

24 April 2001

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Dear Ms Bushell

**Modernising Civil Courts**

Please find enclosed the Association of Personal Injury Lawyers' response to the Court Service consultation document regarding the modernisation of the civil courts.

Please do not hesitate to contact me if I can be of any further assistance.

With kind regards.

Yours sincerely

Annette Morris  
Policy Research Officer

**COURT SERVICE CONSULTATION**

**MODERNISING THE CIVIL COURTS**

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS**

**24 APRIL 2001**

The executive committee would like to acknowledge the assistance of the following people who contributed to the preparation of this response:

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## MODERNISING THE CIVIL COURTS

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents more than 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
  - To promote full and prompt compensation for all types of personal injury;
  - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
  - To alert the public to dangers in society such as harmful products and dangerous drugs;
  - To provide a communication network exchanging views formally and informally.
  
2. APIL welcomes the opportunity to respond to this consultation document, which seeks views on the modernisation of the civil courts. Modernisation is fully supported and, indeed, is vital if the civil justice reforms are to operate as intended and to their full maximum. In his “Access to Justice” interim report published in 1995, Lord Woolf in chapter 13 “stressed the importance of the role of IT in supporting the implementation of [his] more general recommendations...”<sup>1</sup> He further stated that judicial case management technology and an IT strategy for the civil justice system were “**fundamental**” as they constituted the tools needed “to support [his] main proposals...”<sup>2</sup> His general conclusion on this issue was that a vision of a modernised civil justice “in seven to ten years’ time” ought to be devised.<sup>3</sup> It is extremely regrettable that such a vision is still a mere proposal in view of the fact that five years have passed since the recommendation was made.

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<sup>1</sup> Chapter 21, para. 1

<sup>2</sup> Chapter 21, para. 2

<sup>3</sup> Chapter 21, para. 36

3. In summary, APIL supports modernisation of the civil courts which includes the following facilities:
  - Sufficient local court services based on analysis of regional need
  - An IT, telephone and video infrastructure that allows a “joined up” court service rather than a fragmented court service as currently available. This would allow court users to deal with their local court regardless of the location of the court in which the relevant claim has been issued. This would extend to accessing information locally; being able to give evidence locally by video link to another court; allowing telephone conferences between solicitors offices and judge’s chambers (for example, case management conferences)
  - Use of electronic facilities to allow direct contact with the relevant judge/court and to assist with procedural requirements such as filing, notification by the court, case management and access to court records
  - Judicial case management technology to allow for a consistent, efficient national approach including direct access by the judiciary to electronic court diaries
  - Ongoing adequate and appropriate training of the full and part time judiciary and all court staff.
  
4. Before responding to the particular questions raised in the consultation paper, APIL would like to outline several, more general, but fundamental points. Firstly, the consultation paper refers to the provision of court services as “business services”. APIL does not dispute that the court service should become more efficient and reduce unnecessary costs and that this can, to some extent be achieved, through the adoption of some “business sense”. The court service, however, is a vital public service and it should allow for the fulfilment of the human right to a fair trial<sup>4</sup>. It should not be run as a business to the detriment of this democratic purpose nor be hindered by having to be self-financing. The modernisation project should not be seen as a means of

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<sup>4</sup> Article 6, European Convention of Human Rights and Fundamental Freedoms

reducing the cost of the Court Service but as a means of improving this cornerstone public service.

5. Secondly, it is stated that the “modernisation project” has a £43 million budget. In his “Access to Justice” final report Lord Woolf stated:

“The additional information that I have received since publication of [the interim] report, both here and abroad, has strengthened my conviction that sensible investment in appropriate technology is fundamental to the future of our civil justice system.”<sup>5</sup>

APIL has grave concerns that £43 million is not a “sensible investment” and is far too small a budget to achieve the necessary modernisation proposed by the Court Service. We would invite the Court Service to provide a breakdown of this budget but would provisionally state that a larger budget is necessary to achieve what would, in the long term, be cost saving and efficiency improving reforms. APIL would also invite the Government to commit to long-term investment in the modernisation of the civil courts as it represents not just a long-term, but an on-going project.

6. Increasing efficiency through the streamlining of services and centralisation must not occur at the expense of local services. The introduction of IT within the court system and new methods of delivering court services must not preclude those who can only, or would rather, deal with the court on a face to face basis. Related to this is the point that those without access to computers or without computer skills, for example, the elderly, should not be discriminated against. Local courts should not be closed until the modernisation proposals can deliver by the proposed alternative means the required court services in those areas.
7. APIL is also concerned about the proposed prioritisation of the different stages of modernisation. Replacement of the IT infrastructure is only a medium term

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<sup>5</sup> Chapter 21, para.1

priority. It must, however, be fundamental to any modernisation and the implementation of any of the proposals.

8. Finally, APIL is extremely concerned that these proposals have been made **before** the assessment and analysis of regional need of court services, population distribution, public transport and road networks. The proposals should, in fact, be based on such an analysis. For this reason, it is at times difficult to judge the adequacy and appropriateness of the proposals because the proposals are not made in context.

## **DEVELOPING ACCESS TO SERVICES BY TELEPHONE**

**Q1 Do you agree that customers should be able to give instructions to the court by telephone?**

9. APIL strongly believes that court users should be able to give instructions to the court by telephone if this method is preferred. This would remove the need for lawyers and clients to attend court where appropriate, which can be both time consuming and costly. The introduction of this proposal would improve the efficiency of the Court Service, the service provided by lawyers to personal injury victims specifically and litigants generally and reduce costs to both the litigants and the Court Service.

**Q2 Can you identify services that you would like the court to provide by telephone?**

10. APIL envisages that the area that could most benefit from greater use of the telephone is that of case management conferences (CMCs). Much time and money is involved in attending CMCs which could be avoided through greater use of telephone conferencing where it is appropriate.

**Q3 Are you satisfied that the appropriate levels of security can be achieved in order that the court can deal with claims that instructions have been falsified?**

11. The introduction of new technologies and greater use of telephones within the court service obviously raises some concern about security. No system, however, is flawless and APIL is confident that security issues can be resolved satisfactorily, provided sufficient consultation with experts, investment and training takes place.

#### **INTERNET AND E-MAIL SERVICES**

**Q4 What are your views on the use of the technologies outlined on pages 36 – 38?**

12. The introduction of on-line transactions, e-mail transactions, automation and workflow, links to government websites and access to public records are fully supported. These proposals would provide a much improved, more efficient service to court users, provided security issues are satisfactorily resolved. The on-line issue of money claims and customer partnerships are not directly relevant to personal injury litigation and so no comment is made upon these proposals. The introduction of such technologies, however, should not preclude or discriminate against court users without access to the necessary IT.

**Q5 What a) services and b) information do you think should be available via the internet?**

13. The proposed availability of the following information and services over the internet are fully supported:

- Electronic issue of all cases



- Electronic notification by the court
- Direct access for court users enabling them to initiate transactions, for example, to enter judgment by default
- Case management and progression
- Electronic filing
- Access to the records of the court

14. To expand on the above, it would be extremely useful to be able to access interactive court forms over the internet that could be completed on screen and forwarded to the relevant judge or court and the opponent. This would be particularly useful for court orders, uncontested applications, listing questionnaires and allocation questionnaires.

**Q6 What are your views on the opportunity for electronic partnerships for particular customers or processes?**

15. APIL cannot envisage any electronic partnerships in the context of personal injury claims and so no comment is made upon these proposals.

**REDUCING COSTS AND EXTENDING SERVICES THROUGH CENTRALISED ADMINISTRATION**

**Q7 What are your views on the development of a more distinct small claims business within the courts, supported by a customer contact centre and a video network?**

16. Due to financial limits, few personal injury claims fall within the small claims track. Proposals to increase the efficiency of the service devoted to small claims, however, do appear sensible. A centre concentrating on the administration of small claims incorporating increased use of electronic services could save extremely valuable court time and reduce the cost of such

claims, thereby increasing “proportionality” within the civil justice system as envisaged by the civil procedure rules.

**Q8 What are your views generally on the issues raised by the proposals for centralisation of administration?**

17. The centralisation of administration is supported, as it is believed that it would greatly improve the efficiency of the Court Service and reduce its costs. It would also assist with the unification of a fragmented, regional-based court system. It is only supported, however, if, as is stated on page 39/40 of the consultation document:

- Local court services are still available for those who require them;
- Staff are adequately and appropriately trained.

18. APIL would particularly like to see centralisation of certain aspects of the court service such as the accounts system. Court accounts are currently held individually by each court and payments to one court cannot be made through another. This is extremely inconvenient and is an area for improvement.

**Q9 What views do you have on our early thinking about the business centre approach and the centralisation of services?**

19. As has been noted in response to questions 8 and 9, the business centre approach and centralisation of services are supported provided sufficient note is taken of the points made by the Court Service on page 39/40 of its consultation paper as follows:

- Local court services must not be removed despite the centralisation of administration

- The technology infrastructure must be adequate and appropriate if centralisation and business centres are to operate successfully
- The links from administrative centres to hearing centres must be effective
- Staff should be fully trained and changes should not lead to the loss of experienced staff

## **EXTENDING HOURS OF SERVICE**

### **Q10 How important to you are extended hours of service for a) office services and b) hearings?**

20. If many services are to be available via the internet, many services will be available 24 hours a day and this is supported, provided lawyers are not required to be available on the same basis. 24 hour services in other areas are not advocated as they are likely to increase the costs of legal services.

### **Q11 What office hours of service would you like to see from the courts?**

21. APIL does not believe that there are any particular problems with the current hearing and court office opening hours, though it may be useful to introduce normal office opening hours of between 9am to 5.30pm. It may, however, be appropriate to review hours of service once implementation of the proposals has begun.

### **Q12 In which areas do you want 24-hour service?**

22. There are no particular areas of personal injury litigation in which a 24 hour service is highly desirable. If more services are available via the internet and e-mail, however, those services would usefully be available on such a basis.

## **NEW WAYS OF GETTING PROCEDURAL ADVICE AND INFORMATION**

**Q13 Are there other electronic ways by which the Court Service should deliver advice and information?**

23. The proposed electronic ways by which the Court Service should deliver advice and information are welcomed and APIL cannot currently envisage any other electronic ways by which the Court Service should deliver advice and information. This should, however, be regularly reviewed.

**Q14 Do you agree that there is a wider advice role for our staff and do you have views on how such a service might be developed?**

24. On page 47 of the consultation document it is noted that it would be useful if court staff were able to provide more than just “procedural advice” but it is unclear what further advisory role is envisaged. In principle, however, it is believed that the more services court staff can deliver to the community, the better, provided all staff are adequately and appropriately trained.

## **“GATEWAY” PARTNERSHIPS PROVIDING ACCESS TO SERVICES**

**Q15 What other areas may be suitable for a similar approach?**

25. APIL is currently unaware of any areas within personal injury litigation which could benefit “gateway” partnerships providing access to justice. Many personal injury victims visit the Citizens Advice Bureaux for advice before consulting solicitor. At this stage, however, the personal injury victims would require legal advice rather than advice or information relating to the Court Service.

**Q16 In what other ways should the Court Service seek to extend its services to the citizen?**

26. It is extremely difficult to respond to this question in view of the fact that an assessment of community needs has not yet taken place as outlined in paragraph 7.

#### **PROVIDING LOCAL SERVICES COST EFFECTIVELY**

**Q17 Do you agree that the current network of county courts does not represent the ideal geographical network?**

27. APIL is concerned about the court closures that have been taking place and does not believe that further court closures should take place before the implementation of the modernisation proposals and adequate services are provided but by different means. Without the assessment of community needs it is difficult to adopt a definitive view as to whether the current network of county courts does not represent the ideal geographical network.

**Q18 Do you agree that there is scope for new ways of using our estate to deliver the services we provide?**

28. Provided local courts and local court services are retained, APIL has no objection to a review of the use of the Court Service estate, especially if this is likely to lead to more efficient and economic use of space and buildings, provided community needs are still adequately served.

**Q19 Do you have other suggestions as to how the Court Service might address this issue?**

29. It is imperative that a review is conducted into regional need, population distribution and analysis of public transport and road networks before the provision of local court services is reformed.

## **FLEXIBLE LOCAL VENUES**

**Q20 What are your views on the proposed approach to local hearing venues?**

30. APIL is not opposed in principle to the proposal that hearing venue structure should be based on the use of hired facilities and shared use with magistrates' courts and other tribunals. APIL would, however, be opposed to this proposal if it resulted in a reduction of time available for county court hearings as this would directly reduce access to justice. Even if this results in fewer hearing venues than currently available, other court services such as the provision of information should be retained on a local basis. Again, however, it is difficult to assess whether the proposals are adequate as they are not based on the analysis of regional community needs.

## **A STRATEGIC AND PARTNERSHIP APPROACH TO THE COURT OFFICE**

**Q21 Do you agree that the citizen (as opposed to other practitioners) essentially only requires a small range of the services?**

31. It is agreed that most communication with, or advice on, the court service is provided by lawyers in the context of personal injury litigation, as most personal injury victims require a lawyer to adequately pursue their claims. It is still essential, however, that local court services are retained so that information is available on a local basis when it is required.

**Q22 What are your views on the proposition that some of the key services provided by the courts might be made available at a wider range of outlets?**

32. The more that court services are integrated into the community, the better, provided those services adequately serve the community's needs. The provision, however, of services at a wider range of outlets should not lead to a fragmented and confusing court service within a local community.

**Q23 What are your views on the notion that the front office of the court might be a shared facility within another agency?**

33. APIL has no particular objections in principle to this proposal providing the services available are still adequate and appropriate for the geographical location.

## **REDUCING ATTENDANCE BY USING TECHNOLOGY**

**Q24 How do you think that the Court Service should develop video services for the civil and family courts?**

34. It is believed that in the context of personal injury litigation telephone conferencing would be more useful than video conferencing. It is envisaged, however, that video conferencing would assist with the taking of expert and lay evidence at trials. Video links are used in criminal proceedings in the context of, for example, child abuse cases, and there is no reason why they would not be similarly useful in civil proceedings. It would be useful because it is likely to increase the availability of witnesses and prevent delays in hearing dates. Such a system would be reliant, however, on all hearing centres having sufficient video facilities and trained staff so that witnesses can give evidence at their local court at a hearing in another court. It should be noted,

however, that experts would still have to be available following the provision of video evidence to assist instructing lawyers with, for example, cross examination.

**Q25 In which areas do you believe that personal attendance can be reduced, and in which areas do you do you consider that it will continue to be necessary?**

35. As noted above, it would be extremely useful to allow uncontroversial witnesses and experts to participate in a hearing via a video link rather than attend in person.

#### **SERVICE FROM ANY “BRANCH”**

**Q26 Should we aim to provide access to service at every court, or are there limits in respect of particular services?**

36. It is not believed that it is necessary to provide all services in all courts. It is proposed by the Court Service, and it is accepted, that it may be sensible to streamline hearing venues. At the very least, however, every local community should have access to information on the court service. In addition, it would be extremely useful if the court service was less fragmented so that services for all courts are available from the local court, even if that is not the court through which the case has been issued.

**Q27 What are your views about the impact on parties of the way in which hearing venue is currently decided, and on the opportunities to reduce that impact?**

37. However the hearing venue is decided, if the claimant, defendant and witnesses live in different locations, problems will be experienced for those



involved. Greater use of video links as discussed above, however, would greatly reduce any problems experienced and increase the efficiency of the system.

## **SUPPORTING THE JUDICIARY TO ENABLE DISPUTES AND OTHER MATTERS TO BE RESOLVED JUSTLY**

### **Q28 What are your views on which are the most important technologies available to support the work of judges?**

38. In his final report, Lord Woolf described judicial case management technology as “fundamental” because it was one of the “tools needed to support [his] main proposals.” APIL agrees with this statement. Much concentration is now placed on judicial control on the progression of a claim and judges must be given the necessary tools to achieve what is envisaged of them in the civil procedure rules. This would include having access to the case file electronically and the ability to contact parties by e-mail and telephone to reduce the need for court hearings and increase efficiency.

39. The above, however, depends upon appropriate and adequate investment in software, equipment and expert training for all judges whether full or part time.

### **Q29 Are there other technologies that would help to support judges or provide improved customer service?**

40. The only other technology currently available that APIL believes would be of use to both the court and court users is “Livenote” i.e. voice recognition software. Trials using this equipment are shorter and more effective than they would have been if the traditional manual methods of recording the evidence had been employed.

## **DEVELOPING THE ELECTRONIC FILE**

### **Q30 What are your views on the potential for electronic filing?**

41. This proposal is strongly supported and will be extremely useful. It means that once documents are complete and ready to be filed, they can simply be e-mailed to the relevant court or judge and the other parties. This would be extremely efficient. Provision would have to remain, of course, for the filing of records in the traditional manner. Common procedures and standards on electronic filing, however, would have to be agreed.

### **Q31 How do you think XML schemata should be developed in order to secure the widest possible uptake and exploitation?**

42. APIL believes that this is a matter best addressed by IT experts.

## **WHAT PRICE TECHNOLOGY IN THE COURTROOM**

### **Q32 Which technologies do you think would have the greatest potential benefit?**

43. The civil procedure rules are based on the premise that they will be supported by a modernised IT infrastructure. E-mail, the internet, telephone and video conferencing would appear to have the greatest potential benefit. This question suggests, however, that a costs benefit analysis will take place on the introduction of new technologies which would be extremely regrettable and extremely undesirable. Full and proper investment should be made into this project.

**Q33 What are your views on how the costs of courtroom technology should be born or apportioned within the system?**

44. APIL feels strongly that the court service should be publicly funded and that individual courts should not be required to be self-financing. This point has been outlined in the introductory paragraphs of this response. However the court service is funded, investment in courtroom technology is fundamental to the modernisation of the courts.

### **PUBLIC ACCESS vs. PRIVACY AND SECURITY**

**Q34 Do you believe there are areas that are unsuited to electronic service delivery as a consequence of privacy and security requirements?**

45. Provided the system is sufficiently secure, APIL does not believe that any aspects of personal injury litigation are unsuitable for electronic service delivery.

**Q35 How extensive should internet search facilities and public access facilities be?**

46. Internet search facilities and public access facilities should be as extensive as possible subject to security and confidentiality.

**Questions 36-40 do not concern personal injury litigation and for this reason, no response is provided to these questions.**

## **MAINTAINING TRADITIONAL SERVICES BUT BECOMING MORE EFFICIENT**

### **Q41 Do you have views on the contracting out of services?**

47. The court service is a public service and it is strongly believed that the core services provided should be provided by the state and not be contracted out. As a public service, the providers should be fully accountable to the public served. Some areas may, however, benefit from contracting out such as the provision of accounts and IT services. This is because these parts of the service are essentially self-contained and would benefit from experienced contractors.

### **Q42 What are your views on the provision of electronic court services by licensed 3<sup>rd</sup> party providers?**

48. As noted above, APIL is not opposed to IT services being provided by contractors or licensed 3<sup>rd</sup> party providers provided that such contractors only provide and support the IT infrastructure necessary to deliver the public service.

### **Q43 What are your views on proposals for fee incentives and electronic payment?**

49. APIL is concerned about the proposal that electronic payment should be encouraged through fee incentives. Electronic payment should be available as it provides an extremely efficient method of accounting and this proposal is fully supported. The introduction of fee incentives would, however, discriminate against those unable to afford the technology to allow electronic payment and, for this reason, cannot be supported.

**INVESTING IN THE RIGHT INFRASTRUCTURE, BUT CONCENTRATING ON THE CUSTOMER**

**Q44** What are your views on our proposals to provide internet access to the services of the Claims Production Centre, and the County Court Bulk Centre?

50. The proposals do not concern personal injury litigation and so no response is made to this question.

**Q45** Are there other developments in electronic services in the short term that you think would enhance customer service?

51. As noted in the introductory paragraphs, it is believed that it is of paramount importance that the necessary infrastructure should be put in place for the proposed modernisation of the civil courts and that this should be a short term (rather than medium term) priority.