



Bar Council response to the Fit for the Future consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Her Majesty's Courts and Tribunals Service consultation paper entitled Fit for the future: transforming the court and tribunal estate.¹
2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Q1. What is your view of our proposed benchmark that nearly all users should be able to attend a hearing on time and return within a day, by public transport if necessary?

4. The phrase "on time" assumes that a court user attends at the time the hearing is due to start before the judge or tribunal rather than in advance of the start time in order for pre-hearing conferences to take place, or negotiations/instructions to be taken. By way of example, in a public law children's hearing the parties are required to attend court one hour before the hearing time. Post-court conferences must also be taken into account.
5. For hearings where attendance is necessary, the proposed benchmark does not provide access to justice if court users are required to pay for overnight accommodation, leave home in the very early hours for a pre-court conference at 9:30am, or return home at close to midnight after a post-court conference beginning at 5:30pm. More than an hour and half travel before and after a full day's hearing and conferences will in our view be unduly onerous for

¹ HMCTS (2018) Fit for the future: transforming the court and tribunal estate. Consultation paper available here: <https://consult.justice.gov.uk/digital-communications/transforming-court-tribunal-estate/>

many. We doubt that any test in which these were considered to be successful outcomes could be said to be built around the needs of the public.

6. Travel in excess of an hour is also likely to indirectly discriminate against court users who have responsibility for school-aged children, even allowing for breakfast club facilities.

7. The Bar Council believes that a benchmark of travel within an hour for 90% of court users is a system more suitable to the needs of the public, and that longer journeys will impact on the delivery of justice.

Q2. What is your view of the delivery of court or tribunal services away from traditional court and tribunal buildings? Do you have a view on the methods we are intending to adopt and are there other steps we could take to improve the accessibility of our services?

8. Measures which improve access to justice, which in the context of this question relates to the provision of 'supplementary' court and tribunal buildings, are supported in so far as the buildings are fit for purpose.

9. A major factor which needs to be taken into consideration is the availability of rooms which can be used for conferences between lawyers and clients. Whilst a building may have a room which is suitable for use as a tribunal or court hearing room, it will not be a suitable building unless there are an adequate number of conference rooms where lawyers can meet with clients and witnesses for the purposes of pre- and post-hearing conferences. This can only be done in a private setting for obvious reasons.

10. In the case studies provided, reference was made to use of council buildings. Coronial proceedings are often held in such buildings and often provide inadequate facilities for conferences between lawyers and families, all too often forcing counsel to take instructions, provide advice, etc. in physical circumstances in close proximity to other parties and which do not allow for those essential communications to be safely confidential. It is unacceptable to expect lawyers and their clients to whisper during a pre- or post-hearing conference and the result of inadequate conference rooms is less candid information provided by the litigant or less candid advice by the advocate for fear of being overheard. This has knock-on effects such as miscommunication which in turn can lead to increased hearing lengths and dissatisfied court users. In some cases, inadequate facilities can act as a bar to a just outcome in any given hearing which can lead to further litigation or a loss of trust in the justice system. It is, of course, even more unacceptable for these conferences to be undertaken in a public area.

11. In the same vein it is essential to consider whether adequate security can be provided in the designated building and whether the building allows access for disabled and less-abled users. It is unacceptable to house hearing rooms on higher floors of buildings where there is no access other than by stairs.

12. Further, it is important to ensure there is adequate access to refreshments in or near to the building: cases often last a full day or more and it is unacceptable to expect all users to bring such food and drink as they may require during the working day. Further still it is important to ensure there is adequate parking close to the venue.

13. Finally it is important to ensure that users are informed of any alternative venue in a timely fashion rather than at the last minute, and to consult with any users as to the use of an alternative venue prior to a decision being made so that needs, such as accessibility, and special measures (such as witness screens or video link) can be taken into account.

14. This answer relates only to the proposal to deliver court and tribunal services in buildings not primarily designated or used as courts or tribunals. It does not address the delivery of court or tribunal services using technological methods as this was not discussed in the section of the consultation paper preceding the question.

Q3. What are your views regarding our analysis of the travel time impacts of our proposals? Are there any alternative methods we should consider?

15. The broadening of the travel time impact to the catchment area rather than the closing court itself is a welcome change, as the initial proposals did not take into account the time required to travel into the town centre where the closing court was located before making a further journey to the receiving court.

16. The assessment of the impact on travel time however continues to assume that the court user only needs to attend court for the time listed for the start of the hearing before the judge or tribunal, rather than one hour before in order for negotiation to take place or further instructions to be given. The difference is significant for court users attempting to travel to major conurbations, as many of the travel times used in the court closure consultation avoided the worst of rush hour travel problems.

Q4. Do you agree that these are right criteria against which to assess capacity? Are there any others we should consider?

17. The Bar Council's overriding impression of the criteria is that they are not readily comprehensible beyond HMCTS itself. The criterion "apply our learning from the OHC project to ensure we have clearly understood hearing room requirements at both importing and exporting locations", is not accompanied by an indication of what was learnt from OHC project, which means there is no way of knowing whether these were the "right" lessons.

18. The criterion "align estates changes with reduced capacity requirements which take place as a result of modernization" is also unsuitable as it predetermines the consequences of "modernization" with no evidence base presented in the consultation to support this. For example, if HMCTS decides that there should be a designated room within each court centre for 'online' hearings to be viewed by the public, the relevant court centre will still need to be operational even if the litigants are not physically present at the court centre. It would be better to state that "estate changes should be aligned to altered capacity requirements resulting from online courts"

19. A further criterion which should be used to assess capacity is "an accurate record of the use of court and tribunal facilities and published models as to predicted future use of court

and tribunal facilities". This is desirable as it injects transparency into the process and will allow for analysis of the models, to ensure they are based upon reasonable assumptions, and data, to ensure it is reliable.

20. Capacity should not be the only criterion which is used to determine court closures. Facilities which are left must be adequate (see the answer to question 2, above). Further, and beyond a dogmatic analysis of capacity, geographical coverage and representation of the justice system throughout the country should also be borne in mind.

Q5. What is your view on the proposed principles and approach to improving the design of our court and tribunal buildings? Do you have any further suggestions for improvement?

21. The Bar Council agrees, as referred to in paragraph 4.63, that as a result of disrepair and lack of planned preventative maintenance many court and tribunal buildings do not provide a suitable environment for court users. We welcome the proposals to update court buildings and facilities; we consider that even relatively minor and cost-effective solutions (for example Wi-Fi in all county courts) could significantly improve the user experience. We note that the consultation sets out aspirational statements of intent with which there can be little disagreement, but we are concerned that these should be matched by a cultural change in the approach to court infrastructure away from remedial capital investment every 15 to 20 years, when a crisis point is reached, and towards a sustained programme of repair and improvement.

22. The Bar Council welcomes the proposal to allow "small works" to be instructed directly and locally and without the need for going through a "business case" process. We are surprised that it was ever the case for the minor works identified at paragraph 4.66. We would like to see a fuller list of minor works which can be left for local decision by a responsible officer ("building champion") to include all paint repairs and redecoration, glazing and window frame work, lock replacements etc. These are matters which directly and negatively affect the working environment at courts and tribunals when they are managed poorly or delayed. Efficient, timely and cost-effective repair is important not just for the longevity and condition of the court estate but for its central function in the delivery of justice. We consider that local management of these issues is vital, as is a clear indication of the budgets will be made available going forward. We would like to see a commitment to a protected and identified budget to maintain and improve the court estate rather than a one-off upgrade.

23. In the civil and family courts there continues to be inadequate provision of conferencing facilities for the use of lawyers and their clients/witnesses. For the reasons already set out in response to question 2, a room which is adjacent to a judge's chambers, the public waiting area or the designated court/tribunal room but which is not sound-proof is not fit for purpose. The conference rooms that do exist are extremely popular and usually taken by someone else. Such rooms need no more than table and sufficient chairs.

24. We note that one of the proposals is to consolidate courts and tribunals into one large regional building. We have some concerns about this proposal, as follows.

- a. Whilst we can readily accept that consolidating facilities in larger more modern premises may be advantageous, in particular from a cost perspective, we consider that there are limits to the extent to which the density and distribution of court buildings can be reduced without adversely affecting court users and compromising the civic function of locally administered justice. In particular we do not think the case has been made for an overall reduction in the size of the court estate; that is to say we would not wish to see HMCTS sell off two courts and replace them with one which is half the size and less well-equipped to handle the volume of hearings currently scheduled.
- b. The Bar Council takes the view that there should be evidence of redundancy in the existing estate rather than an assumption that this will be the case as the result of the introduction of digitisation. In our view, it is far from clear that the court buildings which we have are redundant or that they will be so in the near future. We appear to have quite the opposite problem. Lower-value cases (which make up the majority of hearings in county courts) are often block-listed, and the parties who turn up face a significant risk that their case will not be effective due to lack of judges/court space. HMCTS has recently stated that virtual hearings will not be imposed upon anyone who does not wish to participate and it therefore seems likely that physical hearings will remain the norm for some time to come. It is currently unclear to us why HMCTS has concluded that there is significant spare capacity in the court estate.
- c. In the case of tribunals, appellants, who are in many cases unrepresented and with physical and mental health problems, often struggle to travel to existing venues. Court closures would require them to travel even further thereby causing greater difficulties. Travel times to court are, we think, likely to be a significant issue if the court estate shrinks markedly and/or court hours are extended. We consider that large and remote court buildings may serve to reinforce the perception of remote and impersonal justice removed from the communities in which people live.
- d. The needs of tribunal users may also differ from those of typical court users. For instance, in the social entitlement chamber, ground floor locations are often required to accommodate appellants who are unable to travel in a lift or whom, because of mobility problems, require their appeal to be heard in a location as close to the entrance as possible. Large and distant court buildings can also be intimidating for unrepresented appellants, particularly those with mental health problems. Where there are existing and suitable local premises we question whether the cost advantages of consolidation outweigh the advantages of local and accessible public access to the courts given the problems that are likely to result from the hollowing out of the estate and the decrease in user proximity.

25. We were concerned to see the proposal at paragraph 4.74 that it is likely that more of the historic court buildings are to close. It is accepted that these may be difficult and expensive to adapt to modern ways of working; however, we suggest that there are wider considerations to be borne in mind which militate against closing and selling off yet further historic court buildings.

- a. Whilst we accept that buildings may become unfit for purpose we do not accept that it follows that sale in favour of modern buildings is the solution. With some work, the Royal Courts of Justice have been updated and permit effective modern ways of working without there being a need to move to a modern building. The refurbishment and redevelopment of the Supreme Court is another example. We do not accept that London is a special case; where other cities and towns have historic court buildings we consider that the assumption should be that attempts will be made to retain their existing functions which play an important role in contributing to the sense of continuity, place, stability and community up and down the country. Law being administered through the established court buildings assists in preserving and bolstering the Rule of Law and giving authority to the decisions of the courts.
- b. In relation to new and refurbished court premises, we note the introduction of a design guide and agree that the pilot court centres represent a marked improvement in the user experience and the welcome introduction of flexible court space. We think consideration ought to be given to the elevation of some or all of the design guide into a statement of minimum acceptable standards for court users.

Q6. What are your views on our approach to people and systems? How do we best engage with the widest possible range of users as we develop scheduling and listing systems? What factors should we take into account as we develop our plans?

26. As to people and systems, the Bar Council applauds the aims set out at paragraph 4.91, however, it does not meet our experience across court and tribunal centres and we suggest that more realistic and mundane aims would be appropriate:

- a. Provision of sufficient and able administrators to allow for the court system to operate properly. That is for applications to be processed in a timely manner; staff available to receive skeleton arguments and other documents; the court or tribunal to have relevant papers in good time for a hearing; dedicated staff working, in particular, in advance of 10am and at 2pm so as to allow telephone hearings to take place (and be effective).
- b. Provide sufficient and able clerks to assist courts and tribunals in their functions including: Recorders and other deputy judges who are often very largely without assistance in carrying out their roles; clerks being present in the courts to assist the judges, providing a measure of security; clerks assisting with the drawing up of orders and communicating, post- hearing, with the decisions of the court.

27. We are not against the provision of Digital Support Officers and positively welcome Assisted Digital provision. However, many courts and tribunals suffer from basic failings in staffing and administration, and in our view basic and competent management to allow for ordinary good operation of the courts and tribunals ought to be the first priority, before introducing additional responsibilities and workstreams.

28. By way of example, within Fox Court (which is the main tribunal centre for the South Eastern Circuit in London) there is no Wi-Fi at all and judges have no access to computers other than those which are password controlled by their clerks. The current technology infrastructure is outdated and there is little point in employing IT consultants to generate elaborate systems when all that is needed in most cases is access to reliable and basic technology.

29. The narrative in the consultation paper reflects problems that certain groups have using technology (e.g. the elderly). This seems to miss the fact that there are huge swathes of society who do not have access to IT at all. For example, in the tribunals system many appellants have severe mental health problems and live at the margins of society. Many of them have no long-term accommodation and live on extremely limited funds. The Bar Council continues to believe that it is ambitious to think that these people (who very often are so ill that they can't fill in the simple claim form themselves) are going to (a) have access to technology and (b) be able to engage with online court and tribunals services in any meaningful way, with or without the benefit of Assisted Digital.

Q7. Do you have views on our approach to evaluating proposals for estates changes or any suggestions for ways in which this could be improved?

30. We agree that there is a multitude of factors which need to be taken into account when deciding on estates changes and that a balance may need to be struck between competing objectives. It is impossible for us to comment on the evaluation matrices referred to in paragraph 4.95 of the paper without seeing them, although the principle behind such a matrix seems sensible.

31. We stress, however, that not all factors in the matrix ought to be given the same weight, and that considerations of access to justice *must* be paramount.

32. We approve of the principle of delivering value for money, but we disagree with the interpretation of this principle at the top of page 19 of the consultation paper as necessarily involving the reduction in cost of running the estate (and maximising receipts from surplus estate). Value for money can and should (in appropriate circumstances) mean that a better service is achieved for the same cost. It is important to bear this in mind when considering the closure of court buildings which are a long distance from alternatives.

33. We are not opposed in principle to the closure of court buildings to save money, provided that access to justice is not unreasonably impeded. Court buildings should be retained, no matter how expensive it may be to maintain them, if their closure would result in members of the public in the local area being unable (in practice rather than in theory) to attend court.

34. In this context, we suggest that a further factor which should be taken into account in the evaluation matrix is the extent to which members of the public in the area of the court which it is proposed to close have access to Citizens Advice Bureaux or other freely available face-to-face advice (including the Assisted Digital provision). Where a local court closes

without freely available face-to-face advice people may not know where their nearest court is, or may travel for hours to a court which turns out not to be the right one for the issue of their claim.

Q8. What is your view on our proposed approach to future estates consultations?

35. Subject to one important point, we do not disagree in principle with a rolling programme of consultations. We also appreciate that a transfer of work from one court building to another local court building might more appropriately be regarded as integration, rather than closure.

36. The important proviso in respect of both these points, however, is that it would be wrong to close one court building on the basis that there is a second court building nearby which can accommodate the work of the first court building, if the second court building is then itself going to be considered for closure. Respondents to the consultation concerning the first closure may be comfortable that access to justice will not be impeded because of the proximity of the second building. The basis on which such responses were given would, obviously, be undermined if, shortly after the first closure, there is then a consultation about the closure of the second building.

37. This is not just a hypothetical example. We understand that there was a consultation concerning the proposed closure of Lambeth County Court in 2016. As a result of objections to that closure, it was proposed that the housing-related work from Lambeth County Court would be transferred from that court to Camberwell Green Magistrates Court. That proposal met with cautious approval. A few months later, there was then a consultation in relation to the proposed closure of Camberwell Green Magistrates Court, with no clear plan as to what would happen to the work which had recently been proposed to be transferred from Lambeth County Court. Lambeth County Court has been closed and it is understood that Camberwell Green Magistrates Court is to be closed later this year. A rolling programme of consultations of this kind is plainly unsatisfactory.

38. It is vital that there should be joined-up thinking about rolling consultations in these kinds of circumstances. It is impossible properly to consider the impact on access to justice of closing one court, if a nearby court is closed shortly thereafter.

Q9. What is your view on how these proposals are likely to impact on groups of court and tribunal users with particular protected characteristics as defined in the Equality Act 2010? Are there any sources of evidence or research that you think we should consider?

39. The proposal to amend the test in relation to the time taken for the majority of the population to travel to court by public transport from one hour to a test whereby nearly all users should be able to attend court and return within a day will have an obvious impact on anyone for whom travel is difficult (e.g. those with certain disabilities) or who has responsibility for childcare, which we believe is likely to affect more women than men. If it is not possible to travel to and from court within the compass of a normal working day (say 9.00 to 5.30), many will face serious problems in relation to childcare. We have already indicated our preferred test in the response to question 1.

40. Furthermore, the increased focus on virtual hearings and online administration may be welcomed by many, but will be a problem for others, and not only the elderly, as set out in the response to question 6. We repeat the comment made above that, if a court in a particular locality is to be closed, it is important that those who are unable or unwilling to use technology at least have local access to face-to-face advice about where to go and what to do.

Q10. Do you have any other comments on our future estates strategy?

41. The Bar Council has no other comments.

Bar Council
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