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THE BOSTON CONSULTING GROUP

HM Courts and Tribunals Service Reform Programme

Independent Review

5 February 2016

Prepared for The Rt Hon Michael Gove MP, Lord Chancellor and Secretary of State for Justice

CONTENTS

Disclaimer

INTRODUCTION

HM Courts and Tribunals Service has developed plans to transform most aspects of the courts and tribunals operations. The programme will use digital tools and modern IT to improve access to, and the handling of, case resolution processes across all jurisdictions. Activity will be shifted out of physical courtrooms, allowing for the shrinking of the estate and reduction in the required workforce. Some aspects of the work currently done by judges will be delegated to administrative staff.

Implementation will commence on 1 April 2016 and is planned to be completed in four years. The programme is expected to cost approximately £737m (excluding the Common Platform and Efficiency Programmes already under way) and is estimated to produce steady state savings of approximately £211m per year.[1]

We have been asked to answer three questions regarding the reform programme:

A. Has the reform programme set the right level of ambition? (How does the ambition compare to reform agendas of other leading systems internationally?)

B. To what extent will the current plans deliver on this ambition?

C. Is the programme set up for success in terms of resources, structures and expertise?

By design this has been a rapid (five week) exercise intended to provide an independent high level perspective. Our views have been informed by discussions with the leadership in HMCTS, the Ministry of Justice (MoJ), the judiciary, external stakeholders and experts, as well as court administrators from overseas jurisdictions (see Appendix A for a full list of people interviewed). We have also reviewed relevant documents relating to the design, business case and implementation plans, in addition to expert reports from the UK and other systems. We understand that many elements of the plans are – rightly for this stage – still under development. Where possible, we have reviewed work-in-progress documents, but there is some risk that observations about potential gaps in the plans will become redundant upon release of more detailed plans.

In conducting this review, we are conscious of a confluence of factors creating a unique window of opportunity: overwhelming agreement about the need to modernize and improve access to justice; HM Government's willingness to invest significant funding; and a leadership group, led by yourself and the Lord Chief Justice, who are intent on driving change through radical reform. We are equally conscious that this programme concerns the fundamental reform of one of the cornerstones of society, and it will be essential that throughout the programme confidence in the justice system is not undermined in any way, but is enhanced. The critical role of the justice system amplifies both the risks of failure and the importance of success.

FINDINGS

A. Level of ambition

HMCTS administers a large and complex system, processing over 4 million cases every year. The system is largely paper based and, as a result, highly inefficient. There have been a number of reforms over the years, such as the recent family law reforms,[2] but the way cases are administered has remained largely unchanged for decades. The shortcomings of the system in meeting the needs of modern users have been well documented, including in recent reports by Sir Brian Leveson[3] and Lord Justice Briggs[4]

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1. Including approximately £76m in judicial cost savings.
2. Family Justice Reforms, led by President of the Family Division, 2014.
3. The Rt Hon Sir Brian Leveson, Review of Efficiency in Criminal Proceedings (2015).
4. Lord Justice Briggs, Civil Courts Structure Review: Interim Report (2016).

among others. These reports describe the complexities of the system, noting that legal representation to help users navigate their way is out of reach for many. Meanwhile, wait times for resolution of cases are often lengthy, creating uncertainty for victims, witnesses, jurors and litigants.

i. The ambition of the reforms is unmatched anywhere else

In light of this starting point, the ambition to fundamentally improve the accessibility and efficiency of the existing system is significant. While many individual elements of the reform programme have been adopted in other systems (e.g. e-lodgement, paperless courts, in-court technology, estate rationalisation), the HMCTS reforms push the boundary of innovation in many significant ways. Notably HMCTS's reform plans for in-court digital technology, online dispute resolution (ODR), online hearings, use of Case Officers (administrative staff with delegated judicial powers) and reductions in the workforce will surpass what might be considered best practice among leading overseas jurisdictions today.

EXHIBIT 1 | HMCTS is aiming to achieve or exceed global best practice in most areas

Element	Description	Best-in-class			HMCTS 2020
ICMS	Integrated online case management tech. for both courts and agencies (e.g. police)	**Singapore**	• End-to-end integrated case management systems that include all courts and agencies (Ecquaria)	◓	◕
Vid. Conf.	Video Conferencing technology for remote appearances	**Western Australia**	• VC installations in every court • Common use: >70% of people in custody appear via VC	◓	◓
In-court digital	Technologies (e.g. audio recording) for paperless trials	**Singapore**	• Inferior courts use Digital Transcription System, electronic filing, and digital evidence admissions but low-adoption rate	◕	◕
E-registry	Online registry functions including scheduling, listings & decisions	**NSW**	• LawAccess NSW provides comprehensive registry functions (civil and criminal) online for all courts	◓	◓
E-lodging	Capacity for electronic submission of files in both civil and criminal	**NSW**	• Automatic online filing for criminal cases • Online filing available for civil, with 65% e-submitted	◓	◕
ODR	Online forum for parties to communicate, and resolve disputes without courts	**Netherlands**	• Rechtwijzer 2.0 diagnoses problems & enables ADR system rolled out in modules – incomplete in 2016	◔	●
Online hearings	Taking trials' components online, from summary offence pleadings to full e-trial	**Singapore**	• Subordinate courts offer online court service for small claim disputes up to $20k SD; two e-courts available	◑	◕
DJO	Expanding capacity of lay persons to manage case flow	**NSW**	• Registrars given new powers to expedite case flow including transfers, cost orders, stay of proceedings • Limited growth in the number of registrars	◑	◓
Estates	Consolidation of courts, tribunals, and venues	**Denmark**	• 82 District Courts reduced to 24 • Land court venues closed and services taken online	◕	◔
People	FTE reduction across judiciary, legal support and admin	**Netherlands**	• 45% of administrative staff functions (10% of total headcount) eliminated • No evidence of change in the number of judges	◑	◕

⬜ Elements where HMCTS plans exceed current best-in-class   ◕ Reform delivery relative to best-in-class

Source: Expert interviews; BCG analysis.

In combination, the breadth of ambition of the HMCTS reform plan is unmatched anywhere in the world. As exhibit 2 shows, no other system has attempted a reform programme that is so broad in terms of widespread adoption of digitalisation, introduction of structural changes in court personnel, and rationalisation of estate and workforce. Moreover, no other system undertaking reforms is of a size comparable to HMCTS's jurisdictions.

EXHIBIT 2 | No other jurisdiction has attempted the scale of reforms planned by HMCTS

| System | Elements | | | | | | | | | | | Overall Programme | Scale (cases p.a.) | Programme length |
	ICMS	VC	In-court tech	E-registry	E-lodge	ODR	Online hearing	DJO	Estate	People			
HMCTS (2016-2020)	●	●	●	●	●	●	●	●	◑	●	●	All courts (4m+ cases)	4 years
Australia (NSW)	◕	●	◐	●	●	◐	◐	◐	◕	◕	◕	All courts ~300k cases	8 years
Australia (Victoria)	○	◑	◕	◕	◕	◕	○	◐	○	○	◕	Inferior courts ~330k cases	10 years
Australia (WA)	●	●	◑	●	●	○	○	○	○	NA	◕	Inferior courts ~100K cases	11 years
Netherlands	◕	◑	◑	◕	◕	◕	○	◑	◑	◑	◑	All courts (~1.8M cases)	9 years
Singapore	●	◑	◑	●	◕	◐	◐	○	○	○	◕	Al courts (~350k cases)	15 years
British Columbia	●	◕	◕	◕	◑	◑	○	◕	○	○	◑	All courts (270k cases)	11 years
Denmark	◕	◑	○	◕	○	○	○	◕	●	◑	◐	Inferior Courts (~250k cases)	10 years
Oregon	◕	◕	◕	◑	◕	◑	○	○	○	○	◑	All courts (~200k cases)	7 years
Texas	◕	◕	◕	◕	●	○	○	○	◕	NA	◑	All courts (~2M cases)	11 years

◕ Reform delivery relative to best-in-class

1. Full ICMS roll-out was initiated in 2006 with $45m funding but project was abandoned in 2011 after running $20m over budget and two years behind schedule.

Source: Expert interviews; BCG analysis.

ii. Reforms are framed around efficiency and proportionality, not policy or broader social benefits

The reforms are focused on creating more efficient services through changes to IT, estates, people and ways of working. A key premise of the plans is to redesign the service delivery model to ensure levels of service may be maintained (and improved) within a smaller envelope of funding. To that end the reforms are also heavily focused on proportionality – ensuring that the resources and effort devoted to resolving a case reflect the complexity of the individual case and the needs of the court user, rather than an indiscriminate application of resources across all cases.

In the way in which the reforms have been framed, it is not obvious that they are focused on creating broader social benefits, such as lowering recidivism, addressing the underlying causes of criminality or disputes, or improving witness and victim experience (apart from more efficient interactions with the system). It is also not clear that the core principles ostensibly driving the programme – e.g. building a model around users – have been fully adopted. This is in large part driven by context, given that the programme's focus on cost savings played an important role in making the case for funding during the Spending Review.

The reform plans will nonetheless significantly impact the way in which users access justice and the quality of justice they receive. For example, the reforms envisage a more dynamic allocation of resources with the ability to dedicate more resources to complex and high needs cases in criminal jurisdictions and conversely, fewer resources devoted to simple matters handled through an online fast track. In civil, cases may be resolved more quickly and cheaply for those willing to use an ODR process. The improved ease of use of the system and the increased integrity in data as a result of digitalisation may well improve public confidence in the justice system.

How these new capabilities are used is an important policy issue. Given that driving efficiency gains was the focal point for the programme design, there is some risk that the plans may look different if improvement to justice outcomes were the overriding design objective. An efficiency-focused approach may, for instance, place emphasis on a very aggressive shift of cases to the new online channels, whereas it is possible that a policy-driven approach would take a different view of the right balance between the use of physical hearings and remote channels.

Several independent stakeholders shared the view that it is likely that most of the components of the current reforms would be consistent with a policy-driven programme. To some degree, a number of design choices and trade-offs are yet to be made and will arise as the programme rolls out. There is also good reason to think that the reforms may enable a wider or more ambitious set of policy reforms. For example, smart use of data collected very early in the criminal justice system (e.g. by the police) may allow earlier and more effective triage, permitting a targeted approach for individuals whose complex needs may warrant a more intensive problem-solving approach. However, without a clearer policy narrative to link the ambitions of the programme to broader justice outcomes, these views are largely speculative.

iii. The reform principles recognise the importance of user needs – but improved user insight could enhance the programme

The reforms recognise the need for the new model to be built around the needs of those who use it, including citizens, businesses, victims, witnesses and state agencies. Substantial efforts were undertaken in both planning "sprints" to identify and understand the needs of users through engagement with representatives of user groups and using existing academic studies. The appointment of a Customer Engagement Director to the HMCTS senior management team toward the end of 2015, bringing experience from the retail industry demonstrates a serious commitment to place user needs at the centre of the programme design.

Nonetheless it remains the case that there is a paucity of data to really understand the system's users. Not enough is known about their precise needs and their legitimate expectations of the justice system. We heard from several internal and independent stakeholders that HMCTS has traditionally not been good at understanding user needs, relying too heavily on views of the legal profession. As discussed further below (section B), there are gaps especially in the understanding of the digital literacy and likely digital uptake of court users, with a risk that the ambition is too heavily premised on users wanting to move to digital channels, particularly in the criminal system.

A concerted effort to better understand segments of the court's users – analogous to the understanding retailers and service providers have of their customers – may highlight different design imperatives, or at least impact the phasing of the implementation roll out. This understanding should also inform the key metrics used to track the success of the programme.

B. Quality of the plans

The reforms have been designed in two "sprints". Sprint 1 (March to July 2015) developed a top-down, high level plan. Sprint 2 (September 2015 to January 2016) developed a bottom-up, more detailed version of the plans. Sprint 2 was nearing its end as this review was being conducted. As a result we have been able to access most up-to-date detailed plans, but understand that some elements of the plan are still a work in progress.

i. Plans are generally well developed – but not well summarised and communicated

We have been generally impressed with the planning process. A detailed set of plans has been developed drawing on best practice in both the public and private sectors. Costs and assumptions appear to have been challenged and triangulated with both top-down and bottom-up approaches, resulting overall in a robust set of assumptions, with some important exceptions discussed further below. The coordination of the process has ensured an integrated set of plans with a good understanding of interdependencies.

We are also encouraged that the business process design approach has avoided the trap of merely digitalising existing processes. Many processes have been fundamentally changed (e.g. the use of ODR) and we understand that proposed new processes have been exposed to rigorous challenge sessions (incorporating the judiciary and other users) to identify steps that can be removed or simplified.[5]

Given the robust planning process, we see an opportunity to communicate the plan more effectively to senior stakeholders, including to your office, MoJ and the judiciary. We understand from several stakeholders that the inability of the team to communicate the plan crisply and simply undermines confidence in the rigour of the planning process.

Better communication of the plans would include a consistent, overarching ambition, focused on what the programme will deliver in terms of outcomes for users and the general public. It would also include a roadmap with clear outcome-linked milestones, enabling senior stakeholders to understand and track the programme's progress against budget, quality and timeliness. These milestones should represent the point at which:

- New end-to-end services/channels will be in place (fully rolled out)
- Uptake of new services/channels will materially reduce in-court and workforce activity
- Workforce reductions will take place
- Estates will be closed

We understand that plans will necessarily evolve and change. For IT development in particular, we understand that the "Agile" development approach necessarily means that, within projects, milestones are avoided in favour of an iterative "sprint" approach. But given that workforce and estate reductions are contingent on successful technology roll outs (and resulting user behaviour changes), clear deadlines for end delivery of technology-driven process changes are critical.

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5. A number of non-IT related efficiency gains have also been achieved in the last five years, notably in Family and Tribunals. We understand that attempts to reform civil through simplification of procedure have been challenging due to the voluminous and complex nature of the Civil Procedure Rules (CPR), which are governed by the CPR Committee and subject to MoJ policy. The reform plans propose to circumvent this issue in part by introducing a newer, much simpler set of rules and procedures for the online process (through legislation).

ii. Four-years is extremely ambitious for a broad, IT-contingent set of reforms

Delivering the full benefits of the programme by 2020/21 is extremely challenging. We have serious reservations about the assumed timelines for individual project roll outs, the assumed interdependencies between IT implementation and workforce and estate reductions, and the assumed high rates of digital uptake. Dependency on legislation also creates significant timeline risks.

We think it is unlikely that all the benefits that are anticipated can be delivered within the timeframe. Full benefits realisation by 2020/21 requires many parallel sequences of technology development, roll out and adoption, which together then provide conditions for major workforce reduction and estate closures. At the same time, business-as-usual services will need to be delivered via legacy processes and systems. During this time the entire organisational structure of HMCTS and the judiciary will be radically changed, and judiciary, staff and professional users will need to be trained to adopt a fundamentally new way of working. This would be very challenging to deliver for an autonomous, commercial entity with fast decision making and flexible resource management. The challenge is even greater given the reality that HMCTS must continue to operate as a semi-autonomous government agency with strong interdependencies with central government.

The experience of other countries undertaking court reforms underscores the nature of the challenge. A consistent theme across these countries is that delivering technology-based changes in addition to process and culture changes in courts is difficult and typically takes much longer than anticipated.

- **The Netherlands:** Roll out of e-registry and integrated case management system was scheduled for 2011-2017. It now appears that it may not be fully completed until 2023. The drivers of delay included the prolonged passage of legislation and resistance from the judiciary to changes to existing processes.

- **Denmark:** Pilots of an integrated court-agency case management system in 2012-2015 failed. There is now no projected end-date and the reform scope has been reduced. The drivers of delay included IT failures and a lack of cooperation among agencies to develop compatible IT systems.

- **British Columbia, Canada:** Online Dispute Resolution (ODR) plans were launched in 2010 with an 18-month timeline to implement. The first module will be piloted only this year (2016) with the roll out now expected to be a gradual process over several years. The drivers of delay included prolonged passage of legislation, procurement hold ups and resistance from the judiciary (forced to pilot via tribunals).

- **Victoria, Australia:** A programme to build an integrated case management system across all jurisdictions (2006-2011) was abandoned three years after the expected delivery date. The drivers of delay included an overly ambitious original timeline to win government funding, and failure to procure a tried-and-tested vendor solution.

In some respects, HMCTS does have the advantage of being a reform "follower" in some areas, like online dispute resolution. Delays in other reform programmes have been in part driven by untested technology and processes. By now advances in technology mean that the IT solution development is relatively more straightforward and changes to the service delivery model have been tried and tested to some degree elsewhere. Nonetheless, as Exhibit 3 shows, the reform plans assume a significantly more rapid digital maturation of the UK court system than has been planned or achieved anywhere else in the world.

EXHIBIT 3 | Digital maturity curves for UK and select international systems

Digital maturity % [1]
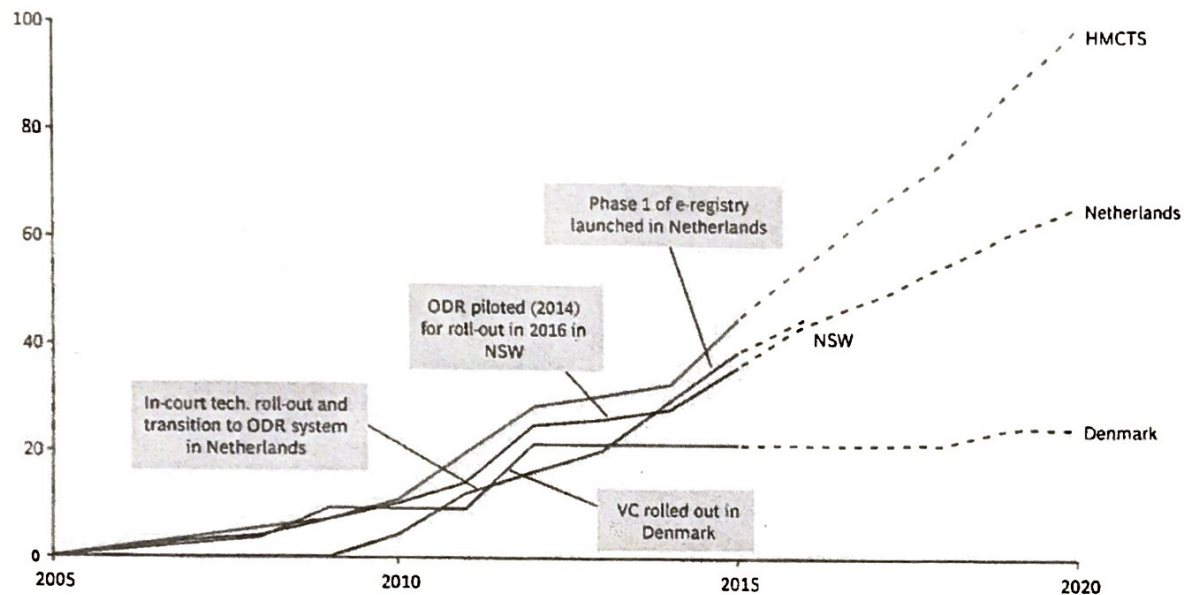
1. Digital maturity measures the jurisdiction's capability and use of in-court technology (25%, paperless registry and lodgement functions (25%) integrated case management technology (25%), and online dispute resolution and e-hearings (25%)) across all courts, tribunals and divisions of law.

Source: BCG analysis, CEPEJ 2014

HMCTS's plans articulate a general assumption of an average 21-month lag from project start to full realisation for each individual project.[6]

- 6 months for tech teams to develop a Minimal Viable Product (MVP)

- 3 months testing at an early adoption site

- 6 months to complete a full national roll-out

- 6 months to realise full cost savings through workforce reduction.

This general assumption is ambitious. Based on Common Platform experience (see below), 6 months to develop a MVP is possible, assuming a ready pipeline of capability and real end-users easily mobilized for user-reviewed sprints. But 6-9 months for pilot and full roll out, followed by 6 months to realise full cost savings, may be too aggressive. It assumes that by the end of the 6-9 month pilot and roll-out period the new process has been adopted at such a rate that legacy processes are redundant and the workforce may be significantly reduced without impacting service levels. There are several reasons to question this:

- All court and tribunal locations will be absorbing multiple changes at once, while still being required to maintain current service levels through legacy system

- Courts, tribunals and the legal profession do not have a record of rapid adoption of change

- Assumed digital uptake rates may be too optimistic, meaning the shift from in-court to online processes may be more gradual than anticipated

Delays in realising the benefits from one project will be likely to have repercussions on other parts of the programme, given that a very significant part of the benefits in estate and people rationalisation can only be delivered once IT changes have delivered more efficient processes. Aligning the roll out of the solutions to staff and estate exits will be challenging and must be rigorously thought through. The sensitive nature and public scrutiny of matters handled by the justice system means that there will be less risk tolerance for any process changes than might be the case in a commercial environment.

6. Approach to Profiling Benefits in Sprint 2 v.0.4.

A real risk for the programme is that the assumed digital uptake rates[7] prove to be too high. The implication would be that achieving the required efficiency improvements that are needed to rationalise the workforce and estates could take longer than planned. According to the business case assumptions, digital uptake rates will be 90% plus by 2020,[8] with a high initial starting point followed by incremental increases year on year.

The ambitious steady state targets are based on the view that:

- There will be material cost and time savings for users who use online channels;

- There is an increasing trend towards digital channels, especially in public services;

- There are a significant number of professional users, including legal representatives, who will provide digital support to clients requiring assistance;

- The digitally excluded share of the user population (based on characteristics such as age, digital literacy, and disability) is similar to, or lower than, the national average; and

- Investment for digital assistance measures and "nudges" will increase uptake over time.

The accuracy of these views will determine both the starting point for digital uptake and the steady state level. As Exhibit 4 shows, rapid growth and high steady-states for digital uptake are currently only seen in those government services that are relatively simple or in those which reach predominantly professional and professionally-assisted users.

EXHIBIT 4 | Project digital uptake rates are high compared to recent experience

Digital uptake actuals for HMG services

HMCTS projection (average)

Legal aid application — Prison visit bookings — Power of Attorney
Incorporation — Criminal record checks — UK passport
Patents — Gambling license application — Outpatient book — Child benefit changes

HMCTS averaged uptake projections
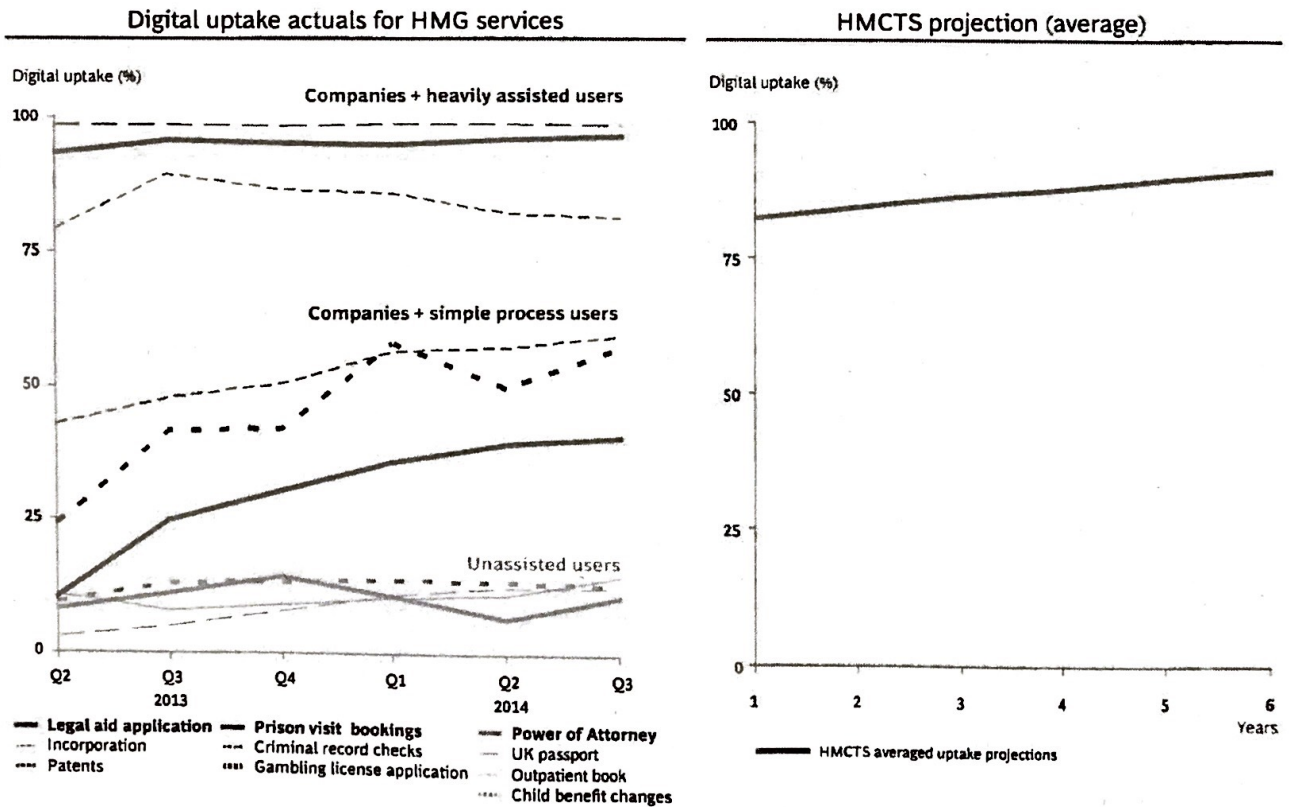
Source: GDS, Sprint 2 Assumptions.

7. Approach to Profiling Benefits in Sprint 2 v.0.4.
8. With the exception of SSCS which is estimated to be 78% by 2020.

The programme team has tested these assumptions with GDS and through Service Director interviews and is focused on achieving the projected steady-state level of digital uptake (rather than a particular uptake growth path, which is less realistic).

However, the critical paucity of detailed data on court users makes it difficult to be certain about the credibility of these ambitious targets. There are a number of reasons to believe that the uptake rate could be lower than projected:

- For general public users in particular, interaction with the justice system is less transactional, less frequent, and more emotionally complex than other government digital services (e.g. filing tax returns).

- For persons typically interacting with the criminal justice system, there is potentially lower average digital literacy and access, and a higher share of barriers, including disability and mental illness.

- There is a growing share of Litigants in Person who will not have the support of legal representation for digital access.

- For the legal profession and the judiciary, experience in other countries suggests a slow transition to digital, due, in part, to cultural resistance and lack of awareness (e.g. Singapore, Netherlands).

The rate of uptake may be influenced by policy and by which actions are viewed as acceptable to shift users online. Ultimately, without better user insight, we cannot be sure which users, under what circumstances, value efficiency and time-saving over other things that may be important to them, such as having their 'day in court'.[9]

iii. Some elements of the business case may be too optimistic

We have some concerns with several elements of the business case.

Assumed benefits from digitalisation

Variation in the initial growth and steady-state level of digital uptake will affect the timing and size of benefits realised. While the savings that result from phase 1 estate closures, introducing case officers (and, to an extent, back-office automation) should not be at risk, the importance of channel switch to reducing workload across all four jurisdictions means that any variation in uptake will place at risk up to £150m of the steady state savings from phase 2 estates, judiciary and staff. The modelling we reviewed does not show accurately how sensitive this share of benefits is to the digital uptake rate – i.e. the assumed critical threshold(s) of channel shift to realise workforce and estate rationalisations.[10]

A significant driver of the benefit, at least in the criminal jurisdiction, will also come from the changed ways of working in other agencies, such as the police and the Crown Prosecution Service. Current court performance data shows a material variation in performance metrics between regions, driven by processes across the justice system (for example, twice the number of cases in London Crown Courts have no early guilty plea compared to the North East)[11]. To the extent digitalisation benefits are premised on better and earlier collection of information or "getting it right the first time", working with external agencies will be critical.

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9. There is some related ambiguity around projected volumes of cases in both the physical and digital channels and hence requirements about future judiciary numbers.

10. The business case does include sensitivity analysis showing change in steady state benefits from percentage shift in uptake rates; however this is focused on the variable cost of assistance to digitally excluded, and does not comment on the sensitivity of the initial, one-off reduction of fixed workforce and estates costs.

11. 45% of Crown cases in London were without early guilty pleas versus 24% in the North-East (Apr-Dec 2015). Source: HMCTS Crown Court Workload and Performance.

Lack of contingency funding

There is no contingency funding and little flexibility for year-end carry over or moving between capital and resource spend. We would typically expect to see 15-30% of resource costs as a contingency in a programme of this nature. The risks of having no contingency are exacerbated by the reliance on asset sales to fund ~35% of the programme, with high exposure to both property price movements (and little room to delay sales) and limited expertise in asset disposal. While sale-and-leaseback of high value properties is one option to provide flexibility in the timelines, this will increase estate operating costs in the interim period.

Costs associated with MoJ support services

The business case assumes that support will continue to be provided by other areas of MoJ (e.g. legal, commercial, procurement, estates, policy, analytical services and ICT) with no recharge of costs to the reform programme. We understand this broadly relates to services consistent with business-as-usual demands from HMCTS (e.g. running of legacy IT systems) and not solely related to the reform (e.g. development of new digital solutions). However there is a risk that the requirements of the reform programme are not adequately reflected in resourcing plans of these MoJ units, particularly as the MoJ transformation is implemented. There is a further risk that to the extent that the capabilities or services provided by these units prove to be inadequate for successful delivery of the programme, the programme may be constrained in its ability to pay for these in the market.

iv. Intrinsic risks in dependency on large IT project delivery

Under current plans, IT delivery is critical to realising a large majority of the programme's benefits.[12] In any environment, IT reform projects have a high risk of failure. A BCG analysis of 50,000 IT projects in the private sector globally found that roughly two-thirds of projects are unsuccessful, in that they fail (18%) or are either functionally incomplete or not on time/in budget (43%). Failure rates increase significantly with project size. This is a very significant IT project. Including the CJS Common Platform Programme and CJS Efficiency Programme, the anticipated spend on IT is approximately £400m.[13]

The IT approach adopted appears to be thorough, with appropriate focus on having the service or business needs drive IT initiatives using Agile development. The Agile development methodology uses continuous planning, testing and integration of both the project and software, with an emphasis on user feedback to successively refine and deliver a product. It de-risks delivery of large IT projects by relying on small, frequent and testable deliveries versus one-off, high risk full releases. It also means progress is more visible and predictable versus an approach where there is a 'black box' between requirements and product delivery.

As discussed below, the progress of the Common Platform Programme provides some reassurance about the feasibility of the approach and will itself be valuable to the reform implementation in terms of lessons learned and ready access to developed in-house Agile capability. The technology required to deliver to the plans is, in and of itself, not overly complex or novel, though there are a significant number of IT projects that will require many "sprints" running in parallel. At the peak of the programme in Years 2 and 3, 16 development teams are expected to be running in parallel on the reform programme alone.[14]

A "health check" of the IT transformation, conducted by one of BCG's Technology Advantage experts and based on a BCG approach to assessing large scale IT projects in both private and public sector entities, highlights a number of specific risks (see Exhibit 5 below). The health check assessed current plans against five dimensions, assigning a score on a series of sub-dimensions based on a review of plans provided and interviews with programme leads.

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12. Some benefits, like expansion of Case Officer roles and Phase 1 estate closures, are not directly contingent on IT.
13. HMCTS Reform 'Size of the Prize', v2.0. Note this does not include programme costs which are estimated to be ~£150m across the reform programme (including staff and project, training and consultants, and ERP).
14. MPA ICT Challenge Session, 25 November 2015 Version 0.8.

According to our assessment, several areas may require further attention to "de-risk" the plan. A number of these areas we have already discussed above in the context of the overall plan, including the scope and timeframe, and the reasonableness of assumptions (especially concerning digital uptake).

Some further areas of concern, particularly over the IT plan, relate to a lack of: understanding of the programmatic risk; mitigation plans; rigorous data migration plans; understanding of roles and responsibilities; testing processes to ensure quality; and structuring the implementation plan in phases.

EXHIBIT 5 | IT health check highlights specific risks

Dimension	#	Sub-Dimension	At risk			Best practice	
Scope & Objectives	1	Programme has clearly defined scope, objectives and target state	1	2	3	4	5
	2	Programme scope is achievable in timeframe	1	2	3	4	5
	3	Programme will meet the needs of HMCTS and users	1	2	3	4	5
	4	Programme risks are understood and mitigations plans exist	1	2	3	4	5
	5	Programme utilises a business-driven prioritisation framework	1	2	3	4	5
Business Value	6	Benefits are clearly defined and signed-off	1	2	3	4	5
	7	Benefit ownership and realisation plans are in place	1	2	3	4	5
	8	Baseline budget cost estimates have been rigorously developed	1	2	3	4	5
	9	Business case assumptions are reasonable and documented	1	2	3	4	5
	10	Actuals will be rigorously tracked against budget	1	2	3	4	5
	11	Programme and run financial projections will be updated regularly	1	2	3	4	5
	12	Value based milestones are defined, tracked and reported to executives	1	2	3	4	5
Governance & Organisation	13	Active engagement of HMCTS, judicial and other stakeholders	1	2	3	4	5
	14	Communication is clear, timely and effective	1	2	3	4	5
	15	Culture of open communication and transparent reporting of progress	1	2	3	4	5
	16	Roles and responsibilities are clearly defined and fulfilled	1	2	3	4	5
	17	Variations to scope are transparent and agreed	1	2	3	4	5
	18	Programme adequately resourced with key roles and populated by experienced people	1	2	3	4	5
	19	Vendors well managed and appropriate SLAs being developed to ensure delivery	1	2	3	4	5
Solution & Deliverables	20	Requirements clearly identified, documented and have business sign-off	1	2	3	4	5
	21	Solution design driven by requirements, with tight traceability	1	2	3	4	5
	22	Solution uses proven components and minimises customisations	1	2	3	4	5
	23	Testing process in place and ensuring quality	1	2	3	4	5
	24	Solution and migration to be proven through dress rehearsal	1	2	3	4	5
	25	Data migration rigorously planned and validated early in Programme life cycle	1	2	3	4	5
	26	Business processes and operating model clearly defined and documented	1	2	3	4	5
	27	Change management ensures sufficient people with right skills available at implementation	1	2	3	4	5
	28	Environments and infrastructure adequately planned	1	2	3	4	5
Planning & Execution	29	Implementation structured into phases with milestones and well-defined stage gates	1	2	3	4	5
	30	Plan in place to resolve issues in a timely manner with contingencies for downtime	1	2	3	4	5
	31	Delivery and cost estimates are developed and updated in a rigorous manner	1	2	3	4	5
	32	Workplans and schedules are predictable	1	2	3	4	5
	33	Plans in place and on track to deliver sufficient operations staff with the right skills and experience	1	2	3	4	5
	34	Programme tracking in place to ensure delivery of expected outcomes	1	2	3	4	5

Source: BCG analysis.

Understanding of risks and ensuring mitigation plans are in place

The IT plans identify several major risks,[15] but at least from the documents that we have been provided, this is a rather limited list in the context of a major IT programme. It is not clear that the business case has fully factored in the cost of common mitigation strategies such as resilient system architecture.

Shared understanding of roles and responsibilities

Agile development requires fast decision making and a high level of autonomy to control sourcing and use of resources. We understand that the respective roles of the reform programme team (and HMCTS digital) and MoJ Digital have been an ongoing issue, although we also understand they have been clarified to some extent in recent weeks. Any resources that are employed, whether from MoJ Digital or elsewhere, will need to operate in a manner consistent with the flexibility and autonomy required by the programme.[16]

Testing processes

The IT project team recognises the importance of testing, but to date we have not seen any approach to testing documented. Integrated testing of processes is a key element of the technology solution and critical to get right early. We typically find that testing is 15-20% of the overall solution delivery effort. Early integration testing can reveal major software defects, and avoid costly and unplanned system rework. It is not clear whether this strategy and approach to testing will be in place by March, as part of the 2016 solution delivery plan.

Data migration plans

In a similar vein, the programme team acknowledge data migration is an important issue, but the plans we have reviewed do not address it. The legacy platforms store a vast amount of case data that will need to be accessed in the future. Data migration can be highly complex, and experience suggests it can often drive significant overspend (>20%) and delay timelines. Again it is not clear whether these plans will be sufficiently developed by March as part of the 2016 solution delivery plan.

Availability of skilled people

The programme requires a significant number of highly skilled people (Agile coaches, developers, sprint masters, architects, etc.). This large team needs to be ramped up very quickly to avoid delays in the timeline. In parallel, the Common Platform Programme will continue to require a large team of in-house developers for at least two more years. With the UK economy expected to continue to grow in 2016 and 2017,[17] securing and retaining high quality, skilled workers may be challenging. Retention is particularly critical given that Agile sprint teams typically become more productive over time as they develop a shared domain knowledge and familiarity with ways of working.

Structuring of implementation into phases

There is an end-to-end view of deliverables across the 4 years; however, we have not seen this broken down into phases of work that can inform the cross-workstream planning process. Before the kick off of a programme, we would typically expect to know what work will be undertaken in the coming year, even if it subsequently changes. This would usually include a full backlog of high level user stories ("epics") for what is going to be delivered in the 12 months and a release timeline. We are told that this is underway. We would expect this to be in place in the next 1-2 months to ensure sufficient ramp up to the 1 April kick off.

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15. E.g. MPA ICT Challenge Session, 26 November 2015, Version 0.8.
16. See also Section C discussion of general use of MoJ support services.
17. See, e.g., Office for Budget Responsibility Economic and Fiscal Outlook, November 2015.

Case study: Criminal Justice System Common Platform Programme (CJSCPP)

The Common Platform Programme, or CPP, is a digital transformation programme focused on the criminal court system. We reviewed the CPP as a way of testing the approach and capability of HMCTS to undertake large-scale IT delivery, as planned under the reforms.

Launched in November 2012 and due to run for 5 years, its original aim was to provide a digitalised method for tracking cases through the Criminal Justice System, thereby improving access to case data for all parties. It has since been re-launched (in early 2014) with an expanded set of deliverables, though still scheduled to complete development by the end of 2017 (roll-out will continue into Q1 2018), and is forecast to cost ~£270m in capital and resources over the five years. Examples of CPP's new deliverables include a digital rota, an online plea system and automation of many non-imprisonable cases. The CPP complements the HMCTS reform programme as it is effectively providing the digital platform for reform initiatives in the criminal jurisdiction.

Approach and progress to date

CPP has adopted an Agile development approach. It currently has ~300 digital specialists (based in East Croydon). We understand that the programme is largely on track and starting to deliver:[18]

- Latest reworked costs and benefits assessment (following MPA gateway review, November 2015) appears to validate ability to deliver within timeline and budget

- Solutions are being tailored to users with representatives (e.g. CPS lawyers, magistrates) seconded to the programme on part-time basis

- "Show and tell" sessions have been conducted, with positive early feedback from users

- After initial issues, there is a strong pipeline of capability in place with a process to vet and performance manage third party Agile developers

Implications for the reform programme

The fact that the CPP is beginning to deliver solutions within budget provides some assurance around the approach adopted by the reform. We also understand that the reform programme is working closely with the CPP to use capability and institutional knowledge already developed.

Lessons from the CPP include:

- Agile programme success requires autonomy in day-to-day business of delivery

- Need to identify and ramp up resources early

- Critical to work with judiciary and particularly external partners in justice system

- Important to embed users (lawyers, admin. staff, judges) in the programme

- Focus on roll out and user adoption: give adequate resources and do not rush

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18. The November 2015 IPA report rated the delivery confidence as amber, meaning successful delivery appears feasible but significant issues exist requiring management attention. The report made a number of recommendations relating to re-baselining the benefits plans and cost profile, improved reporting, programme documentation and maintenance of an audit trail (lessons learned).

v. Prioritisation may be overly focused on delivering financial benefits

The programme's prioritisation approach is driven by the delivery of early financial benefits and the need to follow a necessary sequence of interdependent elements (e.g. ODR contingent on legislative changes). Some service transformations that may not deliver financial or efficiency benefits, but would address concerns with the justice system, like improvement in the experience of victims, witnesses, and jurors, appear not to have been prioritised.[19] This may be in part because an articulation of non-financial benefits (for benefits tracking) is still ongoing.

C. Programme set up

i. The HMCTS reform programme has a number of important elements in place

HMCTS's reform programme has some strong elements in place that are critical to its overall success. These are principally around senior leaders' commitment to change and the experience and capability of the senior management team that has been recruited to run it.

Firstly, there is strong alignment on the need for meaningful change across both HMG and the judiciary, presenting a "once in a lifetime" opportunity, as one interviewee described it. All parties recognise the inefficient and unsustainable nature of courts processes and are keen to address this. Secondly, and related to this, the current reform plans have strong support from all the senior judiciary, and they have been heavily involved in the development of the programme. Other judges we consulted also believe that the high-level ambitions of the programme (such as online justice and estates rationalisation) are "common sense", and reflect the system "catching up with how people live and work today". Lastly, HMCTS has built a strong leadership team, with many senior management roles filled by high-calibre individuals with private sector experience that is relevant to leading a complex change programme. The strength of this team is recognised by senior stakeholders across the judiciary and MoJ, and several people have commented that preserving and supporting the team should be a priority for the programme's sponsors.

ii. The greatest challenges lie in the structural and cultural environment that the reform programme operates in

The greatest risk to the overall success of the reform programme relates to the structures and culture that surround the programme, in particular the working relationship between MoJ and HMCTS. Out of over 40 interviewees across different organisations and teams, ~85% cited this as the most significant risk to successful implementation. We support the widely held view that if these difficulties are left unresolved, they will lead to the failure of the reform programme.

The starting point is complex

The starting point for the working relationship – even on paper – is complex. In all parts of government, central departments and agencies wrestle with the balance between delegation and control.[20] In HMCTS's case the situation is further complicated by the dual reporting lines to both the judiciary and yourself as Lord Chancellor. Although there are clear constitutional and governance reasons for this structure, the result is that senior stakeholder alignment and decision-making are inherently more complicated. Given the importance of the reforms both to yourself and the Lord Chief Justice, there is also a demand for frequent communication between HMCTS and your respective offices.

19. Reform SMT: Delivery Planning Update, 3 December 2015.
20. In the Institute for Government's report on arm's length bodies (*Read before burning – arm's length government for a new administration*) the authors identify the two key challenges to these relationships as being clarity over roles and responsibilities and the balance between freedom and control.

Furthermore, HMCTS is not operating in 'business as usual' mode, and the significant changes proposed by the reform programme bring with them additional checks and balances (e.g. the Infrastructure and Projects Authority and the Government Digital Service reviews). Many of these are well-established governance mechanisms designed to provide scrutiny and assurance for major HMG projects. Although we would not argue against the rationale for having them, it is worth noting that they add a further layer of complexity that HMCTS needs to manage.

Lastly, the MoJ has its own internal rules on delegated authority and spending controls (including the emergency controls introduced in October 2015), which introduce additional approvals processes and slow down decision-making. These controls are designed to add a further layer of scrutiny across the department and its agencies. In the context of a change programme, however, where significant decisions on spend and business change are expected to be made at pace, this is an additional (self-imposed) layer of complexity for the programme.

The impact of the above structural complexity can be seen clearly in the example of the role of the HMCTS CEO. In addition to handling the requirements above, the CEO effectively has four reporting lines: to the HMCTS board (in terms of governance of the agency), to the Lord Chief Justice and yourself (as 'joint-sponsors' of the agency), and to the Permanent Secretary (for her personal performance). In an average week, the CEO spends over 70% of her time preparing for or attending meetings with senior stakeholders ('managing upwards'), diverting significant capacity from running the organisation (see exhibit 6 below). This issue is likely further exacerbated by what is perceived as poor communication between HMCTS and some senior stakeholders.

EXHIBIT 6 | HMCTS CEO spends a disproportionate amount of time on "upward and external management"
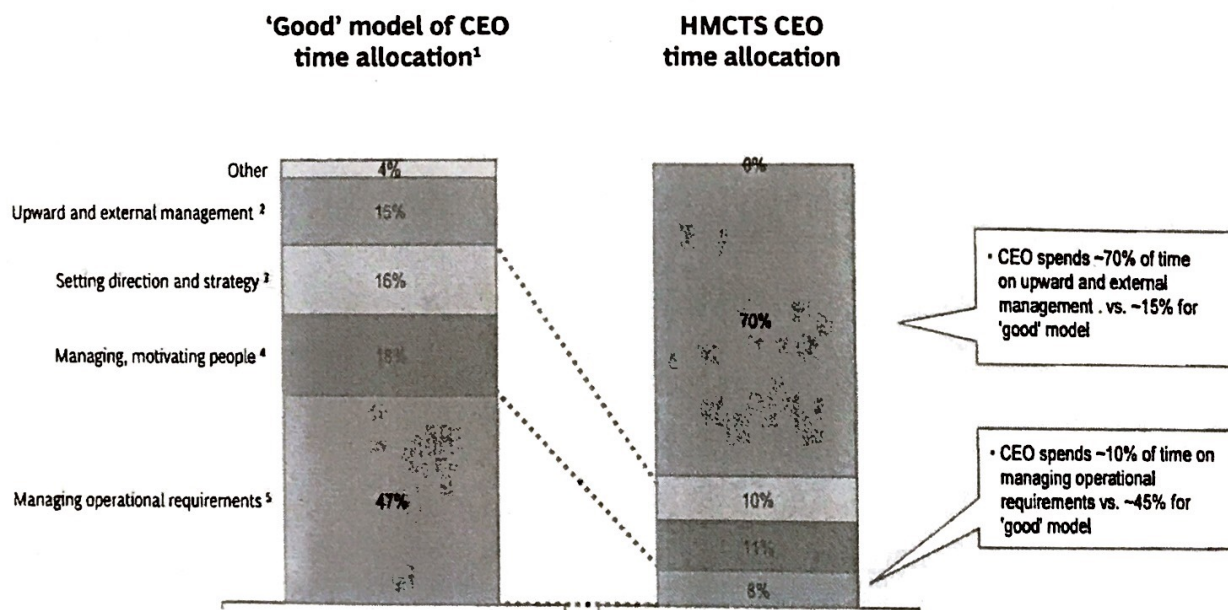
1. 'Good' model based on survey of 1,374 CEOs across industries; weighted average of 124 executives who reported being 'highly satisfied'.
2. Time spent managing senior stakeholders, I.e, SoS, the judiciary, MoJ, the HMCTS Board, plus time spent managing external stakeholders.
3. I.e, discussion of long term plans and goals. 4. E.g, 1-1s with SMT. 5. I.e, managing day to day business and operational crises.
Source: BCG analysis; CEO's diary for 2 weeks 11-22 January 2016: McKinsey 'Making time management the organisation's priority.

Organisational culture and lack of cooperation leads to less effective day-to-day working

In addition to the formal structures above, there is a wide range of stakeholders involved in different levels of decision-making. Although these individuals do not appear on paper in any of the governance structures, they nonetheless have the ability to significantly slow down decision-making whenever they become involved in a process. They therefore constitute an important part of the culture in which the reform programme operates.

There are several areas where ambiguity exists over what is a control (i.e. someone has power of veto over a decision) and what is an assurance process. For example, as MoJ Digital articulated to us, the role of the Common Doorway in all MoJ decisions on IT/Digital spend should be to ensure that teams are not buying something that already exists elsewhere in the organisation. In 'RACI'[21] decision-making terminology, this would be a C role (i.e. MoJ Digital is 'Consulted', in case the solution already exists). However, HMCTS believe that approval from Common Doorway is required for digital change (effectively making MoJ 'Accountable' for the decision). MoJ spending controls also indicate that Common Doorway has an approval function, although the head of the MoJ digital team does not believe this is the case.[22] Lack of clarity on the roles and responsibilities of different bodies leads to wasted time and inefficient decision-making.

This issue was recognised by other MoJ agencies, with the head of one of them reporting that a considerably less ambitious technology change programme (the CJS Efficiency Programme) took a year longer than planned due to the "byzantine bureaucracy" that existed between the Ministry and its Agencies.

Several people also stated that communications between HMCTS and its internal stakeholders (in both MoJ and the judiciary) are often not of the appropriate quality or format, with a misalignment between what one party was presenting and what the other was expecting. This includes examples such as HMCTS bringing what are perceived as "dense and technical materials that lack a clear narrative or vision" to senior meetings, and MoJ producing materials on its own internal transformation plans "that fail to acknowledge the support needed for the delivery of priority programmes, such as HMCTS reform."

According to one person we spoke to, "only one out of ten meetings is successful", and as a result there is a lack of trust that undermines the HMCTS-MoJ working relationship. This lack of trust, together with the programme's high levels of ambition (and its associated risks), results in delays in decision-making. It leads stakeholders to request further assurances (in the form of more meetings or submissions) and to take longer over decisions, as they seek to satisfy themselves that they understand the detail and that it is aligned with their agenda.

In addition to this, interviewees have spoken about (and we have witnessed) a lack of cooperation between HMCTS and the MoJ in relation to the programme. This includes a culture of 'finger pointing' among senior leadership and a failure to act and communicate as a joined-up team.[23] Several interviewees believe that uncooperative behaviour is a result of the fact that incentives of MoJ executives are not aligned with the programme, and that incentives cannot be aligned so long as the vision and priorities of the programme are not clear.

There is a lack of clarity around specific roles and responsibilities

There are several areas where the programme is dependent on MoJ capabilities, or where required capabilities overlap with MoJ capabilities. These areas include HR, Estates, IT/Digital, Procurement, Policy and Legislation. Across these areas, interviewees report multiple concerns relating to respective roles and service levels. These include certain MoJ shared services not being fit for purpose (e.g. the judiciary have low confidence in some MoJ services), a blurring of accountabilities (e.g. a lack of clarity as to whether customer insight belongs in HMCTS or the MoJ policy team) and potential duplication of resources (e.g. both HMCTS and MoJ are building up digital teams). It has not been

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21. A common framework for clarifying decision-making rights, in which all stakeholders involved in a decision fall into one of four roles. Responsible, Accountable, Consulted or Informed.
22. A copy of the MoJ emergency spending controls that we reviewed states that "All ICT and digital projects are to be *approved* through the 'common doorway'."
23. We heard examples of MoJ executives failing to attend important Reform Programme meetings, and MoJ and HMCTS digital teams failing to work together due to "petty squabbles."

within the scope of this work to review specific capabilities, however it is clear that this is an area of low trust between HMCTS and MoJ that needs to be addressed. We do agree with all parties that, where it is dependent on MoJ shared services, HMCTS should ensure that there are clear and enforceable SLAs between it and the relevant Departmental teams in place.

HMCTS is also concerned that the efficiency savings MoJ plans to deliver risk reducing capabilities that are critical to the reform programme, and that there is insufficient focus on the needs of priority programmes in the current MoJ transformation plans. This is echoed by some senior stakeholders in MoJ who believe that the department does not have a 'customer service' culture, and can be overly focused on efficiency at the expense of strategic objectives.

iii. The programme has not yet taken sufficient account of the impact of changes on third parties and their potential to resist change

The planned reforms will have a significant impact on all users of the courts system. For example, the plans anticipate a ~43% reduction in hearing time in civil and family courts.[24] This will have a significant impact on the number of judges and magistrates required, as well as on the economics of legal professionals (e.g. high street solicitors, much of whose business is driven by helping people navigate complex legal processes that the reforms will simplify or remove).

As Lord Justice Briggs notes in his recent review, the entire reform programme is likely to be "a painful process, and an unwelcome one to the many judges and court users who, by long habit or instinctive preference, will simply be reluctant to make the transfer from one to the other... More generally, transition pain for judges and staff is bound to arise from the combined effects of changes in the court estate, in the structures for the handling, communication and storage of case related files, in back office management and in the whole culture of the civil courts, as the Reform Programme proceeds. It is difficult to over emphasise the challenge which this presents."[25]

While HMCTS has conducted some stakeholder mapping (in terms of who the external stakeholders are), there appears to be have been limited work done to understand the expectations of the various groups, the extent to which the reforms will affect them, and their potential reactions.

In other systems overseas we have observed that resistance from external stakeholders (for example the Bar in Ireland, or the police in Denmark) has had a significant impact on those countries' ability to enact courts reform. HMCTS's ability to pre-empt and manage this will be critical to the programme's success.

24. Reform Programme Financial View, 8 January 2016.
25. Civil Courts Structure Review: Interim Report, Dec 2015.

RECOMMENDATIONS

While we have identified a number of challenges with the HMCTS reform programme that need addressing, in our opinion none of these warrant delaying the start of the programme. Given the existing momentum, alignment among stakeholders and calibre of individuals in the HMCTS delivery team, the programme should continue apace.

However there are several things that need to be done in parallel over the coming weeks and months to address concerns and significantly improve the chances of implementation success.

These recommendations fall into three broad areas: create and communicate a compelling narrative; clarify and streamline governance; and address specific risks in the plans.

Create and communicate a compelling narrative

1. Immediately initiate a two or three month project to develop and articulate a "vision for justice" – e.g. how the courts will play their role in making the justice system work for everyone

We recommend immediately initiating a two or three month project to develop an overarching view of the role the courts will play in making the justice system work for everyone. This would address the risk that the reforms are too heavily shaped by efficiency objectives and may not reflect broader justice policy concerns. It would also provide a clear guide for the many trade-offs and design choices the programme will address over the course of implementation.

We envisage the work would be driven by a small team reporting to you and the Lord Chief Justice, taking input from the judiciary and the MoJ policy team. Input should also be sought from the reform team, in order to incorporate user insight research (see point 2 below) and understand the implications of the existing reform plans for policy (given that reforms may widen feasible policy options).

The project should produce an overall reform narrative, articulating expected benefits in terms of social outcomes, including how the reforms will improve justice outcomes and increase confidence in the justice system. The shared narrative could be used by yourself and the Lord Chief Justice in public communication about the reforms to show committed and unified leadership support (see point 3 below).

The project should ultimately look to map the policy narrative to the current reform plans: understand how the existing plans enable the policy goals; identify any required up-front design changes; set principles to guide trade-offs; and identify how prioritisation may be used to realise policy goals in the near term.

2. Invest in developing user and stakeholder insight to inform this policy narrative and to increase the probability and definition of success for the programme

Closely linked to the project to develop a policy narrative is the need to significantly improve user insight. A detailed data set should be developed as a basis to segment users, identify key characteristics (including, e.g. propensity for use of digital) and understand the needs and legitimate expectations of each segment.

This type of exercise is typically done through a combination of qualitative and quantitative surveys, in-context interviews (e.g. following users through the court process) and focus groups. The analysis of needs and legitimate expectations would be used to inform the overall narrative, as well as more detailed design choices.

Rich user insights should then be used to embed user-centricity in the programme roll out. We are encouraged by the appointment of a Customer Engagement Director with a retail background to drive this effort. Placing the user at the centre of the programme and HMCTS means ensuring that the Customer Engagement Director has appropriate analytical resources, supporting a concerted

effort to develop a customer service culture among staff, and developing a set of metrics linked to user experience and the general public's confidence in the justice system as a way of measuring the reform's success.

We also believe much more work needs to be done to understand the way in which "internal stakeholders" who will be impacted by the changes (in particular professional users of the system, such as the Bar and solicitors) will react and to ensure that "internal stakeholders" (e.g. Police, CPS, rank and file judges, magistrates etc) are fully aligned and brought on board. We recommend that HMCTS launches a concerted effort to identify these groups and understand their views, needs (and economics), and to develop engagement and mitigation strategies where appropriate. These should be factored into the planning process, and be an explicit part of the plans.

3. Together with the Lord Chief Justice, reinforce and sustain visible leadership on this agenda

Committed and visible leadership is an important element in the success of any complex change programme. It is encouraging that much of this is already in place, including for example, clear agreement on the need for change across the MoJ and the senior judiciary. However, there is less clear agreement on the underlying purpose of the change and on what constitutes the ultimate goal. It is essential that this is developed and sustained throughout the years ahead (particularly when the programme runs into opposition).

Having clarified the policy narrative (point 1), it will be essential for you, the Lord Chief Justice, and those around you to actively communicate this message both within your organisations and to the broader public over the course of the reforms.

Clarify and streamline governance

4. Simplify and streamline HMCTS governance arrangements concurrent with agreeing a succinct articulation of the reform plan

In the short term there is a need to streamline the governance arrangements surrounding the reform programme to ensure that the leadership team has the authority to make decisions at pace, while providing the appropriate assurances to you, the Lord Chief Justice and wider HMG stakeholders. This will depend both on an improvement in HMCTS's articulation of the plan (see below) and a streamlining of governance arrangements, with clear individual accountabilities for the different elements of the change programme.

Firstly, we recommend an immediate review of delegated authority with a view to re-setting decision rights so that HMCTS has default control over all spend that falls within established Cabinet Office and HMT guidelines. If any further controls are sought, the onus should be on MoJ to justify their inclusion. The more you can empower HMCTS by giving it control over the levers for change it needs (while holding it to account over timeline, budget and delivery), the higher the chances of success. The MoJ should consider whether it needs to set-up additional assurance mechanisms to have confidence that the project is proceeding as is being reported. Importantly, these should not duplicate work already done for other assurance processes (e.g. 6-monthly IPA reviews) and should be infrequent and in-depth, as opposed to day to day.

Secondly, the role of the HMCTS board in relation to both the reform team and the MoJ board should be clarified. The HMCTS board should be accountable for the delivery of the reform programme, and for holding the CEO and senior management team to account. The MoJ board should play a less direct role in the day to day governance of the project, but still assure itself that governance structures surrounding the programme are robust.

Thirdly, we recommend improving the effectiveness of meetings between HMCTS and senior stakeholders (including yourself and the Lord Chief Justice). The shared narrative you develop (point 1) will enable you to frame the intended benefits of the reforms clearly and track progress against them. In parallel, HMCTS should develop a succinct articulation of the plan, including a roadmap with clear outcome-linked milestones, enabling you and other senior stakeholders to understand

and track the programme's progress against budget, quality and timeliness. These milestones should represent the points at which:

- New end-to-end services/channels will be in place (fully rolled out)
- Uptake of new services/channels will materially reduce in-court and workforce activity
- Workforce reductions will take place
- Estates will be closed

Fourthly, all parties would benefit from having less frequent but higher quality meetings and, where possible, these should be with both yourself and the Lord Chief Justice present, so that you can provide input to the project in an aligned manner.

Lastly, relocating the HMCTS team from 102 Petty France to another appropriate office elsewhere in central London will provide a strong signal as to the separation of accountabilities between them and the MoJ. It will also reduce the number of ad hoc (and often unproductive) meetings that occur between the two organisations.

5. Improve cooperation between MoJ and HMCTS by aligning the executive team around shared priorities.

There is a need for the MoJ leadership to clarify its organisational priorities (including, but not limited to, the courts reform programme). Ideally there should be no more than three or four top priorities (to ensure focus), and these should all support your overall policy narrative. The MoJ's own transformation plans should also recognise the need to deliver its own efficiency savings in a way that takes these priorities in to account.

In parallel, HMCTS needs to invest in its communications capabilities (as per the above) in order to improve how it communicates its role in delivering against these priorities, and also the areas where it needs input and support from MoJ colleagues.

The leadership of both MoJ and HMCTS need to clarify their individual roles in relation to these priorities and then be held jointly accountable (under the Permanent Secretary) for delivering against the required outcomes. Further work will be needed to foster a culture of organisational cooperation. The HMCTS board, the Permanent Secretary and MoJ board have important roles to play, leading by example and calling-out poor interpersonal behaviours.

It may also be worth considering a broader review (ahead of the MoJ transformation) to set the right context and make desired behaviours rational, not just in this relationship but across the whole department. We find that in complex organisational set-ups, investing time in thinking about a clear vision for the 'role of the centre' is critical.

6. Establish clear capability requirements for all elements of the programme and clarify roles and responsibilities.

For the reforms to be successful capabilities are needed in the disposals of high-value estate, procurement support to manage contractors, the development and roll-out of new technologies, and the drafting (and passing) of new legislation to enable some of the changes. At the moment, the relative roles of HMCTS and MoJ in each of these areas are ambiguous.

HMCTS should develop a clear set of requirements in each area, linked to the phased articulation of the plan described above and independent of current organisational form or existing teams. This should include (though not be limited to) estates, IT, HR, procurement, policy and legislation. For each one, there should be a transparent process for deciding what type of resource is needed to best meet requirements and an assessment of the options to acquire it. In some instances this might involve HMCTS building up its own internal capacity (with full-time staff on fixed contract), while others might involve an agreement with an MoJ shared service, or the procurement of a third-party contractor to execute a specific task. For example, in Estates, HMCTS will need to specify requirements for disposal capability, facilities and maintenance minor works. HMCTS needs to be clear on what capabilities are needed over the next four years, and then enter into discussions with MoJ about how best to secure them.

Wherever the decision involves HMCTS working with either the MoJ or another supplier there needs to be clear and enforceable SLAs in place, and the option to change supplier quickly if service levels are not met.

Address specific risks in the current plans

7. Build in periodic reassessment of timelines for workforce and estate rationalisation linked to IT solutions.

We have concerns with the ambition of achieving steady state by March 2020. At a minimum, contingency funding should be sought to de-risk the timeline, providing the programme with a lever to accelerate by applying additional resources where necessary and avoiding slippage.

The programme governance should also explicitly build in a periodic reassessment of the timelines for workforce and estate rationalisation which are contingent on IT solutions. These 'go, no-go' decisions should be taken by on the basis of an objective assessment of the internal and external user adoption of new solutions, ensuring that rationalisation initiatives are clearly enabled by the new processes (as planned) with limited risk to service delivery. These periodic assessments are intended to avoid rushing reductions in workforce and estates just to achieve target cost savings.

8. Take steps to proactively de-risk timely delivery of IT solutions

The interdependency between delivery of IT solutions and workforce and estate rationalisation requires on-time delivery of IT solutions, to avoid overall programme delays. Building in contingency to allow for accelerated development work will allow the programme to commit to delivery deadlines. We would anticipate that the additional contingency cost is outweighed by earlier realisation of cost-saving benefits.

We also recommend ensuring that updated IT delivery plans, currently in development, explicitly address the
following gaps:

- Plans for a standalone process to identify and document risks, with detailed mitigation strategies in place (including factoring in costs)
- An explicit understanding of roles, in particular HMCTS and MoJ Digital
- A documented testing process
- A documented strategy for data migration
- Resourcing plans, including plans to signal resource requirements to the market
- Phases of implementation for 2016/17

We believe continued close collaboration with CPP will ensure valuable institutional knowledge, as well as capabilities already in place, may be used by the reform programme.

A health check of the type used in this review should ideally be used to assess the IT programme at every 3 months to check progress and identify further opportunities to de-risk the approach. Part of this should include a regular survey of stakeholders and users (in IT and in the business) to get a feel for sentiment around the programme as rapidly as possible and identify "hot spots".

CONCLUSION

This is an unprecedented opportunity to reform how justice is accessed and delivered. A strong and experienced team is in place to manage this change programme, and the level of support from the senior judiciary for these reforms is remarkable.

The reforms will significantly impact the way in which users access justice, and the quality of justice they receive. While the planned reforms have been framed around efficiency and proportionality, we do see an opportunity to align it with a broader policy vision in the near term.

By comparison to other reforms, the level of ambition is very high, especially for a four-year programme. Operating under the existing governance structures and state of relationships, the programme will not succeed. The recommendations we have proposed are designed to rebalance the narrative and focus by creating and communicating a compelling vision, clarify and streamline governance, and address specific risks in the plans.

APPENDIX A – STAKEHOLDER AND EXPERT ENGAGEMENT

Name	Title	Organisation
Sir Theodore Agnew	Board chairman	MoJ
Neil Amos	Partner	PA Consulting
Bob Ayling	Chairman of the HMCTS Board	HMCTS
Sir Michael Barber	Board member	MoJ
▬▬▬▬	Head of Resourcing and Development	HMCTS
Ann Beasley	Director General Finance	MoJ
Phil Bowen	Director	Centre for Justice Innovation
Lord Justice Briggs	Judge of the Court of Appeal of England and Wales	Judiciary
Simon Broome	Deputy HR Director	HMCTS
Natalie Ceeney	Chief Executive	HMCTS
Sam Clark	Interim Deputy Director Governance and Assurance	HMCTS
Matthew Coats	Director General Corporate Services	MoJ
Andrea Coomber	Director	Justice
Tom Davis	Deputy Director HR	HMCTS
Liz Doherty	Board member	HMCTS
The Lord Dyson	Master of the Rolls	Judiciary
Lord Justice Fulford	Senior Presiding Judge	Judiciary
Kevin Gallagher	Digital Director	HMCTS
Shaun Gallagher	Director Access to Justice	MoJ
Rt. Hon. Michael Gove MP	Lord Chancellor and Secretary of State for Justice	MoJ
John Hall	Deputy Director Family Justice Policy	MoJ
Lynne Hamilton	Finance Director	HMCTS
Arif Harbott	Chief Digital Officer	MoJ
Richard Heaton	Permanent Secretary	MoJ
Barry Hooper	Director Commercial	MoJ
Becky Horrocks	Deputy Director for Governance, Assurance, Readiness	HMCTS
Amanda Jeffery	Deputy Director Judicial Private Offices, Judicial Office, RCJ	Judiciary
Chris Jennings	Estates change lead	HMCTS
Faran Johnson	HR Director	HMCTS
Catherine Lee	Director General Legal Policy	MoJ
Sir Brian Leveson	President of the Queen's Bench Division	Judiciary
Peter Lewis	CEO	CPS
Andrew McNeil	Head of Transforming Justice Portfolio	MoJ
▬▬▬▬	Senior Policy Adviser	MoJ
Indra Morris	Director General Strategy	MoJ
Stephen Muers	Director Criminal Justice	MoJ
Shri Mukundagiri	Head of Financial Strategy	HMCTS
Sir James Munby	President of the Family Division	Judiciary
Julie Nerney	Change Director	HMCTS
Harvey Redgrave	Director Strategy and Delivery	Crest Advisory
Amy Rees	Principal Private Secretary to Michael Gove	MoJ
Liz Richmond	Deputy Director for User Experience	HMCTS
Fiona Rutherford	Deputy Director of Business Strategy	HMCTS

Name	Title	Organisation
Sir Ernest Ryder	Senior President of Tribunals	Judiciary
Kevin Sadler	Chief Architect	HMCTS
Michael Spurr	Chief Executive	NOMS
Professor Richard Susskind	IT Adviser to the Lord Chief Justice, Professor of Law at Oxford University	External
Rt Hon The Lord Thomas of Cwmgiedd	Lord Chief Justice	Judiciary
Guy Tompkins	Operations Director	HMCTS
Steve Vine	Infrastructure and Projects Authority	Cabinet Office
Michael Walker CBE	District Judge and Board member	Judiciary
David Wood	Barrister - criminal, regulatory and public law	Legal profession