Magistrates Association

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As the only independent membership body for the magistracy, the Magistrates Association (MA) is submitting this response to the Judicial Ways of Working consultation as a representative response on behalf of our members. The response was drafted following input from our National Officers, Policy Committees and individual members.

The MA welcomes the underlying aims of the reform agenda to improve the efficiency of the justice system. However, we are alarmed by some of the proposals set out in the Judicial Ways of Working papers. We believe there is potential to erode judicial decision-making powers and undermine established democratic processes and the fundamental principles of the justice system. We also believe that if these proposals are implemented there is a very real risk of unfair or disproportionate outcomes for the most vulnerable people in our courts. The MA therefore believes that all proposals should be carefully considered to ensure that the reform programme is compatible with retaining an open, transparent and fair justice system that is accessible to all.

1. Use of digital systems

Judges sitting in the Crown Court

Q1: *Aside from the resolution of the long standing problem of multi-defendant cases, what further improvements could be made to the DCS and/or incorporated into the Common Platform to improve the criminal process?*

Where magistrates sit on appeals with Crown Court judges they currently do not have access to iPads, which means they either have to use their own iPads, rely on looking at the judge's device or not have access to any online resources (such as Sentencing Guidelines). This is very unsatisfactory and restricts the ability of the magistrates to carry out their role adequately.

Magistrates and DJs (Magistrates' Courts)

Q2: *In the Magistrates' Courts, what improvements could be made when Court Store is replaced by the Common Platform and ATCM?*

One of the problems identified by MA members with the Court Store is in relation to uploading data. It is important that all data can be uploaded onto the system before a hearing.

Currently, access to some files (such as Section 9 statements) can be difficult via iPads in retiring rooms. Similarly it would be useful for any audio or visual evidence to be accessible in retiring rooms.

A clear and easy to follow indexing system is vital to allow quicker access to relevant documents and the ability to view *all* types of formatted documents.

An intuitive mark-up system for legal advisers is also required. Our members have reported that legal advisers are spending too much time concentrating on marking up files and consequently less time on their primary role of providing legal advice. Anything the system can do to automatically populate sections on a form where there is a legal requirement linked to an offence or court order (e.g. surcharge or collection order) would be positive. Of course, there should always be provision for judicial discretion.

The current system for recording DVLA cases is not efficient, and the ATCM should improve this process.

Overall, it will be hugely beneficial to rely on one system required rather than the existing structure of multiple IT systems (such as Court Store, Digital Mark Up and Libra) being used for different purposes, and having to link up.

However, one of the challenges will be to ensure all agencies or parties are able to access the digital systems: in relation to the judiciary, this should be straightforward. But it may prove difficult to require all police forces to sign up to using the same system, which will mean that different processes may have to be used in different areas. It should also be remembered that there are third sector organisations working with Community Rehabilitation Companies (CRCs) and Youth Offending Teams to provide community options. Ensuring link up between all these varied organisations will be important, while maintaining the necessary security protocols so only those who need to have access to information are able to see it.

The issue of who has access to information is relevant not just for third sector organisations, but for all criminal justice professionals. They should only have access to the parts of a case file that is necessary: one concern with the current situation is that sentencers potentially have access to information about previous convictions through the Court Store, which is inappropriate.

Resident Judges, Presiding Judges, DJs (Magistrates' Courts) in leadership roles

Q3: *What information do you need to help you review your workloads, backlogs, and the general performance of your court?*

It should be noted that magistrates are also involved in leadership roles (such as Bench Chair and Youth Panel Chair) as well as strategic roles on Judicial Business Groups and Advisory Committees.

It would be helpful for general statistics on backlogs, length of time to resolve a case, and workload to be automatically generated and provided to Judicial Business Groups as well as Advisory Committees, who are responsible for recruitment planning.

All judicial office holders

Q4: *Would you welcome more detailed information about precisely what is planned for the Common Platform? In what form would you like that information? E.g. by way of a presentation, live demonstration, paper, etc.*

The MA welcome the benefits to improved communication and efficiency that will hopefully come via the Common Platform. We are aware that this part of the reform programme is a central tenet, vital to many of the other aspects proposed, and were very concerned about the National Audit Office's concerns (set out in their recent report 'Early progress in transforming courts and tribunals', May 2018) about the likelihood of it being completed on target.

More information on what is planned for the Common Platform would be welcome, including detailed information about the timeframe for roll-out of the Common Platform and material setting out what magistrates can expect from the new system.

Live demonstrations of the Common Platform would be useful. Although videos can be an efficient way to ensure all relevant parties have an opportunity to see how new systems work, a focus on face to face learning for such a fundamentally important process would be preferred so that any questions or problems can be dealt with at the time. This will also ensure that everyone is using the system as efficiently as possible.

The information or training must be pertinent to each particular agency or cohort as the Common Platform will cover different processes that will not all be relevant to magistrates.

Q5: *What method of training in IT would best suit you? The following seem to be the possibilities: written instructions, video instructions, small group training from judges and/or HMCTS –or a mix of all of the above.*

The MA suggests mixed method options should be available for those with differing skills and confidence in IT.

Hopefully lessons have been learnt from the lack of structured training given with the introduction of E-Judiciary and court iPads. It should be remembered that magistrates are lay volunteers who may need more assistance upskilling with new systems as they are not dealing with them on a daily basis.

We would suggest that face to face training sessions for small groups should be available for all magistrates. Each participant should have an iPad to use for the session, so they can test out what they are learning. It would also ensure any questions or problems can be dealt with immediately.

Written material and videos should also be available, so individuals can practice or refresh their memory in their own time.

Where training is offered online, to be completed at home, then basic hardware and software requirements need to be articulated clearly.

Helpline numbers which provide support and assistance should be prominently displayed.

Additional comments about the use of digital systems

We would like to query whether the IT support available to assist members of the judiciary will also respond to queries from other criminal justice agencies such as CPS, defence lawyers etc.

The MA welcome the acknowledgement that paper documents may be necessary in some situations in addition to digital systems. However we would argue hard copies would not only need to be available for sensitive cases but any situations where the parties either cannot or do not want to use digital systems for any reason. The Government's Impact Assessment for Assisted Digital[1] states that people with disabilities are four times more likely to have never used the internet than those without disabilities. Similarly, those over the age of 65 years old are the age group least likely to be adept at using the internet. This means that the elderly and those with disabilities are most likely to not be able to use digital systems, so the most vulnerable are at risk of being disadvantaged by the digital by default approach. The MA would therefore suggest that, if a case involves an individual who cannot use digital systems due to a particular vulnerability, then paper documents would have to be provided to guarantee non-discriminatory practices.

[1] https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/supporting_documents/assisteddigitalia.PDF

The MA is supportive of the opportunities for improved efficiency and outcomes that could come through the use of technology but it should be remembered that according to the Government's own assessment, 18% of the population are 'digitally excluded'[2] and these people cannot or choose not to engage digitally at all. They must not be prevented from accessing the justice system, and therefore alternatives to online processes must be provided.

The MA would also note that according to the same paper, the Government's assessment is that only 30% of the population are digital self-servers, therefore 52% can only use digital systems with assistance.

We would also like to point out that the Government's Impact Assessment identifies that the proportion of people who are comfortable using the internet for sensitive or confidential matters is lower than the 82% who are seen as able to use digital system with only low level support. The example of internet banking shows that across all age groups, the average percentage that use this service is only 56%.

The Government's Digital Efficiency Report indicates that the greatest savings from switching to digital processes only come once the uptake of users is at least 40%.[3] The MA is concerned that for some of the digital processes, this uptake may not be realistic. The report included case studies indicating uptake of different Government services. In relation to those services engaging with individual customers, the average uptake was only 37%: with the lowest uptake of only 15% for using online processes to book HMPS visits.

The Government's own data shows that on average, it can take over eight years before 40% of users are using the digital processes. And there are very good reasons why the process will be a lot slower in respect to the justice system.

For example, uptake can often be increased through rewarding digital users – however, other than possibly offering a speedier process, using digital process to access the justice system cannot include any offers of inducement without undermining the fundamental fairness of the system. In addition, it has been shown that raising awareness and increasing confidence in systems (by making them easy to use and reliable) among users increases uptake of digital approaches. The Government's Impact Assessment paper notes that the aim is for repeat users of a digital system to gain confidence, with a proportion becoming 'self-servers' and no longer relying on Assisted Digital support. However, as highlighted by Susan Acland-Hood at the recent MA Council meeting on 15 May, the challenge for the justice system is that the majority of users are one-time users, so they will not become more confident with digital systems over time.

In addition, successfully managing security risks is key to encouraging uptake for digital services (which is particularly important in relation to anything that uses sensitive or confidential information). This will be a challenge for engagement with the justice system, especially in relation to the family jurisdiction, where the most private issues are discussed.

2. Use of technology for hearings

Q6: *What types of hearings and cases could / should not be conducted by fully video hearings (where all parties join via video-link, and no one is in the court)?*

We agree that fully video hearings are generally inappropriate for defendants who should have access to a duty solicitor or where parties have identified vulnerabilities. Video hearings are also unlikely to work where interpreters or intermediaries are necessary. For example, simultaneous translations require

[2] https://consult.justice.gov.uk/digital-communications/transforming-our-justice-system-assisted-digital/supporting_documents/consultationpaper.pdf
[3] https://www.gov.uk/government/publications/digital-efficiency-report/digital-efficiency-report#how-long-will-shifting-to-digital-take

the interpreter to be alongside the defendant or otherwise the hearing is lengthened if there is sequential translation.

The MA believe fully video hearings are not appropriate for any hearings dealing with under-18s.

The MA does not believe fully video hearings are appropriate for any hearings that are contested, or where the understanding of parties is key to the legitimacy of the process. This would include any hearings where decisions are being made that have important or long-lasting impacts on parties. So fully video hearings should not be used for any trials or remand or sentencing hearings.

There is a real danger that just outcomes will be affected if fair and effective participation is not assured.

Fully video hearings may be appropriate for summary only, non-imprisonable offences where there is no identifiable victim and the defendant does not have any identified vulnerabilities that would indicate a face to face hearing is required.

Video-link is useful for administrative hearings where legal arguments are being heard, or interim applications being dealt with. It can also make certain case management decisions more efficient.

It is unclear what infrastructure is proposed for fully-video hearings. If the hearings are not to be dealt with in court, alternative space must be found. This space would have to have appropriate facilities for video technology and the MA is aware that existing courtrooms are not necessarily going to be able to accommodate this.

If courtrooms are to be used, then the resource implications involved in equipping all courtrooms with the technology would be considerable. Currently there are insufficient courtrooms with this technology for the current level of usage: moving a case to a courtroom with video-link technology involves delays and therefore a waste of time and money.

The MA would suggest it would be more useful to focus on ensuring all courtrooms have the necessary video-link technology to allow a party to join via video-link where appropriate. However we do not feel it will usually be practical for all parties to join via video-link. Ensuring the process is heard in a courtroom, even where video-link technology is used for a party to participate will ensure the process remains accessible to the public and therefore transparency is achieved.

The MA would also like to raise concerns about the practical problems associated with using video-link technology. Magistrates report difficulties with establishing connections, as well as the fact that sound quality can be poor. Both of these could severely limit the effectiveness of using the technology. It can also be challenging to ensure that the individual accessing the process via video-link can follow who is speaking, and therefore understand the process. It can be very frustrating for the bench where the presiding justice is speaking but is invisible to the defendant using video-link.

It is likely that any fully-video hearings would have the same problems.

The table from the Government's Impact Assessment referenced above shows that across all age groups, only 36% of people use the internet to make calls or web chat. This indicates the percentage of people who might be willing to use video-link technology to give evidence or otherwise engage with legal processes is likely to be low.

Q7: *In what ways can open justice and transparency be achieved for fully video and telephone hearings?*

The MA have commented previously on this issue of the importance of the public being able to attend criminal hearings to maintain public confidence in the legitimacy of the criminal justice process. This is particularly pertinent for magistrates' courts, which are central to providing local justice.

It is not clear, however, how it would be possible for fully video/telephone hearings to be transparent and enable open justice as there is no option for the public to see the process. Open and transparent justice is not just about access to an outcome – justice must also be seen to be done.

Q8: *Where hearings are currently conducted by telephone, would the addition of video technology improve the quality and usefulness of the hearing?*

Although magistrates are not commonly involved in hearings conducted by telephone, we can see how the addition of video technology would improve the quality and therefore usefulness of the hearing. This would be particularly important when defendants are party to the hearing.

Video technology can ensure that judiciary can clearly identify all parties to any particular hearing as well as who is speaking at any one time.

Q9: *How can we best ensure that for appropriate hearings the seriousness of court proceedings is brought home to those participating by video? How can we ensure the integrity of the hearing is maintained e.g. no off screen coaching?*

It is not just the seriousness of the proceedings that needs to be considered: fair and effective participation and perceptions on how fair the process is are also vital. As mentioned above, the MA has concerns about the use of video-linking. We do not feel a video hearing will have the same gravitas as a court hearing at present. Therefore we need to ensure they are used only for appropriate hearings (pre-trial and some sentencing, and only minor trials, with non-sensitive issues in dispute).

It may be possible to ensure the integrity of the hearing if only official/authorised video-link suites are used with court or otherwise authorised staff present during the hearing. Otherwise, it would not be possible to be sure there was no off-screen coaching.

Other considerations would also be to make sure that:

a) There is someone to administer oaths at any video-link suites.
b) It is possible to ensure any witnesses are kept separate and not reporting back to those still to appear on what has happened in the courtroom.
c) There is a process to ensure no recording is being made of proceedings.

3. Cases dealt with in ways proportionate to their nature

Q10: *What advantages or disadvantages are there to a defendant indicating a plea online?*

Advantages:

Where individuals are currently engaging with the Single Justice Procedure via a written plea, allowing the opportunity to engage online would be beneficial. The opportunity to indicate a plea online may improve the efficiency of the system by allowing a case to be dealt with more speedily. This would ultimately also save money.

Disadvantages:

While the MA recognises the potential benefits of an online plea process for cases currently dealt with via the Single Justice Procedure, it is important that any defendant who does not want to engage digitally is not disadvantaged in any way.

If Online Pleas were to be introduced for all cases, the MA would have the following general concerns:

- There is a risk that defendants will indicate a plea without getting appropriate legal advice, possibly without realising the seriousness of the case.

- There is a danger that defendants misunderstanding the process or the consequences of indicating a plea online could increase the likelihood that they will change their plea at later stage, which would create delays.
- An even more concerning outcome may be ill-considered pleas where an individual does not, for example, appreciate that they have a statutory defence or fails to understand the process. This would result in incorrect outcomes, where a defendant is found guilty of an offence of which they are innocent.
- The MA is concerned that the online plea process will mean a lack of opportunity to identify whether a defendant has any vulnerabilities. For example the Liaison and Diversion (L&D) scheme is embedded in police stations and courts but if people engage with the process digitally, there will be no opportunity to identify vulnerabilities or divert appropriately. The MA also believes that there may be certain vulnerabilities that impact on an individual's ability to comprehend the process which mean it is inappropriate for them to indicate a plea online.
- Where a plea is currently taken in person by a court, there is the opportunity to ensure they understand the law (for example relating to equivocal guilty pleas) as well as making sure they understand the consequences of a guilty plea if equivocal.
- Similarly, a not guilty plea could be entered in the mistaken belief that an individual has a defence, when it should actually be seen as mitigation rather than a defence. Again, this could result in delays further down the process with more ineffective or cracked trials as well as the potentially unfair loss of credit for an early guilty plea.
- Online pleas may result in defendants having to be contacted to clarify issues, which may cause delays.
- It is unclear how bail decisions would be dealt with if online pleas were rolled out. There are limitations to police bail: not just because there are situations where an individual has to be remanded but also because the court will have access to all the necessary information (for example whether the defendant is already wanted on a warrant, has breached bail, or is subject to a community order).
- Again, there are concerns about an online process not being transparent, which is in direct opposition to the principle that justice should be seen to be done.
- An online plea process would restrict the opportunities for effective case management to be done, which will risk more ineffective or cracked trials.
- There is a danger that defendants who are unable to engage with online processes will be disadvantaged.

Q11: *What are the issues to be considered regarding the proposals that someone may not come to court until their trial (if they indicate a not guilty plea online and any hearings are fully video)?*

The MA would like to see the following issues considered:

- Lack of opportunity to identify vulnerabilities. For example, the L&D scheme is embedded in police stations and courts but if people engage digitally there will be no opportunity to identify vulnerabilities or divert appropriately.
- There may be more pressure on court time in relation to case management, as well as pulling together appropriate information on a defendant.
- Appearing only for trial or sentence could mean that the defendant does not realise the seriousness of the issues and could increase no-shows.
- The trial booking process may not have fully considered the issues. For example, numerous witnesses could attend, thinking their evidence was necessary or admissible (when the court may direct otherwise). Inappropriate lengths of trial may be directed. Defendants may plead guilty once they attend and the law is explained to them (causing all the consequent upset to witnesses and waste of court time).

- There is a danger that the lack of robust case management will reduce efficiency of trial courts (causing wasted court time and distress to witnesses awaiting outcomes of cases). There has been a recent focus on robust case management at first hearings to ensure more efficient running of the court process and it would be unfortunate if the improvements that have been gained through this focus is now lost. The MA is concerned that the proposed changes will increase the risk of more cracked trials.
- It may mean more defendants appear for their first appearance without seeking appropriate legal advice, which may result in late changes of plea as well as defendants losing the benefit of pleading guilty at an early stage.

Q12: *What access to legal advisers would give magistrates sufficient confidence in hearing SJP cases? What opportunities or risks are there from changing the ratio and location of legal advisers?*

The MA is aware of the proposed opportunities for increasing efficiency through use of SJP and support its use for certain offices such as non-payment of TV licence or rail fare infringements. However, we do not believe that the SJP would be appropriate for all summary only offences which are non-imprisonable. It is also important that all SJP cases are scrutinised carefully to ensure full court hearings or further engagement with a defendant is not necessary.

Although the MA would prefer for there to be a one to one ratio in relation to magistrates to legal advisers, it is appreciated that it may be more efficient to have a higher ratio of three magistrates to one legal adviser. The MA is concerned about the legal adviser not being co-located with the magistrates – if video-link technology was to be relied on, we do not feel it is currently secure or robust enough to ensure the process would not be disrupted. It is also possible that if magistrates have to contact legal advisers digitally it could slow the process down and even possibly risk magistrates not getting input appropriately. It must be remembered that there are likely to be legal issues to be resolved with these cases, including due diligence defences, special reasons, endorsements on same occasion, as well as ensuring the appropriate process is followed before disqualifications.

Magistrates have raised concerns about the software to be used in dealing with SJP cases digitally. It is important that comprehensive training is given to magistrates, as well as appraisals carried out to ensure competency to deal with these cases. Although the MA acknowledges the aim for all magistrates to deal with these cases rather than have ticketed individuals, this will require robust IT training and we would suggest that a mentoring system could ensure all magistrates are given the necessary support to be able to be confident and competent. Another suggestion is to have two or three magistrates sitting together (although dealing with the cases singly) when dealing with SJP cases, so that they can support each other.

Additional thoughts on 'Cases dealt with in ways proportionate to their nature'

The MA disagrees with the following proposals:

- That all remand hearings take place via fully video: the MA believes that this should remain a judicial decision on a case by case basis. We would also note that currently the quality of the technology is not sufficient to deal with the majority of remand hearings.
- Online conviction process: the MA disagrees with this proposal.
- Case management taking place outside the courtroom (online or fully video hearing) until full transparency/open justice is assured. Robust case management at an early stage is key to ensuring speedy, fair and effective processes. Moving to online or fully video risks issues not being identified at an early stage which will result in delays later on in the process.

4. Use of simple, accessible procedure rules

Q13: *What safeguards need to be in place for an unrepresented defendant indicating a plea online?*

The MA has concerns about the online plea process – it is important it is implemented slowly and carefully and evaluated before full roll-out.

There is a danger that if defendants do not take advice or carefully think about their decision before indicating a plea online, that it will lead to pressure on the system further down the process with people changing their plea.

It is also important that defendants are able to engage either via papers or in person if they do not wish to indicate a plea online. This should not disadvantage defendants in any way.

If the online plea is taken forward, the very least protections that should be put in place are:

- A cooling off period before you can indicate a plea so that individuals must consider their decision before confirming an indication of plea.
- A recommendation that legal advice should be sought before indicating a plea: a defendant should have exactly the same access to legal advice as if they were in court. Before an indication of plea is accepted, a defendant should confirm whether they have had access to such advice. Access could include a free service to speak to a solicitor either online or via the telephone.
- The online plea process should not be available to any defendant who has a legal right to a duty solicitor. When indicating a plea in a court hearing, the legal adviser or bench can suggest the defendant should seek legal advice to understand the implications of any plea. An online plea would mean the opportunity for this engagement would be lost.
- Any online process should have very clear warnings about the impact of a guilty plea, including the fact it will result in a criminal record and may jeopardise future employment opportunities.
- Measures to ensure security for people using hand held devices or public computers/Wi-Fi.
- Ensuring fairness of process and outcome for those not indicating plea online but using traditional paper channels so that they are not disadvantaged at all.
- It is important that defendants who have vulnerabilities that would make the online process inappropriate are identified. Currently the L&D scheme ensures that individuals are assessed when interacting with the police. It is not clear how this will be replicated via an online process: unless the defendant is asked to confirm they have been assessed as appropriate to use the online process.

Additional comments in relation to the use of simple, accessible procedure rules

In the JWOW Family document, the need to ensure Rules are available in Welsh is included. This should be as relevant for Crime.

5. Authorisation to perform routine judicial functions

Q14: *In the Magistrates' Courts, what is your view on the following tasks being undertaken by legal advisers?*

• Allocation of either-way cases to the Crown Court or the Magistrates' Courts (both parties should continue to have the ability to make representations about the venue, as now)

This is a vital function that should be carried out by a judicial office holder in a public hearing. These are important decisions with implications for the right to jury trial and which requires the court to evaluate the prosecution case and defence representations in order to form a view of the likely sentence if convicted, as well as the complexity of the case. The impact of the decision can be significant and as sentencing is solely in the remit of the judiciary it is inappropriate that a legal adviser undertakes this

function. The likelihood that issues relating to case management will need to be addressed should also be considered.

• *Ground rules hearings*

Particularly where these are carried out in Youth Court, they are an important judicial function.

• *Live-links directions*

Decisions about whether live-link is appropriate should remain a decision carried out by judicial office holders, although administrative details about setting the live link up are better placed outside of court.

• *Applications for all types of measure to assist a witness in a case*

Decisions about all forms of special measures are vital judicial functions linked to case management as well as ensuring a fair process.

• *Determining applications under s8 CPIA 1996, for disclosure of unused material*

Legal advisers might be well-placed to deal with some of these applications but given the current concerns around disclosure, the MA suggests it is appropriate to wait until the Attorney General's current review of disclosure procedures and the Justice Select Committee's current inquiry on disclosure have concluded before making any changes as to who is carrying out decisions.

It should be noted that it is not always possible to deal with these applications on the basis of papers alone. There are frequently long arguments regarding CCTV or lists of witnesses who may or may not have seen the incident. Ensuring the defence has access to appropriate evidence in a timely manner is a vital part of ensuring our justice system respects the rights of a defendant. Early disclosure can also ensure cases are dealt with appropriately, including where evidence proves the innocence of a defendant.

• *Amendment of suspended sentence order by reason of change of address (CJA 2003, sched12, para 14)*

Amendment to criminal sentences are a judicial function: the MA suggests, however, that a single justice could deal with changes relating to administrative issues such as change of address.

Q15: *In the Crown Court, what tasks or box work could case officers be authorised to do without legal qualifications?*

n/a

Q16: *Is there a potential role, and if so what, for a legally qualified case officer providing direct support to Resident Judges in a court or a group of courts?*

n/a

Additional comment on Authorisation to perform routine judicial functions

In the JWOW Family document, reference is made to the fact that case officers exercising judicial functions should be co-located with the judiciary. This should also be the case in the criminal courts as it is not clear how judicial oversight of delegated tasks can be assured without being co-located.

6. A modern estate, properly staffed

Q17: *What are the advantages or disadvantages of having court buildings and courtrooms/hearing rooms that are used by a combination of jurisdictions?*

Advantages:

- Ensuring full utilisation of existing court buildings;
- Increased flexibility in utilisation of judges and magistrates;
- Ensuring special measures are available for different hearing and jurisdictions, for example making sure there are separate waiting areas and entrances for vulnerable parties;
- Opportunities to share facilities and resources which ensures efficient use of resources.

Disadvantages:

- Erosion of local justice – if local magistrates' courts are closed, there is a very real risk that the justice system will be seen as remote and therefore public confidence and trust could be lost;
- It should be remembered that courts are not just used for hearings, but also places of work for staff, as well as spaces used for learning and coming together of the judiciary. Full utilisation must ensure sufficient capacity for these important roles;
- Increased travel times for all parties as well as reduced accessibility;
- There is potential for confusion around listing conflicts;
- It may be inappropriate for certain hearings dealt with by other jurisdictions (such as family or coronial cases) to be heard in a criminal court. Where a more inquisitorial approach is taken, different settings are beneficial.

Additional comments on 'A modern estate, properly staffed'

- In relation to communication and exchange of information between courts and Customer Telephone Service Centres (CTSCs), security of information sharing is vitally important and should be embedded in any IT structures put in place.
- In relation to use of alternative locations ('pop-up courts'), it would be useful to have clearly set out guidance covering the agreed minimum standards and what criteria should be used in making any decisions about the appropriateness and necessity of using alternative locations.
- The MA is very concerned about proposals to further reduce the court estate, as well as a very significant reduction in staff. Centralisation risks losing local justice and justice becoming remote from all parties as well as the public – which can only damage public trust and confidence in the system.

Additional Points:

1. Common Platform as a single integrated system:
    - It is important that the systems used by police and other agencies such as CRCs are able to integrate with Common Platform. Yet currently there a numerous police systems and some police forces have made it clear that they want to retain their own systems;
    - The MA is concerned about how permissions for access to 'relevant' materials will be dealt with and whether there will be appropriate restrictions on different access in place. For example, will the judiciary have access to any cases on Common Platform if they have the URN? Or will it be on a needs basis so that only people directly working on a case can have access? In order to guarantee proportionality, only those agencies that need to access data should have permission to access specific cases. For example, only the CRC responsible for managing an offender needs to be able to access their case file.
    - It is important that a clear distinction is made between case progression and case management: the latter being a judicial responsibility that should not be devolved to legal advisers.
2. Allocation: the MA would note that the plea and trial preparation hearing (PTPH) for cases where the defendant is charged with an offence that is triable only on indictment is a fundamental part of the process where there is a clear benefit from early engagement relating to

case progression. It should be ensured that if these cases are to go straight to Crown Court for the PTPH, these hearings are not delayed, as this will reduce the efficiency of the process. It may require Crown Court to sit on Saturdays and Bank Holidays to ensure appearances within the statutory time limits. These hearings are also vitally important as they require a judicial decision to be made on bail or remand.

3. Court buildings: it would be good to see reference to ensuring accessibility for courts under the new Courts and Tribunals Design Guide. Accessibility includes ensuring access for people with disabilities as well as wider issues around location and the impact on access to parking or public transport.

Six ways of working:

1. The MA supports the commitment that 'there will be no compromise to the principles of transparency, access to justice and open justice' but it is unclear how this will be guaranteed. Projects should not move forward before there are detailed plans on how this will be achieved as IT processes may have to be embedded within certain structures from the start.
2. The MA would encourage more detailed information about what 'assisted digital' means in practice. This should not just cover how to support people to engage digitally but also ensure people who cannot engage digitally are able to use alternatives including hard copy. Again, assisted digital is already in place and being used for certain Civil process, and the MA support the recommendation from the JUSTICE report "Preventing Digital Exclusion from Online Justice" that detailed evaluation should be carried out. It is vitally important that any groups not engaging or supported via assisted digital are understood before online processes are introduced. The MA believe that face to face should be available locally to support people in accessing digital systems.
1. Procedure rules for online processes: it would be useful to have clear, accessible rules but it is also important that there is consistency between people accessing the system digitally and those that engage in person or via hard copy. Online processes should not result in any advantage over other ways of engaging.

Business Case for Reform:

- The MA is concerned about the proposed reduction in staff and the court estate.
- Further reductions in resources will have negative impact on the efficiency of the justice system.
- Access to justice should be the primary aim, rather than increased savings.

The Legislation:

- Impact of abolishing Local Justice Areas: it is not clear what the impact will be on magistrates and where they sit regularly. Presumably the system will allow magistrates to indicate courts they are willing to attend? There should be a clear, agreed plan to replace LJAs before legislation is brought forward to replace them.
- The MA is concerned with some of the suggestions re delegating judicial decisions, especially case management decisions.
- It is unclear how open justice will be ensured for fully video and audio hearings.

Programmes Summary

- The MA is concerned with proposals that most summary non-imprisonable offences with no identifiable victim will dealt with be via the SJP. It is unclear how any vulnerabilities of defendants that might impact on outcomes will be identified. We also query how victims will

be identified: do they have to indicate they want to engage with the process for a case to be noted as one where there is an identifiable victim?

Specific programmes:

- Video Remand Hearings: any decision about the use of video-link for remand should remain with the judiciary, rather than having a default presumption that video hearings are appropriate.
- Court Hearings: the MA would suggest that the project should be to optimise rather than maximise the use of digital and video capability.
- Youth: the MA believes that fully video hearings are not appropriate for youth court proceedings and that digital channels should be limited to purely administrative processes.