

Document number	15/20
Date	07 October 2015
Response to	National proposal on the provision of court and tribunal estate in England and Wales
Issued by	HM Courts & Tribunals Service
Link to consultation	https://consult.justice.gov.uk/digital-communications/proposal-on-the-provision-of-court-and-tribunal-es/user_uploads/reform-estates-national-consultation_official-sensitive_final_050815.pdf

Question 1: Do you agree with the proposals? What overall comments would you like to make on the proposals?

The MA agrees that access to justice requires that at least 95% of the population should be able to access the court in under an hour. However, the consultation proposals do not meet this requirement. The MA argues this commitment should be met for each region specifically so that disparity between areas (particularly between rural and urban areas) does not result in a post code lottery for people in relation to access to justice. The MA would argue the use of public transport should be considered, not just travel time in a car. It should be considered that in certain areas (particularly rural areas), public transport is less available and people might have to make a number of connections to access courts. If multiple connections have to be made, much more time has to be allowed to take account of possible delays and ensure connections are made. It is also the case that for some rural areas, access to the proposed receiving courts may not be possible for 9.30am using public transport. When considering travel by public transport, it is not just the travel time but also the travel cost that should be taken into account. This is particularly relevant in areas where public transport costs are considerably higher during peak times. The MA is concerned that defendants on low incomes could be disproportionately affected by closures where a lack of good public transport links result in difficulty accessing receiving courts at a reasonable cost; particularly as people on low incomes may be less likely to own cars and therefore be more reliant on public transport.

The MA points out that in addition to possible transport links, consideration should be given to other things that might limit access to a courtroom. For example, whether there is sufficient free and accessible parking available near a court for all court users.

The MA welcomes the fact that accessibility for courts users with disabilities has been considered in the proposals but suggests this should include traveling to the courthouse. So accessibility of available public transport and/or availability of sufficient disabled parking needs to be part of the deliberations.

In looking at courts being under-utilised, further analysis of the data would be helpful to understand whether courtrooms are left empty for half or whole days or whether it is an accumulation of hours (for example courts finishing early and therefore standing empty). The reforms put in place due to the Transforming Summary Justice (TSJ) agenda are still ongoing and therefore it is not known how these (and other) changes will improve the efficiency of courts. Better listing, more efficient case

management and fewer cracked trials will all have an impact on the utilisation of the courts and therefore leave a clearer picture of how and where courts could be merged most effectively.

The MA is supportive of the suggestion that if under-utilisation is shown to be due to courts standing empty for whole or half days, the space can be used to the benefit of the system. It is important to encourage shared use of the courtrooms, including for inquests, training purposes and other events such as Magistrates in the Community (MiC).

The MA argues that the possibility of using alternative locations for certain hearings should not be part of this consultation. For the most fundamental and important hearings, such as trials, access to justice still means physical access to a court. Video linking or alternative buildings might be beneficial for certain hearings (such as some renewal of bail hearings or court reviews), but this is not relevant to the main point that 95% of individuals should be able to access the courts for the most important hearings by travelling less than an hour. Any use of alternative locations should only be taken forward for certain prescribed hearings, and only once sufficient evidence is provided that alternative locations are effective and ensure fair administration of justice. The MA is concerned that use of alternative locations may prove to be in conflict with the digitisation programme which will mean courts are not reliant on paper (as currently) but reliant on secure Wi-Fi, click share and other technology such as video screens. Until such time as digitisation is fully implemented, it is not clear what resources will be required in any alternative locations.

Question 2. Will the proposals for the provision of court and tribunal services have a direct impact on you? If yes, please provide further details.

Further details are provided in the regional responses but any court closures are likely to have a direct impact on magistrates who may have to transfer to another court, or even another Local Justice Area. Magistrates in rural areas will be most affected in relation to increased travel times to court.

The MA also believes long-term consideration should be given to what impact the proposals might have on future recruitment of new magistrates. It is likely that people local to a court will be more likely to apply than individuals who live considerable distances from the nearer courtroom. This may reduce recruitment from rural areas.

It is also possible there might be an impact on recruiting youth and family magistrates. If the work of either jurisdiction is more centralised, it may stop adult magistrates applying for either jurisdiction if they know they could not do the work in their own area.

Question 3: Are there other particular impacts of the proposals that HM Courts & Tribunals Service should take into account when making a decision? Please provide details.

The MA is concerned the some of the proposed court closures will severely restrict defendants, victims and witnesses from accessing justice.

The MA argues there is a danger the most vulnerable people are likely to be unfairly affected by reducing accessibility, particularly if access via public transport is not viable. This could result in defendants who belong to certain vulnerable groups (such as those with visual or other disabilities) being discriminated against as they struggle to attend court. In addition, if the most vulnerable victims or witnesses are discouraged to attend, this could have unintended consequences on certain types of cases such as domestic abuse. One example raised by members was a situation where there was only one possible route via public transport from a certain location – which would mean vulnerable witnesses or victims faced travelling on the same bus or train as defendants.

The MA is also concerned about the impact of the proposed closures on the openness and transparency of the justice system which is vital in ensuring the legitimacy of the system and therefore public confidence. There are two relevant aspects to this which were raised by members. Firstly the fact that magistrates courts provide local justice, with magistrates themselves having proven ties to the locality. Increased travel may result in magistrates sitting far from their local area, thus devaluing the provision of local justice. Secondly, it should also be remembered that access for the public is an important aspect of the justice system, even if they play no part in proceedings.

Following on from the importance of ensuring the public can still access hearings, an important issue initially raised by Lincolnshire MA in response to an earlier consultation was the impact of proposed closures on media publication of court activity. It was pointed out that local newspapers were often the only media presence at magistrates' courts. Given the pressures on local media, it is unlikely they would cover courts outside their immediate area, even if the cases involved individuals who lived within their circulation area. The media has an important role to play in communicating the outcomes of crime and assisting public scrutiny of crime. If local media access to courts is reduced, it would therefore fall to others to ensure transparency and scrutiny of crime. Steps to ensure that the general public was kept informed about local crime outcomes would need to be taken by justice partners so as not to jeopardise weakening public trust in our justice system.

The MA is also concerned that a more centralised justice system might limit multi-agency working, which is incredibly important for changing the behaviour of offenders with complex needs, and would probably increase the costs facing these agencies. The youth justice system illustrates the benefits of multi-agency working with Youth Offending Teams (YOTs) bringing together different agencies to reduce re-offending.

Question 4. 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 MA is supportive of the most efficient use of resources available to HMCTS by targeting investment to those locations which are more modern and accessible.

However, the MA is concerned with the mention on page 9 that some NPS staff may have to find "alternative accommodation" as this would mean probation would not be able to work as closely with the court. The MA considers it important that wherever possible NPS staff should be located on-site. It has been shown in places like Highbury Magistrates' Court that better outcomes are achieved when there are more services/agencies on-site.

The MA is also concerned that the operational costs which it is argued would be saved by proposed court closures are not clearly broken down as some operational costs would merely be transferred to the receiving court, and would therefore not result in any savings. For example, in one area members were informed that the operational costs for their court included magistrates' expenses – which would obviously still be accrued by the work being transferred. In fact, it is likely that for most areas, travel expenses for magistrates will increase.

In relation to the proposals for alternative buildings to be utilised, the impact assessment does not clarify whether it is expected that other buildings could be used free of charge. Even publicly-owned buildings are likely to be bringing in money via private functions, and it would have to be ensured that HMCTS have access whenever needed without competing in the open market with other users. The MA is concerned that in calculating average travel times, the proposals planned for arrival at court of 10am – whereas parties involved in proceedings (including magistrates, defendants,

witnesses) are often expected to arrive at 9.30am. Obviously, this will have an impact not just on possible travel but the duration and cost as well.

The MA believes that 20% of the working-age population being more than 30 minutes away from a magistrates' court, even by car, is concerning.¹ And that when taking public transport into consideration, the proposed drop from 82% to 73% of people who are within 60 minutes of a magistrates' court presents severe challenges for access to justice.

As mentioned above, the MA also believes the possible risk of harassment or victimisation (page 19 of the Impact Assessment) is not sufficiently considered as longer travel times and greater centralisation increase the chances of victims encountering their alleged abusers on the journey to court.

Question 5. 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.

The MA agrees that alternatives to travelling to a physical building could be beneficial for some users in relation to certain types of hearing. Examples would be digitised systems for certain offences such as speeding, or use of video linking for vulnerable witnesses.

The MA appreciates that certain straightforward hearings dealing with uncontested applications relating to bail or remand may be able to be dealt with in an alternative location or via video link, but security would not be the only consideration. Access to the required technology is also vitally important – with systems that are compatible with the new systems being used in courts (such as click share). Even if technology is available in alternative buildings, if the systems are not compatible, simple things such as playing CCTV evidence could be impossible, resulting in adjourned or delayed hearings.

As mentioned above, the MA believes consideration should also be given to how any alternative buildings are currently being used and what duty the authorities would have to prioritise use by the courts. Buildings which are available for hire might mean HMCTS had to compete for the space in a competitive market. In addition, listing arrangements would be further complicated by the need to engage with outside organisations. Finally, the MA would also like to see HMCTS consider whether other organisations could make use of court buildings in order to increase overall utilisation – bringing in revenue without reducing local access to justice.

Question 6: Please provide any additional comments that you have.

N/A

¹ Chart 2, page 16 of the Impact Assessment Document