credibility of the consultation response.

Crown Prosecution Service

### **Question 8 – Detailed breakdown of responses**

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

7.14. This question was answered in 124 responses to the consultation.

7.15. Some of those who responded asserted that decisions had already been made at the point that consultations were published, while others argued that as we have stated that in future we will need fewer courts any proposed closures will inevitably take place. There was general support for involving users and stakeholders earlier and when developing proposals to change the estate, including local judges. The West London Bench made this point:

...we would request that early notification is given to any courthouse / HMCTS business area which will be the subject of change, regardless of whether a court closure or court integration is being contemplated. This should preferably be at the stage in the process where one or more options are being considered by HMCTS, so local input from all professional users, including particularly the Magistracy and District Judges, can be provided into any decision or evaluation matrix before decisions are made or options narrowed down.

West London Bench

7.16. Some respondents emphasised the importance of consultations being evidence-based and that data is accurate and up to date. There was support for more locally-led consultation, with one local magistrate commenting:

Consultation which is more locally made and based on local progress, evidence and detail is welcomed.

Magistrate

7.17. While there was general acceptance of the proposal for rolling consultations, it was also suggested that it was difficult to understand the potential impact without understanding which other sites would subsequently be proposed for closure. Other responses urged that we focus our efforts on integrating services into existing buildings<sup>4</sup>, retaining the local jurisdiction while reducing our estate:

<sup>4</sup> i.e. merging two or more buildings into one, reducing the estates footprint in the locality while still providing all services from the local area in question.

There should be a move away from looking at closures as a single jurisdictional event. Instead a proposed closure should be determined in the context of how it will enable the creation of a multi jurisdiction justice centre, be that as an integration into another local court building, as an integration into another suitable local building or other flexible local approach, or through digital access.

Police and Crime Commissioner for West Mercia.

### **Question 7 and Question 8 – Our Response**

7.18. We appreciate the support to our intention to transparently publish our evaluation matrices, ensuring that our consultations are both evidence-based and that our assessments are clearly understood. Our responses to question 1, 3, 4 and 7 have addressed several changes we intend to make to tighten our principles, analysis and evaluation supporting future estates reform proposals. We are confident these changes will support sound decision-making. We also welcome the support indicated by some respondents to locally-led, rolling consultations and, separately, to our considering opportunities to integrate services into existing buildings. Our pursuit of integrations into fewer buildings within a local area, where this is possible, will help to reduce the running cost of our estate and generate more efficient provision of services.

#### *Independent review*

7.19. We are pleased that the intention to conduct an independent review was welcomed. The review has now taken place, and was undertaken by Professor Martin Chalkley; an academic economist and a Professor of Economics at the University of York. Professor Chalkley was suggested for the independent review by members of the senior judiciary who participate in the HMCTS Board. Professor Chalkley has specific expertise in mathematical economic models and the empirical investigation of these using statistical methods. Since 1996, he has advised and acted as a consultant in respect of many aspects of the delivery of criminal justice, including: Legal Aid; incentives to deliver efficient and high quality legal services; and issues regarding the increasing diversity of the legal profession.

7.20. The review looked at the question of the identification and evaluation of court closure proposals. The review, attached at Annex C, made a number of suggestions with two main themes:

- *Determining appropriate capacity utilisation* – the first core recommendation was that we should develop a better understanding of what an optimum utilisation rate for different sites might be, reflecting the fact that, by analogy with the NHS, targeting 100% utilisation is not always possible or desirable in all circumstances. Work is now being taken forward to look at this, in order that future potential closure proposals are informed by a clearer view of what the target utilisation should be in receiving sites.<sup>5</sup> While we consider that there are significant differences between how the court and tribunal and the NHS estate is utilised - notably, NHS utilisation looks at estate availability 24 hours a day, 7 days a week, while court and tribunal statistics assume a 5-hour day - we believe there is merit in looking into optimum utilisation further.
- *Balancing financial and other considerations when considering closure* - the second main recommendation concerned our methodology for weighing different disparate factors under consideration (such as financial information, the condition of the site, location and workload factors) when identifying potential sites for closure. Professor Chalkley's review made suggestions for how financial data could be 'collapsed' into a single measure. We are now working to develop an evaluation process which will achieve this.

7.21. Some respondents suggested that we should cease consulting on any court closure proposals until court reform has delivered. Others argued that the judiciary and other stakeholders should be informed earlier about any planned court closures.

7.22. We will not propose the closure of any location until we have sufficient evidence to show that the estate rationalisation will work in that location. Where we see evidence that patterns are changing, and that a building is ceasing to be needed, and could reasonably be closed without reducing access to justice, we want to respond to that evidence in good time by consulting as early as possible, gathering views on the case for closure. However, we will not close buildings in anticipation of workload reductions, only closing when there is clear evidence to support the court closure that has been consulted upon. There is a need to strike a balance between consulting "too early", when our evidence of the impact of reform may not be sufficiently complete to put forward a clear and realistic proposal, and "too late", risking not giving court users enough notice of planned changes to the estate and the opportunity to constructively inform out thinking.

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<sup>5</sup> Utilisation figures are based on a five-hour working day, with the court sitting five days a week. In practice however, many courts sit for longer than five hours a day and regularly sits on Saturdays as well.

- 7.23. In listening to responses on the merits of providing early opportunities to influence our thinking, we are committed to consulting at the earliest possible point at which we have sufficient evidence to demonstrate that our proposal will meet our estates principles and maintain sufficient capacity; the capacity consideration being of most relevance to "evidence of reform". The exact form of evidence to support a closure proposal will depend on a site-by-site assessment, being affected by the nature of work heard at the closing and receiving sites. Our analysis will include the "standard" current capacity analysis, drawing on the type of management information that has informed previous closure proposals, and will be enhanced to take account of the changes in methodology we have committed to in this response to consultation. But it will also need to factor in the expected impact of reform following the success of prototypes or initial roll-outs, where this is relevant to a proposal's viability in maintaining sufficient capacity<sup>6</sup>.
- 7.24. Before a consultation for closure is launched and where a proposed closure is dependent upon benefits forecasted (through pilots/early testing) by reform changes, we will need to be able to show changes are in place and are working effectively. The consultation will make it clear that the relevant reform benefits will need to be effective for the sites affected by the proposed closure before closure is taken forward, and that closure will only be implemented when it is shown that the workload can be accommodated in the receiving sites. Before closure of a court or tribunal, any conditions for closure, which have been indicated in the consultation response announcing the decision to close, will be met, with the HMCTS Board providing assurance to the Lord Chancellor that this has happened.
- 7.25. We have included a principle, set out at the start of this chapter, which states that we will collect evidence of reform as our programme delivers. In turn, this will help enable us to consult on proposals as early as possible.
- 7.26. We have also considered the concerns raised about not providing the wider strategic context, namely, plans for other, neighbouring sites envisaged for retention or possible closure. There is an argument for our identifying those sites where we consider there to be a strong strategic case for retention in the medium to long term (10 years +). However, by publishing a view of expected retained sites, the inference will be made that any sites we do not refer to are potential target closures, which may cause concern among local staff and users. There are two further considerations:
- Firstly, asserting that certain sites are expected for retention and closure would be pre-emptive; we need clear evidence about the reduction in workload as a result of modernisation before publishing specific proposals, to enable a proper and fair discussion.
  - Secondly, the circumstances and facts can change over time. This may mean that a site which is strategically desirable for retention cannot be retained because of, for instance, a requirement to exit a leasehold property due to the landlord's wishes.
- 7.27. However, in taking into account the consultation feedback, when consulting on a proposed closure we will, as far as possible, indicate our wider intentions and expectations for the estate within the locality concerned, in order to provide as much information as possible to support an open debate and collation of views.
- 7.28. We also appreciate the point made that we ensure we invest in those sites we intend to retain and not in those we expect to exit in the near future. In general, we will always seek to invest in this way, while bearing in mind that a degree of essential maintenance expenditure will still be required for some sites that we expect may be exited in the medium-term, to support their effective operation and delivery of services to users, and until a consultation process has been completed.
- 7.29. When publishing consultations, we will include details of the process we have followed to arrive at the proposals, including what consultation has already taken place with judicial forums and the involvement of local managers and staff. We will work with the senior judiciary on our appropriate engagement with members of the judiciary including the local judiciary on emerging proposals, in response to the argument made in favour of our engaging as early as possible.

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6 Some proposals for estates changes may continue to be put forward without requiring reform, based on current spare capacity.



## 8. Evaluating the impact of estates changes on service delivery

### Summary

- 8.1. In developing our strategic estates proposals, we have carefully considered equalities impacts. For example, we have discussed the need for supplementary court and tribunal provision; and have considered accessibility in the facilities and design features in our buildings; accessibility is a core principle within our new Design Guide. We have stipulated in our new guide that all building and refurbishment works must comply with building regulations and the Equality Act 2010; these requirements have been built into the designs. Engagement has taken place with the Equality and Inclusion Engagement Group and Equality and Human Rights Commission, and the guide has been reviewed by the HMCTS Accessibility and Inclusion Strategist to ensure compliance.
- 8.2. More generally, we have given proper consideration to potential equalities impacts from the start and throughout the development of our policy proposals. We have included equalities questions in this consultation and brought our analysis together in an equality statement, which is attached at Annex D.
- 8.3. The ninth question asked for views on how the proposals might impact users with protected characteristics as defined in the Equality Act 2010. The analysis of those views, together with our response, is provided below.

### Question 9 – Detailed breakdown of responses

**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 evidence or research that you think we should consider?**

- 8.4. This question was answered in 159 responses to the consultation. The main issues raised overlapped with concerns raised in other answers on travel time and access to justice. In some cases, respondents touched upon equalities issues in answers to other questions; where this is the case we have captured this.
- 8.5. Generally, respondents focussed on the need for HMCTS to engage with vulnerable users, or those defined as having a protected characteristic within the Equality Act 2010. Some respondents reiterated the importance of seeking information on the actual experience of users and considering this proactively when developing proposals for consultation. HMCTS does consider user experience and there is ongoing work to collate current evidence and knowledge from previous research to inform what current user journeys looks like. Although many third sector organisations responded to the consultation, it was felt that further information could be gained from charitable organisations working with vulnerable groups. The following were specifically identified, as organisations from which we should consider seeking more detailed information (although many did respond to the consultation):
  - Women’s Aid
  - Shelter
  - Citizens Advice Bureau
  - Mencap
  - Age Concern
  - RNIB
  - Equalities and Human Rights Commission
- 8.6. The Equalities and Human Rights Commission (EHRC) argued that the evidence provided on equalities in the strategy would benefit from being more comprehensive and included in an equality statement. The EHRC further noted that it will remain difficult for HMCTS to assess the equalities impacts of the proposals without more detailed data on court users, asserting that where there is insufficient evidence regarding protected characteristics, a public body must take steps to seek such information. The mitigations which were detailed were taken as positive but with more detail required to be able to comment further. Similar points were expressed by the Public and Commercial Services Union:

Although HMCTS may not collate all the data itself, equality data on the perpetrators and victims of crime are available. From this data and data collated on the outcomes of criminal cases it must be possible to either directly collate information on the protected characteristics or draw out that information from other sources. It must also be possible to identify the distribution on a regional basis and align this to statistics collated on socio-economic demographics of regions in England and Wales. This would provide a reasonably accurate picture of the demographic of both perpetrators and victims of crime

on a national and regional basis.

PCS Union

- 8.7. Many respondents argued for a detailed equality statement, as provided for the individual court closure documents, to be provided. Some respondents gave opinions as to the groups that would be impacted, generally through longer travel times. Specific groups mentioned were those with disabilities, the elderly, pregnant women, those on low incomes, those from black, Asian or minority ethnic populations and young people. Many questioned whether the mitigating effect of modern technology would be sufficient for those without access to it, or for those with mental health problems, those suffering from drug, alcohol and substance misuse, those with communication and learning difficulties and those with autism. The Law Society commented:

The assessment focuses particularly on the direct impact of closures on disabled people and pregnant women. However, the closure will have far reaching negative implications on other groups which are not mentioned in the assessment. In particular, the extension to the journey time to and from the court will negatively affect elderly people and people caring for pre-school and/or school-aged children.

The Law Society

Equalities and Human Rights Commission

- 8.8. Equalities issues are an important area of concern for our stakeholders and users. While many were concerned about how future court closures may impact access to justice for the groups already described, there was also acknowledgement that the modernisation programme would yield benefits for groups with protected characteristics. In some cases, the move to more digital and online services will advance equality of opportunity for those who find it difficult to travel, a point made by Age UK:

Age UK acknowledges the potential savings and benefits to court users of the move towards virtual and online court and tribunal hearings. And taking into account the transport issues referred to...digital service delivery is likely to be well received by some users who face difficulty getting to a court or tribunal building.

Age UK

- 8.9. As well as highlighting the various groups that would need detailed consideration and the likely impacts of the strategy upon them, comments generally centred on the point that different users have different needs. Similarly, different hearing types and jurisdictions would likely require different levels of facilitation for our users.

### **Question 9 – Our Response**

- 8.10. We have listened carefully to the views of respondents concerning equalities impacts. As a result, we have undertaken a full equalities assessment of our strategic proposals, which is set out below and which includes available evidence and analysis of potential impacts. Based on the feedback received we have identified alternative proxy<sup>7</sup> data sources to inform this equalities statement. This includes data on victims of personal crime and the demographics of potential civil and family court users. The equalities statement explains our conclusions on our high-level (i.e. non-court specific) strategic proposals based on current evidence.
- 8.11. We recognise the ongoing nature of our obligations towards those with protected characteristics. As individual projects or proposals discussed in the strategy are developed we will consider what information we need to inform the individual equalities impacts, to ensure that they are considered proportionately and that we assess the likely equalities implications on the basis of any new or emerging evidence.
- 8.12. We will also examine how our information around the demographic make-up of our users with protected characteristics might be improved, developing our understanding of vulnerable users. While we believe that the public consultation process enabled all key organisations to respond fully to our proposals and provide us with evidence regarding the impact on those with protected characteristics, we will consider how we best undertake proactive engagement with key stakeholders to further improve our knowledge of our users and their needs.
- 8.13. At Annex D we have provided the Equalities Statement.

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<sup>7</sup> Data used to represent likely demographics of court users, in lieu of data showing actual court users.

## 9. Any other comments

### Summary

- 9.1. The final question asked for any other comments that respondents may have had regarding our estates strategy. These are analysed and responded to below.

### Question 10 – Detailed breakdown of responses

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

- 9.2. This question was answered in 118 responses. Many respondents took the opportunity to reiterate arguments made in early sections. Several commented that the consultation itself was comprehensive and that being given the opportunity to comment was positive. Some respondents praised the way in which the questions were open and allowed responses that were more discursive. A magistrate praised the consultation because:
- ...the questions are more open and give the respondent a greater opportunity to present their views and opinions, rather than requiring them to merely validate the proposal. Let us hope that future consultations are of similar quality.
- Magistrate
- 9.3. Other comments centred on listening to users and stressed the importance of access to justice. Some of those responding argued that the main incentive of the strategy was financial and some felt that there was a lack of clarity about how success would be measured. It was perceived that changes were being made based on assumptions about future technology and infrastructure and what it could achieve and that this was a mistake. There was a view expressed that the plans should be rolled out incrementally. Some urged that no further closures take place until new projects and technology are fully tested, while others argued that technology presents real opportunities and expressed a positive view of the work we are doing to incorporate it into the justice system. Finally, there were comments from some who argued for more involvement of the judiciary in all aspects of Reform.

### Question 10 – Our Response

- 9.4. We are pleased that the consultation process itself was considered positive by some respondents. Our strategy for our court estate is an important part of delivering the kind of justice system we feel that is needed in the 21<sup>st</sup> Century. We are therefore, grateful to those who took the time to respond and appreciate the time and effort put into considering the questions posed.
- 9.5. We recognise that many people feel unhappy, uncomfortable, or angry about court closures: for many, our courts and tribunals are the physical representation of the rule of law – a fundamental part of society. We believe that our new principles for considering future proposals for estates reform will ensure a well-balanced, objective and fair assessment of all relevant factors in our decision-making process for future closures.
- 9.6. Some expressed concern that our main incentive was a financial one. Our purpose is not to save money, but to deliver justice but it is right that we think carefully about how we spend the money we have in order to do that. There will always be decisions to be made about how we use the resources we have to provide the best possible access to justice. This will mean consciously balancing spend on buildings (especially those that are little-used) against spend on other ways of accessing justice which could potentially make a greater difference to more people. We believe the reforms we are driving will improve access to services for all of our users, making our funding go further to benefit them.
- 9.7. We know that our modernisation, though underway, has not yet shown at scale the effect of the changes most likely to make a difference to demand in the estate. It is important to emphasise that *none* of the court closures announced to date have been reliant upon our modernisation plans. However, it is right that we develop principles for future estates changes which take into account our vision and plans for modernising our services; because the reform programme has begun to deliver successfully. For example, in May 2018 we rolled out nationally online applications for divorce. This service has cut errors in application forms from 40% to less than 1%, saving people time and reducing confusion and uncertainty. 85% of users are satisfied or very satisfied with the new divorce online service – it is delivering something that is better for users, but less costly to provide, because it is simpler, more streamlined, and easier to get right first time.
- 9.8. We believe that our revised estates principles, which are based on the feedback we have received as part of this consultation, stand us in good stead to make the best decisions possible about our estate, as our reform plans continue to roll out.
- 9.9. Furthermore, we have listened to the responses to the consultation which have overwhelmingly told us that we must consider the different needs of different users, as well as how these might differ depending on the type of hearing. This is something we will do when considering future changes to the court and tribunal estate. We will therefore be carefully considering impacts on specialist jurisdictions, such as the youth court, for example, as highlighted by a number of responses.
- 9.10. Finally, on the early involvement of the judiciary, HMCTS has established judicial engagement groups in order to discuss in detail all of the reforms which are being progressed by HMCTS. These have been in operation since December 2015. It

is important to note that the judiciary shape and lead reform, working with HMCTS. HMCTS is an agency of the Ministry of Justice, but is jointly accountable to the Lord Chancellor, the Lord Chief Justice, and the Senior President of Tribunals. Individual judges contribute across the programme, in working groups and through the jurisdictional Judicial Engagement Groups, overseen by judicial leadership structures. There is judicial representation across the governance structure of the Reform programme, and a 'judicial reform network' links the various judicial forums that provide a judicial view on reform design or implementation questions.

- 9.11. Among other things, our principles are intended to make sure we manage the tribunals estate effectively, and we will continue to engage closely with tribunal judiciary, taking into account guidance from the Senior President on the particular considerations regarding the movement of work involving tribunals. We recognise that we need to understand the perspectives of the judiciary in addressing a diverse range of work, and working practices, in a predominantly leasehold tribunal estate.
- 9.12. There has been extensive work to engage the wider judiciary across England and Wales, funded by the programme but undertaken by the judiciary themselves. For example, in 2018, a set of four jurisdictional documents on 'Judicial Ways of Working' provided the basis for a series of engagement events and feedback from many members of the judiciary, which have informed subsequent discussions between the senior judiciary and HMCTS. The sponsorship of the reform programme by both the judiciary and the Government is key to its success.
- 9.13. The responses to the consultation have informed our strategic approach to future reform of our estate. We would once again, therefore, like to thank everybody who responded.

# Conclusion and next steps

Our new estates principles will guide our decision making as we assess our operational estate and consider making further changes to it.

Our assessments will:

- be based on the development of evaluation matrices covering a range of relevant information on: accessibility; workload; the condition and capacity of a building; and the operating and maintenance costs;
- apply a new methodology for assessing travel time impacts; and
- provide an explanation of reform progress underpinning our assessment of capacity, where relevant to the proposal in question.

Alongside this document we are publishing our new Court and Tribunal Design Guide. This guide will ensure that technology is an integral part of design, rather than a later addition, that we have hearing rooms and workspaces that support digital ways of working and that we provide flexibility within room design, supporting better use of our estate to benefit users.

We are extremely grateful to everyone who took the time to respond and take part in this consultation to develop our strategic approach to future estates reform. The reform and modernisation of the services we provide is a once in a lifetime opportunity. In applying our new estates principles to future proposals on the estate, we will ensure that the decisions we make about our buildings are aligned to this wider transformation.

## Impact assessment

The consultation does not include any specific proposals for estates change and therefore it is not possible to complete an impact assessment. As in previous consultations for individual court closures we will in future publish impact assessments to go alongside those proposals.

## Equality statement

We have completed an equality statement to accompany our estates strategy, which is included as Annex D and which is introduced in Section 9. We also outline the approach we will take when assessing equalities impacts arising from future specific proposals for reforming our court and tribunal estate.

A Welsh language response paper can be found at [\[link\]](#).

A list of respondents is provided at [Annex A](#). Summary of responses

## Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

## Annex A – List of respondents

In addition to the members of the public who responded to the consultation, the following named individuals and organisations provided a response:

12CP Barristers Chambers	Citizens Advice - Witness Service - Cambridge Magistrates Court	Employment Tribunal, SSEC and JP
187 Fleet Street		Employment Tribunals (North East Region)
3PB Barristers	Citizens Advice Bath and North East Somerset	Equality and Human Rights Commission
Age UK	City of London Corporation	Evening Standard
Aitken Harter Solicitors	Civil Court Users Association	First Tier Tribunal Property Chamber Residential Property
APAC EMEA & Auscript	Clarke Willmott	Former Bench Chairman of Greater Manchester
Area YOT Manager, Staffordshire Youth Offending Service	Commons Law CIC	Free Representation Unit
Association of HM District Judges	Consultations SEL Bench	Freelance Advocacy Services
Association of Judges of Wales	Council of Her Majesty's Circuit Judges	Freelance Solicitor
Association of Personal Injury Lawyers (APIL)	Councillor - Banbury	High Court Judge - Junior Presiding Judge of the Western Circuit
Association of Policing and Crime Chief Executives	CPR LP - Cosmetic Practitioner Register	HMCTS Staff
Bank House Chambers	Criminal Justice Alliance	Housing Law Practitioners Association
Barristers	Criminal Solicitors Law Association	Incorporated Council of Law Reporting for England and Wales
BASW England	Crown Prosecution Service	Judiciary
British Naturism, the National Organisation for Naturists in the UK	Deputy Bench Chairman QEII Liverpool	Junior Lawyers Division
British Transport Police	Deputy Bench Chairman Sefton	Justice of the Peace
Buckinghamshire Bench of Magistrates	Deputy Bench Chairman Wirral	Kenworthy Chambers
Buckinghamshire Disability Service, BuDS	Designated Family Judge for Hertfordshire	LawWorks and Litigants in Person Support Strategy Partners
Central Kent Bench	District Judge, Barnwr Rhanbarth, Cardiff Civil and Family Justice Centre	Legal Aid Practitioners Group (LAPG)
Chair of the Bench for North and East Devon Magistrate	District Judges sitting at the County Court at Kingston upon Thames	LLG (Crime) for Wales (views of HMCTS officers who are members of the LLG not represented)
Chartered Institute of Legal Executives	Doughty Street Chambers	London Napo
Chippenham Town Council	East Kent Bench	Magistrates
Citizens Advice	EBR Attridge LLP	
	eCOURT Limited	
	Employment Lawyers Association	

Managing Virtual Hearings Working Group	President of the Supreme Court	Transform Justice
MOPAC	Prison Reform Trust	Transparency Project
N&W Cumbria Bench	Public Law Project	War Pensions and Armed Forces Compensation Chamber
National Bench Chairman's Forum (NBCF)	Queen Square Chambers, Bristol	Welfare Rights Redcar and Cleveland Council
National Police Chiefs' Council (NPCC)	Regional Tribunal Judge (SSCS) for Wales & SW England	Welsh Bench Chairs Forum
National Rural Crime Network	Resolution	Welsh Bench Chairs Forum
Needham Poulter Solicitors	Robert James Worley and Frances Day Charity	West London Bench
Newcastle upon Tyne Law Society	Salford Welfare Rights and Debt Advice Service	Western Bay Youth Justice & Early Intervention Service
North Hampshire Magistrates	Self-employed Solicitor Advocate	Wiseman Lee Solicitors
Northamptonshire County Youth Panel	Senior Circuit Judge, Designated Civil Judge for Avon Somerset and Gloucestershire	Witness Service
Northern Derbyshire Bench	Senior University Teacher at Sheffield University's Department of Journalism Studies	Women's Aid
Nsandi	Serco PLC	Youth Justice Board
Office of the Police and Crime Commissioner for Gloucestershire	Shaw Graham Kersh Solicitors	
Office of the Police and Crime Commissioner for Northumbria	Solicitors	
Office of the Police and Crime Commissioner for South Yorkshire	St James Solicitors	
Office of the Police and Crime Commissioner, West Mercia	St Pauls Advice Centre	
Parklane Plowden Chambers	Standing Committee for Youth Justice	
Payton's Solicitors	Tameside Welfare Rights	
PCS	The Association of Her Majesty's District Judges, Wales Committee	
Police & Crime Commissioner Northamptonshire	The Bar Council	
Police and Crime Commissioner for Dyfed-Powys	The Council of Employment Judges	
Police Crime Commissioner North Yorkshire	The Council of Upper Tribunal Judges	
Police, Crime and Victims' commissioner for Durham	The Law Society	
Powell Spencer and Partners Solicitors	The Magistrates' Association	
Powell Spencer and Partners Solicitors	The Presiding Judges and Family Division Liaison Judge, Wales	
Presbyterian Church of Wales	The Western Circuit	
	Thomas More Chambers	

## Annex B – List of questions

- 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?
- 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?
- Q3. What are your views regarding our analysis of the travel time impacts of our proposals? Are there any alternative methods we should consider?
- Q4. Do you agree that these are right criteria against which to assess capacity? Are there any others we should consider?
- Q5. What is your view on the proposed principles and approach to improving the design of our court and tribunal buildings? Do you have any further suggestions for improvement?
- 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?
- 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?
- Q8. What is your view on our proposed approach to future estates consultations?
- 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 evidence or research that you think we should consider?
- Q10. Do you have any other comments on our future estates strategy?



# Annex C – Independent Review of HMCTS Estates Strategy Analysis

## Professor Martin Chalkley, University of York

I have been asked to provide an independent review of the analysis underpinning the HMCTS Estates Strategy in respect of potential future court closures. That analysis has developed and evolved over the course of the implementation of the Estates Strategy, but in summary its purpose is (i) to establish whether the workload of potentially closed courts can be accommodated within the remaining courts and (ii) to provide guidance as to which courts should be closed taking account of both cost and other considerations.

I am an academic economist and a Professor of Economics at the University of York. I have specific expertise in mathematical economic models and the empirical investigation of these using statistical methods. Since 1996 I have advised and acted as a consultant in respect of many aspects of the delivery of criminal justice, including Legal Aid, incentives to deliver efficient and high quality legal services and issues regarding the increasing diversity of the legal profession.

I have undertaken this review Pro Bono and without obligation, subject only to a letter setting out terms of reference. I am very grateful to HMCTS for providing me with briefings, data, background documentation and assistance in interpreting these materials. This document is for discussion purposes.

### Modelling capacity

A number of models have been constructed to understand capacity utilisation and to provide information regarding the implications of closing courts. I comment here on some of the issues that arise out of that modelling exercise.

The loss of physical court space implies that the remaining courts will have to be occupied more fully. The analysis undertaken has involved a careful and thorough evaluation of the number of court sessions that have been required in the recent past and are likely to be required in the future. The focus is then on whether those sessions can be physically accommodated either within existing nearby courts or through a process of using other more distant court estate, under varying assumptions about the feasible capacity *utilisation* of court space. The various scenarios considered make differing assumptions about the ability of courts to handle a workload of cases – in essence the extent to which the court estate can be forced up to, or near, its *physical capacity*.

The accuracy of this model rests upon correctly accounting for the court estate (the rooms) that will be available, correctly interpreting the linkage between workload (cases) and room requirements and appropriately measuring historic workloads and making appropriate allowances for higher future workloads.

As far as I have been able to determine the models are *accurate* in respect of these. There have been a number of suggestions in respect of making the models easier to interpret. For example, since the natural currency of courts is in terms of sessions, it

might make sense to present results in terms of required and available sessions rather than a surplus or deficit of rooms, but this can be viewed as simply a matter of presentation.

However, accuracy is only one criterion for judging a model. In many cases its *relevance* may be more important. Hence my remaining comments are directed towards assessing the relevance of the models to the real world of court processes and in making a number of suggestions as to how greater relevance might be achieved.

### Capturing the relevance of hitting a constraint

A key element of the capacity models is a calculation of whether there will be a deficit of court rooms available in other courts. It is worth stating that in a number of scenarios such a deficit emerges.

The feature of the occurrence of a capacity constraint being hit is common across many models of business activity. For example, in what is termed *inventory analysis* the focus is on how much of a stock of a good a firm should aim to hold in reserve. If demand for its product persists at a high level for a sufficient time there is a risk that the firm will face a “stock out” and may lose customers. In inventory models this risk is considered central to a firm’s inventory ordering and “stock outs” are often considered near catastrophic events to be avoided.

This analogy leads me to question whether a capacity model approach adequately and appropriately accounts for relevant features of the operation of the court system. Does the model capture the potential costs of running courts at higher capacity utilisation? Does it reflect the reality of what happens should there be excessive workload and the spillover courts are required to absorb capacity? I think the answer to both questions is “no”.

I start with the approach of specifying capacity utilisation *ex ante*. Capacity utilisation levels are usually specified in relation to what has been historically achieved or might be feasible. A fundamental question is what the real-world operational implications are of courts running at these levels of capacity. We know from studies of hospitals that high bed occupancy can result in increased infections, poorer quality of treatment and ultimately lower activity. This last feature of high capacity utilisation is pernicious. A system being run “hot” may actually become less capable of delivering and in a context where the workload continues to accumulate there is a real risk of breakdown; excessive workload leads to over-utilisation which reduces throughput which leads to even greater utilisation and so on.

I have not seen or heard any discussion of what the appropriate or desirable capacity utilisation of courts might be. In the context of a model this should be used to assess the costs of running courts at different capacity levels. I have a concern that the attempt to reduce costs of the estate might ultimately

*increase the costs* delivering justice. There are numerous ways this could happen; through disruption and loss of court time when court rooms are not available, through loss of judicial time as judges have to reallocate their workloads, through increased costs of representation as lawyers charge for time and travel costs for reallocated cases ... and so on. I discuss this point further under the heading *Determining appropriate capacity utilisation*.

This raises a second observation. The present approach mechanistically assumes that cases can be allocated to available court space. According to this approach the capacity constraint only applies to the system as whole. My analogy here is again to the inventory model. The present approach appears to assume that any case can be allocated to any available court. This is like assuming there is only one product and that any *customer* will be satisfied with that product. Does this approach reflect the court process? If not, then the equivalent of stock outs might occur at *much* lower levels of utilisation than currently being considered. Again, this is a realm in which the model might be accurate but not capturing the relevant aspects of the justice system.

Following from discussion with the team I have also made some suggestions as to how the potentially competing objectives of reducing costs and increasing the quality of the court estate might be approached. The various evaluation exercises undertaken so far either present a large number of both financial (cost) and non-financial (quality) indicators for each potential court closure, or attempt to condense all of these into a single ranking of options, which implies placing arbitrary weights on different aspects of estate performance. My proposal is to condense *only* financial performance measures into a single metric and to then invite broader discussion of how differences in that metric might be traded off against other performance measures (such as the quality of the court rooms, the nearness of courts to their relevant populations and so on). Discussion of this approach is still ongoing, but I set out some preliminary thoughts in the section *Balancing financial and other considerations in court closures*.

### **Determining appropriate capacity utilisation**

A common element of the approach taken towards the closure of courts is the targeting of high capacity utilisation. It is taken as given that higher capacity utilisation of courts is desirable. The implicit assumption is then that courts should be run at as high a capacity as possible in order to reduce costs. I seriously question this assumption.

As courts are run at higher capacity the costs of court buildings are spread over more cases so that there is an apparent reduction in the estates costs *per case*. But in many other contexts it is recognised that this first cost saving might be offset and dominated by other cost increases that result from increased capacity utilisation. There are many examples of this sort of effect. I will take one with which I am familiar – the consequences of increasing the bed-occupancy rate in hospitals. As the bed occupancy rate is increased it is true that the cost per patient treated at first reduces, since there are large estates and capital maintenance costs associated with each staffed hospital bed. However, it has also been noted that higher bed occupancy is associated with higher infection rates, and that

very high bed occupancy lead indirectly to higher costs per patient treated. Hospitals that are close to their capacity limits end up cancelling operations, wasting time and resources moving patients between wards or between hospitals and in the limit can actually cease to operate at all (become closed to new admissions).

The crucial point to recognise is that high capacity utilisation is not necessarily desirable or “cost effective”. For any given production system and set of associated costs of inputs there is an appropriate maximum capacity utilisation. Beyond this level costs are not saved – they are increased. It thus seems to me to be fundamentally a mistake to proceed with the Estates Strategy (intended to save costs) without having fully investigated the relationship between overall costs and capacity utilisation. The purpose of such an investigation would be to provide guidance as to what an appropriate level of capacity utilisation should be, and that would then need to feed into any evaluation of closure options. Put simply, rather than evaluating on the basis of what configuration of court estate is consistent with an arbitrary high level of capacity utilisation, the approach ought to be what court estate is needed to ensure an *appropriate* capacity utilisation.

A fuller discussion of the determination of such an appropriate capacity utilisation level is beyond the scope of this preliminary paper but I will comment on one likely implication. Many of the costs associated with high capacity utilisation occur when events conspire to overload a system. The appropriate level of capacity utilisation trades off the risks and costs associated with such overload, with the cost savings implied by running at increased capacity. These latter costs are typically proportional to the full rental costs of buildings and it follows immediately that in areas where rental costs are very low, capacity utilisation should be set low. That avoids any risk of overload at minimal cost. Similarly, in areas where rental costs are high the appropriate capacity utilisation will be high – it is worth facing the risk of costly overload in order to save on rental costs. It follows that we should be looking at regional specific appropriate capacity utilisation rather than “one size fits all”.

### **Balancing Financial and Other Considerations in Court Closures**

There are many trade-offs to consider in trying to best configure the court estate. Courts have a specific location and proximity to populations. They constitute a particular *presence* in their respective communities. They offer varying degrees of quality of space and amenity and so on. Hitherto analysis has either attempted to describe all of these features along with often disparate measures of financial performance or to collapse all criteria into a ranking of alternatives. The latter inevitably implies placing weights on highly disparate features.

I have argued that financial issues ought to be capable of being reduced to a single measure of a court's performance. Strictly speaking I would expect the financial factors to collapse into not a single number, but rather a relationship or mathematical function, which captures the variation of financial performance with the extent of utilisation of a court. For purposes of discussion here however I will work with a single number – the cost per court *session*.

That number – potentially different for each court and varying according to how the court estate is configured – should reflect the overall costs of servicing the physical facilities that a court requires. The relevant approach to evaluating that cost recognises that whether a building is owned outright, leased long term or rented the nature of the underlying cost is a flow of expenditure either actual or notional over time. For the simplest case – a rented property – the rent gives us one substantial element of that flow of expenditure. The other elements are the maintenance costs of the building, the flow costs associated with making it usable (IT, electricity, water charges etc), the flow of expenditure required to repair and restore the building and so on. For an owned property the same calculations apply only the *rent* has to be imputed. This is a conceptually simple process. The value of the building if sold could be realised and invested to generate a flow of income. That corresponds to the implicit rental cost. There are many details in this approach which are more complicated to assess, but they are ultimately implementable.

The benefit of this approach is that it generalises easily – some would say elegantly. If it is anticipated that a building will need a large capital outlay in 2 years time, that too can be converted to an implicit flow of expenditure. For example, imagine taking out a loan in two years to cover that expenditure. The interest charged on the loan is the flow expenditure from that point, and so on. It is even possible to include the large costs associated with buying out of a contractual commitment in this setting. If the closure of a court is subject to a large penalty, that can be converted to a flow of expenditure (the interest on the loan needed to pay the penalty) that is associated with the decision to run that court at zero capacity utilisation.

The essential point is that *all* financial considerations can potentially be incorporated into this cost measure. That will provide a clear, measurable and *comparable* performance metric for each court under each closure scenario. If cost were the only consideration, then the metric would itself form the basis for making decisions. It would be possible to choose the configuration of estate that minimised the overall cost of provision. It is worth noting that in my example it is perfectly possible that minimising costs involves paying large penalties to exit contractual arrangements.

As has been articulated in the Estates Strategy there are many other considerations than cost. However, balancing these against cost is not easily achievable in an algorithmic formula. There are matters of judgement and qualitative assessment. I contend that it is not the role of analysis to determine such trade-offs. What the analysis can focus on and usefully provide is a means to establish what the monetary cost of option “A” is against the lowest cost option “B”. Whether the difference is a price worth paying (to keep open an historic building or to ensure that a population is within easy reach of a court) is for other than the analysts to determine.

**Martin Chalkley**

**11 October 2018**

## Annex D – Equality Statement

### Equality Statement

- 1.1. Section 149 of the Equality Act 2010 (“the EA”) requires Ministers and the Department, when exercising their functions, to have due regard to the need to:
  - Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the EA;
  - Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
  - Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
- 1.2. Paying due regard needs to be considered against the nine protected characteristics under the EA – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.
- 1.3. The Ministry of Justice (MoJ) and its ministers have a legal duty to consider how proposed policies are likely to impact on the protected characteristics and take proportionate steps to mitigate or justify the adverse impacts and to advance the beneficial ones.

### *Direct discrimination*

- 1.4. Our assessment is that the strategy outlined in this document is not directly discriminatory within the meaning of the EA, as there is no suggestion that the proposals would treat any individuals less favourably because of any protected characteristic.

### *Indirect discrimination*

- 1.5. The strategy will mean changes in the way that justice is delivered and how we determine the future of the court and tribunal estate; where these decisions involve the consolidation of court and tribunal buildings (closure of, for example, under-used sites and a focus on strategic centres) then there will be the potential for such decisions to have an impact on those who are affected as a result of increased travel times to court. In such cases, we recognise the potential impact on people with the protected characteristics of disabilities, the elderly and pregnant women. Our assessment is that the policy has the potential to be indirectly discriminatory when we come to consider the equalities impacts on individual courts proposed for closure. Further analysis of such impacts will therefore be undertaken on a case by case basis. This will enable us to understand if the changes are considered likely to result in anyone with a protected characteristic suffering a particular disadvantage and how any such impacts can be mitigated. See paragraph 1.34 for an overview of how we will consider equality impacts for future court closure proposals.
- 1.6. As our services become more digital, with information and services becoming increasingly available online, we believe that many people, including those with disabilities or for other reasons (age, pregnancy) have difficulty with longer journeys, will need to travel to and from court less. However, we recognise that there will be those who will still need to access a physical court or who may face barriers accessing services using online or digital tools. We are able to provide mitigations around travel to court and access to services for those who face problems using IT; these are explained in more detail in the mitigations section. These will be considered in the equality statement for any individual court closure proposals to assess the overall impact on equalities.
- 1.7. While income and poverty are not aspects covered by the EA directly, there will be those on low incomes who have particular protected characteristics. We have mitigations in place to accommodate those on low incomes who may find travel to and from court over greater distances too expensive. These include, for example, finding alternative locations if necessary, or, in appropriate cases, providing supplementary provision. Our new travel time principle will take into account factors such as the cost and complexity of travelling to a court or tribunal building.

### *Harassment and victimisation*

- 1.8. We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

## Advancing equality of opportunity

- 1.9. Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of court users who share a particular characteristic, where those needs are different from the need of those who do not share that particular characteristic. Reducing the reliance on buildings with poor facilities to take advantage of a more modernised estate with better communication methods will help to generate a positive impact on all users, especially people with disabilities, the elderly and pregnant women.
- 1.10. We also note the comments of some respondents, which shows that the move towards online and digital services represents a positive step in advancing equality of opportunity, particularly for those with reduced mobility (see comment from Age UK in paragraph 9.8). The ability to access services without the need to travel to and from a court or a tribunal will mean that many people will be able to access justice more easily than at present.

## Fostering good relations

- 1.11. Consideration has been given to this objective which indicates it is unlikely to be of particular relevance to the proposals.

## Data sources

- 1.12. We have considered the current evidence around protected characteristics of court users. As there is limited data available on actual court users, our data sources provide proxy data that gives an indication as to the potential level of use of courts by those with some protected characteristics.
- 1.13. To enhance our understanding of the potential impact on protected characteristics we have explored sources of data that might help us understand the demographic makeup of potential court users and those that might interact with the justice system.
- 1.14. The information provided below (Table 1) has been provided as an indication of potential users of criminal courts.

**Table 1: The protected characteristics of victims of personal crime (2014/15)<sup>8</sup>**

Table: Characteristics of adults who were victims of CSEW personal crime, 2014/15 CSEW

England and Wales	Adults aged 16 and over Victims of Personal Crime (%) Per cent	General Population (%)
<b>Age</b>		
16–24	28	14
25–34	24	17
35–44	17	16
45–54	16	17
55–64	8	14
65–74	4	12
75+	3	10
<b>Disability/illness status</b>		
No disability/illness	76	79
Non-limiting disability/illness	5	5
Limiting disability/illness	19	16
<b>Marital Status</b>		
Married/civil partnered	31	50
Cohabiting	14	12
Single	42	25
Separated	4	2
Divorced/Legally dissolved partnership	6	5
Widowed	3	6

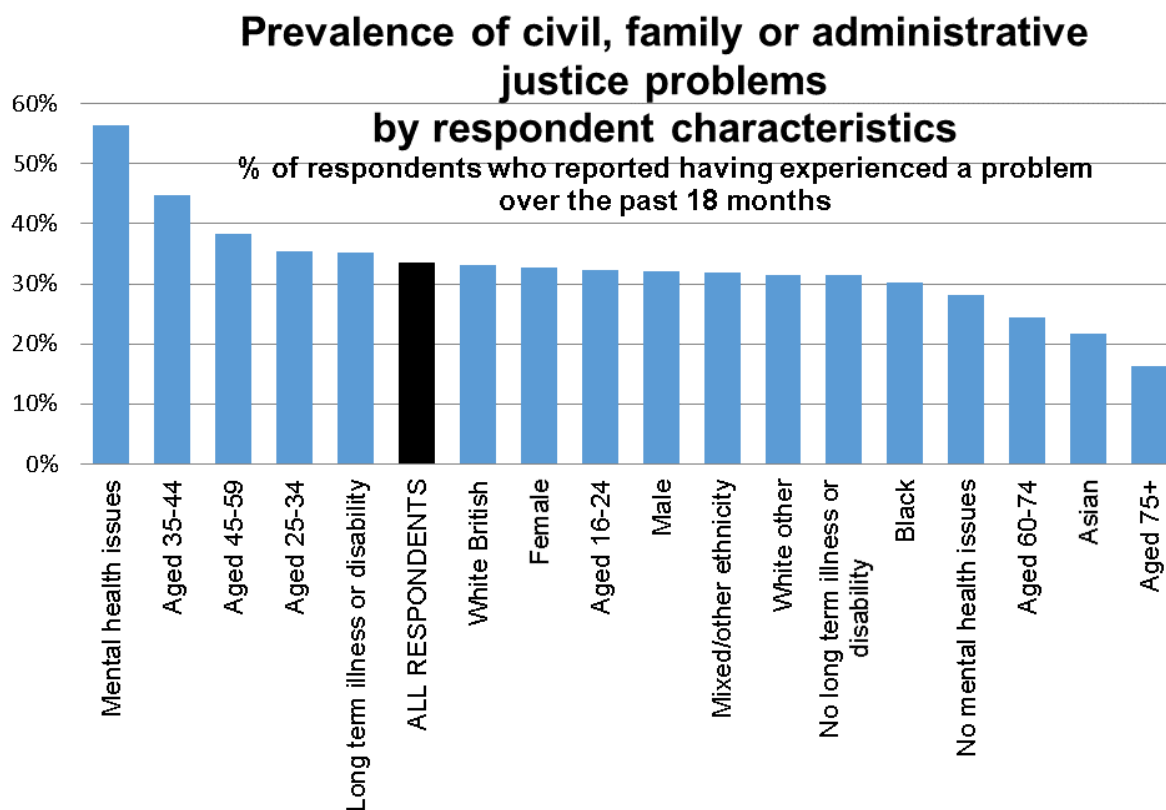
<sup>8</sup> Source: Crime Survey for England and Wales, Office for National Statistics.

England and Wales	Adults aged 16 and over Victims of Personal Crime (%) Per cent	General Population (%)
<b>Ethnicity</b>		
White	84	87
Non-white	16	13
<i>Mixed</i>	3	1
<i>Asian or Asian British</i>	7	7
<i>Black or Black British</i>	5	3
<i>Chinese or Other</i>	2	2
<b>Religion</b>		
No Religion	46	33
Christian	45	58
Muslim	4	5
Hindu	2	2
Other	4	2
<b>Sex</b>		
Male	56	49
Female	44	51

- 1.15. The information provided in Table 1 allows us to identify the characteristics of those who were victims of crime in 2014/15. The table indicates that those who are older are under-represented amongst victims of crime. While those with disabilities are slightly over-represented when compared to the national population (+3% when compared to national population), more recent information suggests that the proportion of the population having a disability is 22%, which compares with 21% listed in the table above. Of these, 11% of people consider themselves to have a long-term mobility impairment which limits their ability to carry out day-to-day activities<sup>9</sup>. Although there is a slight increase in the overall proportion of people with disabilities, we do not consider that this variance impacts the overall assessment of the proportion of court users accessing criminal courts. Our assessment is that there is not a disproportionate number of users who have a disability or are elderly accessing criminal courts and as such we consider that the potential impact of the strategy is proportionate given its wider objectives.
- 1.16. The above data also indicates that those who are single are over-represented amongst victims of crime when compared with the general population (42% as opposed to 25%). We have been unable to identify data to allow an assessment of the impact on those with the protected characteristic of gender reassignment. Having considered the impact of the proposal on the groups for which limited data is available, we have not identified any direct discrimination arising from the strategy outlined in this document. We have already identified the potential for indirect discrimination upon those who have difficulty with longer journeys where court closures take place. We will consider any such impacts in more detail when developing court closure proposals.
- 1.17. To further supplement and understand the demographic makeup - and particularly the protected characteristics - of court users, we have examined the information in Table 2 below which sets out the number of people who experienced a civil, family or administrative justice problem. This helps provide an indication of the likely users of civil and family courts.

<sup>9</sup> Source: Department for Work & Pensions, 'Family Resources Survey' 2017.

Table 2: Prevalence of civil, family or administrative justice problems by respondent characteristics: % of respondents who reported having experienced a problem over the past 18 months<sup>10</sup>



This bar chart shows the prevalence of justice 'problems' relating to civil, family or administrative areas amongst respondents to the Justice Survey. Problems refer to a matter requiring redress through the justice system.

- 1.18. Data from the English and Welsh Civil and Social Justice Survey Wave 2 Summary Report (Balmer, 2013) shows the prevalence of justice 'problems' relating to civil, family or administrative areas amongst respondents to the Justice Survey. Problems refer to a matter requiring redress through the justice system.
- 1.19. It is unclear whether those who responded to the survey are representative of the population as a whole and therefore, we can only draw limited conclusions from this data. The data suggests that over 50% of individuals who responded to the survey and had mental health issues have experienced a justice related problem. However, this does not tell us whether the proposals under consideration are likely to impact this group more or less relative to other court users. The data suggests that out of those in the 75+ age group that responded to the survey, slightly over 15% have experienced a legal problem. As set out above, elderly court users are one group which we consider may be impacted by the proposal. However, the sample size was low and therefore it is difficult to draw concrete conclusions about the impact of the proposal on this age group. HMCTS will, where appropriate, provide mitigations and reasonable adjustments to ensure access to justice for this group is maintained.
- 1.20. Sample size varies by characteristic; ethnicity, in particular, has a low sample size and therefore drawing any firm conclusions on the impact of this proposal on this protected characteristic is difficult. From the data there does not seem to be any gender impact; out of those that responded to the survey, slightly over 30% of both males and females have had a justice problem. This indicates that the proposals should not have a disproportionate impact on gender.
- 1.21. We have also considered evidence from the Ministry of Justice 2014-15 Civil Court User Survey (CCUS).<sup>11</sup> The survey comprised a postal questionnaire for individual claimants and a profiling exercise of business claimants. It provided some information on the characteristics and experiences of civil court claimants in England and Wales, primarily in relation to money and possession claims.
- 1.22. The data suggests that, in comparison with the national adult population profile, individual claimants in this system bringing money and possession claims were more likely to be: male; aged 45 or over; of Asian ethnicity; self-employed; and without health problems.

<sup>10</sup> Data collected between 2006 and 2009.

<sup>11</sup> Ministry of Justice, *Civil Court User Survey Findings: from a postal survey of individual claimants and profiling of business claimants* by Becky Hamlyn, Emma Coleman, Susan Purdon, Bryson Purdon and Mark Sefton (2015).

- 1.23. The age and gender profiles were broadly similar across claim type although possession claimants were slightly older in profile when compared with the average for all individual claimants.
- 1.24. A third (34%) of unspecified money claimants cited a physical or mental health condition, higher than other individual claimant groups. This data provides a snapshot of a specific kind of claimant and as such it is difficult to make judgements upon the impact this strategy will have on these groups more widely. The data does not specify those attending physical court and tribunal buildings, is limited to two types of hearing and does not include information on defendants to these claims who may have quite a different profile. However, it is important to consider the prevalence of those with mental health conditions indicated by this data. It is possible that this group may face barriers accessing services online.
- 1.25. Notwithstanding the limitations of the data, we are taking seriously the importance of access to justice, including in relation to digital services. A programme wide evaluation will be undertaken to understand any impacts.
- 1.26. Early indications from a small-scale trial carried out in the first-tier tax tribunal where for the first time all parties could attend via video has been positive.<sup>12</sup> Hearings took place over the internet, with each participant logging in from a location of their choice using their own equipment and, for the purposes of the pilot, the judge located in the court room. Independent evaluation from the London School of Economics shows that the trial was a success among appellants who welcomed the chance not to have to travel to a court room – with one person living abroad reporting that they avoided the need to fly to the UK and a new mother welcoming the chance to stream from home. The research revealed people found hearings clear, easy to navigate and user-friendly. However, there were problems encountered with the effectiveness of the technology, with the link failing or signal being lost. There was also the possibility of self-selection bias, in that only users who were favourable to video technology returned the pre-hearing questionnaire sent out by HMCTS. It was also possible that case selection was made with conservative estimates of suitability.
- 1.27. Overall, we believe that at this stage any potential indirectly discriminate impacts on the groups described above are proportionate having regard to the aim of the policy. The close proximity of HMCTS sites means that court and tribunal closures are only likely to impact a small number of people and the savings and efficiency achieved as a result of the closures will contribute to a better service overall for users. It remains, however, important to make reasonable adjustments for those who have difficulties with longer journeys to ensure appropriate support is given. These are explained in more detail below in the mitigations section.

## Defendants, victims and witnesses

- 1.28. The latest Race and the Criminal Justice System (CJS) in 2016 report shows that black and minority ethnic groups (BAME) are over-represented among defendants at most stages throughout the CJS. Data on women and the CJS in 2015 shows that men are substantially over-represented among defendants in criminal proceedings. Data for those sentenced in both the Crown and magistrates' courts in 2012 to 2013 confirm that:
  - Males were more likely to be sentenced to immediate custody and to receive custodial sentences of six months or longer than females with a similar criminal history; and We acknowledge that there are higher proportions of defendants with certain protected characteristics – for example, by reference to age, race, sex, than in the general population.
  - Relative to the population, rates of sentencing for Black offenders were three times higher, and two times higher for mixed race offenders, relative to offenders from the White ethnic group; a trend mirrored in prosecutions.
- 1.29. There is no comprehensive source of data on the protected characteristics of victims and witnesses who may use the criminal courts. However, the Crime Survey for England and Wales (2014/15) shows that the following groups of people are over-represented as victims of personal crime when compared to the general population:
  - those aged 16 to 24 (28% of all victims, compared to 14% of the general population);
  - those from BAME (Black, Asian and minority ethnic) backgrounds (16% of all victims, compared to 13% of the general population); and
  - men (56% of all victims, compared to 49% of the general population).
- 1.30. While groups of people sharing particular protected characteristics may be over-represented amongst victims, we are unable to quantify whether such over-representation equates to victims and witnesses who use the criminal courts. The data in Table 1 has been provided as a means of an assessment of impacts, while remaining live to the limitations of this as a proxy.

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12 <https://www.gov.uk/government/publications/implementing-video-hearings-party-to-state-a-process-evaluation>



## Impact on magistrates

- 1.31. HMCTS HR data show that magistrates are older and more likely to be of White ethnicity than the general population of England and Wales from which they are drawn. Data for 2018<sup>13</sup> shows the following:
- There were very few magistrates aged under 40 (4%) compared with 55% of magistrates who were aged over 60. There are very few magistrates under 30 (1%), while 85% of magistrates are 50 and over. The average age of magistrates is 58.8 years old, and has remained at just under 60 since 2012 (the available time series).
  - Those of Black, Asian and Minority Ethnic (BAME) ethnicity were slightly under-represented: 12% of serving magistrates in England and Wales declared themselves to be from a BAME background. This compares with the most recent estimate that BAME groups represent 14% of the general population (all ages).
  - More than half of magistrates were female (55%)
  - Figures from 2011 show that magistrates with disabilities were also under-represented: 5% of serving magistrates in England and Wales consider themselves to have a disability, while 18% of the general population (all ages) consider themselves to have a long-term health problem or disability that limits daily activity a lot or a little. The differences in the definitions of disability are acknowledged.

## Other Impacted Groups

- 1.32. Other groups potentially impacted by court closure proposals may include the judiciary and legal professionals. Statistics from the Judicial Office<sup>14</sup> show that male judges, those of White ethnicity and those aged 50 years and older are over-represented compared to the general population. The practising bar and practising solicitors are more diverse, though men remain over-represented in both professions.<sup>15</sup>
- 1.33. With regards to HMCTS staff, equality statements will be carried out by HMCTS HR at the Business Unit level and the impact on protected characteristics will be fully assessed once the impact on individuals at a proposed closure site has been understood. When a closure of a court takes place we engage with staff in one to one discussions and options for their relocation are dealt with in confidence.

## Assessing the equality impacts of future court closure proposals

- 1.34. For each court closure proposal and consultation, we will produce an equality statement. The statement will consider the evidence available on court users and determine the likely impacts upon users with protected characteristics.
- 1.35. In the most recent court closure response documents, we conducted an analysis of the local populations near to the closing courts, using data from the Office of National Statistics (ONS) at local authority level. We compared this information with regional ONS data to obtain a picture of the cohort of court users with the protected characteristics of sex, age, disability, race and religion in areas surrounding closing courts and then compared this with the regional population. We were able to analyse over or under-representation amongst those protected groups in each area. We will continue to review this data as we develop proposals to change the court estate.
- 1.36. The information provided in Table 1 is based on an analysis of information obtained from the Crime Survey of England and Wales (CSEW) 2014/15. For future decisions regarding the court and tribunal estate we will continue to review up to date information around protected characteristics derived from the CSEW.
- 1.37. The sources of data described in the paragraphs above are what we term 'proxy' data and have been used in lieu of data regarding actual court users. In response to a number of responses received to the consultation, we will be researching further what data may be available on actual local court users and reviewing this. Our proxy data will still be useful to compare information on actual users against potential court and tribunal users, and to complement it where actual court user data may be limited.
- 1.38. As mentioned in paragraph 1.25, we are developing plans for a programme wide evaluation.

13 Judicial Diversity Statistics 2018, <https://www.judiciary.uk/publications/judicial-diversity-statistics-2018/>

14 <https://www.judiciary.gov.uk/publications/judicial-statistics-2017/>

15 <http://www.lawsociety.org.uk/representation/research-trends/annual-statistical-reports/>

## Mitigations

- 1.39. We will continue to provide reasonable adjustments for court users to ensure access to justice is maintained. There are a number of mitigations that we are either considering or are already in place that will help to minimise the impact of court closures on court users, including the following.
- All guidance material, together with information about particular processes, are made available online through GOV. UK and the Justice website. This would include: the location, directions to and available facilities of the relevant court or tribunal, guidance on mediation, how to make a claim, how to appeal, and how to make a complaint. In addition, these websites provide useful links and signposts users to related websites such as: Resolution, National Family Mediation, Community Legal Advice, Citizens Advice, Consumer Direct, Ofcom and Ofgem amongst others. Public information is reviewed regularly.
  - Provision of business and contact centres for some services (e.g. County Court Money Claims Centre) mean that services can be accessed by post and phone until the hearing (if a hearing is required).
  - Online services, such as Money Claims Online and Possession Claims Online allow online access to services up to the hearing stage (if required).
  - Alternative Dispute Resolution is promoted where appropriate, which reduces reliance on court hearings.
  - Reasonable disability adjustments are undertaken in courts in accordance with the existing reasonable disability adjustments policy. Guidance is available to all staff, including a central advice point. Examples of adjustments relevant to this decision include:
    - identification of blue badge parking near the receiving court for those with mobility difficulties;
    - use of the staff car park where necessary for users with disabilities;
    - consideration of an alternative venue where access is problematic; and
    - later starts times can be considered for hearings if a customer notifies the court or tribunal that travel is problematic.
  - Video links for criminal courts are used as follows:
    - prison to court video links allow defendants to appear from custody in magistrates' courts;
    - additional video links are within the court to allow vulnerable witnesses to give evidence without facing the defendant; and
    - the court will always decide whether it is appropriate to conduct a hearing in a certain way, and the parties will also be able to make representations. In making its decision the court should consider whether any parties or witnesses have a disability (e.g. visually or hearing impaired) or are vulnerable and would benefit from face to face contact to be able to effectively participate in the case. Such decisions are based on judicial discretion.
  - Supplementary provision may be provided in certain cases to ensure that access to justice is maintained in more remote, or hard to reach areas. The need for such provision will be assessed on a case by case basis.
  - Assisted Digital provision will support the digital access needs of individuals who are currently not able to easily engage with online services to ensure reasonable adjustments are made. The court should consider whether the parties have the required digital skills and access to technology in order to be able to engage with a video or audio hearing, and may direct for the hearing to be held in a physical court room as a result. Furthermore, we will consider the following mitigations for those who face problems accessing digital or online services:
    - Making reasonable adjustments for users with disabilities through alternative channels including face to face services, telephone or other channels (especially for visual, dexterity or hearing impairments).
    - We will ensure that our systems are continually monitored for equality impacts by service owners and by Government Digital Service at regular intervals to ensure that the standard is being maintained and services are iteratively improved.
    - We will, where necessary, publicise free access to the internet to those users (i.e. those on lower incomes,) who do not or are less likely to have their own internet access, e.g. at local libraries.
  - Facilities and provisions made at sites receiving the work at closing courts can include disabled access, hearing enhancement facilities, baby changing facilities and video-conferencing and prison link facilities. The exact facilities available at a court site can be found on our website: <https://courtribunalfinder.service.gov.uk/search/>. If appropriate facilities are not available arrangements can be made by contacting the court to determine reasonable adjustments that might be made, including, where necessary, use of an alternative venue.

## Conclusions

- 1.40. Our assessment is that the strategy outlined in this document will not directly discriminate against those with protected characteristics as defined by the EA. We have identified a number of potential impacts on those with the protected characteristics of age (the elderly), disability (mobility and those with mental health, visual or digital access problems) and pregnant women. These potential impacts would be indirect and are likely to be as a result of any future court closure, due to increased travel as a result of longer journey times to alternative court sites. We will consider whether such impacts exist when developing court closure proposals and if they do, whether they constitute a particular disadvantage for any court users with particular protected characteristics. We have outlined mitigations that can be put in place where such impacts do occur and we consider it likely that these will ensure our proposals are proportionate given the aims of the strategy.
- 1.41. We envisage that the modernisation of the justice system will make the need to travel to court more infrequent. Furthermore, we feel that our reforms will make it easier for the majority of people to access our services as our proposed strategy will combine physical access to a court, with online and digital services. In the case of the latter, we have provided mitigations for those with problems accessing such services. We will provide evidence of the effects of modernisation on the need to travel to court when making future court closure proposals.
- 1.42. We will be continuing to review and improve the information we hold regarding court users with protected characteristics. We will ensure that, where court closure proposals are developed and projects implemented, we have the best data available upon which to assess the impact on those with protected characteristics.







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