

Justice Committee

Oral evidence: [Court and tribunal reforms](#), HC 1886

Tuesday 21 May 2019

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Members present: Robert Neill (Chair); Bambos Charalambous; David Hanson; John Howell; Victoria Prentis; Ms Marie Rimmer; Andy Slaughter.

Questions 1 - 100

Witnesses

I: Matt O'Brien, Chair, Criminal Law Committee of Birmingham Law Society; Gerwyn Wise, Assistant Secretary, Criminal Bar Association; John Bache JP, Chair, Magistrates Association; and Detective Chief Inspector Craig Kirby, Thames Valley Police.

II: Harriet Bosnyak, Solicitor, Shelter; Tessa Buchanan, Barrister, Vice-Chair of Housing Law Practitioners Association; and Richard Miller, Head of Justice, Law Society.



Examination of witnesses

Witnesses: Matt O'Brien, Gerwyn Wise, John Bache JP and Detective Chief Inspector Craig Kirby.

Chair: Welcome to our evidence session on court and tribunal reforms. Before we start, members need to make their declarations of interest. I am a non-practising barrister and a consultant to a law firm.

Victoria Prentis: I am a non-practising barrister.

Bambos Charalambous: I am a non-practising solicitor.

Andy Slaughter: I am a non-practising barrister.

Q1 **Chair:** Thank you very much, gentlemen, for coming to give evidence to us. Would you like to introduce yourselves and your organisations for the record? I know that all of your organisations have submitted written evidence, for which we are grateful and which we have seen, so we need not repeat all of that. We will then be able to get straight into the questioning.

John Bache: Good morning. I am John Bache. I am the chairman of the Magistrates Association.

Q2 **Chair:** It is nice to see you again, Mr Bache.

Matt O'Brien: I am Matt O'Brien. I am the chair of the criminal law committee of Birmingham Law Society.

Detective Chief Inspector Kirby: I am Craig Kirby. I am a detective chief inspector from Thames Valley police and the deputy head of the criminal justice department.

Gerwyn Wise: I am Gerwyn Wise, a member of Garden Court Chambers and the current assistant secretary of the Criminal Bar Association.

Q3 **Chair:** I am a former member of the CBA, from my time in practice at 2 Bedford Row, although I am not currently a member. It is good to see you all.

To start off, I wonder whether you can help me collectively. In 2016, we had a joint statement by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals setting out a vision for a system that, in their phrase—revised from phrases used before—is “just, proportionate and accessible to everyone”. Obviously, we are concentrating on criminal justice at the moment, rather than tribunals. Do you think the reforms move in that direction or away from it? Is it a good vision, but the reforms are only partially capable of getting there? What is your view?

John Bache: Everybody involved in the reform process wants two things: efficiency and fairness. I think everybody in HMCTS is concentrating on efficiency, which is fine, and all the judiciary want fairness, which is equally fine. The difficulty is getting the balance. I have



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never met a member of the judiciary who says they want an inefficient system, and I have never met anyone from HMCTS who says they want an unfair system. The difficulty everybody is grappling with is how to get a fair balance between efficiency and a fair system. At the end of the day, I think fairness must come first. That is where our concerns arise.

Q4 **Chair:** Do you think the current proposals get that balance right or not, Mr Bache?

John Bache: I don't think there is a right answer. That is half of the problem. HMCTS is absolutely bending over backwards to ensure that everybody is getting a fair hearing. Our concern is that the most vulnerable are the ones most likely to be in difficulties, because they are not digitally competent, or they live a long distance away from courts and courts have closed. They are not people who will easily be able to manage things digitally.

Q5 **Chair:** We will come on to some of the detailed areas of concern in a moment. I am just interested in the dichotomy, or not, between fairness and efficiency, and seeing how that goes.

Gerwyn Wise: In short, the answer is no; I do not think the reforms deliver what was in the 2016 statement. The Criminal Bar Association is obviously in favour of modernisation of the criminal justice system. Frankly, it needs it. The problem, which was touched on a moment ago, is that the focus of the reforms seems to be efficiency—cost saving, essentially—at the expense of maintaining easy access to justice. As you say, we will go into detail on some examples of that. Our main concern is that the main driver is cost saving, rather than maintaining easy access for the most vulnerable in society, whether they be witnesses, victims of crime or defendants. That seems to be the focus of the reforms, from our perspective.

Q6 **Chair:** It was thought that the change in wording in 2016 from what had been used under a previous Secretary of State was greater recognition of the fairness point. You are not convinced by that.

Gerwyn Wise: The words say that. Whether the programmes and changes that have been put in place effect it is another matter.

Q7 **Chair:** Fair enough. Mr O'Brien, what is the view from your end?

Matt O'Brien: The membership of my committee, and the professions more widely, embrace those parts of the reform programme that have been brought in already that introduce efficiencies and generally improve matters. What we are seeing, and where we have raised concerns, is that already there appear to be unintended consequences of those reforms that impact on fairness and access to justice. There is concern that, in a rush to move the reform programme along without taking stock and considering its effect, those problems will only increase.

Q8 **Chair:** What are the headlines of the unintended consequences? I



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suspect we are going to come back to them.

Matt O'Brien: In terms of the unintended consequences, I suppose that—

Q9 **Chair:** Are there access issues?

Matt O'Brien: Access, in a very broad sense, is probably the headline.

Q10 **Chair:** Mr Bache made the point that there is digital impairment for some people.

Matt O'Brien: Yes.

Q11 **Chair:** Travel times?

Matt O'Brien: Yes, travel times, as well as the increasing use of video technology.

Q12 **Chair:** There is the question of whether there are adequate safeguards around the use of that. I understand. That is what we are going to explore.

Mr Kirby, Thames Valley made an interesting specific submission, in which you talked about the proposals concentrating too much on court closures and digital developments, “rather than taking a strategic and holistic approach to the whole criminal justice system”. That is a very specific and interesting criticism. As well as your general view, perhaps you could develop that a little.

Detective Chief Inspector Kirby: From our perspective, efficiency is important to fairness. What we see is that one of the biggest threats to justice is delay, because victims and witnesses disengage, and then justice cannot be secured for either the victim or the defendant who has been accused. Like the other members of the panel, we are fully supportive of the efficiencies, but, as you identified, there are impacts from that.

When we talk about a holistic view, it is around engagement. We are doing everything we can, as a key enabler, to ensure that we are in the right position to support these efficiencies, but sometimes it feels to us that the change is being directed upon us, rather than us being involved in supporting it and managing the potential consequences locally, so that we can address those and ensure that we mitigate them to take the programme forward.

Q13 **Chair:** Can you give me some examples of what makes you feel that?

Detective Chief Inspector Kirby: Of some of the consequences?

Q14 **Chair:** Yes, of things you feel are being forced upon you, in effect.

Detective Chief Inspector Kirby: On digitalisation, we committed to provide our evidence in a digital way by 2020. We have gone forward with a significant technological project to ensure that we can achieve



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that. Then we find that there are real challenges in how that evidence is being received in the court, because it is disconnected. The court infrastructure, and our infrastructure, is not sufficient to accommodate that. We then have to look at workarounds. We are constantly having to identify workarounds for issues.

Likewise, we have invested significantly in Live Link across our force to mitigate the impact of court closures and to save officers' time. For every officer who attends court, we lose approximately four hours.

Q15 **Chair:** Because of travel time.

Detective Chief Inspector Kirby: Again, we have done that, but all the time we are following up and dealing with the consequences as they happen, rather than being involved earlier when we could potentially avoid some of them, or at least help to minimise them.

Q16 **Chair:** I understand that. Before we move on to other things, there is one specific point about courts not being enabled. There is a suggestion that juries have to have evidence in paper form, even though you have sent it all over digitally, because the ClickShare system does not have the facilities. Is that in the jury rooms?

Detective Chief Inspector Kirby: There are two issues. One relates to the jury bundles the juries have access to during the hearing. Secondly, we have started to send across our evidence digitally, but we also have to send disks, because there are currently no facilities in jury rooms to play that evidence. That is another example of a dual process that the police have to accommodate.

Q17 **Chair:** I understand that. You are nodding, Mr Wise.

Gerwyn Wise: On that specific point, when I was doing a murder trial last year at the Old Bailey, two different juries had to share CCTV facilities in retirement. It meant massive delays to jury retirement time. It is an absolute waste of money. That is a perfect example.

Q18 **Chair:** The solution has to be investment in more CCTV facilities, to make the thing worth while.

Gerwyn Wise: Precisely. This whole process only works if there is more investment.

Detective Chief Inspector Kirby: We can help with that. If we are involved earlier and can have a local governance and delivery framework, we can identify issues and work to address them. We feel quite out of that opportunity.

Q19 **Chair:** You are kept out of the loop.

Detective Chief Inspector Kirby: It feels like that. Locally, there are very strong links between the criminal justice agencies—the courts, CPS and ourselves—but a lot of this feels like it is being driven nationally.



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That makes it very difficult for us, and for all agencies, to deliver locally. That applies to our colleagues in the defence as well.

Q20 **Chair:** There is a general sense that you people, as end users, have not been fully engaged in the consultation. I see lots of nodding of assent, Mr Bache.

John Bache: We have been engaged. There are different judicial engagement groups. I am on the magistrates engagement group. HMCTS has meetings with us regularly, and we comment on their proposals. We are not always convinced that they act on our comments. There again, it may not be possible for them to act on them.

Q21 **Chair:** Do you get feedback on why it may not be possible?

John Bache: The obvious one is money.

Q22 **Chair:** I wondered whether, as a matter of process and principle, they tell you why they cannot do it.

John Bache: Yes, they explain why. They are trying to engage; there is no question about that. When we ask them specific questions, they do their best to answer those questions, but the answers are not always what we would like to hear.

Chair: I detect a bit more scepticism from the other members of the panel around that level of engagement.

Q23 **Victoria Prentis:** I want to talk about court closures, particularly the impact of travel times. You will have seen that HMCTS gave a guideline, slightly unhelpfully, after we had all joined in the consultation on court closures. Basically, they said it would be fine if the overwhelming majority of users could leave home no earlier than 7.30 in the morning and be back by 7.30 in the evening, by public transport if necessary. That was slightly weird; I did not quite know whether that meant public transport should be available, or the opposite.

This is very relevant to my area. DCI Kirby will know that our local court, in Banbury, was closed. There is a 23-mile journey to Oxford, which is almost impossible to achieve early in the morning. I should know. At the moment, I am delivering a child to GCSEs at 9 am. The time of day we have to leave to achieve that is extraordinary. Obviously, court is a deadline every bit as important as the GCSE. Would you like to comment on HMCTS's idea that this is a good or acceptable way to proceed?

John Bache: I think that 7.30 am to 7.30 pm is a huge timeframe.

Q24 **Victoria Prentis:** I do, too.

John Bache: It was originally one hour. Everybody, or the vast majority of people, should be within one hour of court.

Q25 **Victoria Prentis:** That is what we consulted on.



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John Bache: That's right. Absolutely. It seems to have changed. I do not quite know why. One thing is that public transport is not always available. In London, it is entirely different. In Oxfordshire, I would have thought that it was reasonably good. In places like Cornwall, the west of Wales or Northumberland, it is not available at all. Often people do not have private transport.

Q26 **Victoria Prentis:** No. DCI Kirby, could you tell us more about court users and their access to private transport, and, indeed, funds to go on public transport?

Detective Chief Inspector Kirby: Our witness care unit can assist them to reclaim that, via funds that the CPS has. As you know very well, in Oxfordshire, probably the worst location for everyone to get to is Oxford city centre. To meet the 7.30 to 7.30 timeframe, there is a suggestion that there needs to be more flexibility around listings. We struggle with dates to avoid, but if we started having hours to avoid as well, it would become another example where we could see a significant displacement of work, as we tried to manage the requirement to hit that timeframe.

Q27 **Victoria Prentis:** Has anyone looked at that? For exactly the same reason, I have asked the hospital in Oxford to put the appointments of patients from Banbury at 11 am, rather than 10 am, because there is a big problem with getting into Oxford in the morning. In court, that would be well-nigh impossible, wouldn't it?

Detective Chief Inspector Kirby: In Oxford, the requirement for defendants is to be at court at 9.15. The requirement for witnesses is to be there at 9.30.

Q28 **Victoria Prentis:** It is like the GCSE. I cannot tell you how early you have to leave.

Detective Chief Inspector Kirby: It is to ensure that all the parties are present for a 10 am start. You could not move it much further back, as otherwise you would lose quite a lot of court sitting time. Trying to manage that is going to be very difficult. We would say that it is a good sentiment—I speak only on behalf of Thames Valley, not nationally—but trying to achieve it, even in an area such as Oxfordshire, will be very challenging.

Gerwyn Wise: It seems to me that the 7.30 to 7.30 timing has come now because of the criticism that has been coming about the closure of courts, particularly in rural areas. They have had to build in a two-hour block, roughly, between leaving and getting to court.

The concern that we have as an organisation is about what consideration has been given to vulnerable court users and how they get to court. Take people with children. You are extending the amount of time they have to arrange for childcare when they go to court. There are people with other caring responsibilities. There are people with low incomes. How are they paying for this travel? There are people with physical disabilities that



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mean that long journeys are near impossible. There are people with mental health difficulties. Quite frankly, it is appalling that the introduction of this two-hour block does not appear to have been assessed in any proper way as regards the impact that it is going to have on the people who use the court system. That is the opinion of the CBA, in any event.

Q29 **Chair:** It may not be just a one-off, one-day thing.

Gerwyn Wise: No, not at all.

Q30 **Chair:** If the case is longer, it can take three or four weeks.

Victoria Prentis: It can go on for weeks.

Gerwyn Wise: I am in the middle of a six-week trial. That could be six weeks of vulnerable defendants having to travel a long way to court.

Q31 **Victoria Prentis:** Yes. Do you have any comment, Mr O'Brien?

Matt O'Brien: I simply echo what Mr Wise said about the vulnerable. People from low socioeconomic backgrounds and people with mental health problems are disproportionately represented in the criminal justice system—mainly as defendants, but also as witnesses—particularly in the summary courts. It feels like this is a policy that has been implemented just taking into account people with resources and the ability to use public transport. That is not who is using the system.

Q32 **Victoria Prentis:** In brief, is this a real concern for you all in access to justice terms?

Detective Chief Inspector Kirby: Because of public transport issues, we are seeing a lot of work having to go into delaying hearings, negotiating with the prosecutors and then liaising with the court. At times, cases have to be adjourned because victims and witnesses are simply unable to get to the court at the right time.

Q33 **Victoria Prentis:** Have no-shows increased?

Gerwyn Wise: I do not think there has been any proper assessment of that, given the timescale we are talking about, but, anecdotally, yes. More and more people are talking about witnesses not turning up and cases being dropped as a result. You cannot keep adjourning a case again and again. Defendants are not turning up, so more warrants for arrest are going out. Therefore, police resources are being wasted on chasing people who are not going to court, rather than doing the things the police should be doing.

Q34 **Victoria Prentis:** Do you feel that the two-hour window was brought in to help the Ministry? Previously, we had all assumed that it was a one-hour window.

Gerwyn Wise: Yes.



Q35 Chair: Mr Bache, can I ask you one thing about that, before we move on? Others may come in. It follows up Mr Wise's point about anecdotal evidence. The only evidence we have seen is a study in Suffolk that was carried out by some academics. There, two of the three courts were closed and everything was centralised on Ipswich. The evidence from that study suggested that the failure to appear rate went up from about 2.5% to over 12% in the two former magistrates court areas—the more rural parts of the county. Have you picked up anything more around that?

John Bache: I am afraid I cannot recollect that particular study. Anecdotally, there is no question but that people are not showing up when otherwise they would.

We are using the phrase "access to justice" quite a lot. There are two aspects of access to justice. The first is the physical aspect—the geography of it. Obviously, court closures have a huge impact, particularly in rural areas. The other aspect of access to justice is digitalisation. The trouble is that the same population—the very people who have had court closures—can be affected. HMCTS says, "Don't worry. We will get around that with digitalisation." They are precisely the sort of people who, for whatever reason, will not be able to cope with digitalisation. Access to justice embraces two different aspects.

Q36 Victoria Prentis: On that, do you have any assessment of what number of the users we are talking about are functionally illiterate? That is one of the concerns I have always had about digitalisation. It is all very well, but not if people cannot write.

John Bache: I think there are figures available, but I am afraid I cannot give them to you. What I know is that a lot of commercial companies—in banking and things like that—rely on people to go digital, but not all choose to do so. They are a totally different population from the population we are dealing with, so it would be completely false for HMCTS to base their anticipation on that. I worry that that is what they have done.

Chair: Fair point.

Q37 Andy Slaughter: There is no dispute about the fact that this is a huge programme of closures. I was on the Front Bench for the first major announcement in 2010. I think we have lost half of magistrates courts and about a third of county courts since then. It may affect rural areas disproportionately, but I am resident in a city area and my county court is moving to its fourth location and my magistrates court to its third since I was elected. That is the situation we are in.

What would you like to say to the MOJ about what now needs to be done to address the problems that this has created? You know what the problems are. From your own personal experience, what would you like to see happen now as regards the physical aspect of access?



John Bache: For a start, I would like them to stop closing any more courts. They do not seem to have any idea of the endgame. That is the trouble. How many courts are we going to end up with in the country? Are we going to stay as we are, which would seem sensible—at least, it doesn't increase the problem—or are we going down to courts just in the major cities? Having courts just in the major cities would not work. It would be great if you lived in London, Birmingham or Manchester, but it could be a problem if you lived anywhere outside the major cities. My first recommendation is to stop closing more courts until we know the impact and see how it is actually affecting people, so that the questions that are being asked now have proper answers, based on statistics and research.

Gerwyn Wise: For a long time, the Criminal Bar Association has been calling for stability and investment in what we already have. It is put out that the reason for court closures is that they are not all being used. To a certain extent, that is correct. We get almost daily emails from practitioners saying that their cases are being taken out of the list at the last minute—for example, in the Crown courts—because there are not enough judges available. That is because there is not enough investment in recorders, who sit part time. Therefore, trials that have been fixed for months are being taken out of the list at the last minute and going off to the end of the year, with multiple defendants involved, multiple people in custody and witnesses inconvenienced at the last minute.

That can be avoided by properly using the facilities we have. We should invest in judges and staff and use what we have. It is about maintaining what we currently have, but putting more money into it. That seems to be the obvious first step, as far as the Criminal Bar Association is concerned.

Q38 **Andy Slaughter:** I am worried about police time. Yes, it is a problem for defendants and occasional court users—some defendants are regular court users—but the fact that police officers are travelling for an hour or an hour and a half to get to court in the morning is taking those officers, whose numbers are already depleted, off the street.

Detective Chief Inspector Kirby: Thank you. It is a challenge. We invested in the Live Link network across our force to try to mitigate that, as a consequence of what we have experienced with the closures.

From our perspective—we have touched on this before—it is about having a whole-system approach. We have an IT infrastructure that is struggling to cope. We are the same. I believe that the reforms are providing support, particularly to HMCTS and the CPS, to address that, but all the forces are having to deal with the issues independently. There is no movement of resource or funding to provide support to us. We need that infrastructure, as a key enabler for this to happen. That is why we talk about the whole system.



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We need whole-system investment. That means looking at the whole and deciding where we need to invest. Then we need whole-system engagement, so that we can all start to work together—I know that the defence has equal issues with this—to make sure that our systems are sufficient and that we can support digitalisation, which can be really effective if it is done in the right way. We need to step back and look at it. I suppose it touches on the investment aspect. What do we need to make this work? We always feel a bit like the cart is before the horse and we are playing catch-up all the time. We are trying to invest, because we have to get our infrastructure right.

Q39 **Andy Slaughter:** Do you feel that is not happening? The whole *raison d'être* or justification for this is that capital is being produced by selling off court buildings. Sometimes courts are now being closed just to realise the asset. The advantage is supposed to be that it is invested exactly as you are saying. Is that not happening?

Detective Chief Inspector Kirby: I can only speak locally. All the investment that we, as a force, are putting into digitalisation and Live Link has to come from our existing budgets—budgets that we would be using elsewhere, if it was not for this. We decided that it is a really critical piece of investment that we must do, but we have not seen anything to supplement that. It is from existing funding.

Q40 **Chair:** Mr Wise, I am interested in the CBA's point about recorders not being available and cases being stood out for that reason.

Gerwyn Wise: It is almost a daily complaint that we get from our members.

Q41 **Chair:** I see it on Twitter from the CBA and so on. I have had exactly that happen in a constituent's case. Are you collecting data on that?

Gerwyn Wise: We are, as part of wider programmes we are doing.

Q42 **Chair:** It is certainly something the Committee will be interested in.

Gerwyn Wise: I will feed that back to our chair.

Q43 **Chair:** That is helpful.

John Bache: There is also a lack of magistrates.

Q44 **Chair:** It is the same thing.

John Bache: That's right. If they increased the retirement age, it would help to solve that problem.

Q45 **Chair:** I understand. That is a separate point, but I take it.

John Bache: I couldn't resist the opportunity.

Q46 **Bambos Charalambous:** The PCS union has told us that it expects there to be 6,500 fewer full-time equivalent staff by 2023. I also note that the Magistrates Association is concerned about over-reliance on agency staff



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in courts. The legal committee of Her Majesty's Council of District Judges has said that, in one magistrates court, there were over 500 unanswered emails. In light of that, what has been your experience of the impact of HMCTS's staff reductions in the criminal courts, particularly on access to justice? What are your thoughts on that?

John Bache: One problem is that, obviously, agency staff are not as good as permanent staff. The thing that impacts particularly on magistrates is the rota system, because the rota system is quite complicated. Previously, a rota administrator was dealing with a smallish group of magistrates—say, 100 or 200 magistrates. Now, they are dealing with a much bigger number of magistrates. Therefore, if somebody cannot sit at the last minute, they have no idea what to do. They just have to put out an email to everybody. Previously, they had one or two magistrates they knew were reliable and could come in at the last minute. That has had a big impact on a lot of magistrates. They have certainly noticed that.

Q47 **Bambos Charalambous:** There is a loss of local knowledge, knowing which magistrates are willing to come at short notice.

John Bache: Absolutely, because it is being done from centres, rather than locally. That has had a major impact.

Gerwyn Wise: Feedback anecdotally from our members is that, in a number of courts, it is now very difficult to get hold of court staff or a manager to deal with issues as they arise. Yesterday I was reading some of the written responses to the Committee. Senior District Judge Emma Arbuthnot made the point that a number of court users had complained about not being able to get anyone on the phone or not getting any response to emails. That is also the experience of our members.

From my own practice in the Crown court these days, it is quite often the case, when you are doing a Crown court trial, that the judge is the only member of court staff in the room. The ushers and the court clerks have to cover multiple rooms and deal with multiple courts. When things are going well, it is fine, but when issues arise—for example, with digital cases, or CCTV and the like—it can lead to delays. Sometimes it is 15 minutes, but sometimes it is half a day. That is all public money that is being wasted. It is slightly short-sighted to cut this and then to lose the money in different ways moving forward. That is our experience.

Q48 **Bambos Charalambous:** What about you, Mr Kirby?

Detective Chief Inspector Kirby: Absolutely. It feels very much like what Mr Wise was saying about case progression. It is having a big impact on case progression when we identify issues, potentially evidential ones but, more often, victim and witness issues, on which we need to engage with the court early to make sure that we can have an effective hearing and make whatever adjustments are required. We are seeing real challenges locally as a result. It is the point you made; it is the local



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knowledge about who to go to and how, even just to be able to engage with people, to make sure that we have an effective hearing.

Q49 **Bambos Charalambous:** Do you not have one point of contact for the police and other court users? Is there not a particular person you have an email or a phone number for?

Detective Chief Inspector Kirby: There are less of them. We have those processes, but the phone may not be answered or the email not responded to. It is a changing picture. We are managing that locally; we are establishing processes and adjusting them, but if we were more joined up we could look at where the court staff, the police staff and the CPS staff are based. There are things we could do if we joined them up, but we are constantly following on and making adjustments.

Q50 **Bambos Charalambous:** I do not know whether there are court user meetings where people make concerns known. Does that still happen?

Detective Chief Inspector Kirby: Yes.

Matt O'Brien: One of the problems is that, although court user meetings have been retained in the Crown court, they have got rid of them for a lot of magistrates courts, certainly in our area. There are very few multi-agency forums where one can discuss these issues and try to address them.

Q51 **Bambos Charalambous:** Even if you had concerns, you could not raise them with court managers, district judges and staff because those meetings do not take place.

Matt O'Brien: In my area, my committee takes the lead and deals with that, but it is reliant on us to do that. There is no longer an official court user group that deals with magistrates court issues. When we were canvassing views to prepare our written response, the consensus was that there was a deterioration in the quality of court staff decision making. As we have heard, there are long delays in responses to phone calls and emails, material misfiled if it is not on the digital case system, applications mishandled, and parties not notified of listing decisions and other directions being made in cases. There was a catalogue of examples of the problems when we canvassed.

John Bache: When I was chairman of a bench, which is a long time ago, the court users group met regularly, every month, just for an hour, and you got problems sorted out there and then. It was a useful group. As my colleague said, those meetings often do not happen now, and to try to get a simple matter solved is a real problem, whereas previously it was solved because you had direct contact with the person who was able to solve it.

Q52 **Bambos Charalambous:** From what Mr O'Brien was saying just now, if issues are not being resolved, listings are being missed and people are not receiving notices, it leads to miscarriages of justice, with people not



turning up and things going awry, which is deeply concerning.

John Bache: I would not say there are miscarriages of justice, but it is an inefficient and unsatisfactory system of justice.

Q53 **Chair:** The quality of staff is all the more significant if you have litigants in person, who might turn to court staff for advice on some procedural matter.

Gerwyn Wise: A particular concern we have is about unrepresented individuals turning up, particularly in the magistrates court. With the introduction of digitisation, everything is available on CJSM, which is the secure email. They do not have access to that, so they turn up without any papers. They have to wait around all day for someone to print them off, if they can find someone to do that. There is almost no chance of them getting access to CCTV because that is somewhere in the ether. We are very worried about unrepresented individuals.

Chair: Fair point.

Q54 **John Howell:** Can I move on to a point that emerges from what Mr Charalambous was talking about: the use of video hearings? I am aware that those work very well in the Court of Appeal—I have seen them in action—particularly for people who are complaining against their sentence and want a decision about that. How far can we use video links in criminal proceedings?

Gerwyn Wise: In principle, the Criminal Bar Association thinks they can be used sensibly, but it has to be for the right cases. If they are straightforward procedural hearings, fine. In a case when anything more complex needs to be dealt with, it gets very difficult, particularly if the defendant is very vulnerable or suffers mental health or learning difficulties.

Video links are being implemented a lot in plea and trial preparation hearings, which are the first hearings in the Crown court. If it is straightforward, fine. You can go in and advise your client and it goes well, but in anything more complicated than that—difficult issues of law or multiple allegations—you are trying to assess whether your client understands everything and you are trying to provide clear advice, but with the facilities we have it is very difficult in those circumstances.

In those types of hearing, we are given only 15 minutes before the case is called on and the defendant is expected to plead guilty or not guilty whatever is happening. If you ask for more time, inevitably you are told no, either because the judge has 25 of those hearings stacked up in a row or because the prison cannot keep the individual at the other end for you to have more time with them. The people suffering in those circumstances are vulnerable defendants on the other end of the line.

In principle, we have no problem with them if they are used in appropriate cases. Our concern is that they are now being more widely



used in cases where people are suffering, and we see no assessment or evaluation by anybody of the impact they are having on the most vulnerable in our criminal justice system.

Q55 John Howell: Does anyone else want to comment on that? Can they be used in magistrates courts?

John Bache: There is certainly potential for them. Sometimes it is easier to say when they should not be used. They should never be used for children and young people in the youth court; they should never be used for trials, and probably never for sentencing, unless it is an academic sentence when someone is already in custody and is given another custodial sentence. In general, for trials, youth courts and sentencing, they should not be used. For other things they can be quite useful.

The problem is that you do not have body language. I am speaking to you now with body language, which you cannot always see on video, so it is more difficult. We worry that again the most vulnerable will be the ones who are most disadvantaged.

Matt O'Brien: There are problems with the principle. I echo what Mr Bache said. There should be limits on their use. Some interesting research has been done by Jessica Jacobson at Birkbeck and the Standing Committee for Youth Justice. Although there is not a lot of empirical research, it suggests that people are disengaged when they use video link. There is also a suggestion that in some cases sentencers are more likely to pass custodial sentences, or longer custodial sentences, because there is remoteness between sentencer and defendant. That is of real concern. It seems to me and my committee that more research should be done about engagement before any further roll-out of video-link hearings takes place.

Detective Chief Inspector Kirby: We have seen positive experiences of it, with police officers using it to mitigate the impact of closures and so on. That is working well. We know that it is preferred for preliminary hearings for defendants in prison because there is always a risk that when they leave a prison they will not return. It creates quite a lot of incidents for prison and court staff when that happens, so that has been positive.

We also used it to good effect with the domestic abuse fast-track pilot we worked on with His Honour Judge Sheridan at Aylesbury Crown court. However, as a balance to that, we piloted it on one of our sites in Newbury around high-risk domestic abuse victims. I also had personal experience of it, in leading a homicide investigation.

We thought that the victims of previous abuse would have felt better giving evidence over video link because of the type of case and the abuse they had suffered, but we found that a domestic abuse victim we were supporting wanted to give evidence in person. It was important for them to be able to say what they wanted to say in front of the defendant. We



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thought victims would be better served by having video-link evidence in those cases, but we were wrong; it was important to them that they had that opportunity, and I do not feel we should take it away from them.

Q56 **Chair:** It cannot be a one size fits all.

Detective Chief Inspector Kirby: No.

Q57 **John Howell:** Can I move you on to digital infrastructure generally? I have seen in the Commercial court a hearing in Portuguese where the translation arrived on the judge's laptop, in front of him, within a second of its being spoken. It is fantastic digital infrastructure. Are the criminal courts going to get the digital infrastructure to make that sort of thing happen?

Detective Chief Inspector Kirby: That's the ambition, isn't it, to have the infrastructure?

Q58 **John Howell:** I know, but is it going to work?

Detective Chief Inspector Kirby: That's a difficult question.

Gerwyn Wise: At the moment, no. You will have seen in the press that on a few occasions this year the Crown courts came to a halt for days because the infrastructure fell apart. Trials were put off and people awaiting sentence were told to go away and come back another day. The answer is no. The infrastructure is not there at the moment; it is not reliable enough. Barely a day goes by when I am in court and the wi-fi does not go down or the Crown court digital case system isn't working. It is a great idea and it is progressive, but it needs to be properly funded.

John Bache: To make one further point about video hearings, it has been universally agreed by the judiciary and by HMCTS that it is always under judicial control, so, if the judge or magistrate wants the person in court, that can be done. The problem is that, if it gets to 4 o'clock in the afternoon and it is assumed it is going to be via video and then you are not happy that it is by video, you are in a real dilemma. Do you adjourn to another day or accept a video hearing that you know is second-rate to some extent? Although the theory is definitely good, the practice is not always as simple as it might seem.

Q59 **John Howell:** Mr O'Brien, do you have any comments?

Matt O'Brien: On the topic of video links?

John Howell: On the topic of the digital infrastructure.

Matt O'Brien: I echo what Mr Wise said. The infrastructure is not there, so I am sceptical about it and it is difficult to answer.

Q60 **John Howell:** Do you have specific concerns about automated online convictions and online indications of pleas in advance?



Gerwyn Wise: Yes. I think it is a terrible idea. How the court is going to be able properly to assess who is entering those pleas and how is beyond me. How do we know that the individual at the other end is not incredibly vulnerable? How do we know they have been properly advised? How do we know that the defence they think they have is not a defence but is in fact mitigation following a guilty plea? When a wrong plea is entered and we inevitably get to a trial, if it is a not guilty, and we discover there is not a defence, there is all that wasted time and, again, money. It is an awful idea, in our opinion.

John Bache: What happens if somebody admits they have done it and then pleads guilty to a section 47, which, as you know, is up to five years in custody, whereas any reasonable person would charge it under section 39, which is up to six months in custody? They have not been properly advised. They have pleaded guilty to a section 47 assault and could end up in custody for five years, in theory, whereas they should have pleaded guilty to a section 39 with a maximum of six months in custody. That is because they have not had legal advice and have done it online.

Matt O'Brien: The problem is lack of opportunity for advice and proper engagement before going online and completing the form. It leads to people pleading guilty to offences to which they have a defence, or there is an alternative plea to a lesser charge that could have been canvassed, or they are pleading not guilty to matters where what they are advancing is mitigation, and that takes up court resources in fixing a trial date and all the rest of it. They are both unacceptable outcomes.

An issue similar to what was raised in relation to video links is a perception that because you are not actually engaging with the court, and it is an online form, there is a lack of formality and focus in that person's mind on what is at stake.

Detective Chief Inspector Kirby: We have seen some timeliness benefits with low-level traffic offences. Those cases are resolved quickly for people, making sure that people on our roads are safe to be on our roads, but I fully appreciate the concerns being raised by other members of the panel.

Q61 **David Hanson:** Can I look at consultation and evaluation? Has anything that your organisations have said in consultation responses to the Ministry of Justice been acted upon, or changed a decision?

Gerwyn Wise: Not before an announcement has been made. We had an experience with flexible working pilots last year that were announced by HMCTS and MOJ without consultation. They indicated that they would start them imminently.

Our membership and leadership were very unhappy about the impact that would have on particular individuals working in the area, people with childcare responsibilities and the like. It took a long time—over 12 months—for us to get the message through to the MOJ. Eventually,



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they backed down, but it took a long time and led to a lot of ill feeling among our membership towards the MOJ and HMCTS and a loss of faith, which is not helpful if we are moving forward on a programme that should be collaborative.

John Bache: I have to be fair. We had concerns over the fit for the future consultation and wrote a detailed letter to Susan Acland-Hood. We had a very sensible and reasonable response from her, saying that they would look into it and make adjustments. I am sorry; I cannot remember the precise issues.

Q62 **David Hanson:** Have any courts proposed for closure that you have made comments on not been closed?

John Bache: Not that I am aware of.

Detective Chief Inspector Kirby: We wrote a response to the consultation regarding Banbury and Maidenhead courts in Thames Valley. Despite our strong local links, we got no response to our concerns. Within that response, we asked a number of questions and sought reassurances about certain mitigation factors. Unfortunately, we did not receive anything about that.

Matt O'Brien: Defence practitioners in particular feel that their views are not really taken into account at any point during the evaluation process. The criminal justice system integration board, which was empanelled by HMCTS, has representatives from the police, prison and probation services, CPS and the Legal Aid Agency, but not solicitors or the Bar. In some cases, rather troublingly, it seems that the Legal Aid Agency is seen as an acceptable substitute for defence practitioners in the system, whereas the considerations of those two bodies are very different, aren't they?

Q63 **Chair:** Many people may never have set foot in court.

Matt O'Brien: Quite. In areas where there has been consultation with defence practitioners, there is a sense that consultation fatigue has set in; I borrow Mr Bache's phrase from his consultation response. We have had so many consultations from the MOJ, the LAA and the SRA on different issues, not specifically the subject of court reform, where people have become very engaged and submitted detailed responses but there is no evidence that they have been taken into account at all, so I think a sense of fatigue creeps in.

Q64 **David Hanson:** Looking at evaluation, we have had a series of court closures and changes, and there are potentially more to come. Could we have short answers, given the time? Do you think there is sufficient evaluation by the MOJ of the decisions that have been taken to date in relation to the decisions that may be taken in the future?

Gerwyn Wise: No.



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Detective Chief Inspector Kirby: We have not seen any locally.

Matt O'Brien: No.

John Bache: There is room for improvement.

Q65 **David Hanson:** Has the MOJ asked you for formal evaluation from the organisations you represent?

Gerwyn Wise: No.

Detective Chief Inspector Kirby: No.

Matt O'Brien: No.

John Bache: Yes, we have been asked.

Detective Chief Inspector Kirby: Can I add that I am representing a single force, not the National Police Chiefs' Council?

Q66 **David Hanson:** I appreciate that.

If you were HMCTS and/or the MOJ, would you think it worth while to invest in capacity and/or undertake the exercise to consult on what has happened to date, prior to any decisions being taken in the future? Mr Bache, I know you said that we should put a hold on it until such time as we have evaluated it.

John Bache: It is self-evident, quite honestly.

Q67 **David Hanson:** Do you think the MOJ is going to evaluate it and ask you what has happened to date?

Gerwyn Wise: I hope so.

Detective Chief Inspector Kirby: I hope so, too.

Matt O'Brien: I hope so.

John Bache: I hope so.

Q68 **David Hanson:** I hope I win the next election, but it doesn't mean I am going to.

Gerwyn Wise: The experience we have had is that it has not happened prior to this.

Chair: Gentlemen, thank you all very much for your time, which we appreciate, and for your evidence, which has been very clear. We are very grateful to you. I won't speculate about elections and what might happen, but how much is the membership subscription, Mr Wise?

It was very good to see you all. Thank you.

Examination of witnesses



Witnesses: Harriet Bosnyak, Tessa Buchanan and Richard Miller.

Q69 **Chair:** Thank you very much for coming to give evidence to us. We appreciate your time. You will have seen the format from before, so perhaps you could introduce yourselves and then we will move on.

Tessa Buchanan: My name is Tessa Buchanan. I am a barrister at Garden Court Chambers specialising in housing and community care, and I am here in my capacity as vice-chair of the Housing Law Practitioners Association.

Harriet Bosnyak: My name is Harriet Bosnyak. I am a solicitor with Shelter and work from the Newcastle office. I am representing Shelter, particularly the north-east.

Richard Miller: I am Richard Miller, head of justice at the Law Society. I am responsible for overseeing our engagement with the whole HMCTS reform programme.

Q70 **Chair:** It is good to see you again, Mr Miller.

We have heard a lot about the criminal justice side of things. It seems to us that the reform programme as far as civil is concerned is based upon the Briggs report and perhaps some updates. Do you think there is an adequate vision for the civil justice side of the work in the Government's proposals? Do the same principles apply? Are they giving enough regard to some of the issues that arise in civil jurisdiction? Do you have any thoughts? What is your assessment of the proposals as a headline figure?

Richard Miller: From my perspective, two different things are going on at the moment. The first is the digitisation of existing processes, moving things online and off paper. That is a long overdue reform, and I think a lot of it is working well. There have been indications recently of delays in dealing with things, particularly in probate and family. That needs to be addressed urgently to ensure that confidence in the process is not undermined.

There are areas of particular concern. Court closures, which we have already heard quite a bit about, are something we have grave concerns about. The flexible operating hours aspect is another area we are concerned about, as well as some elements of the online civil application processes. With flexible operating hours, there are potential risks to litigants, particularly vulnerable ones. For example, in highly-charged family cases, if parties are leaving court late at night, it seems to us there are potential risks of intimidation and disorder that need to be properly taken into account.

I am not sure whether the aspect of flexible operating hours has been taken into account in the assessment of the travel times considered in the court closures approach. If we are piloting extended hours, with the obvious hope that that is successful and extended hours will be rolled out, does it mean, for example, that, instead of having to leave home at



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7.30, we are now saying that people would have to leave home at 5.30 to get to court in time, and would not get home until 11.30 at night? Insufficient account seems to have been taken of the interaction of different strands of the programme.

My concern about online civil applications is that we are looking to enable people to bring proceedings much more easily without needing to rely on lawyers. For example, if you have litigants in person bringing small claims, it makes a lot of sense. You can digitise those processes and they will work well. If, however, you are making it much easier for litigants in person to bring claims that are above the small claims limit, they would potentially be liable for the other side's costs if they lost the case. They could start a case in good faith, thinking it was a valid case, but, if it is not, they could end up losing their life savings and their home in an adverse costs order. I am not satisfied that at the moment that risk has been fully appreciated and addressed.

Q71 Chair: Is that the online nature of the thing or the fact that there is no guarantee they will have proper legal advice as to the risk of commencing that litigation beforehand?

Richard Miller: It is primarily about the fact that they will not have legal advice, but the ambition of HMCTS is to make it much easier for litigants in person to issue claims of whatever value. The starting point has been small claims for litigants in person and any claims for represented parties, where we have many fewer concerns, but, when you start to talk about making it much easier for litigants in person to issue proceedings above the small claims limit, you are significantly increasing the risk that people who are insufficiently advised will bring ill-advised proceedings.

Harriet Bosnyak: In a lot of ways, the proposals are not taking into account some of the things we discussed before. There does not seem to have been much evaluation of what has gone on before. What has happened? Are people struggling to make it to the courts because there have been so many court closures? Are people actually using the online processes that are already there? We do not seem to have any figures in relation to that and how it works.

In the area of law where I practise, which is housing law, the issue about litigants in person being involved in proceedings is significantly greater, even with a court duty possession scheme. My concern is that there has been little evaluation so far as to what the effect has been. If we are pushing forward further reform, how do we know whether it is going to have the effect we want it to have?

Q72 Chair: Ms Buchanan, your organisation has some specific views about online and other issues.

Tessa Buchanan: Yes. Our view, which has been accepted in the past, certainly by Lord Justice Briggs in his final report, is that possession cases



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in particular are not suitable for online determination. There are a number of very good reasons for that.

Defendants who come to court in possession cases are, almost by definition, at a point of crisis in their life. They are very vulnerable; they may have mental health problems, physical disabilities or learning disorders. When they are brought to court for rent arrears, which is a very significant proportion of possession cases, almost by definition their income is extremely limited. They depend very significantly, not least because of the importance of what is at stake, on schemes such as the housing possession court duty scheme. That is an important scheme that operates for solicitors at court on the day of possession lists, assisting defendant after defendant. If we were to move it to an online system, we think that would be lost, to the detriment of the parties and to the courts and justice.

Q73 Chair: If someone is made homeless or whatever, potentially it has knock-on costs for the other agencies and local authorities that will have to deal with the consequences.

Tessa Buchanan: Absolutely. That is quite right. We are concerned about the degree to which that has been taken into account. For example, if a family is evicted, they may go to the local housing department and seek homelessness assistance. The local housing department would have to carry out investigations. It may or may not conclude that the family is intentionally homeless, at which point they may be passed over to social services, so there are knock-on effects.

Q74 Ms Marie Rimmer: Can you explain to us why it is important for there to be access to physical courts and for advice to be available to the type of people who are usually involved in possession cases? Can you give us some practical examples?

Harriet Bosnyak: I can give you a practical example. It is not a personal example; it is one that has come out of work done by Shelter. There was a recent case where a client arrived at court. When they were seen by the district judge, he determined that there were probably some problems of capacity, in that the particular person did not have the capacity to be involved in legal proceedings because they had learning difficulties. Fortunately, because the person had physically attended the court and presumably seen a duty adviser, they were referred to the correct advice. As a result, everything was resolved for them and they were able to remain in their home.

The element of being able physically to attend in front of a judge and get some legal advice, when previously the person would not have sought any advice at all—this may have been the first time they had approached anyone for assistance—meant that the person not only got assistance with the legal proceedings but that they got assistance from social services, because everything that flowed from the capacity assessment meant they had the additional advice and assistance they needed to



continue to live independently effectively. That is a very positive example of the reasons why you need physical attendance at court.

Q75 **Ms Marie Rimmer:** What about access to independent legal advice? There appears to be hardly any, particularly in my area. We have Shelter, and that is it.

Harriet Bosnyak: That is the case in the north-east and the north-west. There are very few housing law practitioners. It is a problem across the country. There has been a significant drop-off in the number of housing law practitioners since LASPO because, unfortunately, there has not been willingness ultimately for firms to put money into keeping a housing lawyer available and being involved in that.

Northumberland, which is an enormous physical area, as I am sure you can imagine, has one housing law practitioner. That means that, if people want assistance, they have to travel to Newcastle. If you are talking about people who are in crisis, have no money and are in rent arrears, how do they afford to get there to get that advice in the first place?

Richard Miller: Our members are telling us that it is not just about not being willing to put the money in to keep the service going, and, very often, not being able to afford to do that. It is also about not being able to recruit experts who meet the Legal Aid Agency's supervisor standards. A number of firms have lost their housing contracts because they simply could not find someone, at the salaries they could afford to pay on legal aid rates, who would meet the standards and was willing to come and work in those areas. As a result, we now have, I think, two or three counties where there is no housing provision whatever, and quite a few more where there is only one provider in the whole county. For the reasons that Harriet has just been explaining, these are people who cannot afford to travel long distances to get the advice they need; by definition, they are facing the loss of their home because they cannot afford to pay the rent or the mortgage.

Tessa Buchanan: The question highlights the fact that access to justice is made up of a number of components, including physical access to court buildings and the ability—

Ms Marie Rimmer: Affordability.

Tessa Buchanan: Yes, and the ability to participate effectively in court proceedings. What we are troubled about with these reforms is the way they seem to manage to undermine a number of different aspects of access to justice. We are aware, and our members are aware anecdotally, of people who have been at the stage of applying to suspend a warrant of eviction. To be evicted from your home, first, the landlord must get a possession order, and then they need to apply for a warrant to send the bailiffs round. The last-ditch attempt to save the home is to apply to suspend the warrant.



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Our members are aware of people who have tried to make those applications to the court, which used to be, and should be, a fairly simple process. A person would go to the court and say, "This is what is going on," and the court staff, because there would be court staff at the counter, would say, "This is the form you need to fill in." Of course, they cannot give legal advice, but they would be able to provide some basic information. Can I give you an example of what one of our members experienced?

Q76 Ms Marie Rimmer: Please do.

Tessa Buchanan: They were assisting a client who had received a notice of eviction on 19 March to take place on 27 March. They called the court the same day to make an appointment to make an application to suspend the warrant, because that is what is needed with the closure of counters, and were told that they did not need an appointment and that they could just turn up. They did that the next day, only to be told that the court was too busy and that they did need an appointment. They made an appointment for the next day and turned up the next day, to be told that the court was too busy and to leave the application, and they would receive a notice of hearing the next day. Three days later, they received, in the afternoon, notice that a hearing would take place the day before the eviction, at which point they had to instruct counsel. That is with a persistent solicitor who knows, as far as anyone does, how the system works.

Chair: That is very striking.

Q77 Ms Marie Rimmer: Based on your knowledge and experience, can you provide some examples of the practical impact of county court closures?

Harriet Bosnyak: The practical impact in the Northumberland area is that the main court for that area, Morpeth county court, was closed. Morpeth is the capital market town in Northumberland, with quite a big bus depot. Most buses pass through Morpeth. That means that, if you happen to live between 15 and 20 miles north of Morpeth, you are not going to be sent to Berwick county court, which is on the Scottish borders; you have to come into Newcastle. The bus service is expensive; it is not cheap, and it takes a very long time to get to Newcastle.

We have to look at the fact that these are generally people who are in crisis and vulnerable, and now they have to go to a city that, believe it or not, they do not know very well; they do not go there very often. They have to find their way not just from the bus stop but down to the county court on the quayside, and navigate their way through the building, too. It makes an incredibly stressful situation even harder, which is why we see quite large levels of non-attendees.

Previously, they would have known Morpeth, because most of them do their shopping there, and they would know where the court was because it was in the same building as the jobcentre. It was much less stressful, and it was easier for them to attend; they could go along and get advice



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from the duty solicitor, and, in more cases than not, they would be able to retain their home. That is not happening now.

Q78 **Ms Marie Rimmer:** These are vulnerable people with not a lot of capacity to help themselves, and the question of affordability leaves them even more stressed.

Harriet Bosnyak: Absolutely. The other thing we have to look at is that, with the roll-out of universal credit, there is a long waiting time for people. There is a minimum of six weeks between when they have to apply for the benefit, or they are forced to apply for that particular benefit, and when they actually receive their money. They can get some advance payments, but that will be for gas and electricity and their food; it is not going to be for the bus fare, which could be up to £14, for them to actually attend the court to deal with possession proceedings that may well have come about because, previously, they had a suspended possession order and had breached that order because, when you are waiting for universal credit, your rent is not being paid either; it is part of universal credit. There are six weeks when your rent is not being paid.

At that point, a landlord, who may be starting to see a big increase in rent arrears because of universal credit, may decide to apply for a warrant. You have a client who now cannot get to the court even to apply to suspend that warrant. They may have had historical rent arrears, and, in fact, that is what tipped them over the edge in terms of the landlord starting possession proceedings. Those are practical examples of what is happening in the rural areas I am working in.

Q79 **Ms Marie Rimmer:** Would anyone else like to comment? Mr Miller?

Richard Miller: I do not have anything specific to add.

Q80 **Andy Slaughter:** Further to that, given that a third of county courts have closed since 2010, do you know of any study or anecdotal evidence that suggests that defendants are not turning up to court? I think I saw something relating to Sheffield and Rotherham, but I am not aware of any other formal study. In a way, even more than the criminal side, there are consequences for a defendant if they do not turn up to court.

You are housing lawyers, and that is a good example of where you have to intervene; if it is a fast-track process or suspension of a warrant, you have to take a positive step and intervene. Do you know what the consequences are, given the extra pressures you talked about on people, in terms of people not being there to represent themselves, let alone be represented?

Harriet Bosnyak: I am not aware of any studies in my area, which is a problem. We should have figures for non-attenders, and the courts would be able to obtain them. It will be noted, because outright possession orders are made against people who do not turn up. We need to see those figures, and they should be collected, but I am not aware that they are.



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Richard Miller: I am not aware of any analysis other than the Suffolk report that was mentioned in the previous session. Anecdotally, our members tell us that the closure of courts and of court desks has had a huge impact, because, with the cuts to legal aid through LASPO, the court desk was one of the few other sources where people could get advice. It has been cut locally and it has been made more difficult to access it, so it has been a double whammy for people trying to get the help they need.

Q81 **Chair:** Do you think the importance of the court desk has been underestimated in all this?

Richard Miller: Very much so.

Tessa Buchanan: The evidence I am aware of in terms of defendants not turning up has largely been from the Suffolk study, which has been mentioned. I know that a district judge in Rotherham did a very helpful study. In a way, that illustrates the problem in our view: it should not be up to individual district judges to work out the impact of the reforms. We are very troubled by the failure to analyse that. We have often had the response from the MOJ or HMCTS, "We'll listen to you, but you need to provide us with the evidence." Solicitors, particularly in legal aid, do not have the time or resources to conduct studies that HMCTS should be carrying out.

The consequences can be extremely severe. If somebody does not turn up, although the court will of course exercise its judicial functions and look at the case before it, the reality is that it is much easier for the landlord to get a possession order if there is nobody on the other side putting a defence. In an example from my own practice, a landlord was seeking an injunction against my client. They were coming from about 20 miles away from the court where it was listed and got hopelessly lost and did not turn up until about 3 in the afternoon. Fortunately, I was there to say, "They are coming; please don't hear the case," but if they had not had a legal representative there, the case would have been called on and, very likely, an order would have been made against them.

Q82 **Ms Marie Rimmer:** The staffing reductions in county courts and the closure of court counters has caused problems for access to justice. Can you give more practical instances where staffing reductions have impacted on cases or clients? I know that people who used to do so are no longer available to help them to fill in forms and do things like that. Do you have any other practical evidence?

Tessa Buchanan: I am sure we all know of numerous examples of the court administration failing to do its job adequately. Lost papers, missing files and hearings being adjourned because of judge availability are issues, along with telephones and emails not being answered. Those are all, unfortunately, common features. It is difficult to say unequivocally that they are attributable just to staff shortages, because of all the other reforms that are going on. Again, that ties into the wider theme that a



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large number of reforms are taking place with different impacts, and it is very difficult to analyse them.

One stark example from a reported case is of a lady who was a victim of modern slavery and trafficking. She sued the perpetrators in an employment tribunal and was awarded significant damages of over £250,000. When those who represented her applied to the court for an interim charging order, to stop the defendant getting rid of their assets and avoiding having to pay out, the court did not deal with the application expeditiously, despite the fact that it was marked as urgent. Because they did not deal with it promptly enough, the perpetrator sold the property and the lady ended up receiving nothing. That is a very stark example of court administrative failures having a serious impact on the vulnerable.

Chair: That is very helpful.

Q83 Victoria Prentis: Do you think there is scope for using video hearings more in civil courts?

Richard Miller: I think there is; in certain circumstances they can work well. An example that we heard recently was of a pilot in Manchester to test video hearings. The practitioners and judiciary there positively suggested that emergency injunction applications for victims of domestic abuse could be a good use. The feedback we have had from solicitors who were involved was that it had a huge beneficial impact on the victims in those cases.

From my own experience in practice, when I had to deal with those cases, it was disruptive having to try to find a court where they would be able to fit you in and take the case on, so being able to do that from the solicitor's office by video link is a positive development. It becomes much more problematic when you move on to contested cases; for example, with the return date on an injunction, it would be very much more difficult, and probably wholly inappropriate, to try to deal with that by video link. But for emergency applications such as the one I mentioned it very positively can be.

There are other cases. For example, there was a pilot in the tax tribunal, where it was assessed. There were quite a few technical problems for most of those who participated, but, despite those problems, most people felt that it was a good way to deal with the particular case. One of the concerns we have about it, however, is that the evaluation looked at only about eight hearings, or something like that. We have been rather concerned about the sweeping conclusions that have been drawn from that analysis. Yes, it was a positive start and it tested the concept, and it indicated that there was a potential good use for video hearings, which could be rolled out, but it is dangerous if HMCTS draws too broad and too deep conclusions from limited data.

Q84 Victoria Prentis: When I was in practice, which was over four years ago,



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we had great success with telephone hearings, particularly in interim matters of various kinds. Do you think there is a real difference between a telephone hearing and a video hearing?

Richard Miller: Potentially, there can be. When you are dealing with purely administrative matters and with case management, I suspect that would lend itself perfectly well to a telephone hearing.

Victoria Prentis: It does, yes.

Richard Miller: By their nature, telephone hearings are more difficult, because you have the issue of not being able to see someone's body language to realise that they are about to speak or are about to make a contribution, or everyone starts speaking at once, and it is difficult to organise who is going to speak next. It is more the practical things like that that make them difficult. Where you have the actual clients involved to any degree, video hearings are probably significantly better, because they give them a better understanding of what is actually going on in the case.

Q85 **Victoria Prentis:** Do our other witnesses have views on video hearings, and the appropriateness thereof? You mentioned possession hearings, and you have already told us what you think about that. Is there anything else?

Tessa Buchanan: We would be cautious about them. Like you, we have had experience of telephone hearings. When a matter is largely uncontested and is just about directions—just the court talking about procedural steps—they can be useful. Vulnerable people may struggle with them; they may need face-to-face interaction with their lawyer, who might come along with a plastic bag of documents to set out their case. I stress the importance of negotiations outside court. Often, matters can be settled. If the matter is being dealt with by video, that is much more difficult to achieve.

Harriet Bosnyak: I agree with what Tessa says. It is definitely the case that possession unfortunately tends to happen to people, instead of being something that they want to do themselves. Nobody, obviously, applies for possession of their own home. In those cases, it is important to ensure that people get access to justice, with a face-to-face hearing where the judge can see them and see all parties, and parties get the opportunity to talk outside the court door and, maybe, come to an agreement or settlement. That means that people are getting access to justice, and I am not sure that video hearings would facilitate that.

Q86 **Victoria Prentis:** With possession hearings, it might be worth your telling us what proportion are settled outside the court door.

Harriet Bosnyak: I try to settle the vast majority of mine.

Victoria Prentis: Exactly.



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Harriet Bosnyak: I do not think I would be doing my job if I was not. I normally try to come to an agreement with the landlord before we go into a hearing.

Victoria Prentis: Yes, I do not know whether that is widely known, which is why it is very valuable to have that evidence.

Q87 **Chair:** The order could be suspended on condition of payment, or something like that.

Harriet Bosnyak: Or there could be an adjournment, because someone has problems with benefits. There may be something fundamentally wrong with the paperwork, which often happens, and the landlord might move to withdraw. There are a lot of elements.

Q88 **Victoria Prentis:** Do you think that the court service's assisted digital service is enough? Do you think it is on the right lines? Have you had experience of it?

Richard Miller: The feedback we have had about it is poor, to say the least. Very few people seem to be using it. Those who are using it tend to want more than just help with the digital aspects; they are actually looking for support generally with their case, including legal advice. The idea of separating help with the digital aspects from the legal advice does not seem to us to be effective.

The other concern we have is that, because it is so little used, we have had some feedback from people who have gone to the site and are told that they can get assisted digital help. The response from staff has been, "What's this? We've never heard of it. We don't know what you're talking about." Overall, I would say that the assisted digital service has not been a success at all.

Q89 **Victoria Prentis:** Do you have anything to add, Ms Buchanan?

Tessa Buchanan: I do not have anything to add. That accords with my understanding of it.

Q90 **Victoria Prentis:** Insufficient knowledge of it. The Master of the Rolls says that the next stage of civil court reform will be to take the positive elements of the online civil money claims project and apply them more widely. I wondered from something you said earlier, Mr Miller, whether you have concerns that the evaluation does not include enough evidence for him to be able to take that forward. Based on your knowledge and experience, what potential is there to do that?

Richard Miller: From what we have seen of the work that HMCTS is doing to digitise the existing processes, it generally seems to be going fairly well. The feedback from our members has been that it looks like a positive development. For example, solicitors can now complete forms online to issue proceedings and transmit them electronically to the court, and they get documents for service by return of email. That contrasts



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with a paper form being sent to the court, where it sometimes sits in a pile for many weeks before proceedings are issued.

That is a huge increase in efficiency in the process, which is beneficial to solicitors, their clients and defendants, because everything gets resolved much more promptly if you can cut out those sorts of delays. It also has implications for court staffing. If things that might previously have needed to be entered manually into the court's computer systems are actually just sent electronically, it could save a huge number of man hours. Legitimate staff savings could be made through this process, as long as HMCTS does not cut the staff before they have delivered the systems and got the efficiencies. That, I suspect, may be where some of the problems have arisen recently.

Where we get into more problematic territory is with the more transformative things that HMCTS has the ambition to do. Here we think that it is perhaps not clear enough what the end vision is, and people are not quite clear where things are heading. We do not think that they have yet been properly tested, delivered and evaluated. There is a vital need to test the justice implications of all these reforms. It is no good just testing whether it works from a practical point of view and whether it delivers more efficiencies. We have to look at the impact it has on the delivery of justice, and that is an element we keep pressing.

Q91 **Victoria Prentis:** By that, do you mean access to justice, or the final results?

Richard Miller: Yes, but also what we were hearing about earlier, such as the reduced degree of empathy between the decision maker and the parties, if they are not physically in front of them. What impact does that have? Do the courts end up having less material to look at, or do they look at it in different ways, if they are only looking at it online or in writing, rather than having oral presentations, for example?

Q92 **Victoria Prentis:** Do you feel that sufficient work is being done to scope that?

Richard Miller: We are not entirely clear precisely what work is being done to scope that. This is where I come to my concern that there has been no consultation on the big picture. What is the endgame? What are we moving to? If there had been, we would all have a much better understanding of what is going on and why, and it would help us to engage and perhaps feed in our concerns. It might address some of our concerns as well.

Q93 **Victoria Prentis:** Do you fear that it is all being done to save money rather than to make a better justice system?

Richard Miller: I think there is good faith at the heart of what is being proposed, but the budgetary concerns tend to drive some of the decision making in ways where, perhaps, if the focus was much more on the justice and the budget was less of a concern, things might be done



differently, to make sure that things are working better and are fully tested before there are attempts to roll them out.

Q94 **David Hanson:** You have covered the areas I was going to cover. The only issue is whether you think there is any appetite from the Ministry of Justice to review the way it has consulted and evaluated what it has done in the past, and if there are any further changes to be made.

Tessa Buchanan: Our perception is that the review and consultation process has been, to an extent, lip service. Obviously, we do not expect every suggestion we make to be immediately written into the next policy document, but we do not get the impression that concerns are listened to. We often feel, particularly with court closures, that the thing happens, and then our concerns materialise but the apparent juggernaut continues.

The impact of court closures has been really deleterious on other courts that are overwhelmed, yet, by way of example, the court closure programme seems to be continuing. There does not seem to be the analysis that we think is necessary when you are carrying out a programme on this scale, or trying to carry it out. It needs clear analysis of what has happened and better consideration of what is proposed, and that does not seem to be taking place. At least, if it is taking place, it is not taking place publicly enough and with enough engagement. The perception is that engagement is often in private with selected stakeholders, and it is very difficult to gain full understanding of what is happening, particularly because it is rather piecemeal, to a significant extent.

Richard Miller: On some of the individual strands, HMCTS is setting up formal evaluation projects, and it is engaging with us on those. They are at a very early stage at the moment, so it is difficult to know how effective that engagement is going to be, but at least it is there at the moment.

There is an absence of looking back at the impact of previous decisions, and the court closure programme is a good example. One of the key factors that the HMCTS uses is utilisation rates, but when courts have been closed, work has been moved to other courts, and we have not seen any change in the utilisation rates for the courts that have absorbed that work. Surely, if they are suddenly absorbing a large amount of work from another court, their utilisation rates must have gone up. If not, why not? Does that mean that utilisation rates are not a valid measure for which courts are appropriate to close? There are some real concerns over the evidence that is being used and how it is being used in the court closure programme.

Q95 **Chair:** We heard from the CBA, as you probably picked up, of their concern about cases being stood out or taken out of the list for whatever reason, because judges or recorders were unavailable, and courts were actually sitting empty. Is this an issue in the civil and family jurisdictions?



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Richard Miller: Our members say yes; this is happening on a regular basis, and there are a lot of delays in getting hearing dates, to a greater extent than there have been in the past.

Q96 **Chair:** Do you find that as practitioners?

Tessa Buchanan: Yes, I do, from my own personal practice. The last two trials I was instructed in, the day before, the court rang my solicitors and said, "I don't think we're going to have a judge available." The flip side of that, which is very frustrating, is that we know of courts standing empty. At Brentford, three of the six courts are used, which is not, as far as we are aware, because the cases are not there to fill them. They are; you have to wait months for a hearing. It is because the judges are not there.

Q97 **Chair:** They do not have the people there. Do you find that as well, Ms Bosnyak?

Harriet Bosnyak: Yes, in particular with PCOL, the possession claims online system. They are often block-listed, so you may get 15 or 20 cases listed in one go. If there are not enough district judges available, you wait hours for your case to be heard. It will take a very long time for your case to be heard. If you need an adjourned hearing, we normally say we want 14 days, because if we say 14 days we might get it listed within the next four to eight weeks. If you want longer than that, you could be waiting months for a new hearing. That is not necessarily in everybody's best interests. Most of my clients want their possession case resolved; they want to stay in their home and for that to be the end of the matter.

Q98 **Chair:** Do you think that the people you engage with at the MOJ—I mean no disrespect to them—have had sufficient hands-on experience of how the system works? As far as you are aware, have they actually been into a county court and seen what happens, or sat through a possession action? Is there any attempt to see what actually happens on the ground in those cases, when they come to court?

Richard Miller: I think there is an attempt to do so, but I wonder sometimes how accurate a snapshot you can get. One of the best ways to get that sort of information is to turn up unannounced. I do not know how far visits are organised. Certainly, for Ministers, they would tend to be organised visits, and in those circumstances I do not think you necessarily get a reflective picture of what is actually going on, on a normal day.

Q99 **Chair:** The polish is got out and that sort of thing.

Tessa Buchanan: I would agree. Turning up on one day and getting a snapshot is not really helpful. It is the attrition that is important. When you are in court 12 times, several times a week, just to get through, it can be very wearying. When I read MOJ and HMCTS documents, I do not recognise the portrayal there.



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Q100 **Chair:** We heard from the criminal practitioners about the disappearance at the magistrates courts level of things like court user committees. I do not know what the situation is for you; it is a long time since I did civil work, it must be said. Were there ever such things for the county court, for example, and are there now?

Harriet Bosnyak: Yes, Newcastle has a biannual court users committee, but, to some extent, it is not particularly helpful, because all the practitioners in the area are aware of the problems. It is not the court staff's problem; it is not their issue that they are under-resourced and understaffed, so to repeat the same thing over and over again is not in anyone's interest. We all just want to get on and do our jobs.

Chair: It does not help very much. Are there any other points you want to raise with us?

Thank you very much for taking the time to come down to us. I know that some of you have travelled a long way, so I am very grateful to you. Thank you for your time and for the evidence you have given.