

Prison Reform Trust response to the Ministry of Justice consultation *Fit for the future: transforming the Court and Tribunal service*

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families.

www.prisonreformtrust.org.uk

PRT welcomes the opportunity to respond to the Ministry of Justice's consultation *Fit for the future: transforming the Court and Tribunal service*. Our response mainly focuses on the impact of the proposals for digital court reform and is relevant to the issues raised in consultation questions 2, 6 and 9.

Digital court reform

The consultation proposals and associated savings which the Ministry of Justice hopes to make are based on the assumption that vast amounts of court business will be moved online:

The starting point for our approach is that only what has to be done at a physical venue – most trials and sentencing – will be done there. The remained will be dealt with outside the courtroom using modern technology (MoJ 2018, 1.15)

This includes the much more widespread use of video links – including fully virtual hearings and online pleas.

Better use of technology, with robust safeguards in place to protect the vulnerable and ensure fairness and due process, has the potential to play an important part in making our justice system more efficient and accessible. However, the Ministry of Justice's most recent evaluation of a virtual court pilot found virtual courts to be more

expensive than traditional courts.¹ In addition, it raised specific issues regarding the impact of the pilot on fairness, which it said gave “cause for concern”. These include:

- The rate of guilty pleas and custodial sentences were higher in the pilot than in traditional courts.
- The rate of defence representation was lower in Virtual Courts compared to the expectations of the pilot in the original business model, and the comparator area.
- The physical separation of defendants (and sometimes their solicitors) and the courtroom raised some concerns among practitioners. For instance, the separation made it harder for defence and CPS advocates to communicate before and during hearings.
- Some magistrates and District Judges thought that the court had more difficulty in imposing its authority ‘remotely’, and perceived that defendants took the process less seriously than they would if they appeared in person.
- The time pressures resulting from the court running fixed 15-minute slots, which were judged by some magistrates and District Judges as risking delivering ‘hasty justice’, or a perception of such. The fixed time slots were not thought suitable for more complex cases.

The evaluation recommended that “If the Virtual Court concept is rolled out in future these issues are further explored.” However, no further research has been conducted by the Ministry of Justice on the impact of virtual courts and there has been no public consultation on digital court reform. Furthermore, both virtual hearings and online pleas require legislation to be implemented. We question the rationale for basing a programme of court reform and closures on proposals which have not been sufficiently evidenced or piloted and may not be realised. We urge the government to conduct a thorough assessment of the impact of digital courts and fully consult with stakeholders, including defendants and prisoners, before it decides whether or not to proceed with these proposals.

Equality impacts

To ensure our justice system is just, proportionate and accessible, and in order for the government to meet its own equality duties, it is of utmost importance that access to justice is realised by the most vulnerable citizens in our communities – whether they are witnesses, victims or the accused. It is well established that high numbers of people in contact with criminal justice services have multiple needs, many of which are directly related to their ability to interact with HMCTS in a meaningful and effective manner using technology.

For example, literacy rates amongst prisoners are low, with around half at or below Level 1 in reading and four-fifths at or below Level 1 in writing; around a third of prisoners have an IQ of less than 80, and it is generally acknowledged that between five and ten percent of adult offenders have a learning disability.² For many, such low levels of IQ will mean they need support with reading, writing, communication

¹ <https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/virtual-courts.pdf>

² NHS England (2016) Strategic direction for health services in the justice system: 2016–2020, London: NHS England

and comprehension. People with a learning disability may be acquiescent and suggestible; they may fail to understand what they are accused of and the implications of decisions they are being asked to make. In the absence of adequate safeguards, a person with learning disabilities and/or autism might, for example, plead guilty, in order to expedite proceedings in the hope of being allowed to leave police custody and to return home quickly, without appreciating the implications of entering a guilty plea. Many people with mental health problems have conditions that fluctuate, meaning that they might engage well with technology on one occasion, but not on another – even on the same day. Therefore, greater use of technology in courts could have a disproportionate impact on women, given the large number of female offenders with a mental health need.

The Standing Committee on Youth Justice, of which the Prison Reform Trust is a member, has raised specific concerns regarding the impact of the consultation proposals on children. In addition, research by Transform Justice suggests that virtual hearings may disadvantage young adults (aged 18-25) who tend to use virtual communication in informal, social situations with friends or peers, not in formal settings with figures of authority.³ As a consequence, appearing virtually in court may prevent them understanding the seriousness of proceedings, particularly given the level of maturity associated with their developmental stage.

We are particularly concerned that the consultation makes no mention of how the proposed reforms will integrate with existing liaison and diversion services in police stations and courts for identifying and assessing the needs of vulnerable defendants. To ensure that all defendants, and especially those who are vulnerable, do not fall prey to the exigencies of a swift and efficient resolution, robust safeguards need to be in place to secure informed decision making and a comprehensive understanding of the implications of decisions made.

Virtual remand hearings

We are concerned that the increased use of virtual hearings could lead to a presumption that the majority of pre-trial hearings, including those considering bail, are held via video link, especially given the potential cost savings involved. In the 2010 virtual court pilot, cost savings were greatest for custody cases where transport and cell costs were reduced.

It is vital that potential efficiency gains do not take precedence over the need to ensure fairness and consistency in the consideration of bail decisions. Unlike sentencing, which is proportionate to the seriousness of the offence, bail decisions can be based on the perceived risk that the defendant will fail to appear for trial, intimidate witnesses, or commit further offences. This requires careful consideration by the court of the defendant and their circumstances and an opportunity for the defence case, as well as the prosecution's, to be thoroughly aired. Therefore, it is particularly important that the defendant is properly represented in remand hearings and no unnecessary barriers are placed in the way of them being able to communicate effectively with both their legal representative and the court.

³ Gibbs, P (2017) Defendants on video – conveyor belt justice or a revolution in access? London: Transform Justice

Time on remand is experienced as a punishment with harmful effects that go beyond the loss of liberty. As remand prisoners are held in local prisons, which are typically older and more overcrowded than those for sentenced prisoners, they generally experience a less decent regime. They are more likely to be locked up for most of the day, more likely to be confined two to a cell designed for one, and less likely to have opportunities to work. Even a relatively short period in custody can result in homelessness, increased debt, family breakdown, loss of employment, and social stigma. The uncertainty of their status and the deprivations they experience also cause emotional distress, as indicated by the disproportionate numbers of remanded prisoners in incidents of self-inflicted deaths in custody.

It is particularly important that the work of liaison and diversion to identify and assess the needs of vulnerable defendants is not in any way impeded by the use of video link technology. A mental health assessment should always precede and inform a decision to remand. A remand into custody should never be imposed by a court in order to obtain a mental health assessment, as the experience of remand itself can contribute significantly to the mental distress of individuals. Remanding people into custody on the misconception that prison is “a place of safety” has been documented by inquests as contributing to the self-inflicted deaths of remand prisoners.

Given the concerns raised by the Ministry of Justice’s own evaluation of virtual courts, highlighted above, we fear that an over-reliance on virtual hearings could result in less rigorous bail decisions and a greater number of people being unnecessarily remanded into custody. The consultation commits the government to working “closely with justice partners in Sussex, London and the South East on the video-enabled justice initiative ... developing virtual hearings for suitable remand cases” (para 1.12). It says it “will continue to test and develop virtual hearings during 2018 This will develop our understanding of how virtual hearings work, what they can offer and where they are likely to be appropriate – and, of course, where they are not” (para 1.14).

It is not clear from consultation what criteria the government will use to judge “suitable remand cases” or how it will go about assessing such cases. As highlighted above, we are particularly concerned that the consultation makes no mention of how the proposed reforms will integrate with existing liaison and diversion services. In view of the significant risks presented by these proposals to the safety and wellbeing of vulnerable defendants in particular, we urge the government to put its plans for virtual remand hearings on hold, until it has gained a clear understanding of the impact of video link technology on bail decision-making, and established clear criteria and integrated systems for assessing suitability its use.