



Crime Judicial Ways of Working (JWoW) December Communication

Introduction

1. Can I start by thanking everyone for their contribution to the JWoW Crime Survey? Circuit Judges, District Judges (MC), Magistrates and Recorders all contributed, many as individuals and many as part of a group response on behalf of a court or bench. Several hundred of you came to meetings and expressed your views, all of which were recorded. It has been an extremely valuable exercise to have received your input.
2. Since then you have received two documents from the LCJ and the SPT. The first set out themes emerging from the responses; the second described the progress that has been made in relation to a number of cross jurisdictional topics including Training, Estates and IT systems. I won't repeat the contents of the documents. They can be found [here](#) and [here](#).
3. You were promised a document specific to Crime to identify the points made about Reform in the criminal courts and to keep you up to date as to what is being done both generally and specifically in relation to those areas where you expressed concern.

The JWoW process and your views

4. Your responses were read, analysed and summarised by the Judicial Office and the team from Accenture. The summaries were reviewed by the two Judicial Engagement Groups, the JEG (Crown Court) and the MEG (Magistrates), by the JRB and by me. The DSPJ reviewed individual responses and group responses and discussed them with me. All your views and ideas have been considered. Many of them have been acted upon.
5. On some aspects of the Crime Programme, your views were almost unanimous. These included:
 - a. the need for court hearings to achieve effective case management;
 - b. the imperative of open justice;
 - c. the need to have sufficient trained and experienced staff in the courts;
 - d. the need for working technology; and
 - e. the need for training in new technology.
6. On the broader question of the Reform plan, it was clear that judges and magistrates welcome new technology. You have been working digitally for some time, yielding savings and efficiencies but there is some caution about whether the technology required for further necessary improvements of the whole criminal courts' system will be delivered.
7. The cost of the Common Platform is £270m. That the government has been prepared to finance HMCTS to develop it should be seen as a measure of the commitment to move to 21st century technology and replace the creaking systems (Libra, Crest, Xhibit) in place for 30 years. They have no wish to introduce technology or systems that won't work. The Automated Track Case Management system (ATCM), part of the Common Platform, is already working well in the Single Justice process.



8. The role of the judiciary in this is essential: it is to contribute to the design so that the developers produce systems which allow us further to improve the way we administer justice in the criminal courts. I am grateful to all the judges and magistrates who are working to that end.

Priority topics for discussion

9. With the DSPJ, I considered the views of the JEG and the MEG on the survey responses and decided upon some priority topics. Three were urgent:
 - a. Open Justice (reflecting your widespread concern that it should not be overlooked as we undertake more work on a digital platform);
 - b. Case Management (because the Crime Service Model is being designed now) and systems which permit us effectively to manage cases so that justice is achieved without delays and unnecessary expense; and
 - c. Video Hearings (because of the level of misunderstanding about their proposed use).
10. I reached a considered view on each topic informed by your responses. Discussions then took place between the Senior Management Team of HMCTS, the DSPJ and me.
11. I should add that the situation has not arisen where my view differs from the view of the majority (or, indeed, of a sizeable minority). Obviously, should that happen, as a matter of leadership, I will take the decision and be responsible for it, but I would consult widely with other senior colleagues before differing from strongly held views by a significant number where everyone of us only wants a properly functional and fair process for criminal justice. By way of example, some judges consider that a telephone hearing is not appropriate in the Crown Court although most judges disagree (as do I). I am quite sure that proceeding in that way could easily be appropriate for certain short hearings of a purely procedural nature where a swift answer or adjustment to an order is all that is required. This is consistent with the Criminal Procedure Rules and the duty of the court to make use of technology actively to manage the case.

Open Justice

12. As was made clear in the JWoW document, the courts must at least be as open to the public after reform as they are now; the public must be able to see and hear that which they can currently see and hear in court. You were unanimous on the need to preserve this right. I entirely agree.
13. When judges conduct telephone hearings now they do so in open court so that the hearing is observed and, in the Crown Court, recorded on DARTS. Where hearings are to be conducted by telephone or fully video (i.e. no one in court, all parties connected via technology) I believe that open justice would be secured by a live link to a viewing area in the court building where the case is listed. The judge or bench would be aware that the hearing was being observed; staff would supervise any such area. This would address your powerfully expressed cogent concerns about live streaming, broadcasting, recording or interfering with the footage. In August, we made that suggestion to HMCTS and, in October, their open justice team made some general and wide-ranging proposals to the JRB. We have sought confirmation that our simple, practical proposal will be put in place. The live link from my Inquiry (from court to a tent in the Quad at the RCJ) was entirely successful and should not be difficult to replicate. I would not be averse to a hearing being viewable in another court building in addition to the court where the case is



listed provided that people in the locality where the offence occurred (where the hearing will be listed) are able to observe it. This could be open for discussion. All the same safeguards would apply.

14. Let me be clear. Nothing will be done to reduce the openness of the criminal court process or to undermine it.

Case management

15. Case management is a judicial function. It is not administrative. HMCTS agrees this fundamental proposition. You spoke with one voice on this topic: active judicial case management is essential to obtain early guilty pleas, where appropriate, and to make sure that cases are ready for trial and to ensure that no trial takes longer than it needs to. In the revised Crime Service Model (which will support the administration of criminal justice) the expectation now is that PTPHs will take place in court in nearly all cases. I believe that with some changes in approach and the provision of effective case progression technology, the need for the PTPH may be reduced and it may also be that, with new technology and new approaches, the average length of a PTPH will be reduced. That will happen if the technology is as effective as we expect and leads to improved engagement.
16. To provide some context, I add that the design of the case progression technology has not yet started and it will not be ready before the summer of 2020. To ensure that it works as we require it to work, in due course, judges and magistrates will be involved in checking and testing the design of the crime service model and the technology. Assumptions prepared for the business case will not dictate the design and the principles of BCM and TSJ will be at the heart of whatever system is introduced. I am grateful to the Resident Judges for the valuable contributions they all made to new ways of approaching case management at their recent annual conference. It is very encouraging to see judges pooling their experiences to develop new approaches and new ways of doing things. All the improvements in case management since my 2015 Review have been judge-led and I am grateful to all who have contributed and made them work.
17. Please keep focussed on BCM and TSJ. They have improved the way we do things but there is always more to do as we wait for the new technology.
18. One practical point about which a number of you were concerned: HMCTS has agreed that Magistrates and District Judges (MC) will be provided with the appropriate hardware to carry out case management and trials using the new software.

Online plea and allocation

19. Whilst online plea is being used in some Single Justice cases and certain summary offences, the numbers so far are small. I expect those numbers to increase. Like you, I remain of the view that before online plea could be contemplated more widely changes would be necessary to the way that Legal Aid is provided. HMCTS is working on this issue with the Ministry of Justice and the Legal Aid Agency because early good quality legal advice is essential and safeguards are imperative.
20. As to online allocation, I believe that there may be some situations where this is possible but further changes to the processes in Magistrates' Courts would be necessary. One change would be a requirement that before allocation is considered the defendant is put to his election: if there is to be an election for trial, there is no point in an allocation hearing. Indictable only and



certain serious either way cases will always require sending. Discussions on how allocation might proceed are still at an early stage. HMCTS believes that once the Common Platform processes are in place, some either way offences could have the allocation decision taken online and that other case management could be conducted online or by fully video hearing. Discussions on this are ongoing to ensure that the expectations as to the proportion of cases that could be handled on line are realistic. The need for early engagement and sound legal advice is equally important at this stage.

21. Processes are being designed which will allow for decisions to be taken in court, in a video hearing, or online. Time will tell the extent to which such decisions can be taken 'out of court'. You were clear (and I agree) that there are times when all parties need to be at court for progress to be made. Many of you are concerned that a move to online directions could lead to less engagement. All this will have to be considered carefully as the technology is being developed. I am determined that at the end of Reform the system will be appreciably better for all involved than it is now.

Video remands

22. You will know that the original plan was that all remand hearings in the Magistrates' courts should be by fully video hearing with the issue limited to the question of remand. This is no longer the case. The Crime Service Model is being redesigned so that the bench has the information it needs to permit pleas to be taken and directions given at the first hearing. The Video Remand Hearing (VRH) project team is now working with the police-led, Home Office-funded Video Enabled Justice (VEJ) project. We await developments. We are fortunate that the excellent joint chairs of the MEG are on the relevant working group.
23. Many remand hearings (including directions) will continue to be conducted in court. The question of whether a defendant attends in person or by video will remain for the bench supported by the relevant Criminal Procedure Rules and Practice Directions. It follows that the new processes must include a way of making sure that a defendant can be brought to court where appropriate. Save in some specific circumstances (where, for example, the arrest has been late) a young person should not be presented late in the day.
24. Having regard to open justice, many of you commented in this context about the need for a person to be in court in order properly to understand the importance of court proceedings and, at the same time, for the general public to see how seriously they are regarded. This underlines respect for the Rule of Law. Many of you suggested that research is needed to discover what the effect is on the administration of justice of video hearings. This has been discussed with HMCTS and they have agreed with the Ministry of Justice that there will be an evaluation (in which the judiciary will be involved) as to the impact and effect on the administration and delivery of justice.

Fully video hearings in the Crown Court (where no one is in the courtroom)

25. As was made clear in the JWOW documents, trials will not be conducted by fully video hearing either in the Crown Court or the Magistrates' Courts, with the possible exception of Single Justice System cases where there may be scope for the defendant to seek a fully video trial rather than come to court. An example could include the case of a defendant who lives in the south west with the alleged offence (such as speeding) taking place in the north east. This suggestion has yet to be developed by HMCTS.



26. Such hearings are some way off. Between March and July there was a pilot of 8 cases in the First-Tier Tax Tribunal. This demonstrated, amongst other findings, that the technology utilised required further development: 3 out of the 8 cases could not proceed because of technical issues of one sort or another. The Tribunal judges involved in the other 5 were cautiously positive about the experiment. The litigants themselves were positive about the video hearings. The evaluation by the LSE is [here](#). Further work is now being done.
27. As a research project, the video hearing team spent some time in Kingston County Court refining the technological and room demands for fully video hearings. Judges and magistrates were asked to test it. The general view of the Crown Court judges was that the technology was not suitable for use in the Crown Court. We understand that the team is now working on the development of new software with the concerns expressed by the judges in mind.
28. Assuming robust and effective technology is in place which the judiciary consider appropriate and further assuming that open justice is secured, the sort of hearings I consider could be conducted by fully video are set out below. In coming to my own views, I have considered the views which you have expressed and those of the JEG. In the Crown Court, these are:-
- a. Further case management hearings. This does not extend to compliance hearings.
 - b. Bail applications.
 - c. Legal argument including dismissal applications and applications to stay cases for abuse of process.
 - d. Ground rules hearings governing how the evidence of young and other vulnerable witnesses is given.
 - e. Similarly, pre-trial hearings to determine the admission of evidence of the previous sexual behaviour of a complainant in a trial of sexual assault.
 - f. Some straightforward fitness to plead hearings, relieving the need for busy psychiatrists to have to travel to court.
29. As has already been said, subject to legislation, the types of case that can be heard by fully video will be a matter for the senior judiciary. To that end, either Criminal Procedure Rules or a Practice Direction would then have to be promulgated but, in an individual case, the decision as to whether a hearing will be by fully video will be for the judge or bench. Listing protocols will not cut across these principles. Multi handed cases will continue to take place in court, as now.

Other topics upon which there has been discussion

Case officers

30. The scope of the original HMCTS reform programme included a role for legal advisers as case officers in the Crown Court. Opinions were divided among the judiciary as to what these legal advisers could usefully do. The JEG analysed all the tasks judges currently undertake and considered which could properly be undertaken by Legal Advisers. The number was so small that their deployment could not be justified, even for a group of courts. I accepted the JEG analysis and HMCTS is no longer pursuing this proposal.



31. What the JEG (along with many RJs) did make clear is that leadership judges would like some administrative support so that they can concentrate on the cases. We had raised this with HMCTS earlier this year and will return to it.
32. The JEG and many of you have pointed out that there are straightforward decisions that can be taken by experienced listing and case progression staff under your supervision. This saves time, is efficient and depends on well trained and experienced staff in court. I believe this can be further developed.

Common Platform

33. There is a real desire for reliable information about the advent of the Common Platform: when is it coming? What will it do? How will it change the way the courts run? In the middle of 2018 a decision was taken to develop the software for the Magistrates' Courts at the same time as the Crown Court. I hope this reassures the District Judges (MC) and magistrates that their requirements are considered as important as those of the Crown Court.
34. HHJ Menary (to whom we should be very grateful) has worked very hard on the Common Platform. The part of the Common Platform for staff functions has been ready to receive cases at Liverpool Crown Court for over a year. A very small number of guilty pleas went through the system successfully but it has not yet been possible to test it with larger numbers. We hope to see more cases come through the system in the coming months. Our latest information is that SJP referrals to the Magistrates' Court for hearing are planned for pilot in February 2019 and, that development of Common Platform for staff functions will be complete and ready for pilot/extended pilot in the latter half of 2019 for both the Magistrates' and Crown Court. This will affect staff only; the consequence is that processing and resulting the case will be much more straightforward. We will keep you informed of progress.
35. As I said earlier, case progression on the Common Platform will not be ready before the summer of 2020. This is the part of Common Platform (as I foresaw in my Review in 2015) which should make managing cases easier and should lead to fewer pre-trial hearings. You will be provided with a report on Common Platform (what will it do and when) in the new year.
36. Some of you have said that communication about the Common Platform is no substitute for training. I entirely agree (as does HMCTS). Training will be provided before any new system is introduced into the courts.

DCS

37. We used the survey to seek your views on the DCS and how it might be improved. At my request, HHJ Stephen Holt and HHJ Tony Bate have reviewed all the responses and made recommendations about the way forward. A summary of their report is included with this document at Appendix 3. I have asked the DSPJ to act on the recommendations. Not for the first time we are all indebted to these two judges for their enormous efforts on the DCS. I should add that HMCTS has agreed to make the developers available for discussions with the judges.
38. You may remember that DCS was introduced as a temporary system pending the introduction of Common Platform. This remains under review by HMCTS. You will be kept informed if anything changes.

Staffing



39. Concerns have been expressed across the judiciary about the future staffing of the courts, given the plans to reduce the number of staff by one third. Concerns have also been expressed about the future of listing and how staff in the courts and the Courts and Tribunals Service Centres (CTSCs) would work together. HMCTS acknowledged these concerns; they are building the model for the future staffing by reviewing the workload of all administrative tasks and considering where they can best be carried out. At the moment, they estimate that 60% of the staff that remain post Reform will work in the courts and tribunals, 40% in the CTSCs.
40. It is agreed that all Courts will be staffed to agreed minimum levels, and the staff will be carrying out agreed roles. The current proposals for the Crown courtroom include a clerk, and an usher. There will be additional ushers responsible for dealing with the public outside the courtroom. There will be a case progression officer/s in the Crown Courts. The numbers of staff in a particular role will depend on the size of the court, as you would expect.
41. It is agreed that all Courts will have an appropriate number of Listing Officers. It is expected that new scheduling and listing tools will support them and make the process more efficient. Staffing decisions will be reviewed once more is known from pilots about the software's capabilities and how they might evolve.
42. The JEG and MEG will continue to discuss staffing in the criminal courts with HMCTS. The detailed design of the CTSCs will also be discussed with the JEG and MEG, to include an agreed, effective and responsive system of communication between the CTSCs and the Courts, and a structure to deal with the handover from one to the other.

And finally

43. On your behalf and on behalf of the senior judiciary, I would like to thank all the Circuit Judges, District Judges (MC) and magistrates who are working so hard and patiently in all the working groups: case progression, online plea and allocation, youth, court hearings, video hearings and video remand hearings, the magistrates working with the Single Justice Service project, and all those who sit on the JEG and the MEG (these groups are listed at Appendix 1 and 2). They have helped the HMCTS teams to understand the purpose of the court process and have brought it to life for them. They have rigorously scrutinised proposed systems and, where appropriate, have suggested changes and improvements. In that way, the system is being shaped by those responsible for the efficient administration of justice. I hope that they will all be prepared to continue with this work.
44. Some others will be asked to assist from time to time. It is imperative that we make the best use of the money that is being provided to modernise the courts. It is our responsibility as the judiciary to make sure, insofar as we can, that at the end of Reform the courts have in place a robust and effective technological infrastructure which better supports the administration of justice in the criminal courts. At the same time, we must continue to develop new ways of doing things so that we improve the efficiency of the courts without sacrificing access to, or the quality of, justice.
45. There is still a great deal to do. Some topics remain for discussion and that will be done in due course. All that you have said will be taken account of as we move forward but I readily recognise that there may be some things we have overlooked. If you are concerned about anything, please e-mail the Judicial Office at this address:



JOCourtsandTribunalsReform@judiciary.uk It will then be directed to the right place and you will receive a response as soon as possible thereafter.

Brian Leveson

President of the Queen's Bench Division and Head of Criminal Justice



Appendix 1
Membership Bodies

Body	Members
Crime Judicial Engagement Group (JEG)	Deputy Senior Presiding Judge
	Cutts J
	HHJ Dean
	HHJ Dixon
	HHJ Edmunds
	HHJ Menary
	HHJ Patrick
	HHJ Taylor
Magistrates Judicial Engagement Group (MEG)	King JP
	DJ (MC) Robinson
	Bache JP
	DJ (MC) Crane
	Cutbill JP
	Ellis JP
	DJ (MC) Goldspring
	Hamilton JP
	Higgs JP
	Hobbs JP
	James JP
	Radcliffe JP
Judicial Executive Board (JEB)	Lord Chief Justice
	Master of the Rolls
	President of the Queen's Bench Division
	President of the Family Division
	Chancellor of the High Court
	Vice-President of the Court of Appeal (Criminal Division)
	Chair of the Judicial College
	Senior President of Tribunals
	Senior Presiding Judge
	Vice-President of the Queen's Bench Division
	Deputy Senior Presiding Judge
	Chief Executive of the Judicial Office
Judicial Reform Board (JRB)	Deputy Senior Presiding Judge
	Senior President of Tribunals
	DJ Jenkins
Judicial Reform Board – Courts (JRB-C)	Deputy Senior Presiding Judge
	Deputy Head of Civil Justice



Body	Members
	Cobb J
	DJ Jenkins
Judicial Reform Steering Group	Deputy Senior Presiding Judge
	The Chief Magistrate
	Cobb J
	Deputy Head of Civil Justice
	DJ Jenkins
	King JP
	Norris J
	DJ (MC) Robinson
	Senior President of Tribunals
	Chamber President Sycamore
Judicial Ways of Working Group	Deputy Senior Presiding Judge
	The Chief Magistrate
	HHJ Bird
	DJ Davis
	HHJ Earl
	UTJ Gray
	DJ Jenkins
	King JP
	Norris J
	HHJ Sapnara
	Simler J
	Chamber President Sycamore
	HHJ Worster
RJ Zucker	



Appendix 2

Judiciary Reform Working Group Members

Group	Member
Case Progression Project	DJ (MC) Arnold
	Chapman JP
	HHJ Enright
Court Hearings Project	HHJ Drew
	Fetherstonhaugh JP
	DJ (MC) Goldspring
Online Plea and Allocation Project	DJ (MC) Lloyd
	HHJ Lowe
	Steele JP
Single Justice Service (SJS) Project	Beattie JP
	Picken JP
Video Remand Hearings Project	King JP
	DJ (MC) Robinson
Youth Project	DJ (MC) Bouch
	DJ (MC) Green
	HHJ Norton
	Weston JP
Scheduling & Listing Working Group	Deputy Senior Presiding Judge
	Brooks TJ
	HHJ Chambers
	Cobb J
	Deputy Chief Magistrate Ikram
	HHJ Richardson
	REJ Swann
Video Hearings Working Group	Cutts J
	Cobb J
	DJ Marshall Phillips
	DJ (MC) Crane
	REJ Swann
	Thura Win JP



Appendix 3

Summary of Findings from Survey on DCS Improvements

- **Training issues:** In a number of cases, the functionality asked for by judges already features on DCS, but judges need to be informed or trained on it. In some instances, their comments also highlight improvements needed: for example, quite a few judges stated the copy function does not work – but the specific issues are it can only copy from one page and not multiple, and can only copy from Word files not PDFs.
- **Comments in chronological order:** An overwhelming number of users want the comments section to be in chronological order and not where comment appears on the DCS file as at present. This is something we have been asking for since the DCS was rolled out and should be very a fairly simple tweak to the software.
- **Notes for the next judge:** Judges noted they would welcome a lead on best practice as to how a judge can best leave a note on the DCS for the next judge – whether this should be a memo or tightly shared comment.
- **Information at a glance:** There is a strong call for all the relevant stage dates, T or S number etc. to be on a single display so they can be readily accessed. This is mainly a training issue as the Case Home button on the Case Update screen already provides a lot of the information, but it would be very simple to put a button on the Home screen called Info.
- **Rules for uploading documents:** There needs to be a simple protocol so all users know which section to upload a document to.
- **POCA proceedings:** There is widespread support for POCA proceedings to be on the DCS. This should be possible but there is a potential problem in the minority of cases involving a 3rd party.
- **DCS unstable:** Some respondents complain that the DCS frequently crashes and is unstable. This is most likely to be because of issues with Wi-Fi at individual courts and/or with users' laptops. The new Digital Support Officers may be able to help judges with these issues and to collect information about any recurring problems.
- **T & S numbers readily visible:** There is widespread support for the T or S number to be shown on the first page of the Review panel. This is a good idea and could be slotted in below the defendant's name in the top right of the Review panel.
- **Which indictment is the working indictment:** It is not always clear which is the relevant indictment. Generally, it is the last indictment in the indictment section – B. A simple note on the comment section from the reviewing lawyer/case worker who uploaded the indictment would remove confusion.
- **What's new:** Many judges want to be able to see at a glance documents that have been uploaded to the file since they last opened it. This is a good idea and would save a lot of time. We hope the software engineers could tweak the system so that new documents appear in the index in bold (as with emails in Outlook).
- **Issues for Mac and iPad users on the DCS:** There are issues with Apple software which is often used in court by advocates and judges. For example, the Go To button does not work on Mac. The software could be tweaked to resolve this problem.
- **Cluttered comments panel:** There is a widespread feeling that the comments panel becomes overloaded and difficult to navigate. Chronological listing will help but thought



should be given to allowing the judge to delete old and defunct comments. At the moment the only person who can delete a comment is the person who posted it.

- **CCTV and video footage:** There is widespread support for CCTV and video footage such as body cam material to be available on the DCS from an early stage and by the PTPH at latest. This would certainly increase early guilty pleas and is a good idea but is technically challenging, unless storage and bandwidth can be substantially increased. This problem has haunted the S28 preparation.

CONCLUSIONS

1. Training issues can only be met by training. The new edition of the Judges' Guide to the DCS was paused until the multi-handed defendants solution was fully rolled out. Many of the solutions that judges are looking for at the moment are in the current guide.
2. Judges would like a lead in best practice in two areas in particular: (1) how best to leave notes for the next judge and (2) a national protocol as to where a document should be filed.
3. Discussions with the software engineers will reveal whether what we think requires a simple tweak is more or less complicated.