



# Library Note

## Resourcing and Staffing of the Courts

On 23 June 2015, Michael Gove, Lord Chancellor and Secretary of State for Justice, announced the Government's intention to work with the judiciary to reform the courts and tribunals in England and Wales. This came as part of ongoing reforms of the court system.

Her Majesty's Courts and Tribunals Service (HMCTS) is the body responsible for the administration of criminal, civil and family courts in England and Wales and for giving people and businesses access to justice through the courts. In June 2015, HMCTS stated in its annual report that "the level of service currently received at a court or tribunal is at best inconsistent and, at worse, frustrating, despite the continuing great efforts of our staff and the judiciary". A lack of digital services, outdated systems, waste and inefficiency, poor utilisation and inadequate facilities of court buildings has been noted by HMCTS.

Section 1 of the Courts Act 2003 states that the Lord Chancellor is under a duty to ensure that there is an "efficient and effective system to support the carrying on of the business of the Senior Courts, the Court of Protection, the county court, the family court, and magistrates' courts, and that appropriate services are provided for those courts".

In the November 2015 Autumn Statement, the Chancellor, George Osborne, announced that the Government was increasing total investment to more than £700 million "to modernise and fully digitise the courts". In 2014/15 the Government had committed £380 million new investment over five years from 2015/16 to "fundamentally transform the courts and tribunals system, ensuring it is fit for purpose and delivers swifter and more certain justice". However, he added that the Government would need to sell a number of underused courts and refurbish others. These reforms were expected to deliver savings of approximately £200 million a year from 2019/20 onwards and would deliver a "more efficient configuration of the estate". Following consultation, on 11 February 2016, the Ministry of Justice and HMCTS announced that 87 courts and four tribunal buildings would close. The details of the wider reform are a work in progress, but although many see the need for the reform and the opportunity it provides, concerns have also been raised, in particular with regard to accessing the justice system.

This Lords Library briefing has been prepared for the debate to take place in the House of Lords on Thursday 14 July, about staffing and resourcing of the courts. It provides an overview of HM courts reform, in particular it focuses on the proposed closure of further courts but also touches upon the move to a digitised and more flexible court system and issues that have been raised in response to the proposed reform.

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## I. Her Majesty's Courts and Tribunals Service

### Responsibility

Her Majesty's Courts and Tribunals Service (HMCTS) is the body responsible for the administration of criminal, civil and family courts in England and Wales. It administers the work of magistrates' courts and the county court, family court, crown court—an executive agency of the Ministry of Justice (MoJ)—and Royal Courts of Justice.<sup>1</sup> HMCTS is responsible for:

- Providing the supporting administration for a fair, efficient and accessible courts [...] system.
- Supporting an independent judiciary in the administration of justice.
- Driving improvements across all aspects of the administration of the courts [...].
- Collaborating effectively with other justice organisations and agencies, including the legal professions, to improve access to justice.
- Working with government departments and agencies to improve the quality and timeliness of their decision-making, which will reduce the number of cases coming before courts [...].

It is also responsible for giving people and businesses access to justice through the courts (and tribunals) including:

- Victims and witnesses of crime.
- Defendants accused of crimes.
- Consumers in debt or with other disputes.
- People involved in the adoption or protection of children.
- Businesses involved in commercial disputes.
- People asserting employment rights or challenging government body decisions.
- People affected by relationship breakdown.<sup>2</sup>

### Accountability

Section 1 of the Courts Act 2003 states that the Lord Chancellor is under a duty to ensure that there is an “efficient and effective system to support the carrying on of the business of the Senior Courts, the Court of Protection, the county court, the family court, and magistrates’ courts, and that appropriate services are provided for those courts”.<sup>3</sup> The Judiciary of England and Wales has explained that it is important to distinguish the accountability of the judiciary as an institution from that of the courts as an institution and that of HMC[T]S. It has summarised that “[t]his is because of the responsibility of the Lord Chancellor for the resourcing of the courts [...] If a lack of resources means there are insufficient courts, court staff or judges and

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<sup>1</sup> HM Courts and Tribunals Service, ‘[About Us](#)’, accessed 30 June 2016.

<sup>2</sup> *ibid.*

<sup>3</sup> Courts Act 2003, section 1(1).

the result of this is delay, it is the Lord Chancellor and not the judiciary who is responsible and accountable”.<sup>4</sup>

## Statistics

According to HMCTS’ accounts for 2015/16, HMCTS comprises a geographically dispersed organisation with an annual spend of around £1.7 billion and income plans of £914 million. The overall cost base consists of three broadly equal areas of expenditure: HMCTS staff, salaried and fee paid judiciary, and estates.<sup>5</sup> HMCTS has noted the following figures:

- In 2015/16, HMCTS employed approximately 16,000 full-time equivalent (FTE) staff and worked with 1,800 full-time judiciary, 7,500 fee-paid judiciary and about 19,500 magistrates out of 471 buildings.<sup>6</sup> The average number of staff permanently employed by HMCTS reduced by 953 FTEs from 2014/15 to 2015/16, with associated staff costs that have decreased from £509 million in 2014/15 to £501 million in 2015/16. (These figures do not include the judiciary).<sup>7</sup> In 2014/15, HMCTS employed 17,033 staff in total—16,162 permanently employed staff and 871 agency and contract staff. HMCTS employed 17,829 staff in 2013/14 compared to 19,704 in 2011/12.<sup>8</sup>
- Staff costs for 2015/16 were £501,292 and for 2014/15 were £509,463. The average number of full time equivalent (FTE) staff paid during the year was 16,286.<sup>9</sup>
- Judiciary costs were £462,846 in 2015/16 and were £449,258 in 2014/15.<sup>10</sup>
- For the year 2015/16, there was a population of agency and contract staff working within HMCTS which was equivalent to 1,077 FTEs, fulfilling mostly front line roles.<sup>11</sup>

HMCTS explained in its 2015/16 annual report and accounts that its workforce would reduce over the coming four to five years and therefore it had “deliberately recruited staff to roles on a temporary basis” in order to minimise the risk of redundancy on its existing workforce, and to minimise long term redundancy costs incurred by employing staff who it knew it could not offer a long term role to”.<sup>12</sup>

<sup>4</sup> The Judiciary of England and Wales, [The Accountability of the Judiciary](#), October 2007, p 8.

<sup>5</sup> HM Courts and Tribunals Service, [Annual Report and Accounts 2015–16](#), 7 July 2016, p 43. Members of the judiciary are independent of HMCTS and their payroll costs are met either from the Consolidated Fund in the case of senior judiciary—that is, from the Government’s general bank account at the Bank of England—or directly by HMCTS for other judiciary. All costs are included within HMCTS’ accounts “to ensure that the full cost of operations is disclosed”. Senior judges also receive long service payments under an agreement with the Ministry of Justice and there is a provision for these payments within the Ministry of Justice accounts.

<sup>6</sup> *ibid*, p 43.

<sup>7</sup> *ibid*.

<sup>8</sup> HM Courts and Tribunals Service, [Annual Report and Accounts 2014–15](#), 9 June 2015, p 21 and p 71.

<sup>9</sup> HM Courts and Tribunals Service, [Annual Report and Accounts 2015–16](#), 7 July 2016, p 44.

<sup>10</sup> *ibid*, p 91. For further information regarding expenditure, see: HM Courts and Tribunals Service, [Annual Report and Accounts 2015–16](#), 7 July 2016, p 44.

<sup>11</sup> *ibid*, p 43.

<sup>12</sup> *ibid*.

## 2. Court Service Performance

In June 2015, HMCTS stated in its annual report that “the level of service currently received at a court or tribunal is at best inconsistent and, at worse, frustrating, despite the continuing great efforts of our staff and the judiciary”.<sup>13</sup> HMCTS described a lack of digital services and outdated systems—noting that accessing its service often involved filling in paper forms, travelling to its buildings to complete “a simple process” or needing to arrange face-to-face meetings for “basic” guidance. It added that even where it had previously tried to introduce more digital ways of working, it had often relied on “digitised versions of paper-based business processes, layered on top of legacy IT systems, some of which are over 30 years old”. It noted that these contributed to delays and failures in the system:

We have outdated back-end systems, adding to delay, inefficiency and failure in the system. Our services have often been designed in silos, rather than developed in a consistent approach to improve our user experience across our service. It follows that our user experience is inconsistent and unnecessarily confusing, particularly for our vulnerable users.<sup>14</sup>

On 23 September 2015, Natalie Ceeney, the then Chief Executive of HMCTS, highlighted “waste and inefficiency” of the courts, explaining, for example, that physical tribunal hearings for immigration appeals were held with full legal representation even though the appellants were physically out of the country, and that prisoners were being transported across the country at a “huge cost” for a few minutes’ bail hearing in front of a judge. She also explained that court buildings across the country were not fit for purpose any longer, with their “very poor utilisation and inadequate facilities”:

In our criminal courts, witness[es], victims and defendants can wait years for a case to come to trial, causing chaos to lives as people wait for a decision before they can work out how to move on. In our civil courts and tribunals, people in debt attend court in person—often losing a day’s wages—worsening their situation. After the death of a family member, completing a probate form in complex legalese can add huge unnecessary stress. And I hear on a daily basis about just how tortuous the process of trying to get fees refunded can be for those needing to use our courts but who receive low incomes.<sup>15</sup>

She stated that, essentially, HMCTS systems were “no longer good enough to support the fair administration of justice”.<sup>16</sup> In its evidence to the House of Commons Public Accounts Committee, the MoJ noted that the criminal justice system was more efficient than it previously had been because it is delivering the same service but for 26 percent less, while acknowledging the system could be much better and was in need of reform.<sup>17</sup>

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<sup>13</sup> HM Courts and Tribunals Service, [Annual Report and Accounts 2014-15](#), p 20.

<sup>14</sup> *ibid.*

<sup>15</sup> HM Courts and Tribunal Service, [‘Modernising Courts and Tribunals’](#), 23 September 2015.

<sup>16</sup> *ibid.*

<sup>17</sup> House of Commons Public Accounts Committee, [Efficiency in the Criminal Justice System](#), 27 May 2016, HC 72 of session 2016–17, p 15.

HMCTS has published statistics in its accounts for 2015/16, which provided the following data with regard to outstanding court cases:

#### Criminal Courts:

- In the magistrates' courts outstanding cases reduced by 0.4 percent from 326,437 at the end of 2014 to 325,209 at the end of 2015. Receipts of cases fell by 1 percent from 1,607,170 in 2014 to 1,589,516 in 2015 whilst disposals increased by 1 percent from 1,570,660 to 1,594,029. The magistrates' courts effective trial rate increased from 45 percent in 2014 to 48 percent in 2015.<sup>18</sup>
- At the crown court, outstanding cases fell by 9 percent in 2015 from 55,116 at the end of 2014 to 50,039 at the end of 2015, there was an 11 percent reduction in trial cases, from 47,497 to 42,651. The effective trial rate remained steady at 50 percent in both years.<sup>19</sup>
- The number of days from first listing to completion for all criminal cases in magistrates' courts was 22 days in 2015, an increase from 20 days in 2014. The number of days from sending a trial case to the crown court to main hearing increased from 117 days in 2014 to 136 days in 2015.<sup>20</sup>

#### Civil Courts:

- The average time to deal with a fast or multi-track claim from date issued to claim going to trial improved from 56.8 weeks in 2014 to 52.6 weeks in 2015.<sup>21</sup>

#### Family Courts:

- The average time for the disposal of a care or supervision applications in 2015 was 28.3 weeks, an improvement from 29.9 weeks in 2014. The percentage of care or supervision proceedings disposed of within the 26 week time limit (introduced in the Children and Families Act 2014) improved from 55 percent to 58 percent.<sup>22</sup>
- There has been a decrease in the time taken for private law cases overall in 2015, taking 14.5 weeks compared to 16.7 weeks in 2014.<sup>23</sup>

On 27 May 2016, the House of Commons Public Accounts Committee published a report about the efficiency of the criminal justice system. Among its conclusions, it noted that:

- Around two-thirds of trials in the crown court are delayed or do not go ahead at all.

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<sup>18</sup> HM Courts and Tribunals Service, [Annual Report and Accounts 2015–16](#), 7 July 2016, p 27.

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*, p 28.

<sup>22</sup> *ibid.*

<sup>23</sup> *ibid.*

- Victims and witnesses are having to wait longer for their day in court: 134 days between the case leaving the magistrates' court and the start of the crown court hearing, compared to 99 days two years ago.
- 38.4 percent of cases sampled in a 2015 inspection were not reviewed by the Crown Prosecution Service (CPS) before they reached court.<sup>24</sup>

The Committee explained that the criminal justice system relied on victims and witnesses coming forward and giving evidence, but that the service victims and witnesses received was “not good enough”. It highlighted that:

- Only 55 percent of those who have been a witness say they would be prepared to do so again.
- One in five witnesses can wait for four hours or more to give evidence in court and we heard examples of different parts of the system sending victims conflicting information on the same case.<sup>25</sup>

The Committee also expressed its view that there were “unacceptable variations in performance in different areas of the country”. For example, it stated that in the year to September 2015 victims of crime in North Wales had a seven in ten chance that the crown court trial would go ahead as scheduled, but for those living in Greater Manchester there was only a two in ten chance. The length of time victims had to wait between an offence being committed and the conclusion of the case at the crown court ranged from 243 days in Durham to 418 days in Sussex.<sup>26</sup>

The Committee also commented that central government spending on the criminal justice system had fallen by 26 percent since 2010/11 and the MoJ had exhausted the scope to cut costs without pushing the system beyond breaking point. In some areas, even if the court made use of its full allowance of sitting days, there were not enough judges to hear all the cases.<sup>27</sup>

### 3. Government Announcements

#### Reform Proposals

In a written statement on 23 March 2013, the then Lord Chancellor and Secretary of State for Justice, Chris Grayling, announced that he had asked his department “to explore proposals for the reform of the resourcing and administration of our courts and tribunals”.<sup>28</sup> He explained that he would work closely with the judiciary as to the detail of the reforms, as well as work with relevant parliamentary committees.<sup>29</sup> A year later, on 28 March 2014, a joint letter by the Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, the then Senior President of Tribunals, Sir Jeremy Sullivan, and the then Lord Chancellor and the Secretary of State for

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<sup>24</sup> House of Commons Public Accounts Committee, [Efficiency in the Criminal Justice System](#), 27 May 2016, HC 72 of session 2016–17, p 5.

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*, p 6.

<sup>28</sup> [HC Hansard, 26 March 2013, col 95WS.](#)

<sup>29</sup> *ibid.*

Justice, Chris Grayling, set out that an agreement had been reached.<sup>30</sup> The letter noted that, for a number of years, there had been a need to “invest significantly in HMCTS’ physical estate and technology, as well as to modernise working practices and processes” and it announced that HM Treasury had agreed new investment to enable a Reform Programme to be undertaken. The letter explained that “this will deliver—through the use of modern technology, an improved estate and modernisation of current working practices—a more effective, efficient and high performing courts and tribunals administration”.<sup>31</sup> It added:

This will be enabled by a new one-off investment, averaging £75 million per annum over five years from 2015/16, front loaded to maximise impact. This supplements the funding already provided via the MoJ for the Criminal Justice System IT and Common Platform programmes and to support the upgrading of the estate. This investment will create a sustainable and affordable system where services provided to the public will be improved and the costs of delivery reduced for the taxpayer [and would] enable the legal profession and other justice agencies to adopt more efficient and cost saving working practices by using digital technology in their dealings with the courts and tribunals. Wherever possible, we wish to provide those using the justice system with maximum flexibility as to how they access courts, tribunals and their supporting administration. For example, in the future, the legal profession and other users should only need to attend at a court or tribunal when it is absolutely necessary.<sup>32</sup>

The letter explained that there would be integration with existing programmes:

We plan, through existing funding, to modernise technology in the criminal courts working jointly with the CPS and the police forces; the Reform Programme will be integrated with that developing work.<sup>33</sup>

With regard to better working practices, processes and use of the court estate, it noted:

The courts and tribunals estate is in need of modernisation: it is ageing and offers inadequate facilities for its users. We intend to invest significantly in the estate, managing it sensibly and holistically, making better use of its buildings and reducing its ongoing cost. Across all jurisdictions, a great deal of staff time is wasted on antiquated, paper-based processes. Without modern technology, the judiciary and staff cannot work as efficiently as possible, nor can the public access the justice system they deserve. We will introduce greater digital working and speedier, more flexible processes, enabling access to information on demand, reducing delay and saving cost. We intend to review and reform our procedures and processes, working with the procedural rules committees and the lead judges in civil, family, criminal and administrative justice. That review will have as one of its objectives ensuring that greater use is made of court and hearing rooms.<sup>34</sup>

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<sup>30</sup> [Joint Letter to Judges and Staff from the Lord Chief Justice of England and Wales, Senior President of Tribunals and Lord Chancellor and Secretary of State for Justice](#), 28 March 2014.

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

The HMCTS Reform Programme would be a joint venture, exclusively led and implemented by a strengthened HMCTS Board and accountable to the three stakeholders.<sup>35</sup> It was noted that certain issues, such as judicial deployment, would remain solely the responsibility of the Lord Chief Justice and the Senior President of Tribunals.<sup>36</sup>

On 23 June 2015, Michael Gove, the Lord Chancellor and Secretary of State for Justice, announced the Government's intention to work with the judiciary to reform the courts and tribunals in England and Wales.<sup>37</sup> Mr Gove explained the Government's view that criminal courts needed "urgent reform". He noted there had been significant delays for court hearings—such as a two year delay on a hearing for rape cases—missing or late paperwork, broken video links, and cases "derailed" by the late arrival of prisoners.<sup>38</sup> He explained that "dedicated" court staff had to cope with "snow drifts of paper, archaic IT systems and cumbersome processes". He also stated that civil and family courts required reform, with businesses and individuals being "astonished" that they could not easily file their case online.<sup>39</sup>

Michael Gove argued that online solutions, as well as telephone and video hearings, could make access to justice easier, and could reduce the need for journeys to court. He also noted that "dependence on an ageing and ailing court estate which costs around one third of the entire courts and tribunals budget" could be reduced.<sup>40</sup> Later the same day, he told the House of Commons that the Government suspected that "a significant number of additional courts will have to close".<sup>41</sup>

### Funding and Court Closures

In order to move to an online system, in the November 2015 Autumn Statement the Chancellor, George Osborne, said that "under-used courts will be closed, and I can announce today that the money saved will be used to fund a £700 million investment in new technology that will bring further and permanent long-term savings and speed up the process of justice".<sup>42</sup>

HM Treasury's publication on the November 2015 Autumn Statement explained that the Government's increased investment would "modernise and fully digitise the courts".<sup>43</sup> It explained that in 2014/15 the Government had committed £380 million new investment over five years from 2015/16 to "fundamentally transform the courts and tribunals system, ensuring it is fit for purpose and delivers swifter and more certain justice." HM Treasury added that the Government had already taken steps to deliver a more efficient and effective courts and tribunals system for all users—including action to create a fully integrated criminal justice system, based around a common digital platform from police stations to court rooms—and that the total investment of over £700 million would significantly reduce court hearing times and the time spent on basic administrative functions, and take away the need for over half a million pre-trial hearings in the criminal courts. However, to do so the Government would need to sell a

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<sup>35</sup> For further information on their respective roles, HMCTS' relationship to the Ministry of Justice and the arrangements in relation to financial management and parliamentary accountability see: HM Courts and Tribunals Service, [Her Majesty's Courts and Tribunals Service Framework Document](#), April 2011.

<sup>36</sup> [Joint Letter to Judges and Staff from the Lord Chief Justice of England and Wales, Senior President of Tribunals and Lord Chancellor and Secretary of State for Justice](#), 28 March 2014.

<sup>37</sup> Ministry of Justice, ['What Does a One Nation Justice Policy Look Like?'](#), 23 June 2015.

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

<sup>41</sup> [HC Hansard, 23 June 2015, col 755.](#)

<sup>42</sup> [HC Hansard, 25 November 2015, col 1371.](#)

<sup>43</sup> HM Treasury, [Spending Review and Autumn Statement 2015](#), November 2015, Cm 9162, p 69.

number of underused courts and refurbish others.<sup>44</sup> These reforms were expected to deliver savings of approximately £200 million a year from 2019/20 onwards and would deliver a “more efficient configuration of the estate”.<sup>45</sup> The Government was also to look at changes to court fees as it “continued to put the courts on a more sustainable financial footing”.<sup>46</sup>

In his Autumn Statement, George Osborne explained that the Lord Chancellor had worked with the Lord Chief Justice and others to put forward the “bold and radical plan to transform our courts so they are fit for the modern age”.<sup>47</sup>

### Consultation on Court Closures

On 16 July 2015, the MoJ and HMCTS launched a consultation on the proposal regarding the court and tribunal estate in England and Wales—a key element of HMCTS’ wider court reforms.<sup>48</sup> The consultation sought views on the closure of courts and tribunals which HMCTS did not believe met its “ideas of how best to deliver justice in the future” ahead of full implementation of the reform programme.<sup>49</sup> The consultation covered the proposed closure of 87 courts and four tribunals.<sup>50</sup> This would be the second of two recent court closure programmes. In June 2010, the Coalition Government had announced that it would consult on plans to close a number of courts in England and Wales and, following consultation, in December 2010 the Government announced that 93 magistrates’ courts and 49 county courts would be closed.<sup>51</sup> Since May 2010, there have been 146 courts closures, as at June 2015.<sup>52</sup>

The consultation explained that HMCTS operated 460 courts and tribunal hearing centres across England and Wales. According to the MoJ, the estate costs taxpayers around half a billion pounds each year and is “underused”—noting that over a third of all courts and tribunals were empty for more than fifty percent of their available hearing time in 2014.<sup>53</sup> According to the MoJ, at national level, the recorded utilisation levels of courts by jurisdiction in the financial year 2014/15 were only 71 percent for crown courts, 53 percent for county courts and 47 percent for magistrates’ courts.<sup>54</sup>

The consultation put forward proposals that aimed to reduce “surplus capacity” by closing “unused or underused” courts and tribunals, or those that were “simply unsuitable”.<sup>55</sup> The buildings that were consulted on represented 16 percent of hearing rooms across the estate which are, on average, used for only a third of their available time. The consultation concluded on 8 October 2015.

<sup>44</sup> HM Treasury, [Spending Review and Autumn Statement 2015](#), November 2015, Cm 9162, p 69 and p 104.

<sup>45</sup> *ibid*, p 69.

<sup>46</sup> *ibid*, p 104. For further information regarding court fees, see: House of Commons Justice Committee, [Courts and Tribunals Fees](#), 20 June 2016, HC 167 of session 2016–17; and [Criminal Courts Charge](#), 20 November 2015, HC 586 of session 2015–16.

<sup>47</sup> [HC Hansard, 25 November 2015, col 1371](#).

<sup>48</sup> Ministry of Justice, [Proposal on the Provision of Court and Tribunal Estate in England and Wales](#), 16 July 2015.

<sup>49</sup> *ibid*, p 4.

<sup>50</sup> *ibid*, p 5.

<sup>51</sup> [HL Hansard, 14 December 2010, col 816](#).

<sup>52</sup> [House of Lords, ‘Written Question—Court Closures’, 8 July 2015, 770](#). For further information on the earlier reforms, see: House of Commons Library, [Court and Tribunal Closures](#), 21 March 2016.

<sup>53</sup> *ibid*, p 2.

<sup>54</sup> Ministry of Justice, [Response to the Proposal on the Provision of Court and Tribunal Estate in England and Wales](#), 11 February 2016, p 19.

<sup>55</sup> *ibid*, p 2.

## Court Closures Announced

On 11 February 2016, the MoJ and HMCTS published its response to the consultation on the provision of court and tribunal estate in England and Wales.<sup>56</sup> They announced that 83 courts and three tribunal buildings would be closed. This would be the second major reform on court closures,

Over 2,100 separate responses were received, along with 13 petitions containing over 10,000 signatures.<sup>57</sup> In total, 110 responses related specifically to the national consultation paper and, of these, 15 were supportive of the closure proposals nationally, 39 had “neutral views and 56 responses were opposed to the closure proposals”.<sup>58</sup> A selection of responses to the consultation is drawn on in the commentary section below.

## Reform Details

Specific details of the reform are currently limited. In September 2015, Natalie Ceeney, the then Chief Executive of HMCTS, said that “we need to fundamentally rethink our model for the 21st century”.<sup>59</sup> She explained that she was not able to share detailed plans as that was “firmly work in process”.<sup>60</sup> Instead, HMCTS had some “increasingly clear ideas” which, she noted, both the Secretary of State and Lord Chief Justice had spoken about in recent speeches.<sup>61</sup> She summarised three key themes. Firstly, that the system needs to be built around those who use it, secondly that it needs to be accessible—easy to use, but digital in design—and, thirdly, that clearer proportionality needed to be introduced into the system, such as using modern technology to consider evidence and using hearings only where necessary, while making sure that all of services are consistently good.<sup>62</sup>

In June 2015, the judiciary was described by the Government as “leading the way” in reforming the courts.<sup>63</sup> Since the 2015 general election, Sir Brian Leveson and Lord Justice Briggs have published a report and interim report respectively on the structure of the courts—their findings are expected to feed into the court reforms (see further reading).

## Expected Legislation

The Queen’s Speech 2016 stated that the Government “will legislate to reform prisons and courts to give individuals a second chance”.<sup>64</sup> A background briefing to the Queen’s Speech by the Cabinet Office noted that there would be a Prison and Courts Reform Bill but did not provide detail with regard to provisions specifically relating to court reform.<sup>65</sup>

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<sup>56</sup> Ministry of Justice, [Response to the Proposal on the Provision of Court and Tribunal Estate in England and Wales](#), 11 February 2016.

<sup>57</sup> *ibid.*, p 4.

<sup>58</sup> *ibid.*, p 4.

<sup>59</sup> HM Courts and Tribunal Service, [‘Modernising Courts and Tribunals’](#), 23 September 2015.

<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*

<sup>62</sup> *ibid.*

<sup>63</sup> Ministry of Justice, [‘What Does a One Nation Justice Policy Look Like?’](#), 23 June 2015.

<sup>64</sup> [HL Hansard, 18 May 2016, col 3.](#)

<sup>65</sup> Cabinet Office, [The Queen’s Speech 2016—Contents](#), 18 May 2016, p 10.

## 4. Commentary

### Timescales

The House of Commons Public Accounts Committee report on *Efficiency in the Criminal Justice System* (May 2016) explained that the MoJ had said it would take four years before all the benefits of the reform programme was delivered in full.<sup>66</sup> HMCTS has published potential implementation dates of its court closures—one part of the reform—which provided an indication of when courts would cease to provide a public-facing service and would be subject to change as the programme progresses.<sup>67</sup> It noted that the first tranche of closures would begin between February 2016 and June 2016 and the latest tranche of closures would take place between July 2017 and September 2017.<sup>68</sup> However, HMCTS assured the Committee that the broad reform programme would be delivered in stages so some improvements should be seen within four years and that users were already benefitting from some changes to IT. It explained, for example, that all criminal courts now had Wi-Fi, widescreens, and “clickshare” technology—which allowed parties to present evidence digitally.<sup>69</sup> HMCTS was piloting further improvements, including the ability to transfer information electronically from the CPS to the magistrate’s courts, and it expected to provide iPads to magistrates across the country in the next six months and, within the next year, defendants would be able to enter guilty pleas online for traffic offences.

The Committee expressed concerns, however, that users of the system would not see the full benefit of the reforms for another four years, and argued that the MoJ could do more to improve the system in the meantime.<sup>70</sup> It noted, for example, that there could already be better sharing of “the many small practical improvements being introduced by hardworking staff in individual courts” and that there were “many examples of practical things the [MoJ] could change now to save time and money, that do not necessarily rely on the introduction of new technology or IT systems”.<sup>71</sup> The Committee also emphasised that “many” of the planned changes were things that it considered should be happening already.

The Committee added that other elements of the reform programme would be more challenging and expressed concern that the Government “does not have a good track record of delivering projects that involve significant changes to IT”.<sup>72</sup> It stated that it had heard from departments on numerous occasions about ambitious plans to deliver improvements through big IT projects but that those projects often suffered from delays and cost overruns. The MoJ said that the courts reform programme was “difficult and complex because of its scale, ambition, and timescale for delivery, and because it needed to bring together different elements for the programme to be a success” but it believed that it would be possible to deliver the reform programme.<sup>73</sup>

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<sup>66</sup> House of Commons Public Accounts Committee, [Efficiency in the Criminal Justice System](#), 27 May 2016, HC 72 of session 2016–17, p 7.

<sup>67</sup> HM Courts and Tribunal Service, [Potential Implementation Dates](#), 7 June 2016.

<sup>68</sup> *ibid.*

<sup>69</sup> House of Commons Public Accounts Committee, [Efficiency in the Criminal Justice System](#), 27 May 2016, HC 72 of session 2016–17, p 16.

<sup>70</sup> *ibid.*, p 3.

<sup>71</sup> *ibid.*

<sup>72</sup> *ibid.*, p 7.

<sup>73</sup> *ibid.*, p 17.

In its report, the Committee recommended that the MoJ and the CPS should work with others on the Criminal Justice Board to agree and publish a timetable by the end of 2016 that sets out what specific measurable improvements would be achieved, and by when, over the course of the next four years.<sup>74</sup>

## Access to Justice

When giving evidence to the consultation on the proposal on the provision of the court and tribunal estate in 2015, the Welsh Government expressed the view that the UK Government was “acting prematurely” in focusing on closing courts and tribunals prior to the assessment or analysis into developing digital platforms and before Lord Justice Briggs had made full recommendations about the future structure of the civil courts—suggesting an “absence of clear and strategically informed proposals”.<sup>75</sup> The Law Society agreed that the use of technology could benefit court users and that this would require significant investment, but recommended that it would be “prudent” to modernise the court with new technology and assess how it was working, and then consider savings.<sup>76</sup>

The House of Commons Public Accounts Committee agreed that an estate comprising fewer, bigger courts had the potential to provide more flexibility in scheduling trials, but remained “concerned that the impact on all court users has not been properly considered”.<sup>77</sup> It also expressed concern that HMCTS has said that it began consulting on a programme of court closures in July 2015, but only started working on a long term asset management plan to prioritise investment in its estate in December 2015, noting “surprise” that HMCTS had continued to spend limited resources on courts which are now being closed, for example £600,000 on Torquay Magistrates Court over the last six years, including a recent £100,000 investment in new windows.<sup>78</sup>

The UK Association of Part Time Judges raised concerns of about court closures for those on a lower income, given that the internet was not free and would require hardware and Wi-Fi or broadband connection. Speaking on behalf of the organisation, Peter Causton explained that he could “envisage the scenario where in housing cases people on benefits will be unable to attend court to argue against eviction and will have no other way of making an appearance, as they may not have access to the internet”.<sup>79</sup> He also raised questions on behalf of vulnerable people who use the courts, querying the additional affordability and cost of car and public transport usage. The Law Society also expressed concerns about the impact of the proposals on access to justice with regard to the cost and time of travel. Others, including the Housing Law Practitioners Association, also noted the negative impact the changes could have on those with ill health who “already struggle to attend existing courts”.<sup>80</sup>

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<sup>74</sup> House of Commons Public Accounts Committee, [Efficiency in the Criminal Justice System](#), 27 May 2016, HC 72 of session 2016–17, p 7.

<sup>75</sup> Ministry of Justice, [Response to the Proposal on the Provision of Court and Tribunal Estate in England and Wales](#), 11 February 2016, p 13.

<sup>76</sup> *ibid.*

<sup>77</sup> House of Commons Public Accounts Committee, [Efficiency in the Criminal Justice System](#), 27 May 2016, HC 72 of session 2016–17, p 7.

<sup>78</sup> *ibid.*, p 6.

<sup>79</sup> Ministry of Justice, [Response to the Proposal on the Provision of Court and Tribunal Estate in England and Wales](#), 11 February 2016, p 12.

<sup>80</sup> *ibid.*, p 13.

According to the MoJ and HMCTS there would be a reduction of 8 percent in the proportion of the population who would be able to travel to their nearest magistrates' court within an hour by public transport.<sup>81</sup> That would be the largest change with regard to travelling times following court closures. In response to concerns, the Government acknowledged that its proposals “will result in an increase in travel time for some of those who do need to attend court and who live in proximity to a court or tribunal which will now close” but stated that “access to justice is not just about proximity to a court” and that it was committed to developing alternatives to travel and fewer people needing to go to a court at all.<sup>82</sup>

Victim Support has highlighted potential problems with regard to waiting times, noting that as well as ensuring a high quality of facilities available to all witnesses, HMCTS must make sure that “added pressure on remaining courts as a result of closures does not generate backlogs” which would lead to longer waiting times and could have “serious and far reaching implications for victims and witnesses”.<sup>83</sup> The Bar Council has specifically urged HMCTS to further investigate the alternative arrangements proposed by the consultation to close courts, in particular to “make certain that the remaining courts will be able to take on the further workload and that the alternative venues proposed will meet the appropriate requirements”.<sup>84</sup> The MoJ noted that a number of responses to its consultation on court closures had addressed the alternative provision of court services, with many supporting the use of technology in delivering services differently, but raising concerns about “security of judiciary and staff in other buildings, the availability of suitable internet connections and the ability of people to access and use online services”.<sup>85</sup>

Questions have been raised regarding what has happened to courts that had been closed due to the previous court reforms. In answer to a written question by Andy Slaughter (Labour MP for Hammersmith), which asked for the monthly cost of each court building which had been closed but not disposed of since May 2010, the Government provided information for fifteen court buildings.<sup>86</sup> The average monthly cost was not available for three of the fifteen court buildings. For twelve of the courts the total average monthly cost, as at 10 December 2015, amounted to a total of £40,618.

JUSTICE—an all-party law reform and human rights organisation—set up a working party to consider the reform of the court and tribunal estate. It welcomed the court reforms as an opportunity, but noted that it was “particularly concerned with the need for HMCTS to invest in responsive, motivated and highly skilled staff to buttress the system”.<sup>87</sup> In its May 2016 report, JUSTICE stated that reducing staff numbers was “an obvious way to trim the budget” but had “an adverse impact on the smooth operation of the system”:

If the court and tribunal system is to operate effectively and efficiently within a smaller physical footprint, the role of HMCTS staff within those spaces must increase. [...] We have taken evidence from a wide range of court users who have consistently highlighted

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<sup>81</sup> Ministry of Justice, [Response to the Proposal on the Provision of Court and Tribunal Estate in England and Wales](#), 11 February 2016, p 16.

<sup>82</sup> *ibid*, p 19.

<sup>83</sup> *ibid*, p 18.

<sup>84</sup> *ibid*, p 12.

<sup>85</sup> *ibid*, p 20.

<sup>86</sup> [House of Commons, 'Written Question: Courts—Closures', 15 January 2016, 19301.](#)

<sup>87</sup> Justice, [What Is a Court](#), 18 May 2016, p ix.

the negative impact on the system of a reduced staff cohort. This reduction has also lowered morale amongst the staff themselves.<sup>88</sup>

HMCTS had previously mentioned in its 2014/15 annual report and accounts that automation of its processes and digitisation systems will mean that it “will need a smaller workforce in the future” and that, as digital technology allows video and online working “it is likely that we will need significantly fewer buildings requiring fewer staff”.<sup>89</sup> However, JUSTICE has said that in order to facilitate the potentially transformative effect of digitised case management and dispute resolution processes, it “would hope that existing HMCTS staff would be redeployed within the court and tribunal estate”.<sup>90</sup> It argued that the need for the enhancement of the court and tribunal service by its staff would grow as the HMCTS Reform Programme was implemented and that although the transition to a paperless system and an increased reliance on technology may mean that fewer employees were needed in some areas, the more intensive use of the estate and the introduction of new online systems would require adequate human support.

JUSTICE explained that the presence of diversely skilled, trained and empathetic court staff was imperative to the efficient, effective and accessible operation of the court and tribunal estate.<sup>91</sup> In particular, the working party emphasised the need to invest in well-trained and highly skilled IT support personnel who would provide assistance in person.<sup>92</sup> In October and November 2014 an organisation wide capability survey was undertaken by HMCTS and arising from the survey were three capability priorities for 2015/16: one of which was leading and managing change and one other which was digital skills.<sup>93</sup>

In addition, JUSTICE suggested that an overall shift was needed towards a more customer-focussed approach to staffing of the courts, particularly front-facing staff, which included ushers and security personnel. It felt that court users should be treated as clients that were being provided with a service, but a reduced number of court staff “impacts upon the ability of those remaining to achieve this aim”.<sup>94</sup> The working party recognised that navigating court and tribunal buildings can be “a daunting task, even for professional users” and proposed the exploration of a concierge service in justice centres for people to be able to speak with someone who could explain basic procedures and sign-post.<sup>95</sup>

## Further Reading

Below is a selection of recent reports which are not included in the above briefing but which are intrinsically linked to the reforms of the courts. The findings in the following reports by the judiciary are expected to feed into the Governments reform:

- Judiciary of England and Wales, [Review of Efficiency in Criminal Proceedings by The Rt Hon Sir Brian Leveson President of the Queen’s Bench Division](#), 23 January 2015

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<sup>88</sup> Justice, [What Is a Court](#), 18 May 2016, p 53.

<sup>89</sup> House of Commons Public Accounts Committee, [Efficiency in the Criminal Justice System](#), 27 May 2016, HC 72 of session 2016–17, p 31.

<sup>90</sup> *ibid*, p 53.

<sup>91</sup> Justice, [What Is a Court](#), 18 May 2016, p 53.

<sup>92</sup> *ibid*.

<sup>93</sup> HM Courts and Tribunals Service, [Annual Report and Accounts 2015–16](#), 7 July 2016, p 49.

<sup>94</sup> *ibid*, pp 53–4.

<sup>95</sup> *ibid*.

In February 2014, after discussion with the Lord Chancellor, the Lord Chief Justice asked Sir Brian Leveson to conduct a review into the efficiency of criminal proceedings.<sup>96</sup> Sir Brian noted that the review was conducted against the background of the decreasing public funding that was available not only for HMCTS but also for the police, the CPS, the National Offender Management Service (NOMS) and legal aid. In January 2015, Sir Brian published his report.<sup>97</sup> The report looked into how criminal defendants were given independent legal representation in the courts of England and Wales and to demonstrate ways in which, consistent with the interests of justice, it might be possible to streamline the disposal of criminal cases thereby reducing the cost of criminal proceedings for all public bodies. A further aim was to ensure that proposed reductions in criminal legal aid could be justified on the basis that the rate of remuneration would not be affected: less work would be required to be put into each case because considerable waste and inefficiency in the system (which takes up the time of criminal lawyers and consequently costs money) had been eliminated. The review was intended to stand alongside that conducted by Sir Bill Jeffrey, [Independent Criminal Advocacy in England and Wales: A Review by Sir Bill Jeffrey](#) (May 2014) on the provision of independent criminal advocacy services.

- Judiciary of England and Wales, [Civil Courts Structure Review: Interim Report by Lord Justice Briggs](#), December 2015

The Civil Courts Structure Review was commissioned by the Lord Chief Justice and the Master of the Rolls in July 2015.<sup>98</sup> Included in its terms of reference was “to make recommendations for structural change including, in particular, the structures by which the fruits of the Reform Programme may best be integrated into the present structure of the civil courts”.<sup>99</sup> The work was “designed to align optimally” with the Reform Programme and in also to look at the overall structure of civil justice. Lord Justice Briggs published an interim report in December 2015.<sup>100</sup> In his interim report, Lord Justice Briggs noted that, due to urgency, the interim report set out options for structural change “but, for the most part, with only the provisional expression of tentative conclusions in the areas where I have found it appropriate to do so”.<sup>101</sup>

Lord Justice Briggs’ interim report also noted that though funding was resolved, there was “little about the Reform Programme that has yet reached the level of detail, at least in relation to the civil courts, necessary to be able to do much more than speculate about its effects upon the structural issues”.<sup>102</sup> He explained that much of it “depends critically upon assumptions about what software can be designed to run a digitised court” and about the quality of the end-product—noting that there was “very little” in the UK or abroad that set reliable precedent.<sup>103</sup> Lord Justice Briggs is expected to report in full by the end of July 2016.<sup>104</sup>

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<sup>96</sup> Judiciary of England and Wales, [Review of Efficiency in Criminal Proceedings by The Rt Hon Sir Brian Leveson President of the Queen’s Bench Division](#), 23 January 2015

<sup>97</sup> *ibid.*

<sup>98</sup> Judiciary of England and Wales, [Civil Courts Structure Review: Interim Report by Lord Justice Briggs](#), December 2015, p 2.

<sup>99</sup> *ibid.*

<sup>100</sup> Courts and Tribunals Judiciary, [‘Introductory Message from the Lord Chief Justice and the Master of the Rolls’](#), 28 October 2015.

<sup>101</sup> Judiciary of England and Wales, [Civil Courts Structure Review: Interim Report by Lord Justice Briggs](#), December 2015, pp 5–6.

<sup>102</sup> *ibid.*

<sup>103</sup> *ibid.*, p 6.

<sup>104</sup> *ibid.*

A selection of other recent reports on the court system are:

- National Audit Office, [Efficiency in the Criminal Justice System](#), 1 March 2016, HC 852 of session 2015–16.
- House of Commons Justice Committee, [Courts and Tribunals Fees](#), 20 June 2016, HC 167 of session 2016–17.
- House of Commons Justice Committee, [Criminal Courts Charge](#), 20 November 2015, HC 586 of session 2015–16.

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