

Fit for the future: transforming the court and tribunal estate

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The Criminal Justice Alliance (CJA) is a coalition of 137 organisations - including charities, third sector service providers, research institutions and staff associations – working across the criminal justice pathway. Our members now employ more than 12,000 people between them. The Alliance works to establish a fairer and more effective criminal justice system.

The CJA welcomes the opportunity to respond to this inquiry. This response focuses on the issues most pertinent to the CJA's collective voice.

1. 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?

In 2016, the Justice Committee recommended a benchmark - which seemed reasonable - within which nearly all users (90 per cent) should be able to reach the nearest magistrates/court venue within one hour by public transport. The proposed new benchmark is significantly broader, and it is unclear what the upper limit of 'within a day' is. For example, if someone was to attend a hearing scheduled for one hour, would a four hour journey to court and back – totalling nine hours – fall within the 'day' benchmark?

We welcome the fact that 97-98 per cent of users travelling *by car* would still be able to access Crown Courts and Magistrates' Courts following the changes within the one hour benchmark recommended by the Justice Committee. However, for those using *public transport*, these figures fall to just 61 per cent of Crown Court users and 74 per cent of Magistrates' Court users, down from 62 per cent and 82 per cent respectively.

We are thus concerned that the changes might disproportionately affect those unable to drive or without access to a car, which may disproportionately impact those with limited means and those with learning difficulties.

Further, while the consultation recognises court closures may 'put at some disadvantage' those who are pregnant, disabled or with childcare commitments due to the 'need to travel further than they did previously', it fails to recognise that the proposed benchmark also does so. Longer journey times to court are more likely to negatively impact upon women, who are more likely to be caring for young children who need childcare.

The consultation document states that the 'model will make an assessment of the journey times for members of the public within the catchment area of a court or tribunal building ... based on National Statistics Output Areas'. Using an average time for a journey as the benchmark is likely to disadvantage those with mobility impairments whose journeys will almost certainly take longer than an individual without such an impairment.

2. 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?

The CJA welcomes investment in modernisation and recognises the benefits of digitalisation, such as the centralisation of HMCTS administrative functions. The CJA also welcomes the proposed alternative court rooms. CJA member JUSTICE has previously identified the potential benefits of using 'pop-up courts' by employing a range of public buildings to be used as courts on an *ad hoc* basis. The use of non-HMCTS buildings as courtrooms will be of benefit to court users living in areas where courts are being closed.

It is difficult to disagree with stated aims of doing things 'more flexibly' and 'at a convenient time' in order to 'provide a more open and accessible justice system that is quicker, easier and more efficient'. However, we have concerns that some proposals pose a risk to 'open and accessible' justice.

First, while the proposal for online pleading may benefit some people by avoiding the need to travel to court, there is a risk it could impact on an individual's decision as to how to plead. The implications of a guilty plea – such as the impact of a criminal record on future employment – may not be fully explained online or understood by an individual. Their difficulty in understanding such information might also not be picked up over a computer, whereas such a vulnerability could more easily be identified in person and reasonable adjustments made.

Second, the use of video hearings, while welcome to some court users - such as those who may find it difficult to travel to court and remand prisoners concerned about being forced to move prison following a hearing – poses risks for certain individuals. Research by the Institute for Criminal Policy Research (subsequently published by the CJA in *Structured Mayhem*) found that many court users already find hearings alienating – in part due to the formality and ritual of the court room – and often experience them as intimidating, chaotic and stressful.

Research from CJA member Transform Justice suggests that use of video hearings might further increase a defendants' feelings of isolation, stress and exclusion from the criminal justice system. This research also noted that video hearings can have a particularly negative impact on defendants who do not speak English well, those who are unrepresented and both younger and older people.

Similar concerns about vulnerable defendants apply to the use of video hearings. For example, many 'hidden' vulnerabilities, such as mental health problems, learning disabilities and autism are more difficult to pick up over video than in person.

While virtual hearings may expedite hearings when they go smoothly, there appear to be unresolved technological difficulties. Investment is required and the commitment to improving equipment is welcome. The Institute for Criminal Policy Research also found that technical equipment often failed, was of poor quality or was missing. This may increase delay to proceedings and disadvantage court users, in addition to heightening feelings of frustration for victims and witnesses as well as defendants.

We share concerns that use of video might jeopardise the relationship between defendant and legal representative. While there are some benefits to video links – for example, reducing travel time for legal representatives – these are counterbalanced by concerns over possible difficulties in developing a relationship and issues around confidentiality.

When there are technical audio difficulties, individuals may resort to shouting in order to be heard, causing them to be overheard. In addition, conversations may be monitored or the security of a video link breached. Both the use of online pleading and virtual hearings may also pose a challenge for those without access to or knowledge of how to use the internet, such as the elderly or those who cannot afford access to it.

The CJA agrees that virtual hearings should not be mandatory and that any decision as to what should be done virtually be judicially determined. In order for this to be done fairly, there should be clear guidelines and appropriate training.

5. 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?

The CJA supports the ambition of creating an estate of high quality that is fit for purpose, including improving the way day-to-day maintenance is delivered and facilities for children and young people. In particular, we agree that improving facilities for victims and witnesses should be a priority.

As noted in the consultation document, a range of special measures is already available to help victims and witnesses and a further range has been put in place to help reduce the anxiety involved in attending court. The CJA recommends that, given this largely successful adoption of special measures for vulnerable victims and witnesses, including those with mental or physical disabilities, and given the high levels of vulnerability among many defendants, the Ministry of Justice should ensure equivalence of provision across all groups of court users in order to enhance engagement with the court process.

The CJA recommends that the criminal dock, which isolates defendants and further alienates them from proceedings, should only be used on a discretionary basis where deemed appropriate by the judge for reasons of safety. The norm should be that the defendant sits next to his or her legal representative in court.

8. What is your view on our proposed approach to future estates consultations?

The CJA welcomes engagement with stakeholders, however there are anxieties as to the authenticity and effectiveness of current stakeholder engagement by HMCTS and what is being done meaningfully with responses received from such consultations.

9. 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?

As noted above, there are concerns about the impact these proposals will have on certain groups of court users with particular protected characteristics. In short, increased use of digital services may impact court users who lack access to the internet or knowledge of how to use the internet, such as the elderly, those without means, and individuals with learning disabilities. The use of video hearings may also disadvantage those with vulnerabilities such as autism, mental health difficulties and learning disabilities, where such vulnerabilities are hidden and are less likely to be identified over video. Court closures and the proposed benchmark timescale of a day may also disproportionately impact upon those with childcare responsibilities and those with physical impairments.

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This response does not reflect the individual policy position of any member organisation of the CJA