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The reform projects

HMCTS reform is led by the lord chancellor and the lord chief justice, acting jointly. It covers the entire administration of justice across England and Wales: criminal, civil, family and tribunals.

In April 2018, the judges were told there were seven main reform programmes, as summarised below:¹

1. **Crime Programme:** This programme aims to progress cases through the criminal justice system more efficiently and with reduced delays. It plans to reduce the number of hearings taking place in court and to develop a *common platform* for securely sharing information on a single system. This will mean information is shared from the point when a police officer charges a defendant or requests a charging decision from the CPS to the point the case is decided and the result is formally recorded.

Most summary non-imprisonable offences with no identifiable victim (approximately 840,000 cases a year) will be taken out of the courtroom and heard by a single magistrate on the basis of a case file. In more serious cases, defendants will provide an indication of their plea online rather than in a court hearing. Judges and magistrates will be able to conduct remand hearings through telephone, video-link, or online unless they need to be in court.

2. **Civil, Family and Tribunal (CFT) Programme:** The plan is to develop a range of digital services to support the resolution of civil, family and tribunal cases fairly and speedily, underpinned by a set of common components to be used across these three jurisdictions.

The CFT programme has identified a set of administrative and judicial procedural steps that are common to civil, family and tribunal cases. The ambition is to unite these common procedures on one digital platform with a single access portal. It will involve automated triage, where appropriate, and more frequent use of alternative dispute resolution. This and, subject to primary legislation, a new set of online procedure rules will allow claims to be brought without legal aid or representation.

3. **Common Components:** In a separate workstream aligned to the CFT programme, HMCTS are creating over 30 *common components*, a set of applications that will enable more integrated working across CFT. The most important components will be *core case data*, a

way to capture case information, and *document and evidence management*, which will hold the documents related to a case. A further component will be the *judicial user interface* so that judges and tribunal members see the same types of screen whenever they use CFT systems.

4. **Property Programme:** This programme aims to make better use of fewer HMCTS buildings, to create new designs for courts and tribunals, to modernise the remaining buildings, and to generate some of the income required for investment elsewhere. Taking cases out of the courtroom through *fully video hearings* – where all parties take part electronically – will reduce courtroom needs. The number of courts and tribunals will be reduced. Some court buildings will be used by more than one jurisdiction. Courts and tribunals will be modernised in line with a new court design guide.
5. **Infrastructure and Operations Programme:** This programme provides the products and services to support other projects. The programme will install up-to-date Wi-Fi and video screens in every court and tribunal building. Increased use of video hearings is planned to improve efficiency. There will be two types. In the first, one or more parties will attend a hearing by telephone, video-link or online. In the second, subject to legislation, all parties will take part in this way. A new digital tool is being developed to automate some aspects of the scheduling and listing process where this is considered appropriate by the judiciary. The judges will retain control of listing decisions and listing officers will remain based in courts. Case officers will be recruited for different roles in different jurisdictions. They will always be under the control of judges.

A number of Courts and Tribunal Service Centres will be created as the centralised locations for contact and case administration. These may house some case officers if judges decide it is not necessary for them to be co-located with the judiciary. Assisted digital refers to the new support arrangements put in place to help users interact with the courts and tribunals via digital channels such as webchat, telephone assistance and, where necessary, face-to-face assistance.

6. **People and Culture Transformation (PACT) Programme:** This programme “will redesign HMCTS to support new ways of working”. It will be responsible for reducing staff numbers from 16,500 at the start of the reform process to just over 10,000 by 2022.
7. **Transforming Compliance and Enforcement Programme (TCEP).** This programme involves new technology, a new operating model and new procurement contracts to ensure court order, such as penalties and compensation, are enforced effectively.

Beneath these seven programmes are no fewer than 52 projects. Some of them are explained in the list below, along with others that have already been completed:

The CJS (criminal justice system) **Common Platform** programme. In partnership with the Crown Prosecution Service (CPS) and the police, HMCTS is developing a unified case management system based on a digital case-file. It replaces the existing HMCTS and CPS case management systems with a single system providing access to all the information that’s needed to deal with individual cases. This is the fourth attempt since the early 1990s to improve the flow of information between police, prosecutors and the courts.

The Common Platform programme preceded HMCTS reform and is funded separately. It was meant to be completed by July 2018 but suffered from significant delays because of the need to deal with three separate organisations: the police, the CPS and HMCTS. In 2017, to stay in budget, the scope of the project was reduced and the completion date was deferred until June 2020.²

In January 2018, two cases in Merseyside were dealt with using the Common Platform from beginning to end for the first time. The judges expected the pilot programme in Liverpool to be completed by early 2019, with legacy systems being decommissioned and the Common Platform becoming the system of record at all court centres later that year.

The Crown Court **Digital Case System** (DCS). This allows all professionals involved in a criminal case to share documents online and read whatever material they are entitled to see. Judges can use it to annotate evidence and write judgments – although they cannot view areas that are restricted to prosecution or defence teams. The system is now used for all CPS prosecutions and is being extended to other prosecutors. Case management no longer relies on paper; pre-trial applications and directions are made online.³

While it is likely that DCS will remain for some time to come, no final decision has yet been taken about its future development – whether it is to be incorporated into the Common Platform programme or superseded by the Common Platform’s functionality.

A digital case management system in the business and property courts based at the Rolls Building in London. Called **CE-File**, it was developed between 2013 and 2016. All professional court users are now required to file claims electronically, saving costs and making the court globally accessible.

Sir Terence Etherton said in April 2018 that CE-File had worked and “it is intended that there will be a roll out of an equivalent digital case management system to support digital working in the Court of Appeal, High Court, Upper Tribunal and Employment Appeal Tribunal”.⁴

The **Criminal Justice System Efficiency Programme** (CJEP), set up by the Ministry of Justice during the coalition government of 2010-15. This led to the DCS and also preceded HMCTS reform. However, the National Audit Office reported in March 2016 that the criminal justice system was not delivering value for money and there were “many areas where improvements must be made”.⁵

The **Better Case Management**⁶ (BCM) initiative, which gave effect to Sir Brian Leveson’s **Review of Efficiency in Criminal Proceedings** published in January 2015. BCM’s aims include robust case management, fewer hearings, maximum engagement from every part of the criminal justice system and efficient compliance with the rules.

Launched in October 2015, the BCM initiative introduced a uniform national **Early Guilty Plea** scheme and **Crown Court Disclosure**⁷ in document-heavy cases. BCM builds on **Transforming Summary Justice**, a joint criminal justice system initiative which was aimed

at simplifying the process for dealing with cases in the magistrates' courts. These reforms were introduced by Lord Justice Gross when he served as senior presiding judge from 2013 to 2015. A handbook on BCM was published in February 2018.⁸

The **single justice service**, which expands on the existing *single justice procedure*.⁹ That gave a single lay magistrate power to deal with guilty pleas and "proof in absence" cases (where the defendant does not respond). It applies only to adults charged with summary-only, non-imprisonable offences. The magistrate sits with a legal adviser but the prosecutor and defendant are not present. The hearing does not need to take place in a traditional courtroom and so there is more flexibility in terms of the place and time at which it may be heard.¹⁰

By early 2018, the single justice service was being used at Lavender Hill court in London for some 350 fare evasion prosecutions a week. It is to be extended to TV licensing and DVLA cases. It's intended that the procedure will eventually deal with up to 840,000 cases a year – all without an identifiable victim. A hearing with a lay bench will still be possible if the defendant requests it or pleads not guilty; or if the magistrate believes it is necessary. Subject to legislative change, it is proposed that this could be a video hearing.

Online guilty pleas under the single justice procedure are handled under the new **automated track case management** system. Cases are uploaded to the system by prosecutors, who include licensing authorities and train operators. In the past, paper files used to be ferried round London in taxis and detailed had to be retyped.

According to Mike Logan from the HMCTS development directorate, the system "provides an interface for legal advisers to access and record decisions for single justice procedure cases, notify parties of decisions made and generate orders and notices".¹¹ The system is expected to apply to summary-only, non-imprisonable cases dealt with under the single justice service overseen by a single magistrate.

Digital Mark-Up enables legal advisers and court associates in magistrates' courtrooms to record the results of cases online.¹² Previously, staff in courtrooms would have made handwritten notes for clerical staff to upload.

Video remand hearings are conducted in criminal cases using links to courts from police stations and prisons. These used to be called "virtual remand hearings".¹³ There are also 3G/4G links to other locations from which vulnerable witnesses may give evidence without the need to attend court.

The first tribunal hearing with neither party present took place in March 2018 but the judge and the media were in court.¹⁴

A *fully video hearing* is one where all parties take part electronically. If nobody is in court, there is no hearing for the press and public to attend. But the judges have promised that "the fundamental principle of open justice will be observed". Details of how this will be achieved have not yet been announced.

Abolition of transfer hearings: if the necessary legislation is passed, defendants facing charges that are triable only by a jury will go straight to the Crown Court for what's now called a plea and trial preparation hearing, removing the need for an appearance at the magistrates' court. Senior judges regard this remnant of committal proceedings as a waste of resources.

Online plea and allocation, enabling defendants in criminal cases to indicate a plea online and avoiding the need for allocation hearings.

Case progression outside court by judges and case officers under judicial supervision. This project and the online plea project are still very new.

Several **estates rationalisation projects** will involve selling off surplus court accommodation in areas such as Birmingham and west London. A **court design guide** will define the principles and standards for new buildings.

Professional Court User Wi-Fi for authorised users, including lawyers. One password covers all courts. There are more than 50,000 registered users.¹⁵

The **ClickShare** dongle, which allows advocates to display evidence stored on, or accessible from, their laptop computers on large television screens installed in courts. Until that was introduced, video recordings were often found to be incompatible with the hardware and displays available in court.

The online **make-a-plea** service,¹⁶ which is now available across England and Wales for people to plead guilty or not guilty to a summary non-imprisonable traffic offence. Users must have an internet-enabled device – such as a computer or smart phone – but a call centre is available to help users complete the online forms. Welsh-speakers are assisted by staff in Caernarfon. The system is linked to drivers' licensing records at the DVLA.

Katie Dean, the service manager responsible for make-a-plea, explained¹⁷ how easy it was to respond to problems. For example, users had been confused by the question "Do you want to come to court to plead guilty?" They said yes even though they didn't want a hearing. So the question was changed. "We are no longer stuck with a system that we have to work with," she said, "which makes for a much simpler customer journey."

The **eJudiciary** service is an email and document management system that provides information and advice direct to decision-makers in the courtroom. Judges and magistrates can access this service from any device – unlike the antiquated system it replaced, which ran only on court-issued computers and could take as long as 20 minutes to boot up. The eJudiciary system was developed by John Tanzer, a former circuit judge who retired in 2016. He worked with Andrew Wright of HMCTS and two specialists from Microsoft, whose software the system uses. Senior judges said it was "successfully transforming the ability of the judiciary to carry out research and legal work online".¹⁸

CaseLines, a digital court platform devised by a commercial developer. It allows documents to be loaded directly into an electronic bundle using secure cloud-based facilities. The system puts documents in case order, searches for duplicates and indexes pages. HMCTS is currently making limited use of the service.

eLIS, an acronym for the courts' electronic library and information service. This provides judges and others with access to legal databases and other library services.

The **Assisted Digital project**, designed to help court users who are "challenged in the use of online services". Mike Brazier, of HMCTS's accessibility and inclusion team, said there would be support by telephone, webchat and face-to-face. He promised that "paper channels will always remain and be provided for those who need them". Shrewdly, he recognised that some people might prefer to use online services. A bereaved executor seeking probate after the death of a close relative might need a friendly voice to provide help and guidance. But others in that position might find it less upsetting to communicate with a computer.¹⁹

The Ministry of Justice said in January 2018 that it had "partnered with the UK's leading digital inclusion organisation, Good Things Foundation, to deliver face-to-face assisted digital service through their Online Centres network".²⁰

The **Help with Fees online service**,²¹ enabling court users to apply online for reductions in court fees. This service became fully operational in July 2016. "We went from an 80% rejection rate (mostly because the old, complicated form was hard to fill in correctly) to closer to 20%, and saved £1m", said Susan Acland-Hood, chief executive of HMCTS.²²

Data Store in the magistrates' courts. This allows automated receipt of case files from the CPS and improved archiving.

The **jury summoning service**. When completed, this will allow people summoned for jury service to respond online or by phone, confirming their availability or asking to be excused.

Possession claims. The master of the rolls told civil judges in April 2018 that an HMCTS project was "due to start in October 2018, which will look to make possession claims available online and speed up the administrative elements of the process. There is no intention that any contested hearing should be conducted online or by video."²³

Enforcement. In April 2018, civil judges were told by the master of the rolls that "an HMCTS project is just starting that will look at ways in which to streamline the enforcement process across all parts of the civil jurisdiction. Although long overdue, the parameters of the project are still being finalised."²⁴

The Court of Protection will allow its cases to be initiated and managed online.

A major **family law** project will enable individuals and local authorities to start and manage applications for adoption and care orders.

The **online civil money claims** project, which covers the online court and the digitisation of other civil courts. A test phase with invited users began in 2017 and the service was opened to all unrepresented claimants in March 2018. By June 2018, 10,000 claims had been lodged and user satisfaction was said to be high.

However, there was little attempt to divert users from litigation – for which, of course, they would have to pay court fees. This was in contrast to the Civil Resolution Tribunal in the Canadian province of British Columbia. HMCTS told me it was not its job to encourage litigants to behave in any particular way.

HMCTS also piloted a service aimed at legal professionals who manage multiple claims on behalf of clients. It started in the spring of 2018 with 10 law firms and 1000 claims.

Only the initial claim and defence process was digitised at the outset: defended cases still had to go to court in the normal way. But the system does allow a defendant to make a settlement offer. If that's accepted, an agreement is generated for the parties to approve. An early claim was settled in that way within a couple of hours.

The **divorce project**, under which more than 99% of divorces will be granted online by a "suitably trained and legally qualified professional judge". This was launched in January 2017 when the East Midlands regional divorce centre began requiring divorce petitions to be completed online.²⁵

In May 2018, the divorce service was extended to all unrepresented users.²⁶ It will apply to applications to end a marriage or civil partnership. It will also cover nullity petitions and judicial separation.

Take-up exceeded expectations: by June 2018 the 60% of unrepresented users were applying online, compared with 40% who were sending in paper forms. Only the application process had been digitised by May 2018; HMCTS announced it would start work on digitising the respondent's reply and the court order dissolving the marriage.²⁷ Even though that process was still being handled manually, officials reported a reduced error rate because divorce petitions were being completed more accurately.

A backlog of cases had built up at the divorce centre in Bury St Edmunds, which covers a wide area of southern England and is not part of the online service. Officials said in June 2018 that there had been staff shortages and the situation should soon improve.

Because cases were being processed more quickly, it looked at one time as if the divorce rate had gone up. But this proved not to be the case.

The **probate project**, to allow the personal representatives of a person who has died to deal with the deceased's property. This too was launched in 2017.²⁸ HMCTS says that grants of probate are now often issued "on-the-day".²⁹ If that means the day on which the application is lodged, it must raise questions about how effectively the system authenticates original wills and death certificates.

An **online tribunal service**. This will initially allow claimants to start and progress appeals in social security and child support cases through what are called **online continuous hearings**. As explained by Sir Ernest Ryder, "all participants, the appellant, the respondent government department – which in this case is the Department of Work and Pensions – and the tribunal judge are able to iterate and comment upon the basic case papers online over a reasonable window of time, so that the issues in dispute can be clarified and explored. There is no need for all the parties to be together in a court or building at the same time. There is no single trial or hearing in the traditional sense."³⁰

The senior tribunals judge described this **iterative process** as a ground-breaking project. "The process of on-line dispute resolution will become the norm for much of the less complex work in civil, family and tribunals jurisdictions," he said.³¹

The **tax appeal online project**, which allows appeals to be lodged online with the first-tier tax tribunal.³² Launched in June 2017, it was used by over 2,300 people within three months, with almost 700 appeals lodged.³³

The last five projects mentioned above – money claims, divorce, probate and the two tribunal services – are the first components of a single process that is intended to operate across all civil, family and tribunal cases, supported by a new set of court rules.³⁴ It is often referred to as the "online court" although, because it has no distinct meaning, that term is not generally used by HMCTS or the judges.

Criminal courts are now closer to paperless working than the civil courts. That may seem surprising, as the challenges of digitising the disparate parts of the criminal justice system might appear greater than computerising civil claims.

One reason for this is historic. Peter Handcock was chief executive of HMCTS from 2011 to 2015 and Peter Lewis was chief executive of the Crown Prosecution Service from 2007 to 2016. Together, they set about transforming the processes for which they were jointly responsible. Another is financial: governments are more willing to spend money fighting crime.

But there is a more fundamental reason for computerising the criminal courts first. Although it will become increasingly possible for defendants to be convicted online without the involvement of magistrates, the criminal courtrooms of the future will not look very different from the criminal courts of the past. Courts will certainly rely on electronic communication. But there will still be prosecutors trying to persuade judges or juries that defendants are guilty of the criminal charges. The rule book will be largely unchanged.

Reform of the civil courts is much more ambitious. Here, the aim is to tear up the user manual and start again.

Work is now proceeding on identifying the requirements of an IT system for use across all the non-criminal courts – including tribunals, family courts and the Court of Appeal. The judges have insisted that their courts should continue to be as open and transparent as they are now – if not more so. Facilities will need to be provided so that the press and public can monitor hearings that take place by telephone or video – while ensuring that these are not recorded in breach of the law.

The Prisons and Courts Bill,³⁵ published in February 2017 but dropped later that year, would have provided for video screens in court buildings that could be monitored in the same way as hearings in open court. Under these proposals, courts would have needed to publish information online about pending cases and hearing dates. The press and public could search for information about cases of interest and inspect public documents – as they can already for cases using the CE-File system in the Rolls Building.³⁶

Sir Ernest Ryder, who as senior president of tribunals had become the judge most closely associated with the reforms, said in February 2018³⁷ that “our digital courts must be open courts”. The senior tribunals judge insisted that judges must be involved in reform and suggested non-executive directors to support judicial governance, more training for judges in management skills, more transparency, and more accountability.

He continued:

We are now in a new, digital world... In order to understand, to design and to test reform we must, it seems to me, engage far more than we have in the past with academia, with management experts, digital experts, with the professions, regulators, ombuds and wider society. Reform must be based on proper research; robust and tested. It must consider the latest design techniques. It must be open to scrutiny, and communicated clearly and readily to the judiciary, government, parliament, the professions and the wider public. It must require us to consider whether our processes are sufficient to modern conditions... Which of our processes must change, which may fall by the historical wayside? No question can be out-of-bounds. If we are to secure open justice, all questions must be capable of being asked and examined. But examined properly. The judiciary must therefore support, promote, and commission research. Just as the unexamined life is one not worth living; the unexamined and unresearched reform may not be worth taking.

A significant part of HMCTS reform is rationalising the court estate – which, in many cases, involves closing buildings. The government estimated that “for the financial year 2014–15, nearly half of our buildings were used for less than half of their available hearing time”.³⁸ In February 2016, the Ministry of Justice announced plans to close 86 courts and tribunals; a further five, identified in a consultation paper a few months earlier, were reprieved.

Lawyers and others were concerned about the impact on access to justice of closing courthouses. There were also doubts about whether selling off part of the court estate would raise as much money as the government had hoped. “There is a realisation in some areas that court estate buildings are probably worth nothing and the sites are not worth very much,” Lord Thomas of Cwmgiedd, the lord chief justice, said in April 2016. “But in other areas we have extremely valuable property that we need to consolidate.”³⁹

HMCTS became directly responsible for the courts and tribunals service early in 2017 and ensured that the whole of the maintenance budget was spent for the first time in many years.⁴⁰ Its chief executive, Susan Acland-Hood, said in October 2017: “We’re investing in repairs and

renovations of many of our court buildings; and, where we had court building that were not well-used, we have sold them at the pace we said we would, for more than we undertook to raise, and are reinvesting all of the proceeds.”⁴¹

But those on the ground told a different story. The closure of Lambeth county court in London disclosed an “astonishing saga of ineptitude, delay, panic and confusion”, one said.⁴²

Sir Terence Etherton, master of the rolls, argued in 2017 that the estate could be reduced without reducing its accessibility to court users.⁴³ Administrators would no longer need to work in the buildings whose cases they administered and so a national courts administration service could replace a localised one. Less back-office space and fewer courtrooms would be needed. Multi-court buildings housing tribunals, civil courts and criminal courts would become standard. But there would be more need for public access so that litigants could manage their claims digitally or seek telephone assistance. Computer terminals, video-links and telephones would be needed so that witnesses could give evidence remotely.

In January 2018, the Ministry of Justice launched a new consultation on court closures.⁴⁴ It said there were 350 court and tribunal buildings in use towards the end of 2017, of which 11 were already scheduled for closure. It identified a further seven buildings that could be closed down and sold.⁴⁵ Retained buildings would be consolidated and improved.

One new court is to be built though – in the City of London. It’s to be a criminal court but it will deal only with white-collar crimes: cybercrime, fraud and economic crime. The total cost is believed to be more than £300m and the City will pay for it.

The new court – as yet, unnamed – will be built on the site of Fleetbank House in Salisbury Square, close to legal London. It should be completed by 2025 and will replace two existing courtrooms in the City.⁴⁶

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