



Ministry
of Justice

Transforming our justice system: summary of reforms and consultation

September 2016



**Transforming our justice system:
summary of reforms and consultation**

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

September 2016



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Foreword

Today the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals have published a joint statement on their shared vision for the future of Her Majesty's Courts & Tribunal Service.



The justice system in England and Wales is internationally revered as one of the finest in the world; our strong and independent judiciary, world-class legal profession and adherence to the rule of law are the basis of a civilized society and strong economy. The Government is investing over £700m in the courts and tribunals and more than £270m in the criminal justice system, a sign of our commitment to building on our strengths and maintaining our international reputation. The world is moving on and our justice system must keep up to meet the changing needs and expectations of everyone who uses our courts and tribunals.

The statement by the Lord Chancellor, Lord Chief Justice, and Senior President of Tribunals explains how the work we are doing will provide the public with a justice system that is:

- **Just:** decisions and outcomes are fair, the judiciary are supported by processes that are modern, transparent and consistent, and like cases are treated alike. A strong judiciary and meritocratic legal professions draw on the widest available pool of talents, to maintain public confidence and strengthen the rule of law.
- **Proportionate:** the cost, speed, complexity, and degree of adversarial protection make sense and are appropriate to the nature and value of the dispute at issue. An effective system will save people time and money, and shrink the impact of legal proceedings on their lives.
- **Accessible:** the system is affordable, intelligible and available for use by all, convenient for those who cannot easily attend in person, and supportive of those not comfortable with the law or technology.

In practice, these principles will deliver **swift and certain justice**.

The Ministry of Justice, in partnership with the judiciary, is working hard to ensure we can deliver the ambitious vision laid out by the Lord Chancellor, Lord Chief Justice, and Senior President of Tribunals today. Their joint statement demonstrates the strong and sustained commitment of the judiciary to supporting the reform programme, but it falls to the Ministry of Justice to develop and implement the policy proposals that will change the system and realise that vision.

This document outlines what the Ministry of Justice is doing to achieve reform of the justice system, and invites the public and interested stakeholders to give their views on certain specific measures. Where required, we will bring forward legislation in due course.

A handwritten signature in black ink, which appears to read 'Sir Oliver Heald'. The signature is written in a cursive, flowing style.

Sir Oliver Heald QC MP
Minister of State

Transforming our justice system: summary of reforms

1 Chapter One: overview – a modern justice system

- 1.1 A fair and functional justice system underpins every civilised society. It determines guilt in criminal cases, adjudicates on disputes between individuals, families and businesses, protects vulnerable children and allows the public to hold the Government to account.
- 1.2 Our current system does all of this, but we want it to be even stronger; faster and easier to use, with improved experiences for those who use it, and better value for the taxpayer. There are many changes needed to realise the vision of a modern day justice system set out in the joint statement of the Lord Chancellor, Lord Chief Justice and the Senior President of Tribunals.
- 1.3 This summary of reforms outlines all of the changes we are making to improve our system and achieve that vision. We are inviting views on certain specific measures – more detail on these proposals is available in Chapter 7 of this document.
- 1.4 The measures set out in this document all adhere to the principles of reform; just, proportionate and accessible.
- 1.5 To deliver a system that is **proportionate** and tailored for the complexity and seriousness of individual cases, we are taking a consistent approach across jurisdictions, including:
 - i. More use of case officers for routine tasks: Judges spend too much of their time dealing with uncontroversial, routine or straightforward matters which could just as effectively be dealt with by court staff under judicial authorisation. Where it is appropriate, specially trained staff will be able to carry out some of this work to help justice move faster.
 - ii. More decisions made “on the papers”: Where a case is relatively straightforward or routine, representations will be made online in writing for a judge to consider outside of a traditional court room, without the need for a physical hearing, meaning a more convenient experience for everyone involved.
 - iii. More virtual hearings: Where a judge needs to listen to the parties make their arguments, it will be possible in many cases to hold the hearings over telephone or video conference, without the need for the parties to travel to a court building. There will still be an important place for physical court hearings for criminal trials and other serious or complex cases, but where they are appropriate, virtual hearings offer an easy and convenient alternative for everybody.
 - iv. More cases resolved out of court: In appropriate cases, we will encourage parties to settle their disputes themselves, without the intervention of the courts.

- 1.6 We are also working to make our processes **accessible** and straightforward to make them easier for to use, with many of our services moving online – for example:
- i. Putting probate applications online: Dealing with probate affairs can be difficult and complicated at a time when people are often coping with bereavement. We are digitising the probate system to allow the entire process to be managed online, from application to resolution, making it an easier and faster process when cases are uncontested.
 - ii. Managing divorce online: Work has already begun to allow divorce applications to be made and managed online, removing some of the bureaucracy from often stressful and lengthy proceedings and simplifying cumbersome administrative processes.
 - iii. Digitising applications for Lasting Powers of Attorney: Allowing people to make arrangements for a time in the future when they may not be able to make decisions by themselves is a helpful but often emotionally stressful process. Applications have been partially digitised since 2014, resulting in fewer application forms being returned because of errors. We will build on this by making the system fully digital to deliver a quicker service.
- 1.7 Across the board, we will be simplifying forms and making our processes more straightforward so they are easier for everyone to understand.
- 1.8 Many of these changes are designed to bring the justice system up to date for the modern world and take advantage of advances in technology to provide a faster, more accessible service for users of the courts and tribunals. It is important, however, that we also consider the unintended effects of this technology to make sure that the system remains **just**. We will:
- i. Provide a system that works for everyone: Digital and online processes are easy and efficient for many people, but the justice system must also work for people who do not or cannot access services online. We must provide an alternative route of access for every service that moves online. We would welcome your views and suggestions on how to make sure that nobody is excluded from justice in this way. Further details can be found later in Chapter 7.1 where we also seek views on our proposed approach.
 - ii. Continue to ensure open justice: It is a core principle of our justice system that justice is open. “It is not merely of some importance, but of fundamental importance that justice should not only be done, but should be manifestly and undoubtedly seen to be done,” as Lord Chief Justice Hewart said in 1924. The principle of open justice will be upheld and the public will still be able to see and hear real-time hearings, whilst we continue to protect the privacy of the vulnerable.

Changes by jurisdiction

- 1.9 Chapters 2 – 5 outline the changes that have already begun and those we plan to make in the crime, civil and family court jurisdictions, as well as in the tribunals system. These changes will work together to bring to life the vision of a just, proportionate and accessible justice system, fit for modern times.

2 Chapter Two: Criminal

2.1 In the criminal courts, we are working with our criminal justice partners including the CPS and the police to simplify the system, particularly with the introduction of new IT platforms, to make sure that criminal offences are dealt with in the most proportionate and appropriate way. This will reduce reoffending as well as improving experiences for victims and witnesses in the system. We will do this by:

2.2 Making the courts more flexible

- i. Aligning the criminal courts: Magistrates' courts and the Crown Court deal with different levels of criminal offence, but they must work better together to provide a more efficient service. We are working with the judiciary on structural and procedural changes that will give the senior judiciary clearer oversight of, and flexibility to manage, judicial leadership in the criminal jurisdiction. This will enable the Crown Court and magistrates' courts to operate more closely together – stronger leadership and alignment will improve court performance for everyone involved. To support this, we will bring the structures of the courts closer by reforming existing local justice areas and making it easier to transfer cases between the Crown Court and Magistrates' Court when appropriate – starting in the right place will make the process simpler and easier for victims and defendants.
- ii. Making it easier for vulnerable and intimidated witnesses (including victims) to give evidence: We will roll out the use of pre-trial cross-examination in Crown Court trials, allowing vulnerable and intimidated witnesses to pre-record their cross-examination, meaning the witness does not always need to attend the trial itself. A pilot found that this procedure meant witnesses gave evidence in half the time it would take at trial¹. We believe that expanding this will reduce distress for victims and witnesses and improve their overall experience of the justice system.

2.3 Addressing offender behaviour

- i. Introducing problem solving courts: We are exploring the opportunities for problem solving methods further with the judiciary and collecting the evidence base. We are continuing to trial this approach in locations across the UK.
- ii. Using out of court disposals: We will use out of court disposals in appropriate cases, to help change offenders' behaviour at the earliest possible opportunity– with swift and certain consequences for offenders who do not comply with the conditions attached.

2.4 Improving process and technology for more efficient and digital justice

- i. Streamlining process: We are making changes to the way cases progress through the criminal courts, including removing unnecessary appearances in court (such as first appearances in magistrates' courts for cases which can only be tried in the Crown Court), introducing a more efficient process to allocate cases to the Crown Court or magistrates' courts and allowing simple decisions to be made via a new online system (see below).

¹ Ministry of Justice, Process evaluation of pre-recorded cross-examination pilot, Sep/Oct 2016

- i. Using technology to make processes more efficient: We will increase the use of video link and telephone and video conferencing technology to make hearings easier and more convenient for all, including victims and witnesses and criminal justice system agencies. We will work with the police to hold bail hearings by video link from police stations to reduce the need for some offenders to be held in police cells overnight. In appropriate cases offenders will be able to plead guilty, be convicted and sentenced all on the same day by live video link from police stations.
- ii. Introducing a new collaborative IT system: The Common Platform is already being developed to provide a single case management IT system for use throughout the Crown Court and magistrates' courts. It will provide access to case material and information to many agencies within the criminal justice system as well as the defence, victims and witnesses. Many current paper and court-based processes will be moved online, saving time and increasing efficiency for all court users.
- iii. Enabling online convictions and fixed fines: For certain routine, low-level summary, non-imprisonable offences with no identifiable victim, we propose to introduce a system which resolves cases entirely online. Defendants would log on to an online system to see the evidence against them before entering a plea. If they plead guilty, they can opt in to (and can always opt out of) the online system which allows them to view the penalty, accept the conviction and penalty, and pay their fine. Cases would be resolved immediately and entirely online, without the involvement of a magistrate. We would welcome views on this proposal– further details are available in Chapter 7.2.

3 Chapter Three: Civil

3.1 The civil justice system deals with a huge range of cases – from low monetary value but passionate disputes between neighbours, to complex commercial cases worth millions. We already deal with these disputes in different ways but can go further in ensuring that we are taking a just, proportionate and accessible approach, to lead to swifter decision making.

- i. Introducing a new online process for resolving claims: In line with plans across all jurisdictions, we will move more cases away from physical court rooms. Building on Lord Justice Briggs' proposals in his Civil Court Structures Review², we will create a new process to resolve many disputes entirely online, using innovative technology and specialist case officers to progress routine cases through the system and reserving judicial time for the most complex cases. We will create a new, streamlined Rules Committee to design this new system and keep the processes simple. When hearings are required, they may be held over the telephone or video conference, focusing court resources on the most complex and difficult cases. This will mean that cases should reach a quicker resolution.
- ii. Encouraging parties to resolve disputes themselves where possible: We will increase signposting to mediation and alternative dispute resolution services to help people avoid court for minor disputes that would be better handled privately, without needing the court to intervene.
- iii. Extending the fixed recoverable costs regime: Fixed recoverable costs are legal costs which can be recovered from the losing side by the successful party to a claim, at a prescribed rate. (For civil claims, these are set out in the Civil Procedure Rules). We will build on measures introduced in the last Parliament for low value personal injury claims, to limit the level of legal costs recoverable. These measures provide transparency and certainty for all parties and are designed to ensure that the amount of legal work done is proportionate to the value of the claim. We are keen to extend the fixed recoverable costs regime to as many civil cases as possible. The senior judiciary will be developing proposals on which we will then consult.
- iv. Civil enforcement: We will give the High Court powers to issue attachment of earnings orders to the High Court to create a simpler, more consistent approach to enforcement, and make sure more people can get the money they are owed. We will also commence the fixed deductions scheme (fixed table) provisions in the Tribunals, Courts and Enforcement Act 2007 in the County Court and introduce fixed tables in the High Court, providing transparency and certainty of the rate of deductions from debtors' earnings to pay back their creditors.
- v. Replacing statutory declarations in county court proceedings with a witness statement verified by a statement of truth: We will replace outdated and currently inconsistent procedures, which are inconvenient for people to use and resource intensive to administer, with a more modern digital approach but keeping strong penalties where a statement of truth is found to be false.

² Civil Court Structures Review: Final Report, Lord Justice Briggs, July 2016

4 Chapter Four: Family

- 4.1 Family proceedings deal with some of the most sensitive issues in the justice system, including parental disputes over where children should live and spend their time, protecting vulnerable children from abuse and neglect, and dealing with divorce and separation. Since the Family Justice Review in 2011³, there have been major reforms with the creation of the Single Family Court and changes to legal aid eligibility in private law cases⁴.
- 4.2 There is more work to be done, however, to make sure that the family justice system is tailored to the individual needs of the many people who use it, and to make sure that those people feel that their views are heard and considered in deciding the best outcome. We are working to consider what further changes are needed and will bring forward proposals in due course.

³ Family Justice Review, final report published November 2011:
<https://www.gov.uk/government/publications/family-justice-review-final-report>

⁴ The Single Family Court was introduced by the Crime and Courts Act 2013. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed eligibility for legal aid from most private family cases. Mediation remained in scope.

5 Chapter Five: Tribunals

5.1 Tribunals were originally introduced to provide a proportionate and easy to use service, mainly for citizens appealing decisions of the state, but over time they have become complicated and slow to deal with, burdened with paper and unnecessary bureaucracy. In line with our principles of just, proportionate and accessible, we are working to create a system that is easier to use and delivers better value for money.

- i. Streamlining procedures and encouraging a balanced approach: We are working to simplify our procedures and put entire services online where possible, carefully designed to be intuitive and easy to follow. Many relatively straightforward tribunal decisions do not require full physical hearings, so where appropriate, judges will be making decisions based on written representations, hearings will be held over telephone or video conference and specially trained case officers will help cases progress through the system. All of these changes will make the process quicker and easier to deal with for all parties involved in a case.
- ii. Digitising the Social Security and Child Support Tribunal: This will be one of the first services to be moved entirely online, with an end-to-end digital process that will be faster and easier to use for people that use it.
- iii. Simplifying panel composition: Another factor in taking a balanced, tailored approach to tribunal cases is making sure the panels that make decisions in tribunals are designed to best suit the circumstances of the case. Most tribunals currently reflect historic arrangements that may be out of date and do not tailor the expertise of the panel according to the case. We propose to revise the current arrangements for setting panel composition to make sure that that appropriate expertise is focussed on those cases that need it. We would welcome views on how best to achieve this – more details are available later in Chapter 7.3.
- iv. Reforming employment tribunals: The Employment Tribunals deal with a huge volume of claims every year – c. 83,000 in 2015/16⁵. They work on similar principles to many other tribunals and the civil courts, but currently have an entirely separate structure, including a specific appeals tribunal. We are considering whether the new approaches being adopted elsewhere in the justice system could be applied to the employment jurisdiction.

5.2 Whilst any reform to the courts would be limited to England and Wales only, HMCTS is also currently responsible for managing reserved tribunals in Scotland. Responsibility for managing reserved tribunals in Scotland will be transferred to the Scottish Courts and Tribunals Service as part of the implementation of the Scotland Act 2016 and the Scottish Government will be responsible for deciding how those tribunals are managed in future.

⁵ Table 1.2, Main Tables, Ministry of Justice Tribunals and Gender Recognition Statistics Quarterly, Jan – Mar 2016: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-january-to-march-2016>

6 Chapter Six: Conclusion and Next Steps

- 6.1 These reforms work together to make the vision of the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals a reality. In making these changes, we will establish a just, proportionate and accessible system that is fit for modern times and provides a better experience for everyone who needs it.
- 6.2 The Government will bring forward legislation in due course to enable these reforms where necessary.
- 6.3 At this stage, views are invited on three specific elements:
- i. Assisted digital facilities;
 - ii. Online conviction and statutory fixed fine; and
 - iii. Panel composition in the tribunals.

Transforming our justice system: Consultation

About this consultation

Duration: From 15/09/16 to 27/10/2016

Enquiries (including requests for the paper in an alternative format) to:

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102 Petty France
London SW1H 9AJ

Tel: 020 3334 3555

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How to respond:

Please respond online at: <https://consult.justice.gov.uk> by 11.59pm on Thursday 27 October, or send your response (also to arrive by Thursday 27 October) to:

Courts Reform Policy
Post Point 3.41
Ministry of Justice
102 Petty France
London SW1H 9AJ

Tel: 020 3334 3555

Email: CourtsReformPolicy@justice.gsi.gov.uk

Response paper:

A response to this consultation exercise will be published in due course at: <https://consult.justice.gov.uk/>

A Welsh language consultation paper will be available in due course.

We are also separately consulting on a range of issues related to the way that judges will work in a reformed system and the future provision they need to enable them to do so.

This summary of reforms does not consider the implications for court and tribunal fees or legal aid. This fundamental reform of the way the justice system works may well demand consequential changes in the future, on which we will consult separately in due course where appropriate.

7 Chapter Seven: Consultation

7.1 Assisted digital

- 7.1.1 Improving technology and putting more services and processes online is key to our reforms; for most people, this will make court and tribunal services more accessible and easier to deal with, and will fundamentally change the way in which people interact with the justice system.
- 7.1.2 We recognise that not everyone will be able to engage with these new processes, and we need to take steps to provide support to those people who need it to interact with the new system.
- 7.1.3 There is a range of ability and comfort in using technology across the UK. It is estimated⁶ that of the UK population who use government digital services:
- 30% are “digital self-servers” – these are people who have the skills, access and motivation to use digital services unaided.
 - 52% can be “digital with assistance” – these are people who are able and can choose to engage digitally, but may need some help to do so. Over time, they should gain the confidence to become part of the “self-server” group.
 - 18% are “digitally excluded” – these people cannot or choose not to engage digitally at all, due to difficulty in accessing IT facilities, lack of basic digital skills or confidence, or low motivation. These people will continue to need a lot of support, but the size of the group is shrinking with time as digital services become more common.
- 7.1.4 Everyone must be able to use our services, regardless of which of these groups they fall into. The number of people in the third group will vary across the different jurisdictions and they may be disproportionately represented in some parts of the system – in designing different services we will need to tailor the solutions based around the needs of the people using that service. A one-size-fits-all approach is not appropriate.
- 7.1.5 To make sure that our services can be used by everyone, we expect to include the following as part of our approach:
- Face-to-face assistance – for example, aiding completion of an online form. This type of service may be supplied by a third party organisations in some cases.
 - A telephone help service offering similar advice, which we would expect to be staffed by Her Majesty’s Court and Tribunal System (HMCTS).
 - Web chat to guide people through online processes.
 - Access to paper channels for those who require it.

⁶ Government Digital Strategy (2013)

- 7.1.6 We are testing some elements of this in the development of two new services – the ability to make a plea online for low level traffic offences and applying online for financial help towards court fees, for those on low incomes.
- 7.1.7 A number of recent Government initiatives have delivered assisted digital support to smaller groups of people, and we are learning the lessons from these to inform our approach. Given how many services we are modernising, the number of people who will be affected by the changes across the courts and tribunals will be on a much greater scale.
- 7.1.8 We will continue to develop our approach to assisted digital support as we develop our services, piloting and testing proposed solutions and taking account of user research to tailor our provision. This will be an ongoing process. A dedicated team in HMCTS will work to make sure that we are providing intuitive, easy-to-use digital services for everybody, including the digitally excluded and those who may have other difficulties such as impaired vision or low literacy.

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

Please state your reasons.

Question 2: Do you believe that any channels are particularly well suited to certain types of HMCTS service?

Please state your reasons.

7.2 Online conviction and statutory fixed fine

7.2.1 Many of the low-level cases that magistrates' courts deal with are relatively simple and straightforward, and should be dealt with in a more proportionate way. Around 890,000 cases a year are summary-only, non-imprisonable offences. Since April 2015, we have been implementing a new way of dealing with some of these cases, starting at Lavender Hill Magistrates' Court. In appropriate cases, the Single Justice Procedure allows one magistrate to consider a defendant's plea and the evidence, including any mitigating circumstances, "on the papers", alone and outside a physical courtroom. The magistrate can convict the defendant and impose a penalty without the need for a court hearing. Neither the defendant nor the prosecution are inconvenienced by having to attend court for these proceedings (for some offences the defendant can even enter their plea online) and the case is dealt with quickly and efficiently, allowing magistrates to focus their valuable time on more complex and contested cases. By the end of 2016 we will complete the roll-out of this procedure across England and Wales.

7.2.2 We have plans to digitise this process. Prosecutors will be able to enter details of the charge via an online portal. Defendants will view the charge and evidence against them, enter a plea and any mitigating circumstances or means information and (following consideration of the case by a magistrate) be informed of the magistrate's decisions – all online.

7.2.3 We want to simplify the process even further for some of the most routine and least serious cases. In future, we propose that some defendants in appropriate cases will be able to resolve their cases entirely online. Defendants will be able to log onto an online system and view the evidence against them before entering their plea. Under this proposal, defendants who plead guilty in these cases will be offered the option to accept a pre-determined penalty (plus any appropriate compensation and costs), be convicted and pay the resulting penalty immediately, without a magistrate's involvement. This allows defendants to conclude their case faster and with greater certainty, and means magistrates can spend their time and the courts can focus their resources where they are most needed. We expect to implement this process from 2018.

7.2.4 We propose that a number of safeguards are built into the process to ensure it is only used in appropriate circumstances:

- i. Only specified summary only, non-imprisonable offences would be eligible for this process; where the offence does not have an identifiable victim, is relatively straightforward and a fixed penalty may be appropriate.
- ii. The defendant would have to actively opt-in by entering a guilty plea online and agreeing to this process. If the defendant wishes to plead guilty but does not wish to accept the fixed fine or the online conviction (for example, because they want to explain mitigating circumstances or provide information about their means) they can instead choose to have a magistrate consider that information via the Single Justice Procedure or have their case heard in court. Pleading not guilty would mean the case is automatically listed for trial.
- iii. Prosecutors would have discretion as to whether a particular case is suitable for this process in light of the evidence or aggravating factors such as repeat offending.

- iv. All prosecutors will still be required to meet the statutory test for prosecution – that is there is sufficient evidence to prosecute and it is in the public interest. Prosecutors will remain accountable for their decisions.
- v. Defendants would be presented with all the relevant evidence against them and the potential consequences, such as the disclosure regime for the conviction. Before electing to go down this route, they would be given details of the prospective fixed fine (and any additional elements such as compensation or costs) to allow defendants to make an informed decision.
- vi. Defendants would be able to seek help to engage with the process through assisted digital channels if they wished.
- vii. The court would have the power to reverse a conviction and have the matter retried, in the event that the defendant did not understand the consequences of their decision to accept the conviction and total penalty.
- viii. Current early guilty plea discounts would continue to apply whether the guilty plea was entered online or in other ways (e.g. via post).
- ix. Defendants who are unable to pay the total penalty immediately would be able to agree a repayment plan.
- x. If, in the future, driving offences which carry penalty points are brought into scope of this process, there will be a system to handle points and the potential for disqualification via “totting up”, to remove cases that are not appropriate for the online system.

7.2.5 Offences in scope

7.2.6 Only certain specified offences will be eligible for this process. For a case to be appropriate for this process it must be relatively straightforward and simple to prove, with no complex grounds and no other potential for significant discretion from magistrates in a traditional setting. There should also be no likelihood of ancillary orders being relevant (for example, disqualification from driving or a parenting order). We propose to test the system with a small number of summary, non-imprisonable offences in the initial phase of introducing the online conviction and fixed fine scheme, which would be:

- Railway fare evasion
- Tram fare evasion
- Possession of unlicensed rod and line.

7.2.7 If this initial phase is successful, we plan to bring other offences, particularly certain road traffic offences, into the system in future.

Question 3: Do you agree with the principle of an online conviction and statutory fixed fine process for those who enter an online guilty plea and are content to proceed with the process?

Please state your reasons.

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

Please list additional considerations.

Question 5: Do you think that the proposed safeguards are adequate (paragraphs i-x above)?

Please state your reasons.

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

Please state your reasons.

7.3 Panel composition in tribunals

- 7.3.1 As part of our commitment to simplifying tribunals, we are reviewing the current arrangements for panel composition in tribunals in the unified system.
- 7.3.2 Non-legal members are a vital part of our judiciary, bringing unique skills and expertise that would not otherwise be available to the tribunal. They also help us make sure that our judicial system is truly representative, not only of society but of the people who appear in front of our tribunals. Having someone, when necessary, who is able to provide specialist expertise and knowledge about, for example, the impact of a medical problem in an appeal to the First-Tier Tribunal (Social Security and Child Support), or the appropriate rental value of a property in an appeal to the First-Tier Tribunal (Property Chamber), can be essential. Our system will continue to need and provide for the input of non-legal members with a wide range of skills to provide that necessary expertise where needed.
- 7.3.3 As we streamline the tribunals system, we need to be more tailored and flexible in the way that non legal members are used. Panel composition will remain a matter for the Senior President of Tribunals (SPT), but we want to move away from a blanket approach of using non-legal members regardless of whether their specialist expertise and knowledge is relevant or required. Instead, they should only be part of the panel where their presence is relevant to the case. Their expertise and knowledge may also be used in innovative ways, with a greater focus on online engagement and ongoing conversation outside of traditional hearings between the parties and the tribunal.
- 7.3.4 The terms of the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008 allow the SPT to set the composition of tribunal panels in the unified system via Practice Statements. They also require him to have regard to the arrangements that existed before the tribunal transferred into the unified system (which started on a rolling programme in 2008). This requirement in practice means that many tribunal panels are based on historical precedents rather than the most appropriate specialist expertise or knowledge for individual cases in 2016. In the First-tier Tribunal (Social Security and Child Support) , for example, many cases must be heard by a judge, a medical member and a member with experience of providing or receiving care for disability, regardless of the circumstances of the case in question.
- 7.3.5 Some change has already been introduced by way of revised Practice Statements, and has not been shown to have any negative effects on decisions. For example, cases in the First-Tier Tribunal (Immigration and Asylum) are now usually heard by a single judge unless the President of the Chamber or Resident Judge determines that further panel members are needed in the interests of justice. The number of appeals allowed in deportation cases has remained between 32% and 37% from 2012/13 to the first two quarters of 2015/16⁷. There has also been a reduction in the number of additional panel members in the First-Tier Tribunal (Special Educational Needs and Disability), and the number of decisions appealed from the first tier has

⁷ Table 2.5a, Main Tables, Ministry of Justice Tribunals and Gender Recognition Statistics Quarterly, April – June 2015: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2015>

remained stable. Separately, in the Employment Tribunal, the Government has reduced panel members in most unfair dismissal claims, but outcomes have not been notably affected – the proportion of successful cases has stayed between 8% and 11% between 2007/8 and 2014/15⁸.

7.3.6 We therefore propose to amend the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008 to give the SPT greater freedom to adopt a more proportionate and flexible approach to panel composition, by:

- Providing that a tribunal panel in the First-tier Tribunal is to consist of a single member⁹ unless otherwise determined by the SPT; and
- Removing the existing requirement to consider the arrangements that were in place before the tribunal transferred into the unified system.

7.3.7 The determination of panel composition will remain the responsibility of the SPT, and he will continue to be required to maintain access to justice, to ensure that proceedings are fair and proportionate, and to provide the necessary expertise¹⁰. We can therefore be confident that people who rely on the tribunal to give them a fair decision will not suffer, but instead there will be an improvement in speed and efficiency as well as more scope for innovation. It will allow the SPT to consider the most appropriate way to deliver specialist expertise and knowledge in the transformed tribunals system, and to make decisions based on what is useful rather than historical precedents that may no longer be relevant.

7.3.8 Where specialist expertise or knowledge is required, it will still be provided but the SPT will be able to consider more flexible allocation of the important specialist resource provided by non-legal members. For example, they could be used as a pool of specialist experts who could be deployed across various Chambers and jurisdictions who would benefit from their expertise, answering specific queries from judges or helping people work through the process by sharing their skills and knowledge.

7.3.9 The use of multiple panel members in the unified tribunals currently costs the taxpayer around £21m per year in fees alone, with daily fees for each member ranging from £200 - £500, plus additional costs for travel and subsistence, training, appraisal and general administration. By using NLMs in a more tailored, flexible way, we can make sure that more people in the tribunals will benefit from their specialist expertise and knowledge, while delivering better value for the taxpayer.

Question 7: Do you agree that the SPT should be able to determine panel composition based on the changing needs of people using the tribunal system?

Please state your reasons.

⁸ Table 2.3, Main Tables, Ministry of Justice Tribunals and Gender Recognition Statistics Quarterly, April – June 2015: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2015>

⁹ This will usually be a judge but could be another appropriate specialist – for example, surveyors currently sit alone in some cases in the Property Chamber.

¹⁰ See Section 2(3) of the Tribunals, Courts and Enforcement Act 2007

Question 8: In order to assist the SPT to make sure that appropriate expertise is provided following the proposed reform, which factors do you think should be considered to determine whether multiple specialists are needed to hear individual cases?

Please state your reasons and specify the jurisdictions and/or types of case to which these factors refer.

7.4 Impact and equalities impact assessments

7.5 To accompany this document we have published impact and equalities impact assessments for each of the measures we are inviting views on.

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

- Assisted Digital
- Online conviction and statutory fixed fine
- Panel composition in the tribunals

Please state your reasons.

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

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

- Assisted Digital
- Statutory Fixed Fine
- Panel composition in the tribunals

Please state your reasons.

8 Summary of questions

We would welcome responses to the following questions set out in this consultation paper.

Assisted digital

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

Please state your reasons.

Question 2: Do you believe that any channels are particularly well suited to certain types of HMCTS service?

Please state your reasons.

Online convictions and statutory fixed fines

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

Please state your reasons.

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

Please list additional considerations.

Question 5: Do you think that the proposed safeguards are adequate (paragraphs i-x above)?

Please state your reasons.

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

Please state your reasons.

Panel composition in tribunals

Question 7: Do you agree that the SPT should be able to determine panel composition based on the changing needs of people using the tribunal system?

Please state your reasons.

Question 8: In order to assist the SPT to make sure that appropriate expertise is provided following the proposed reform, which factors do you think should be considered to determine whether multiple specialists are needed to hear individual cases?

Please state your reasons and specify the jurisdictions and/or types of case to which these factors refer.

Impacts and equalities impacts

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

- Assisted Digital
- Online Conviction and Statutory Fixed Fine
- Panel composition in the tribunals

Please state your reasons.

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

Please state your reasons.

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

- Assisted Digital
- Statutory Fixed Fine
- Panel composition in the tribunals

Please state your reasons.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please respond online at: <https://consult.justice.gov.uk> by 11.59pm on Thursday 27 October, or send your response (also to arrive by Thursday 27 October) to:

Courts Reform Policy
Post Point 3.41
Ministry of Justice
102 Petty France
London SW1H 9AJ

Tel: 020 3334 3555

Email: CourtsReformPolicy@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can also be requested from this address.

Publication of response

A paper summarising the responses to this consultation will be published in due course. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

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>

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