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The government responds

In September 2016, the Ministry of Justice published its proposals. Its main paper, modestly called *Transforming our Justice System*,¹ was issued jointly by Elizabeth Truss, who was then lord chancellor, and the two senior judges responsible for courts and tribunals of England and Wales, Lord Thomas of Cwmgiedd and Sir Ernest Ryder.

Their announcement promised that transformation of the courts and tribunals across the country² would be based on three core principles: reforms would be just, proportionate and accessible. The main transformation involved technology, with a promise to develop “a single online system for starting and managing cases across the criminal, civil, family and tribunal jurisdictions”. Indeed, “some cases will be handled entirely online”.

There was more detail in a consultation paper launched at the same time by Sir Oliver Heald, the then justice minister.³ It included a slightly opaque promise to “bring the structures of the courts closer by reforming existing local justice areas and making it easier to transfer cases between the Crown Court and magistrates’ courts when appropriate”. The minister made it clear he was referring to the geographical divisions⁴ for which magistrates’ courts are responsible: reform of these areas would make it easier to close courts.

The consultation paper also sought views on issues such as “assisted digital”. This is the concern that by putting services online we may exclude as much as a fifth of the population from them. Of people in the UK who use government digital services, it was estimated that 30% can do so unaided and a further 52% can manage to do so with some help. The remaining 18% are referred to as “digitally excluded”.

This estimate dates from 2013 and the proportion who can’t or won’t use online services has presumably gone down since then. But the Civil Justice Council argued that the proportion of digitally excluded court users is higher than among the population as a whole, because litigants are more likely to be people on low incomes, the elderly and people whose first language is not English.⁵

It’s essential that provision is made for them. The government sought views on whether this should be face-to-face assistance, a telephone helpline, web-chat or “access to paper channels for those who require it”.

Clearly, some combination of these resources would be appropriate. My own view is that users should not be allowed to apply on paper for services that are delivered digitally. People should, instead, be helped to access services online.

In February 2017, there was a response from the government.⁶ It promised support for people who have trouble with using technology. "In particular," it said, "we will ensure that our assisted digital support takes into account the needs of those who are elderly or have disabilities, those with poor literacy or English skills, and those who lack access to technology because of cost or geography."

The government said it would work with independent suppliers to provide a network of accessible, quality-assured assistance. "Telephone and webchat services will also be available and clearly signposted for those who already have access to IT but require extra support, and paper channels will be maintained for those who need them."

Another proposal on which the government invited comments would reduce the use of non-legal members in tribunals. A tribunal would consist of a single member – usually, but not invariably, a judge – unless the senior president of tribunals decided otherwise.

Campaigners argued that this came close to undermining the entire basis of tribunals – which was that they comprised people who pooled legal knowledge and practical experience. They were particularly suspicious of moves to redesign tribunals dealing with social security and disability benefit appeals.⁷

I can see that the recent reduction in the use of lay members has not affected outcomes. I am sure it must be difficult to find appropriate lay members in some cases; in other case, there may be little need for them. I do value the contribution made by lay members to the tribunal system. But I accept that it would be difficult to maintain the current system of three-member tribunals when cases are being considered in the online continuous hearings mentioned earlier in this paper.

The Ministry of Justice announced⁸ in February 2017 that it would drop its plan to make single-member panels the default position in the unified tribunals. It had never been intended that single judges would be assigned to hear cases where specialist expertise was needed, the government insisted. Non-legal members would continue to sit as needed. The Senior President of Tribunals would decide whether a tribunal would comprise one, two or three members.

The government also published a consultation paper on judges' terms and conditions in September 2016.⁹ Lord Thomas of Cwmgiedd said this would "open up opportunities for judges to be deployed more flexibly and enable them to sit in more than one jurisdiction". It would also lead to a single judiciary sitting in a single jurisdiction, he added, and this would result in the more efficient and effective administration of justice.¹⁰

Sir Ernest Ryder said the "one-stop shop" being piloted by tribunal judges was an example of the future. "In the property tribunal," he explained, "we are trialling the concurrent hearing of tribunal and court proceedings relating to property before one specialist panel so that the litigant can avoid going to separate places to get a complete solution to their property problems."

"What are concurrent jurisdiction hearings today may well be a single hearing before a single specialist judicial forum tomorrow," said the senior tribunals judge. "There need be no distinction in the future between a specialist tribunal judge and a specialist courts judge."¹¹

These would be huge changes. But they must be seen in the context of a judiciary that is facing what Lord Thomas called unprecedented pressures: a reduction in morale, a very significant fall in pay and pensions in real terms, an increase in early retirement and recruitment difficulties.

“Whilst modernisation of the courts and tribunals is vital and will improve the administration of justice,” Lord Thomas said in his annual report to parliament, “the judiciary itself demands attention. There is, for example, very real concern about recruitment. This is particularly so in relation to the High Court, where the last two competitions failed to fill all vacancies. This emerging trend needs to be reversed as a matter of urgency, together with tackling the causes of low judicial morale.”¹²

But judges were not exempt from the cuts. “Reform will reduce the amount of judge-time needed,” the judiciary were told in an internal document¹³. The business case includes a £76m annual saving (uprated for inflation). We will need to use our highly skilled cadre of salaried judges more flexibly than at present.”

No judge would be made redundant, but there would be less work for part-time judges. Fewer magistrates would be needed but those that remained would focus on more interesting and challenging cases.

References

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2. HMCTS is currently responsible for managing reserved tribunals in Scotland. Responsibility for this will be transferred to the Scottish Courts and Tribunals Service as part of the implementation of the Scotland Act 2016 and the Scottish Government will be responsible for deciding how those tribunals are managed in future. https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/supporting_documents/consultationpaper.pdf paragraph 5.2.

3. https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/supporting_documents/consultationpaper.pdf See also related documents here: <https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals>

4. <http://www.legislation.gov.uk/ukpga/2003/39/section/8>

5. <https://www.judiciary.gov.uk/wp-content/uploads/2011/03/cjc-response-on-transforming-justice-nov2016.pdf>

6. <https://consult.justice.gov.uk/digital-communications/transforming-our-justice-system-assisted-digital/results/transforming-our-justice-system-government-response.pdf>

7. See James Sandbach, *Legal Action*, December 2016/January 2017, page 7.

8. <https://consult.justice.gov.uk/digital-communications/transforming-our-justice-system-assisted-digital/results/transforming-our-justice-system-government-response.pdf>

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12. <https://www.judiciary.gov.uk/wp-content/uploads/2016/11/lcj-report-2016-final-web.pdf>

13. *Judiciary Matters*, Courts and Tribunals Judiciary, autumn 2016, page 7.

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