

## **Prison Reform Trust response to the Justice Committee inquiry into transforming courts and tribunals – March 2019**

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
- promote equality and human rights in the criminal justice system.

[www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk)

### **Introduction**

PRT welcomes the opportunity to submit evidence to the Justice Committee's inquiry into transforming courts and tribunals. Our response focuses on the impact of the proposals for digital court reform, particularly the use of video hearings and ensuring that defendants are able to follow and participate fully in court proceedings. We are particularly concerned regarding the potential use of video hearings in the case of remand and on people held in prison, and the lack of supporting evidence or evaluation.

### **What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to criminal justice and those who are digitally excluded or require support to use digital services?**

1. 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, attempts to increase efficiencies must not undermine the rule of law and trust in our legal system.
2. The Ministry of Justice's most recent evaluation of a virtual court pilot found virtual courts to be more expensive than traditional courts.<sup>1</sup> 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.

---

<sup>1</sup> Terry, M., et al. (2010) Virtual Court pilot—Outcome evaluation, London: Ministry of Justice

- 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.
3. Given such concerns, HMCTS has rightly piloted the first fully-video hearings in a controlled way. However, the independent process review, which was piloted in the first-tier tax tribunal during 2018, revealed that of the cases considered for a video hearing only eight hearings were held.
  4. We support and encourage HMCTS to take a measured approach, with opportunities to learn and develop any such scheme. However, the exclusion of large numbers of people due to the ICT requirements of the pilot; potential self-selection bias; and a lack of participants reporting vulnerabilities that might limit their ability to take part in hearings effectively, reduced opportunities to uncover valuable learning.
  5. It is well established that high numbers of people in contact with criminal justice services have multiple needs. 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.
  6. The report of the Public Accounts Committee's inquiry into the reforms raised concerns regarding access to justice for vulnerable defendants, and a lack of consideration on the impact of the reforms. We are not convinced, that the government's response has set out an adequate plan to ensure that its reforms do not compromise—let alone enhance—access to justice.<sup>2</sup>
  7. The government has introduced specific safeguards in relation to children, for instance, by restricting the use of video link technology in cases that involve the consideration of custody for under 18s. However, we are concerned that the reforms could disproportionately impact other groups as well, including young adults, people with learning disabilities, autism, mental health conditions, as well as older people who may be less familiar with technology.
  8. Literacy rates amongst prisoners are low; 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. For many, such low levels of IQ will mean they need support with reading, writing, communication and comprehension. People with a learning disability may be acquiescent and suggestible; they may fail to

---

<sup>2</sup> HM Courts and Tribunals Service (2019) Putting people at the heart of reform—Response to PAC recommendation 2, London: HMCTS

understand what they are accused of and the implications of decisions they are being asked to make.

9. We are particularly concerned that there is not yet any clarity on how the reforms will integrate with existing liaison and diversion services in police stations and courts for identifying and assessing the needs of people who are likely to be vulnerable in court, such as those with learning disability, autism, acquired brain injury, and certain mental health conditions.
10. It is unfortunate that the first process review of full video hearings, was only able to examine the experiences of people who did not report any individual capabilities or vulnerabilities that might limit their ability to take part effectively in video hearings.<sup>3</sup>
11. We urge the Justice Committee to use the opportunity of this inquiry to press the government to conduct a full and independent evaluation of the impact of its proposals on access to justice.

**What are the effects on access to justice of court and tribunal centre closures, including the likely impact of closures that have not yet been implemented; and of reductions in HMCTS staffing under the reform programme? For users, how far can online processes and video hearings be a sufficient substitute for access to court and tribunal buildings?**

### **People held in prison**

12. Digital reform of courts must be met with similar digitalisation of the prison estate to ensure that people in prison are not unduly disadvantaged. The current state of our prison system, in particular the limited access to information and support resulting from poor regimes and limited access to ICT, creates real challenges to the provision of access to justice for people in custody.
13. HM Prison and Probation Service (HMPPS) recently published the *Access to Digital Evidence (A2DE) Policy Framework*. This details the process for Governors to provide access to digital equipment to view electronic disclosure by the Crown. Our advice service gets regular calls about what was previously known as access to justice laptops, with people reporting great difficulty and delays in gaining access to equipment needed for legal work. Whilst it is too early to have a clear view of its impact, we hope this recent policy clarification will remove uncertainty and any practical barriers in providing equipment.
14. The A2DE Policy Framework focuses on provision of read-only devices for viewing of digital evidence, rather than equipment which will aid legal preparation. Exceptionally, equipment for legal preparation may be provided if it is a 'real need' for this support, for example if someone has a disability which means that refusing the support would risk prejudicing legal proceedings. However, the policy is clear that equipment will be "not to simply to facilitate swifter communications or to make correspondence and/or submissions more presentable". This means most people in prison will still face the additional challenge of having to prepare cases by hand.

---

<sup>3</sup> Rossner, M. and McCurdy, M. (2018) *Implementing Video hearings (Party-to -State): A Process Evaluation*, London: Ministry of Justice

15. Prison libraries can be a valuable resource for prisoners involved in legal proceedings. Unfortunately we get reports from some prisons that necessary materials are unavailable; time in the library is too brief; and difficulties accessing the library due to low staffing and poor regimes. Court reforms must take into account prisoners' ability to research and prepare for their cases at all stages of the process.
16. Access to justice is one of the many reasons that ICT provision in prisons should be greatly improved. Any support that courts provide for members of the public through online resources or customer service centres will not be accessible to people in prison under current conditions. HMCTS should work with HMPPS to ensure that people in prison are not disadvantaged by reduced access to information and support. Similarly prisons and courts should work together locally to ensure that information is readily available at all stages of the journey from court to prison, highlighting any changes brought in by the reforms.
17. In light of cuts to legal aid, we hear from an increasing number of self-litigants—particularly those pursuing judicial review or civil claims against a prison. They are often unable to access the information, forms or other resources to effectively pursue their case for the reasons stated above. It should be of real concern to our justice system when the ability to pursue a case is impeded by the very institution which that case is about. An inability to reasonably challenge unfair practice from within the prison estate also means that opportunities to identify and address systemic problems are missed.
18. Telephone numbers for courts are rightly included in the list of estate cleared numbers in prison. However, the adoption of touch tone menus in many court phone systems presents a challenge—touch tone is disabled on prison PIN phones. When our advice service has tried to assist people by calling the courts and requesting an alternative direct number, the response is usually to refuse and suggest they write instead. This is understandably frustrating, undermines people's ability to effectively manage their own legal proceedings and disadvantages them compared to people outside of prison.

### **Video remand hearings**

19. We are concerned that the increased use of video hearings could lead to a presumption that the majority of pre-trial hearings, including those considering bail, are held via video hearing, 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.
20. 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.
21. 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

hearings. A face-to-face 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.

22. It is also unclear which criteria will be used to judge “suitable remand cases” or how it will assess them. Given the concerns raised by the Ministry of Justice’s own evaluation of virtual courts, highlighted above, we fear that an over-reliance on video hearings could result in less rigorous bail decisions and a greater number of people being unnecessarily remanded into custody.
23. 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 video hearings on hold, until it has gained a clear understanding of the impact of video hearings on bail decision-making, and established clear criteria and systems for assessing suitability.
24. The use of virtual hearings for remand decisions is of particular concern in the context of the commitment in the Government’s Female Offender Strategy to reduce the women’s prison population. Women are more likely than men to be remanded into custody and many do not subsequently receive a custodial sentence on conviction. In 2017, 43% of women entering prison did so on remand, and of these women half did not go on to receive an immediate custodial sentence. 62% of women remanded and dealt with by the Magistrates’ Court and 39% of women dealt with by the Crown Court did not go on to receive an immediate custodial sentence.
25. The Prison Reform Trust report Counted Out highlighted the over-representation of black British and some minority ethnic women in prison. Black women are 29% more likely than white women to be remanded in custody at the Crown Court and 25% more likely to receive a prison sentence. Asian women are 51% more likely than white women to plead not guilty at Crown Court, the highest rate of any ethnic group. There has also been an increase in the number of Gypsy, Roma and Traveller women in prison and due to educational disadvantage they are affected by low literacy levels. The implications of proposed reforms for groups whose needs and vulnerabilities are commonly overlooked must be thoroughly investigated.

**Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication, with other relevant stakeholders?**

26. We share concerns raised by the Public Accounts Committee that “HMCTS’s imperative to deliver at such a fast pace risks not allowing time for meaningful consultation or evaluation and could lead to unintended consequences.”<sup>4</sup> As Transform Justice highlighted in its submission to the PAC Committee, there has been little engagement with the general public on the reforms and publicly available information is limited. So far, there had only been public consultations on the strategy for court closures and some elements of digital court reform. However, as yet, there had been no public consultation on the expansion of video hearings, online pleas or the civil and tribunal digital programme. There are no plans to consult on these

---

<sup>4</sup> House of Commons Public Accounts Committee (2018) Transforming Courts and Tribunals, London: HM Stationery Office

important areas of reform in the government's revised HMCTS external stakeholder approach, published in response to the Public Accounts Committee report.<sup>5</sup>

**Have the Ministry of Justice and HMCTS taken sufficient steps to evaluate the impact of reforms implemented so far, including those introduced as pilots; and have they made sufficient commitment to evaluation in future?**

27. We share the serious concerns raised by the Public Accounts Committee regarding the failure of the government to properly evaluate the impact of the reforms or commit to further evaluation in future:

*“Although HMCTS assured us that it is testing digital services, like online forms, with users, this does not amount to a proper evaluation of the wider impacts of the changes in the real world. We are concerned that HMCTS told us a great deal about processes and products and not enough about how the changes might affect people. Moving services online without assessing the impact could have serious implications for users of the justice system. We share concerns raised by legal professionals and in written submissions that, without sufficient access to legal advice, people could make uninformed and inappropriate decisions about how to plead, and that the roll-out of virtual hearings could introduce bias and lead to unfair outcomes.”<sup>6</sup>*

28. We are particularly concerned by the failure of the government follow up on the findings of its original virtual court pilot. As highlighted above, the evaluation raised significant concerns regarding the potential impact of virtual courts an access to justice for vulnerable defendants. It recommended that “If the Virtual Court concept is rolled out in future...these issues are further explored.”<sup>7</sup> 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. As we have highlighted earlier in our submission, what limited research has been conducted on video hearings to date is completely unsatisfactory. We would urge the government to develop more piloting opportunities to build up a larger body of research. This would allow the actual, rather than the anticipated, impacts of the reforms to be independently evaluated.
29. 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 on access to justice and fully consult with stakeholders, including defendants and prisoners, before it decides whether or not to proceed with these proposals.

---

<sup>5</sup> HM Courts and Tribunal Service (2018) Engaging with our external stakeholders: Our approach and plans, London: HMCTS

<sup>6</sup> House of Commons Public Accounts Committee (2018) Transforming Courts and Tribunals, London: HM Stationery Office

<sup>7</sup> Terry, M., et al. (2010) Virtual Court pilot—Outcome evaluation, London: Ministry of Justice