

**Ministry of Justice
Proposal on the provision of court and tribunal services in
England and Wales**



**A response by the Association of Personal Injury Lawyers
October 2015**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 25-year history of working to help injured people gain access to justice they need and deserve. We have over 3,700 members, committed to supporting the association's aims and all of whom sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, Governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Alice Warren, Legal Policy Officer

APIL

3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX

Tel: 0115 9435428; Fax: 0115 958 0885

e-mail: alice.warren@apil.org.uk

Introduction

APIL campaigns for full and fair access to justice for all. It is important that the proposed court closures do not result in any restrictions on access to justice, particularly for those people in rural areas. Members throughout England and Wales are particularly concerned that closure of some of the more outlying courts will result in increased delays in the courts that remain open. If courts are closed, the Government must ensure that there is proper provision in place for the remaining courts to take on the workload. Further, attending court is already an extremely stressful process, and court users – whether they are claimants or witnesses – should not be made to feel even more vulnerable because they are required to travel a lengthy distance to an unfamiliar place.

We set out below our general comments on the closures and specific comments from our members on proposed closures throughout England and Wales. We have answered only those questions relevant to us, as an organisation representing injured people.

Q1 Do you agree with the proposals? What overall comments would you like to make on the proposals?

Q3 Are there other particular impacts of the proposals that HM Courts and Tribunals Service should take into account when making a decision? Please provide details.

APIL's long-standing position is that there should be full and fair access to justice. We believe the proposals, if implemented as planned, may prevent access to justice particularly for people in more rural areas, as their access to satisfactory court facilities will be diminished.

Increased workloads for remaining courts

Comments on specific closures are set out below. In general, many of the courts earmarked for closure are run efficiently and serve the local area well. If the proposals go ahead to save money, care must be taken to ensure that the remaining courts can provide an efficient and well run service to meet the needs of all of their users. There must be adequate provision of services in the remaining courts to deal with the increased workloads that are expected, including sufficient staffing levels required to deal with the influx of new cases. Members have reported that many of the courts that are to remain open are already under huge strain, and this is already causing delays to the resolution of cases. It is extremely important that the quality of service throughout the courts does not suffer and that there is efficient administration of justice. Undue delay will cause stress and concern for the injured person.

The Government must also be mindful of the challenges posed by different areas, and ensure that the requirements of the court users in those areas are still being met. For example, Welsh speakers will be left particularly vulnerable if Carmarthen is closed, and there must be proper provision for them to continue to access justice.

Increased travel times/Attending court in an unfamiliar place

The process of going to court is already extremely stressful and daunting for injured people, who are already vulnerable and likely a one-time user of the system. Increased

travelling times and the requirement to attend a court somewhere unfamiliar is likely to increase stress and may even put an injured person off from bringing a claim entirely. Members report that the most common reason for an injured person to attend court is for an infant approval hearing – so most of those affected in this way, from a personal injury point of view, will be children. There will also be increased costs to court users – increased distance will increase costs which will make accessing the court more difficult for an injured person who may have had to take time off work due to their accident. Increased travel times will also affect legal representatives, which will lead to increased legal costs.

Litigants in person

Litigants in person will be particularly disadvantaged if the proposals are implemented as planned. Currently, if a litigant in person is confused or unsure how to comply with directions for example, they can call the court or even attend in person and someone will be on hand to discuss how to proceed. This helps to reduce the strain on the courts and cut down on delays to other cases later in the process, as the litigant in person will understand what they need to do so will comply within time limits and will not take up more than their allocated time at hearings by asking questions. With increased workloads on the courts staying open, it is highly likely that the litigant in person will no longer be able to obtain the support they require and they will simply be left to their own devices, clogging up the courts and causing delays to other cases as they do not know what to do.

Transitional provisions

Care must also be taken so that if the proposals do go ahead, transitional plans are in place to preserve efficient access to the courts. Hearings and inquests that have already been scheduled months in advance will be at risk. If the court closes before the scheduled date, the parties stand to lose their date and venue and will be pushed to the back of the queue. This will cause distress to the injured person or bereaved family, and plans must be in place to ease the transition.

Q4 Our assessment of the likely impacts and supporting analysis is set out in the Impact Assessment accompanying this consultation. Do you have any comments on the evidence used or conclusions reached? Please provide any additional evidence that you believe could be helpful.

The consultation foreword states that following the implementation of the proposals, over 95 per cent of citizens will be within an hour of a court (by car). Even if this is an accurate estimation (we have doubts as to the accuracy of the estimated travel times across the different regions), this will still mean that 2,870,430¹ people will not be able to access a court within an hour by car. Additionally, this percentage also assumes that the 95 per cent will have access to car, and this is simply not the case. In 2014, the National Travel Survey found that 24 per cent of households do not have a car. Poorer households will be

¹ Figures from http://ons.gov.uk/ons/dcp171778_406922.pdf England's population is 54,316,600, Wales' population is 3092000.

disproportionately affected by the closures, as of the poorest fifth of households in England, 47 per cent do not have a car².

A number of members have also suggested that the travelling times put forward by the Government are an underestimation. The impact of these court closures must be assessed accurately – and this includes proper estimation of the travel times that a person would be expected to undertake to get to the court. These times are also calculated from court house to court house, and there is no consideration of the time and cost of getting to the closed court location. Further details of the travelling times for each region are set out below.

We are also disappointed that there has been no assessment of the impact on Welsh speakers of the closures.

The impact assessment also fails to address the specific impacts of the proposed closures on vulnerable groups in society. Whilst the assessment refers to the HMCTS principles and the need to ensure access to justice and take into account the needs of users, particularly the vulnerable, we do not feel that there is an adequate assessment of the effects on these groups. For example, poorer households will be disproportionately affected as they are more likely to rely on public transport to get to and from the court- therefore travel times will be higher than average. Further, whilst the assessment does recognise that there will be difficulties for older people in having to travel further (paragraph 91), it suggests that these problems will be ameliorated by the greater availability of on line information which may reduce the need to travel to courts. There is no account taken of the fact that older people and poorer households are more likely not to have internet access in the home, or, with regard to older people, may not be familiar with using the internet. Someone who has never before used, or has little experience with the internet may find the prospect of online dispute resolution just as daunting as having to attend court itself.

Q5 Are there alternatives to travelling to a physical building that would be a benefit to some users? These could include using technology to engage remotely or the use of other, civic or public buildings for hearings as demand requires. Please explain your answer, with specific examples and evidence of the potential demand for the service where possible.

We are aware that the Government is currently considering how an online court could be integrated into the current court system, and there must be a joined up approach between this and the proposals to close courts. If physical courts are to be replaced to some extent by an online court, it is imperative that there is proper infrastructure (broadband coverage etc) in place before any courts are closed, to ensure that there is no reduction in access to justice.

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457752/nts2014-01.pdf

As detailed below, if technology is to be used more frequently, the Government must be aware that more rural areas of England and Wales have significant issues with broadband coverage. It is important that if there is increased use of video links etc, that there is sufficient technical infrastructure available both generally and specifically within the court service which is fully resourced financially in order to allow this to happen.

It must also be recognised that vulnerable people, such as the elderly, people for whom English is not their first language who may require extra assistance to complete online forms, and poorer households who may not have easy access to the internet, will be disproportionately affected by any online solutions, and provision must be made for them to obtain help.

Whilst greater use of technology is to be welcomed in the court process, the Government must recognise that in some circumstances, attendance at court will be unavoidable. Telephone hearings are already commonplace in personal injury cases, and currently the personal injury claimant or their representative only attends court when it is necessary. There are certain issues and procedures within the PI claims process that require the parties to attend in person – such as costs and claims management conferences - and there must be provision for this.

In relation to litigants in person it is particularly important that they can feel that they can come to the court and be able to get help from someone to explain the process. If a litigant in person can meet with someone to alleviate their concerns and explain how to comply with directions and so on, then this will help to reduce any delays potentially caused by the litigant in person further down the line.

Comments on specific courts

Wales

Our main concern about the Welsh court closure proposals is that we cannot see that the impact assessment has taken into account the impact of the proposed closures on Welsh speakers and on the Welsh Language. We would remind you that it is a fundamental right of the people of Wales to be able to be served by the Courts of Wales through the medium of Welsh.

Furthermore the failure to take into account the Welsh Language will leave some court users isolated. There are large variations in the number of Welsh speakers from county to county, and to close a court in an area that has a large number of Welsh speakers and move that business to an area where the vast majority of people do not speak any Welsh will hinder access to justice. For example, there is a proposal to close Carmarthen Civil, Family, Tribunal and Probate Hearing Centre, and to move business to Llanelli, Haverfordwest and Aberystwyth. Whilst, according to the 2011 census³, 43 per cent of those who live in Carmarthenshire can speak Welsh, only 18 per cent of those who live in Pembrokeshire (where Haverfordwest is located) indicated that they could do so. This not only demonstrates the cultural differences between the two counties, which will exacerbate the feelings of uncertainty and anxiety for court users, but if there is no consideration for those who speak

³ <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/rft-table-data-cube-pivot-table.xls>

Welsh and their entitlement to use the Welsh Language, these people will further be put off using the courts.

The consultation on court closures in Wales hints, at page 5, that increasingly, court services will be online rather than within buildings. Members in Wales have raised concerns about the availability of broadband in the more rural areas. If more technology is introduced and court users are required to complete more of the process online, it must be acknowledged that there are significant problems with broadband and this will impact on a person's access to the court system, and therefore access to justice. Closing courts and not addressing the issues with broadband will further isolate those in the most rural areas, preventing access to justice.

Page 5 of the Welsh court closures consultation also states that the government recognises that the public should not have to make excessively long or difficult journeys to attend hearings at courts or tribunals. A number of the changes proposed in Wales will result in a significant increase in travel times for court users. The closure of Carmarthen court will result in 45 per cent of users undertaking a 1 to 2 hour car journey to access court. Currently all users could access the court in the car in no more than an hour. Our members also query the reliability of the travel time data. Members suggest that the estimated time taken to travel between Holyhead and Caernarfon by car (35 minutes), for example, is an underestimation.

We are also concerned that the courts in Cardiff are not being examined, as there could be significant costs savings to be made there. There are also two courts in Newport which do not appear to have been scrutinised. The court estate must be reviewed in the round and resources must be allocated throughout Wales to ensure that local access to justice can be achieved and those in more rural areas can still realistically access a court.

Brecon

We are particularly surprised at the proposed closure of Brecon Law Courts. This is a regional centre in quite a rural area, and we are concerned that the closure and proposal to move business to Merthyr Tydfil will be problematic for a number of reasons. Firstly, due to the geography of the two towns, road links are poor. In order to get to Merthyr from Brecon, one must cross the Brecon Beacons, which will be particularly problematic during the winter months if the weather is bad. Secondly, there are cultural differences between the towns, and people may be reluctant to go somewhere unfamiliar to attend court. Attending court is already a stressful event and this is likely to add to the stresses on a person at a particularly vulnerable time. We recommend that Brecon remains open to serve the surrounding area, and the courts in Cardiff and Newport are examined to ensure that there is sufficient provision of courts throughout Wales, not just in the more populated South.

North East

There is a concern from members that the courts in the North East are already under considerable strain. Members report considerable delay between the date of issue and the trial being listed, and delays in applications being dealt with across the courts in the region. Closures will increase this strain further, leading to greater delays in the injured person's case being concluded. The level of service should not suffer and the Government must ensure that the remaining courts can cope with the increased workload.

Morpeth County Court

Morpeth County Court serves a large area within the North East, and whilst travelling times from Morpeth to Newcastle are considered by the consultation, there is no consideration that the court user will have to travel to Morpeth and then Newcastle. Travelling times, particularly for those using public transport, will be much longer than at present. The average percentage of people that will need to travel between 1 and 2 hours on public transport to get to the court will increase from 25 per cent to 70 per cent. This is unacceptable.

North West

West Cumbria and Kendal Magistrates' and County Courts

Cumbria presents a number of challenges which will need to be taken into account to ensure that access to justice is maintained. Cumbria is the third largest county in England by area alone, and is sparsely populated. Some areas are not easily accessible, and there is only one motorway. Closure of West Cumbria and Kendal County Courts will leave the whole county served by only two courts – Carlisle and Barrow-in-Furness. This will put undue strain on those remaining courts, causing delays in the resolution of cases.

Using video links etc to circumvent attendance at court is not practicable for many as broadband provision in the area is particularly patchy and unreliable.

Greater Manchester County Courts

The proposal is to close all of the Greater Manchester County Courts (Oldham, Altrincham, Bury, Bolton, and Tameside) and to redirect this business to the Manchester Civil Justice Centre. We are concerned that Manchester CJC may be unable to cope with the influx of extra cases, and this will result in delays in the resolution of cases. The Government must ensure that the court is equipped to cope and there is not a decline in the quality of service.

The closure of the Greater Manchester courts will also mean that claimants will have to travel further to attend their "local" court. As above, the consultation does not take into account how far the claimant will already have travelled to get to the court now. Clients come to Oldham County Court from a catchment of around 7 miles. To then travel to Manchester would be a further 8 miles, meaning a 30 mile round trip. This adds costs for the claimant – who may be taking time off work due to their injury.

We recognise, however, that the MoJ needs to make costs savings, and suggest that perhaps one hearing centre should be set up for the North of Greater Manchester, and one should be set up for the South of Greater Manchester. This will help to maintain access to justice at a local level, and will also ease the pressure on Manchester Civil Justice Centre in having to absorb extra work from the surrounding courts.

South West

Bath Magistrates' and County Court and Family Court

The proposal is for all work currently dealt with at this court to move to Bristol Civil and Family Justice Centre. Members report that Bath County Court is currently convenient and efficient, and the administration of Bristol court is already "creaking under its existing

workload". Members report that mistakes are often made, documents go missing when sent to the court, and there are difficulties in being able to speak to someone at the court over the phone as the staff is busy and clearly under strain. Bath court is efficient and works well, and members are concerned that the level of service will suffer if business is instead transferred to Bristol. Over the years, Bristol has absorbed a great number of small satellite county courts, including Weston Super Mare, Thornbury etc and the inclusion of Bath's workload will surely result in further mistakes and delays, overall causing undue delay to the injured person and the resolution of their claim.

London

Our members in London are concerned that, whilst transport links throughout London are good, and there are not the same challenges as other areas with people having to travel much further than previously in order to access justice, there will be delays if there are fewer courts and fewer staff. The current court estate in London provides efficient service and works well. To close the more outlying courts will result in more business being directed to Mayors and City and Central London courts. Both of these courts have modest capacity, and closing some of the outer lying courts will increase workload, leading to delays in obtaining dates for applications and trials and ultimately delays in resolution of the action and obtaining compensation for the injured person. It is important to ensure that if closures take place, the remaining courts have the resources and staffing to cope with the increased case load and can still provide an efficient service.

- Ends -

Association of Personal Injury Lawyers

- ▶ 3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX
- T: 0115 958 0585 ● W: www.apil.org.uk ● E: mail@apil.org.uk