

# COURT CLOSURES BRIEFING

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# Transform Justice

Transform Justice is a national charity working for a fair, humane, open and effective justice system

## SUMMARY



The government has closed 250 courts since 2010, with more courts likely to close in the future in order to release funds for digital court reform and refurbishment.



Physical court hearings will be replaced by virtual courts (video/telephone) or online systems, which the government say will increase access to justice, despite evidence for this being weak.



The savings the government hopes to make from closing courts are very small in comparison with the £1billion budget available for digital court reform.

## TRANSFORM JUSTICE

Transform Justice ([www.transformjustice.org.uk](http://www.transformjustice.org.uk)) is a charity which works for a fair, humane, open and effective justice system. It advocates for change by generating and disseminating research and evidence on particular issues, promoting practical policy changes. It has published reports on the centralisation of magistrates' courts, sentencing, video hearings and unrepresented defendants.

## BACKGROUND TO THE COURT CLOSURES

The government has published proposals to close eight courts (Banbury, Maidenhead, Cambridge, Chorley, Fleetwood, and Northallerton Magistrates' courts, Banbury and Wandsworth County Courts and Blackfriars Crown Court) alongside an over-arching strategy document concerning future court closures ("Fit for the future: transforming the court and tribunal estate"). Each court closure and the overarching strategy is subject to public consultation, which closes on 29<sup>th</sup> March 2018.

These latest proposed closures come soon after two major phases of court closures - since 2010, 250 courts have been closed, with 36 more marked for closure, despite overwhelming opposition from court users and the wider community. The overarching strategy document suggests the end of the closure programme is not nigh – that the latest proposal to close another eight courts is but the precursor of more court closures.



This briefing, which focuses on criminal courts, is designed to help parliamentarians respond to the consultation and explain its importance to constituents and other stakeholders.

## THE WIDER COURT REFORM PROGRAMME

The proposal to close individual courts now and in the future, should be viewed within the context of the wider court reform programme. This programme aims to replace physical courts with digital and virtual courts, whilst improving the facilities of existing courts. Some of the ideas for this programme were generated by reports by Lord Justice Briggs and Lord Justice Leveson.<sup>1</sup>

Lord Justice Leveson's report fed into government proposals to digitise criminal courts through introducing online and virtual (video or telephone) processes. These proposals were outlined in a white paper in 2016 and in the Prisons and Courts Bill<sup>2</sup> (which was abandoned due to the election). A new courts bill was announced in the Queen's Speech in July 2016 and is expected to be tabled imminently.

In terms of criminal justice, the proposed reforms (as outlined in "Fit for the future") are:

- I. **A significant increase in the use of video and telephone hearings.** Her Majesty's Courts and Tribunal Service (HMCTS) proposes that eventually, only Crown Court trials will be held in a physical court-room with the majority of parties present. All other cases, including magistrates' court trials, may be held virtually, with all parties on iPads, laptops, the telephone or in video rooms, with no one at all present in a physical court room.
- II. **The establishment of an online criminal court, which would deal with every stage of a criminal case for those pleading guilty of minor offences.** Criminal sanctions (financial penalties) would be automatically applied. There is already an online programme whereby those pleading guilty of minor motoring offences can go through the entire "court" process online. The government wishes to extend this process to a range of other summary offences.
- III. **The promotion of a system for pleading guilty or not guilty online, for all criminal offences.**

These reforms cannot be implemented without legislation, but HMCTS is already spending considerable sums on staff, IT systems and management consultants. There is no published plan for the digital court reform programme and no costings. In December, the then Minister of State, Dominic Raab said, "*the business case relating to court reform will not be released for external publication*".<sup>3</sup>

It is clear that many back-room court processes need digitising so that case files can be stored and moved digitally. However, the proposal to put court hearings involving defendants and witnesses online, on video, or on the phone, is less clear cut.

Video hearings are already extensively used for witnesses, defendants and prisoners. Defendants appear on video from the police station for first appearances, and from prison for remand and sentencing hearings.<sup>4</sup> There is evidence that: defendants do not usually have a choice as to whether they appear on video, appearing on video is a significant barrier to communicating with their lawyer and with the court, and that, as a consequence, outcomes for those appearing on video are more negative; Ministry of Justice research suggests those who appear on video are more likely to be imprisoned.<sup>5</sup> Defendants in prison often favour a hearing on video because they are offered Hobson's choice – either a long, uncomfortable, journey in an unpleasant van to the court, whilst running the

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<sup>1</sup> <https://www.judiciary.gov.uk/civil-courts-structure-review/civil-courts-structure-review-ccsr-final-report-published/> and <https://www.judiciary.gov.uk/announcements/review-of-efficiency-in-criminal-proceedings-published-media-release/>

<sup>2</sup> <https://services.parliament.uk/bills/2016-17/prisonsandcourts.html>

<sup>3</sup> <https://www.theyworkforyou.com/wrans/?id=2017-12-21.120983.h&s=speaker%3A24815#g120983.r0>

<sup>4</sup> <http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf>

<sup>5</sup> <https://www.gov.uk/government/publications/virtual-courts-pilot-outcome-evaluation-report>

risk of having to move to a new prison after the hearing, or the option of a video hearing from their current prison. Given the threat to effective participation posed by virtual justice, defendants should not be offered Hobson's choice.

The impact of online courts and online pleas is unknown, since there has been no published research on the existing online court for motoring offences and no pilot of online pleas. Both threaten effective participation and fair trial rights.

In the case of online processes, there are concerns that the implications of pleading guilty to any criminal offence are considerable, but difficult to communicate online, particularly explaining the long-term impact of a criminal record on employment and educational opportunities. Lawyers are worried that such online processes will increase the proportion of defendants who are unrepresented when they plead guilty or not guilty, or throughout the process. A "layperson" without representation may well plead guilty, even if they did not do the crime of which they are accused, or if they have a viable defence.

Transform Justice's briefing on the (abandoned) Prisons and Courts bill gives further details on the government's proposals.<sup>6</sup>

## RELATIONSHIP BETWEEN THE DIGITAL COURT REFORM PROGRAMME AND COURT CLOSURES

### **Real courts are to be replaced by virtual and online hearings.**

If government plans to increase online and virtual (video or telephone) hearings go ahead, fewer courtrooms will be needed. However, more rooms for lawyers and probation officers to use for video consultations will be required, alongside booths for journalists and members of the public to witness virtual court hearings - if no one is in the physical court room, there will be no way of witnessing a court case except via newly constructed viewing booths.<sup>7</sup>

A key driver of the recently announced court closures is a commitment from HMCTS to contribute £250 million from the closure of courts to the total £1 billion which the digital court programme is estimated to cost (the remaining £750 million has been committed by the Treasury). Thus, the imperative for closing the courts is partly a general desire to improve efficiency and partly to satisfy the needs of the Treasury.

There is no costed plan for the digital court reform programme, so we cannot judge whether it must, or will, cost £1 billion; we also cannot judge whether the sacrifice of more courts is financially truly necessary. Of the £1 billion allowed for the programme, we know that at least £30 million has been spent on management consultants<sup>8</sup> and £38 million on IT contracts.<sup>9</sup>

The government has included descriptions of the digital court reforms in the Fit for the Future consultation but has not included any questions on the digital court reform proposals. Two of the key criminal justice proposals (fully virtual courts and online pleas) have never been subject to public consultation.

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<sup>6</sup> <http://www.transformjustice.org.uk/wp-content/uploads/2017/04/Transform-Justice-Briefing-on-the-Prisons-and-Courts-Bill5-.pdf>

<sup>7</sup> <https://www.lawgazette.co.uk/law/courts-bill-viewing-booths-to-preserve-open-justice/5059937.article>

<sup>8</sup> <https://www.theguardian.com/law/2018/jan/02/moj-spending-huge-sums-on-consultants-to-deliver-digital-courts>

<sup>9</sup> <https://www.theyworkforyou.com/wrans/?id=2017-12-12.119062.h&s=speaker%3A24815#g119062.r0>

## IMMINENT AND FUTURE COURT CLOSURES

Each court is assessed as to its usage, comparing the total potential usage with the actual usage, e.g. “during the 2016/17 financial year, Cambridge Magistrates’ Court sat for a total of 2,376 hours out of a possible 7,620 available hours”. The overall number of cases heard in criminal courts has reduced in the last ten years, and some cases may take less time given the implementation of efficiency programmes such as speedy, summary justice.

However, the under use of courts is not only related to the volume of cases, but also to cuts in resources to the judges and court staff who might hear those cases. The number of full time staff employed by HMCTS has fallen from 20,392 in 2010/11, to 14,269 in 2016/17<sup>10</sup> whilst the number of magistrates has been cut by nearly half. This means that many court cases take longer – on average, a defendant now waits 6 weeks longer for a Crown Court trial, compared with six years ago (32 week wait in total).

Whilst Banbury and other courts faced with closure are technically under capacity, this is within the context of court cases taking a long time, which is arguably needlessly so. The use of court space is constrained by a lack of sufficient judges and court staff. If these resources were made available, the court capacity would be better used, and cases would not be unnecessarily delayed. Current excess court capacity could also be utilised through improving the facilities for lawyers and probation officers to do video consultations (accepting that there will always be some video hearings), and by improving existing facilities for court users.

There are also concerns that in modelling how existing court work may be transferred to other locations, the government has not factored in how court time is used in reality. They have scheduled the work of courts in units of 1 hour, adding them up and then splitting and fitting the work of the court in question into the ‘under used’ or ‘free’ hours of another court. The flaw here lies in taking the unit of court work as 1 hour - a typical criminal trial is almost never just 1 hour, but rather several hours, and often not all at once. It is therefore unlikely that the hours currently unused in Blackfriars Crown Court will be transferrable to the other major Crown Court centres in London.

## TRAVEL TIME

As recently as 2010, the courts service suggested that all courts should be within a 1-hour public transport journey for all users. In their new strategy, they suggest instead that users should be able to get to and from court within the day. A comparison is also made with travelling to and from school (where DFE guidance is that children should not spend more than two and a half hours each day), though there is a crucial difference here – a small minority of children may choose to attend a school far from their home, whereas most court users do not choose to attend court.



HMCTS concedes that 7% of Crown Courts users and 5% of magistrate’s court users will be more than two hours by public transport from their nearest court. However even this may be an underestimate. The consultation on closure of individual courts estimates the increase in travelling time in the case of each court, but it is not clear that the proposed new journey times include those who live outside town centres. The journeys in Cambridgeshire are calculated from the towns in Cambridge (Huntingdon, St Neots, Ely), not from the rural locality. Someone living 15 miles south east of

<sup>10</sup> <https://www.theyworkforyou.com/wrans/?id=2018-01-30.125748.h&s=speaker%3A25391#g125748.q0>

Cambridge, who might currently be able to get into the city by bus in 45 minutes, will take considerably longer than the 1 hour 10 minutes estimated as the journey time between Cambridge and Huntingdon by public transport.<sup>11</sup>

The people who attend court tend to be poorer, less likely to own cars and more likely to have physical and/or mental disabilities. They frequently lead chaotic lives. Any journey which is longer and more difficult will create barriers to witnesses, defendants and family members getting to court. The government suggests video linked or online hearings will meet the needs of such users but, as previously mentioned, video and online processes threaten effective participation and access to justice for defendants.

## ECONOMIC IMPACT

The impact assessment<sup>12</sup> suggests that £3.1 million (10-year net present value discounted from 2017/18) may be saved by HMCTS in the running costs of courts by closing them. This does not include receipts from the sale of the buildings. However, if all “*worst case scenarios*” were realised, the court closure programme would result in a loss of £4.4 million.<sup>13</sup>

The main driver for the programme is to save money in order to invest in digital court reform and court refurbishment. However, significant potential costs do not appear to have been factored into the costs of court closures:

- Cost of delays to hearings due to defendants and witnesses being late/failing to appear, owing to the difficulties of getting to court. The assumption made that “*there will be no impact on the ability to hear cases in magistrates’ courts, and therefore there will be no impact on the prison and remand population*”, is unrealistic, given failing to appear increases the likelihood of remand.
- Cost of police pursuing those who fail to appear and increased costs of measures (including police custody) used in relation to those who fail to appear.
- The extra costs in transport and time is not factored in for lawyers, judges, police, court staff and support workers.
- There is no allowance for redundancy costs on the questionable basis that “any HMCTS staff made redundant as a result of these closures would be able to find alternative employment”.

Overall, given that the budget for the digital court reform programme is £1 billion, and that £30 million has been spent just on one management consultancy contract (for PWC to do change management), it seems that the saving of £3.1 million is small given the negative impact on court users and communities. As an alternative, HMCTS could look at making savings in the digital court reform programme.

## OPEN JUSTICE

Court closures, online and virtual justice all threaten open justice. Currently, nearly all courts are open to the public and journalists to observe and write about. Open justice means justice is seen to be done and this is both transparent and accountable. Open justice principles are enshrined in law

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<sup>11</sup> <https://www.gov.uk/government/consultations/cambridge-magistrates-court-proposal-on-its-future>

<sup>12</sup> [https://consult.justice.gov.uk/digital-communications/cambridge-magistrates-court-proposal-on-future/supporting\\_documents/hmctsestateconsultationimpactassessment.pdf](https://consult.justice.gov.uk/digital-communications/cambridge-magistrates-court-proposal-on-future/supporting_documents/hmctsestateconsultationimpactassessment.pdf)

<sup>13</sup> [https://consult.justice.gov.uk/digital-communications/banbury-maidenhead-courts-future-proposal/supporting\\_documents/hmctsestateconsultationimpactassessment.pdf](https://consult.justice.gov.uk/digital-communications/banbury-maidenhead-courts-future-proposal/supporting_documents/hmctsestateconsultationimpactassessment.pdf)

such that, if a higher court rules the public or any section of it was unlawfully excluded from the courtroom, those proceedings may be declared invalid because they were not 'in public'.<sup>14</sup>

Existing courts will still be open to the public and the media, but the fewer courts there are, the more difficult it will be for most people to get to their local court. As a result, fewer members of the public will observe courts. Reduced access to courts matters because public understanding of the criminal justice system is already low, but it is that very understanding which aids access to justice and effective participation.

Virtual and online courts threaten open justice itself. If no one is present in court and all parties are on iPads/phones/video, it is not clear how witnesses and the general public will be able to observe court hearings. HMCTS has talked of creating special booths in courts, where people will be able to watch individual screens and listen to a hearing using headphones. However, no plans have been published as to how exactly they intend to make fully virtual hearings “open”.

Online processes will be even more difficult to access. If someone pleads guilty or not guilty to a crime on their mobile phone whilst on a bus, how will victims, witnesses, and others be able to witness that court “hearing”? How will a case which is conducted entirely online be witnessed by journalists and the public? The government has talked of publishing the results of online hearings and cases, but they have not explained whether the process itself will be available to witness.

## IMPACT ON EQUALITY

There is no proper equality assessment, either for the consultations on closure of individual courts or for the over-arching strategy for courts. The government is not in a position to assess the impact of court reform and court closures on those with protected characteristics because it has no data on the users of the courts, either for this consultation or for previous ones:

*“No comprehensive information is held on the protected characteristics of HMCTS users. In this assessment, we have assumed that all court users are representative of the general population from which they are drawn, using data from the 2011 Census. We have compared the protected characteristics of this population with the populations in the appropriate local authority areas”.*

HMCTS concedes that pregnant women and those with disabilities may have to travel further, but that *“potential impact is proportionate having regard to the aim of the policy. The closure of the proposed court will impact a small number of users and the savings and efficiency achieved as a result of the closures will contribute to a better service overall for users”*. We are not persuaded of the evidence base for this claim.

There are strong indications from academic and other research that criminal court witnesses and defendants are demographically different to the rest of the population. They tend to be younger, more likely to be from BAME communities, with a higher incidence of physical and mental disability, including learning difficulties. People with protected characteristics are likely to be much more severely impacted by the difficulties in getting to court – particularly if journeys involve several changes of public transport and very early starts.

Transform Justice feels that, without data on the users of courts proposed for closure, and sufficient data on courts in general, proper assessment of the impact of changes on court-users is impossible. Even more useful would be survey evidence with current users to ascertain how they get to the court now, and how they would get to court under the proposed changes.

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<sup>14</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2016/2792.html>

## “POP-UP” COURTS

In their 2016 report, “What is a court?”,<sup>15</sup> the charity Justice suggested the use of ‘Pop-up’ courts, which draw on the flexibility of the justice space model to employ a range of public buildings as simple and standard justice spaces on an ad hoc basis. Fit for the Future suggests an expansion of such pop-up courts (which they term “supplementary provision”), partly to fill the need created by closing courts:

*“Where we close a building and it is clear that regular – even if infrequent – physical hearings should continue to be held nearby, we will work with local partners to use non-HMCTS buildings to provide them... We have already established that supplementary provision can be an effective way of providing access to justice for SSCS Tribunal users in Scotland where we hire venues in 14 locations which are used on a regular, but not full-time, basis to hold hearings. These venues include community centres, village halls, church halls, conference centres and hotels”.*

This is a promising idea which retains local justice in community venues, but it needs investment – investment which is only worth making if the local court definitely needs to close.

### CONCLUSION

HMCTS is proposing to close some courts, to refurbish others, to facilitate “pop-up” courts in inaccessible areas and take most court hearings out of the courtroom altogether – either online, on video, or on the phone.

The total lack of a research basis supporting the move to digital and virtual systems contrasts with strong indications from research that, in the criminal sphere, virtual hearings impede effective participation in justice and that online pleas and courts may lead to miscarriages of justice. The closures of courts currently planned, and the future closures strongly suggested in the Fit for the Future consultation paper, are related to plans to eliminate nearly all hearings held in physical courts. The strategy is flawed given the lack of evidence either for genuine under use of courts, or for digital reforms improving access to justice. The savings (£3.1 million NPV) potentially accrued by closing important courts such as Cambridge Magistrates Court and Blackfriars Crown Court seem small compared to the negative effects on local communities, and tiny given the £1 billion available to the overall digital court reform programme.

If local justice is to be maintained, rooted in communities, then the way forward is to use our existing courts better and fill the existing gaps with “pop-up courts” in civic spaces. A defendant pleading guilty to a crime on their mobile phone, or giving evidence whilst sitting at home using their iPad, does not constitute open local justice.

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<sup>15</sup> <https://justice.org.uk/what-is-a-court/>