Response to the Consultation on, "Fit for the future"

Transforming the Court and Tribunal Estate

CLSA

The Criminal Solicitors Law Association has provided a response to the above consultation(The C.S.L.A.). The response is based on practical experience and knowledge of the affects which some Court closures have already brought about, and the concerns regarding other proposed Court Closures.

The proposals by the Government to use modern technology and working ways to transform the Justice System are to be applauded. The Criminal Case Management System which is used extensively in all of the Crown Courts has brought many benefits, not least instant access to case management, fewer bundles at Court, and everyone having access to the same system. This should be further developed for all Courts and Tribunals, and subject to amendments is working well.

However, what should not be overlooked is that access to Justice often means access to the Courts and Solicitors. The C.L.S.A have concerns that this Government believes that so called, "Simple" cases can be fast tracked and dealt with in situations where a Defendant does not appear in Court, and is denied access to a Solicitor. The purpose of any Court hearing is to enable both the Prosecution and the Defendant to be heard equally. The concept of equality of arms is enshrined in the history of England and Wales, that should not be removed in the guise of expedience or technology. The layman does not have an understanding of the law, often now, no statements are produced at the first Court hearing, and if the Government interferes, and decides which type of cases should be dealt with outside of a formal Court hearing, then there is a denial of basic access to Justice. What a minister may decide as a trivial matter, may well not be to the Defendant, who is entitled to be heard fairly and honestly, not swpt aside for the sake of convenience. The fear is that further Governmental interference will simply show that the Judicial system is no longer impartial, but at the dictation of ministers for the purposes of cost cutting and target setting. This is neither justice, nor is it laudible, and the Government should be dissuaded from interfering in this way.

The C.L.S.A. do not understand how the Lord Chancellor can believe that reform of the Criminal Justice System is because it is slow and restrictive. This shows a lack of understanding of due process by the Lord Chancellor. Technology has, and will continue to provide benefits to all parties involved within the Justice System, what it will not do is override the need for proper access to Solicitors, Barristers, and Tribunals. Those who practise within the Judicial System know all too well that a non attending client, or a client who is produced via the video link is treated less favourably than a client who is physically present at any Court proceedings. Access to professionals, and physical presence are vital, both for continuity of instructions, and equality of arms.

A proposal to use either the telephone or videolink for non essential hearings has its merits for the Court user. However, this also has its disadvantages in attempting to use the videolink and telephone system. What if Counsel is dealing with several cases at the same Court, not an uncommon situation, or the childcare solicitor who's case has overrun? This is not being factored in to the proposals and should be considered further.

Sir Terence Etherton misses a huge point in his statement about local justice, The online solutions court will not enable parties to carry out litigation properly from their home computer. How can any party be sure that they are being presented with the full facts to enable them to participate fully, what warning, or directions can be given if someone does not understand their case, and their Solicitor is not sat in the same room as they are? We have seen far too many examples of poor disclosure, badly typed misleading statements in too many cases, both in the Magistrates and Crown Courts to have any trust in the providers. Just because the Lord Chancellor believes that an issue is simple does not make it so.

Sir Ernest Ryder misunderstands one point, and perhaps he should re read the Magna Carta, he quotes, "Justice does not stand outside or above the citizen". What he fails to understand is the concept of the Magna Carta, "Every man is equal before the Courts" These proposals remove that right by governmental interference as to what it considers is important.

Civil Cases are no less complex and important than Criminal cases. Even the most complex issues can be of limited financial value. Treating the level of money claims up to the value of £25,000.00 overlooks those potential complexities.

It is noted that the Lord Chancellor is working with the Crown Prosecution Services and Police to simplify the system, including new technology programmes. The obvious oversight here is the lack of engagement with all practitioners in the criminal justice system. Without wishing to appear cynical, the CPS and Police have hardly covered themselves in glory relating to the most simple of issues, namely investigation and disclosure. If they are so lacking in knowledge and expertise in the basics, how can there be any confidence that their idea's will contribute fairly to the criminal justice system?

Flexible operating hours in pilot schemes offer no flexibility at all. Neither the police, the CPS or practitioners have the means to operate flexibly, there are no resources, no funding, no staff, and no amenities, glib words without knowledge.

Questionnaire

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

In certain area, for example in Cambridgeshire, this is already proving to be an impossibility. Let us firstly deal with the question of access to the Magistrates Court. Magistrates Courts are often used for Child Care and Family cases. Such cases regularly begin at 9am. If a client has a 2 hour journey by using either public, or personal transport, which is highly likely, as many clients and therefore Court users are in receipt of benefits, this means leaving home at say 6am, trying to resolve childcare issues, being able to get children to school, or fed, attending Court, often stressed, and therefore unlikely to be fully able to participate in Court proceedings, and then having the stress of returning home, and ensuring firstly, that transport is available, and secondly, the worry, again of being able to resolve childcare issues.

This is an ill thought out procedure, Criminal cases are equally likely to be effected.

The ruse, that public transport can resolve attendance within 2 hours does not take account of waiting at Court, the hope that, for example, a case where a stand down report is required for sentencing, can be done, and the client being dealt with expeditiously, is a fiction. Such action is likely to harm justice. Indeed, there are some Courts in the North of England, whereby such closures now involve travel on a number of buses, a 6 hour round trip. How can this be in the interests of justice.

It is not merely the need for all Court users to be able to attend a hearing on time, and return within a day, they must be able to participate effectively and meaningfully without further stress. Court closures will not allow for this.

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

Courts and Tribunals by their very nature have an important part to play in an area of Law. Sometimes, the presence of a formal institution can have a sobering effect, both on Defendants and Respondents, and also those involved in the participation of hearings. There is more than adequate research available to show that a defendant appearing by way of video link is less favourably treated than those who are present.

Of equal importance, some first appearance matters which the proposals seem to wish to make the making of a plea on line without access to a Solicitor. Even the simplest of issues at first blush can be complex and requires access to a Solicitor. The proposals of virtual hearing denies access to a Solicitor. The Crown Prosecution Services seem to be of the view, that limited evidence, and a dearth of statements is sufficient to enable any person to make an informed decision regarding plea's. This is not the case, the law can be complex, as can defences, the misguided approach of, "Your client must know whether he has done it" is inadequate, and frankly farcial. Justice must be seen to be done, expedience and cost cutting is no answer to the provision of Justice on the cheap, and frankly the only way that access to justice can be improved is by proper funding, proper Courts, properly qualified participants, openness and fairness. The Courts do not provide accessibility of services,

what services are provided? Cases are brought, they need to be responded to properly, and who knows, this may actually be the most economic outcome.

Q.3 What are your views regarding the analysis of the travel time impacts of our proposals? Are there any alternative methods we should consider?

This in part has been answered in question 1. There is no taking into account the true availability in public transport, the costs of attending Court on those on benefit, the ability to participate effectively in Court proceedings, Court waiting lists on the day.

The M.O.J. has clearly not participated effectively in its studies, for example, a Defendant on benefit, living in Bar Hill, Cambridge is expected to travel to Huntingdon Magistrates Court by using public transport, for a child care case, starting at 9.00am. How does the client get their children to school, how can they be certain that they will be home at 4pm to collect their children? The time that they need to leave home, get 3 buses, and return the same way, and participate in litigation effectively is impossible. Poor thinking skills. This is just one example.

There is some justification, for limited hearings, in allowing video-link, or telephone conferences for none urgent hearings. However, this impacts upon the participants understanding, and alienates them from the proceedings. Local Court, local justice.

Q.4 Do you agree that these are the right criteria against which to assess capacity? Are there any others we should consider?

There appears to be a wilful lack of understanding as regards to capacity and use. What is required is a proper analysis of Court use, Court listings, and client use. Hearing rooms are impersonal, not secure, and disengage users from real hearings.

The MOJ have consistently failed to realise the true problems of Court hearings, procedure and practicalities. What is the difference between a hearing room and a Court? Perhaps it is the £34,000.000 revenue which will find its way into the MOJ pockets. There can be no justification for these proposals. There is no evidence that capacity proper has been reduced, just a diversion away from the justice system under the guise of modernisation which does nothing to support access to justice,

<u>Q.5</u> 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 MOJ consistently uses the terms, "Victims and Witnesses". This is both wrong and discriminatory. The purpose of all Courts and Tribunals is to ensure equality of arms, not the pandering to any one group in favour of political correctness.

How can there be equality of arms when those who's liberty, or children may be lost, but the facilities for such Court users is overlooked to the specific perceived need of others.

The Justice system is there for all users, it is not for the Judiciary, nor the MOJ to discriminate. The term Victim automatically implies the presumption of guilt, that is misleading and democratically unfair... an addendum of the Magna Carta can be attached.

Technology has its uses, particularly where legal furthering of a case is made out, and no intervention is required from the client, then teleconferences are ideal. However, video-links tend to dehumanise those appearing on a screen, and meaningful participation. Equally, the skewed view of those who appear by way of video link, despite warning being given by the Judge is likely to have an impact upon a Jury. Body language is as important as to what is being said. This facility is not available to a vulnerable and nervous defendant.

One positive and major change which technology has provided is the Criminal Case Management System. For the sake of ease, continuity, and multi party participation, such systems should be introduced as a matter of urgency to all areas of Law. This will enable speedier case management, and may well reduce Court times at a later date.

Q.6 What are your views on our approach to people and systems? How do we best engage with the widest possible range of users as we develop scheduling and listing systems? What factors should we take into account as we develop our plans?

Flexibility is always a desirable approach to any listing system, and Is a noble aim. However, the push towards digital practise overlooks the need for access to those who can provide independent and impartial advice, and such accessibility should not be overlooked for the twin aims of convenience to the Courts, and speed.

The C.L.S.A. have earlier expressed, in this consultation, the areas of concern, they can only be reiterated. Web chat, teleconferencing, and e mails clearly play an important role in any progress, however, what must be acknowledged is the fact that often, Counsel or advocates are involved in more than one case at the same Court, and by dealing with matters electronically, can often preclude progress in other matters.

One way forward is for the advocates to file, one week in advance, a list of their cases to be heard in any one Court, together with a time estimate of each matter. Such a list to be filed with the listings office, and then there could, and should be a seamless transition of all hearings. Failing that, keep each system as it is now, to prevent aborted hearings.

It is vitally important to understand how Court users do use the Courts, and Court facilities. Listing matters electronically is often no substitute for the need to attend personally, and credence must always be given to understanding that Counsel often deal with multiple matters on one day.

Q.7 Do you have views on our approach to evaluating proposals for estates changes, or any suggestions for ways in which this could be improved?

It is clear that the M.O.J. are less concerned with evaluating the impact upon Court closures and mergers, than with the impact upon the Justice System. Little proper analysis regarding Court use, timings, and availability and accessibility has been undertaken.

It is both naieve, and damaging to believe that some cases can be heard because a Court user can attend Court by public transport in one day. There are of course further issues, for example, equality, what about the Advocate, who may also have childcare issues? Local Justice is another factor. Expertise amongst magistrates and local Court Clerks have proved invaluable. It would appear that all is being done to facilitate crown Witnesses, whereas the Defence or Respondent is excluded from the equation.

This consultation is a money saving exercise and a land grab for building space, and nothing more.

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

The C.L.S.A. is concerned about the terminology in use. The consultations, such as they are, appear to be involved in Court closure and land sell off, giving little regard to the impact on anyone but the Crown Witnesses, and the misguided view that accessibility can be overcome by electronic means or public transport. As always, the issue is access to justice, if such access is denied fairly, then so is justice.

Q.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?***

Each and every Court or Tribunal user should have unhindered, and unmitigated access to all Courts and Tribunals, and in the interests of Justice, such access should be open. Any user, whether they have physical or emotional difficulties should have access to the relevant support, and legal access that is necessary.

By removing local Courts, those, often on benefits, are denied easy access to justice, along with access to a local Solicitor. Many Lawyers will simply be unwilling, or unable to travel long distances, in order to provide representation as it may not be viable, nor feasible.

Equally, those who are physically, or emotionally less mobile will feel disconnected from the judicial process, or indeed may well find that it no longer provides what they need. Video-link, web cam, and telephone conferences are often time limited, a client may not understand all the procedure, and the case against them, and may well not have access to a Solicitor, the Mental Health Team, or Probation. This is state empowering over the vulnerable.

The C.L.S.A. would urge that the M.O.J undertake a full survey with the recognised bodies as opposed to concentrating upon those that they perceive are the victims in cases. Empirical and properly thought through evidence and experience is required before alluding to a populist view.

Q.10 ***NO***