

PROVISION OF COURT AND TRIBUNAL ESTATE IN ENGLAND AND WALES – PLA RESPONSE

CONSULTATION QUESTION:	PLA RESPONSE
<p>1 Do you agree with the proposals? What overall comments would you like to make on the proposals?</p>	<p>The PLA is not averse to change. We fully understand the financial reasons which have given rise to the proposal. However, what is of concern is to ensure that, if the proposal is put into effect, the service that the courts provide is fit for purpose. For too long there has been under-resourcing and under-management of the court service. As a result, the current service provided by the Courts is generally considered to be poor or very poor by our members. We attach a leading article published in the Law Society Gazette on 21 September 2015, written by the PLA chair-elect which addresses the serious concerns held by our members.</p> <p>Problems reported include:</p> <ul style="list-style-type: none"> <li>• Unacceptable delays, for example in the production of orders and in arranging hearing dates. Feedback shows it is taking some courts over eight weeks to turn around post and return issued applications.</li> <li>• Court staff giving incorrect or inconsistent information (including wrong contact numbers), or being unable to say what is happening with a particular matter. Often, the computer system appears at fault.</li> <li>• Unless a claim needs to be issued within 24 hours, it is no longer possible to get a 'face-to face service' to ensure claims are issued before critical deadlines.</li> <li>• Appointments to issue proceedings being refused, usually due to administrative failings, including staff refusing to accept claims over the counter when they are physically too large to fit in the drop box.</li> <li>• Claims being issued for service by solicitors, only to be served by the court and incorrectly listed for interim hearings (with L&amp;T Act 1954 proceedings being listed for interim possession hearings and residential possession proceedings listed for incorrect case management hearings).</li> <li>• Matters being listed in front of the wrong level of Judge [Gordon v Gosport Blinds, Portsmouth County Court]</li> </ul> <p>The acknowledged effect of the proposal will be a reduction in capacity – in the case of the County Courts a reduction of 17% i.e. almost one-fifth of existing capacity. Whilst the proposal sets out that the Courts that are proposed to be closed are under-utilised, generally speaking, this does not match the PLA's experience of these Courts. Moreover the proposal does not confirm the utilisation rates of those Courts where cases will be transferred to and the PLA has grave concern that these Courts are</p>

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	<p>already stretched to the limit.</p> <p>Physical relocation of a court service to another site will not address this problem, but will simply lead to a greater burden being placed on the other site – particularly if they are taking on work from more than one court. The proposal expressly states that it does not include any IT process upgrades. We are therefore very concerned that, without sufficient investment in the provision of the court service itself, the downward spiral will continue.</p>
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<p>2 Will the proposals for the provision of court and tribunal services have a direct impact on you? If yes, please provide further details.</p>	<p>The Property Litigation Association is an association made up of approximately 1200 lawyers specialising in property disputes in England and Wales. These include but are not limited to business lease renewals (CPR 56), possession claims (CPR 55), debt recovery, dilapidations claims, residential and agricultural matters and various other matters seeking damages and/or declaratory relief. We come from a variety of firms in terms of size and location. CPR 55 and CPR 56 require that claims be dealt with in the County Court responsible for the area in which the subject property is located. The upper limit of jurisdiction for claims issued in the County Court also means that other property related claims must be issued in the County Court. As a result, the PLA has considerable experience of the provision of County Court services.</p> <p>The PLA has no experience of magistrates' courts, family courts, youth courts or tribunal hearing centres. Its response is therefore limited to the proposals which affect the provision of County Court services.</p> <p>The proposals will have a direct impact on our members and, more importantly, their clients. As mentioned above, for many matters a claim must be dealt with in the county court whose catchment area covers the subject property. Therefore, our members and their clients may have to travel further than might otherwise be the case, which may take longer and be more costly. With further distance to travel, it may be necessary to contact the court before hand in order to avoid a wasted or less successful visit. However, with many courts, it is very difficult to contact the court by telephone as the lines are always busy, no matter what time of day a call is made. Frequently the courts cannot confirm whether or not a hearing has been vacated, often forcing attendance despite the matter being settled, so as to avoid the lengthy process of appealing / setting aside a decision mistakenly made. The wasted costs will be compounded if parties have to travel further.</p> <p>If some county courts are taking on the burden of work that would have gone elsewhere, this is only going to get worse. The proposals do not say how many extra staff will be retained at the county courts which are taking on the extra work, or whether that court has capacity to take on the work – the impact statement only considers how little used the proposed closure courts are.</p> <p>On top of this, a number of recent administrative and legislative changes (or threatened changes) have discussed extending the county court property load or have actually extended it. For instance, the abolition of distress, with CRAR restricted to rent claims alone, means an extra amount of service charge disputes must be added to county court work. If reforms of the law of forfeiture are implemented as proposed this will restrict all forfeiture or termination proceedings to county court claims where as presently most commercial leases are forfeited by peaceable re entry without recourse to the courts. The PLA's view is that the county courts are already insufficiently resourced to deal with any extra workload.</p>
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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 points set out in section 2 above are repeated.

It is necessary to assess the impact on the county courts which will be taking on the extra work. For example, Wandsworth is earmarked to take on the work from both West London county court and Lambeth county court. The proposal does not explain whether Wandsworth has the capacity to deal with the extra work, nor how many extra staff, telephones, computers etc will be needed nor that they will be acquired sufficiently in advance to ensure a smooth transition.

The impact assessment on travel is expressly limited to two times of day – to get to the court for 10am and to leave again at 5pm. However, not everyone has to be at court at 10am and then stays for the whole day. Court appointments are at any time between 10am and 4pm and can last for as little as 10 minutes. Travel times will vary throughout the day, particularly on public transport outside of rush hour. Buses and trains will not run as frequently during these times. Therefore, the impact assessment on travel underestimates the additional travelling time on public transport.

The impact assessment makes clear that no other proposal has been considered. It is closure of the nominated courts or do nothing. There is no suggestion of investing money to upgrade any of the buildings so that they meet the objectives, or of investing capital to make the courts accessible so that more of the public will use them and they will be less of a burden than currently is the case. We consider that thought should have gone into finding alternative ways of retaining at least some of the nominated courts.

Justice should be accessible and not overly delayed. Recent experience of PLA members is that it is common for cases to be commenced in a local home court but then moved for the administrative convenience of the court, often more than once, and to quite different courts. For elderly, disabled or disadvantaged parties and/or witnesses this is a real problem and needs to be avoided. If parties are local to West London having to travel to say Willesden and then to Central London for a trial places a significant extra burden on the elderly, disabled or disadvantaged.

Delay is a very serious problem for our members. We presently experience 6- 7 week turnaround periods for routine post , issuing of process and receipt of orders. Hearing dates (including CMCs) for simple matters and applications are often many months later than reasonably expected. The courts statistics bare no relationship to our members and users experience. These issues are already completely unacceptable. Accordingly if closure and consolidation of courts and their workloads are going to result in further delay (which seems inevitable) this is not feasible and is not justice. Many defended property cases are taking 18 – 24 months already to come to trial. This is both costly, very unsatisfactory and again unacceptable

Transferring cases between already overburdened courts brings with it delay. One member firm cites a recent trial which was moved from Tunbridge Wells to Central London for the 1 day trial. The Claimant (a man in his 90s) and firm based on the south

coast travelled to CL for the hearing. An application to adjourn was made, and the ability of the DDJ to hear the contested renewal questioned. The application was refused, but the result was insufficient time to hear the trial. CL then sent the matter back to Tunbridge Wells for urgent listing. 44 days have passed since the trial date, but CL have still not made the required order so the matter is still to be listed. These delays push back the 18-24 month trial time even further. Parties are exploiting the pressures on the court burden in a manner which prevents justice being done.

It is the experience of many of the PLA's members that trial windows are double booked. One member had a 5 day trial listed on 22 June 2015. On 18 June 2015 they were informed that the trial was double booked and the parties asked for dates to avoid up to the end of November 2015. Dates were given up to the end of December 2015. Without further consultation, the court re-listed the trial for a week in January when retained Counsel is already booked. The court were informed immediately and the trial is yet to be re-listed. [Hildebrand v Archer claim Nos: A00WD691 and B20LU008]

<p>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.</p>	<p>The points set out in section 3 above are repeated.</p> <p>The impact assessment concentrates primarily on the cost but does not deal in the round with whether the court service as a whole will, if the proposal is implemented, be able to cope. There needs to be a fundamental rethink about how the courts operate, with particular emphasis on staffing levels, the issuing of claims remotely (either on line or by lodging at some agency nearby, such as a post office which can post claims in bulk to the relevant county court), procedural hearings by telephone, and email correspondence with the court. The fewer times someone needs to attend physically the less the closures of the courts and the overburdening of other courts will be felt.</p> <p>However, the PLA has grave concerns the closure of existing courts will only exacerbate the problems already experienced by our members and users as referred to in section 1 above.</p>
<p>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.</p>	<p>The suggestions in the question are all welcome. However, what is disappointing is that there has been insufficient thought or assessment of what alternatives would work. The proposal is that the nominated courts would be closed by no later than April 2017. That is not very long to come up with workable solutions so that there is a smooth transition immediately after a court is closed.</p> <p>Whilst hearings by telephone can be a viable alternative and in some cases preferable to a hearing in person, especially when dealing with case management issues, this option already exists and is routinely used where it is appropriate to do so.</p> <p>The PLA's experience is that there are serious problems with the existing technology used by the County Courts which severely restricts the purpose that it is intended to serve. Our members have little confidence in the technology used by the Court, the result being a reluctance to rely solely on technology.</p>

<p>Please explain your answer, with specific examples and evidence of the potential demand for the service where possible.</p>	
<p>6 Please provide any additional comments that you have.</p>	<p>The PLA welcomes a discussion with MOJ in respect of the proposed closures and the above comments so that the PLA can address our members' concerns. In the time available it has only been possible to obtain limited regional and Court specific responses but further feedback has been requested so that particular regions/Courts can be discussed with MOJ.</p>