



The Chair
Andrew Langdon QC

3 August 2017

Lord Justice Fulford
Judicial Office
11th floor, Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Dear Lord Justice Fulford,

Thank you for your letter of the 28th July, written, as you explained, in your capacity as the 'Judge in Charge of Reform'. Most people interested in the subject of the forthcoming 'Flexible Operating Hours' pilots will have read it. Many have commented on it already.

In the letter, you said that 'in the light of public comments from members of the legal profession' you would attempt to 'demystify' the proposals. You expressed regret at 'the extent of the widely broadcast misunderstanding and ill-informed comments from a range of sources.'

To be fair, I acknowledge that there have been a number of misunderstandings and ill-informed comments. This is perhaps understandable given that there was no consultation paper setting out the proposals in any detail, and they have been developed in a somewhat piece-meal fashion.

As for my own public comments - and there have been many - I have had the benefit of such information as HMCTS have provided me with. I have spent many hours both

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studying what has been released to me, and discussing the plans with the CEO of HMCTS and her staff. I would like to take the opportunity to say that they have all been charming and gone out of their way to give me the help I have sought. Sometimes they have been unable to answer what I believe to be pertinent questions, or provide further information, but you should know that nothing that has been revealed to me leads me to the conclusion that I have been ill-informed.

Time will tell whether I have misunderstood.

Of course my information comes not just from HMCTS but also from those I represent – working barristers. In that sense I suppose I am close to a valuable source of information. Barristers, as you know, understand what happens at court, and they are perhaps in a better position to explain what they think the impact of shift-sitting will be, than anyone employed by HMCTS. I and other members of the Bar, including the junior Bar, have spent some time trying to explain our concerns to HMCTS and to anyone else who will listen.

The theme of your letter seems to be that we need not fear a pilot, however misconceived the pilot is, because we can have confidence that the evaluation will demonstrate whether our expressed concerns are valid.

That seems unanswerable. Except of course, that it depends on the evaluation criteria and whether it is designed in a way which will adequately measure the consequences we fear. For many months I have been pressing HMCTS for those criteria. They have listened, and they have produced an invitation to tender (ITT) to contractors to be appointed to evaluate, to which your letter refers. The ITT does not provide the criteria. It invites contractors to design it. I have a number of other concerns about the ITT which I have expressed in writing to HMCTS. They have replied and we continue to engage.

For reasons you will perhaps respect, on behalf of the Bar, I have repeatedly both in many meetings and in correspondence, pressed for detail of what the evaluation will look like, and how, precisely, it will be undertaken. As you know, we have not yet been provided with the answer. We both know from the meeting we attended yesterday, that there is some doubt as to whether we will have it before the first pilot (Newcastle) commences.

As you also know, I have expressed misgivings that if the pilots are distorted by 'sympathetic' listing – in other words not including cases where the parties object – then it will not have measured the consequences we fear, should there in due course be a wider roll-out on the basis that the pilots have been a 'success'.

You will see I hope, why we fear the impact on diversity at the Bar given the consequences of those with caring responsibilities. I have set out these concerns carefully, a number of times, on the basis of what I have read and been told by many women at the Bar. Though there are of course many men who are carers, it is still, as a matter of fact, principally women who have the primary responsibility for caring for children and the elderly.

So you will see I hope, why I have been pressing on behalf of the Bar for assurances that these pilots, if they must proceed, are robust and fairly and thoroughly test our concerns.

In terms of what may be a stake, your letter says 'there is no plan for a national roll out of anything at present.' As a lawyer, you will see why, given those last two words, there is little comfort to be found there for those of us who see what may happen in the future.

Ultimately, as I think you acknowledge, this is all about funding. I understand that HMCTS has to try to make the most of the money made available by the Treasury. No-one doubts that the efforts to make the most of our assets is sincerely motivated by those, including you, who have taken the lead in this part of the reform program. Unhappily the Courts and the Legal Aid budget are set against expenditure on prisons. There are, as I am all too well aware, increasing demands on a Ministry of Justice budget which has been cut, and is not ring-fenced from further cuts.

Last Friday I was given the great privilege of making a few remarks at the valedictory marking the retirement of Lord Neuberger. You will recall his final words which included the following –

'The high quality and proper authority of the judiciary and therefore of the rule of law are at risk if ministers and parliamentarians do not provide us with appropriate support in the form of both words and means.'

A little later he said: *'We must maintain our high quality while doing everything we can to be more diverse.'*

These HMCTS 'reforms' which plan courts sitting in shifts, are an attempt to deal with the fact that the Ministry of Justice is underfunded, and so are the courts. I am sure that the consequences of sitting in shifts, with the additional unpredictability in sitting hours that that entails, will put back our attempts to make the Bar and therefore the judiciary in due course, more diverse. If I am right, these 'reforms' caused by insufficient funding by successive governments, should be resisted.

It is hard for the Bar to resist 'Judge-led' reform. I acknowledge of course that you, as Judge in Charge of Reform, have certain responsibilities. Conversely, I am sure that as Chair of the Bar I have a duty to ensure that a bad reform is exposed as such.

Unless the Bar has complete confidence that the evaluation of these pilots will measure our concerns, we will be very unhappy about engaging with the experiment. I have been saying so at every opportunity to HMCTS. I am very happy to share the correspondence and records of our meetings with civil servants with you if you wish.

I hope you did not mean implicitly or otherwise to criticise the Bar Council, or for that matter the CBA, in raising these concerns, and doing so vocally and vehemently.

I wonder if, on reflection, you would be prepared, publicly, to make it clear that you did not mean to suggest that the Bar Leaders who have been grappling with this had been ill-informed or misunderstood?

Yours,

A handwritten signature in black ink that reads "Andrew Langdon". The signature is written in a cursive style and is underlined with a long horizontal line that has arrowheads at both ends.

Andrew Langdon QC
Chair of the Bar

cc Lady Justice Macur, Senior Presiding Judge.